

**CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS**  
**Sitting/Acting as the**  
**NORTH CLACKAMAS PARKS AND RECREATION DISTRICT BOARD OF DIRECTORS**

**Study Session Worksheet**

**Presentation Date:** June 5, 2012    **Approximate Start Time:** 2:45 p.m.

**Approximate Length:** 15 min.

**Presentation Title:** Patrol and Enforcement Intergovernmental Agreement with the City of Happy Valley and Metro

**Department:** North Clackamas Parks and Recreation District

**Presenters:** Gary Barth and Michelle Healy, NCPRD and Chris Storey, County Counsel

**Other Invitees:** Jason Tuck and Steve Campbell, City of Happy Valley

**WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?**

Should the Board of County Commissioners, acting as the Governing Body of the North Clackamas Parks and Recreation District (NCPRD), approve the Intergovernmental Agreement (IGA) with Metro and the City of Happy Valley for Patrol and Enforcement of park rules at Mount Talbert Nature Park, Scouter Mountain and other properties located within the City of Happy Valley?

**EXECUTIVE SUMMARY:**

NCPRD, Metro and Happy Valley have been working together to improve enforcement of park rules at a number of park properties located within the City of Happy Valley. The attached IGA lays out the roles and responsibilities of each agency as they specifically relate to enforcement at Mount Talbert Nature Park, Scouter Mountain, the Miller property, the Rogers property, the Burrigh property and other future properties acquired by Metro within the City. (Please see exhibit A of the IGA for a map of the properties). Because this is a three party agreement, only two of the above-mentioned properties apply to NCPRD – Mount Talbert Nature Park and Scouter Mountain. The other properties are either entirely managed or owned by Metro, or by the City of Happy Valley. However, the proposed IGA identifies the City of Happy Valley as the main enforcement authority at all of these sites. County Counsel has reviewed and approved the attached IGA.

Background on the two properties that are specific to NCPRD as part of this IGA are described as follows. Mount Talbert is a 224-acre nature park located within the NCPRD. The park is jointly owned by NCPRD and Metro, and NCPRD operates and maintains the park on a day-to-day basis through an existing IGA with Metro. On November 22, 2011, the Board passed Board Order 2011-88, approving the annexation of Mount Talbert to the City of Happy Valley and the property was officially annexed to the City in April of 2012.

Scouter Mountain is a 100-acre property owned entirely by Metro located within NCPRD. Of the 100 acres, 70 acres will be operated and managed by NCPRD through an existing intergovernmental agreement. The property is currently closed to the public, however, Metro, NCPRD and Happy Valley are working together to construct visitor improvements to the site and anticipate the park will be open in the summer of 2013.

Through this IGA the partners will be able to provide an increased level of service for rule enforcement at these properties with the goal of improving visitor experiences, reducing complaints and protecting natural resources.

**FINANCIAL IMPLICATIONS:**

None to NCPRD - the City of Happy Valley is taking on enforcement responsibility for the properties listed in the IGA.

**LEGAL/POLICY REQUIREMENTS:**

As outlined in the IGA the City of Happy Valley will be adopting NCPRD and Metro park rules for enforcement.

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

This is a three party agreement between NCPRD, Happy Valley and Metro. As part of the recent annexation of Mount Talbert to the City of Happy Valley, the enforcement of park rules was discussed publically with the Board, the NCPRD District Advisory Board and park neighbors.

**OPTIONS:**

1. Direct staff to present the IGA, in its current form, for decision at a future Business Meeting.
2. Direct staff to coordinate with Metro and Happy Valley to amend the IGA to address concerns raised by the Board and schedule revised IGA decision at a future Business Meeting.
3. Reject IGA.

**RECOMMENDATION:**

Staff respectfully recommends that the Board direct staff to present the IGA, in its current form, for decision at a future Business Meeting.

**ATTACHMENTS:**

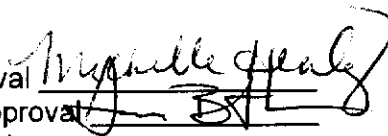
1. Draft IGA.

**SUBMITTED BY:**

Division Director/Head Approval

Department Director/Head Approval

County Administrator Approval



For information on this issue or copies of attachments, please contact Michelle Healy at (503) 742-4356

## Fiscal Impact Form

**RESOURCES:**

Is this item in your current work plan and budget?

- YES  
 NO

**START-UP EXPENSES AND STAFFING (if applicable):**

Not applicable to NCPRD.

**ONGOING OPERATING EXPENSES/SAVINGS AND STAFFING (if applicable):**

Not applicable to NCPRD.

**ANTICIPATED RESULTS:**

Improved rule enforcement and park patrol at the properties included in the IGA, resulting in a better park visitor experience and fewer complaints.

**COSTS & BENEFITS:**

Prior to this agreement and the annexation of Mount Talbert to the City of Happy Valley, enforcement of park rules was done by the Clackamas County Sherriff's Office. This partnership frees up the Sherriff's Office from responding to park issues at Mount Talbert. In addition, Happy Valley Code Enforcement will provide more regular patrols at all of the sites, which should reduce visitor complaints received by NCPRD and the partners.

**INTERGOVERNMENTAL AGREEMENT**  
**PATROL AND ENFORCEMENT AGREEMENT**

 **DRAFT**

This Intergovernmental Agreement (“Agreement”), entered into on the last date of signature below (the “Effective Date”), is by and among Metro, an Oregon municipal corporation (“Metro”), North Clackamas Parks and Recreation District, a service district of Clackamas County organized pursuant to ORS chapter 451 (“NCPRD”), and the City of Happy Valley, an Oregon municipal corporation (the “City”) (collectively, the “Parties,” and each individually, a “Party”).

**RECITALS**

A. The voters of the Metro region have approved two ballot measures (Metro Ballot Measure 26-26 in 1995, and Metro Ballot Measure 26-80 in 2006) to provide funds to protect and preserve natural areas within the Metro region, and pursuant to the aforementioned ballot measures, Metro has either alone, or in cooperation with the City or NCPRD, acquired real property within the City, as more specifically described in the Recitals below;

B. Metro and NCPRD acquired portions of the property known as the Mt. Talbert Natural Area, which property is depicted on the attached Exhibit A (the “Mt. Talbert Property”), and Metro and NCPRD entered into an Intergovernmental Agreement, dated May 20, 2010, to provide for NCPRD’s long-term management of the Mt. Talbert Property (the “Mt. Talbert IGA”);

C. Metro has acquired property commonly known as Tax Lot 12E36B 00700 and Tax Lot 12E36B 00790 in Section 25 of Township 1 South, Range 2 East of the Willamette Meridian, as depicted on the attached Exhibit A (the “Scouter Mountain Property”), and Metro and NCPRD entered into an Intergovernmental Agreement, effective December 21, 2010, to provide for NCPRD’s long-term management of the Scouter Mountain Property (the “Scouts IGA”);

D. Metro and the City acquired property commonly known as Tax Lots 2300 and 2600, in Township 1 South, Range 2 East of the Willamette Meridian, Section 25A, as depicted on the attached Exhibit A (the “Miller Property”), and the City and Metro entered into an Intergovernmental Agreement, effective June 30, 2008, to provide for the long-term management of the Miller Property (the “Miller IGA”);

E. Metro acquired property commonly known as Tax Lot 300 in Section 25 of Township 1 South, Range 2 East of the Willamette Meridian, as depicted on the attached Exhibit A (the “Rogers Property”);

F. Metro acquired property legally described as Parcel 5, PARTITION PLAT NO. 2011-046, in the City of Happy Valley, County of Clackamas, and State of Oregon, as depicted on the attached Exhibit A (the “Burright Property”); and

G. Notwithstanding that the Mt. Talbert IGA, the Scouts IGA, and the Miller IGA (collectively, the "IGAs") may state that the property manager will provide security services to the applicable property, the Parties desire for the City to provide security, patrols and other law and code enforcement services to the properties referenced above, and potentially other properties that Metro may acquire within the City, and the Parties are entering into this Agreement to set forth the terms of the City's commitment to provide such security services.

NOW, THEREFORE, in consideration of the foregoing, and mutual covenants herein, the Parties agree as follows:

**1. Properties to Receive Patrol or Enforcement Services.**

1.1. This Agreement shall be applicable to: (a) the Mt. Talbert Property, the Scouter Mountain Property, the Miller Property, the Rogers Property, and the Burright Property; and (b) properties that may be acquired by Metro within the City, to the extent that Metro has notified the City that Metro wishes the City to provide patrols and code enforcement services to such property, and the City has accepted such responsibility pursuant to Section 1.2 of this Agreement. Such properties shall be collectively referred to herein as the "Supervised Properties," and individually as a "Supervised Property."

1.2. Metro will request the City's enforcement services (as set forth in more detail in Section 2, below) for newly acquired properties by formal written request to the attention of the City's representative identified in Section 5.5, below. Not later than thirty (30) days after receiving Metro's request, the City shall provide to Metro written notice stating whether the City will provide enforcement services to the Property.

1.3. The City, by its approval of this Agreement, hereby delegates responsibility to, and authorizes, the person named as the City's representative in Section 5.5, or the designee of such person, to determine whether the City will accept responsibility to provide patrols or code enforcement services to a property. Said representative is authorized to bind the City to provide patrols or code enforcement services to such property in accordance with this Agreement without any further approval or consent from the City Council.

1.4. By accepting the responsibility to provide enforcement services to the Supervised Properties, as set forth in this Agreement, the City agrees to be responsible for funding the cost of such services, with the City's own financial and staffing resources.

**2. Scope of Enforcement Services.** Notwithstanding anything to the contrary in the IGAs, the City shall provide the following services to the Supervised Properties:

2.1. Patrols. With respect to those Supervised Properties that are officially open to the public, the City will patrol such properties as often as time allows, on a weekly basis. A Supervised Property is "open to the public," if it either (a) has constructed (not informal) trails, outdoor furniture, signage, visitor information available on site or on the internet, or other substantial evidence that the property is open to the public, or (b) is immediately adjacent to a property or properties that meet the criteria in the foregoing section (a). As of the date of this

Agreement, the Mt. Talbert property is the only Supervised Property open to the public. Notwithstanding the fact that a Supervised Property may not be open to the public, the City may elect to provide patrols to such properties, in the City's sole discretion.

2.2. Code and Rule Enforcement. Regardless of whether any Supervised Property is open to the public, the City will respond to complaints by the public or another party to this Agreement of any disturbances on the Supervised Properties and take enforcement action as the City deems appropriate, in the City's sole discretion, against individuals observed or known to be violating: (a) any State, County, City, or Metro code, (b) any Metro rules, regulations, or policies that apply to Metro's natural areas (the "Metro Rules"), (c) any rules, regulations, or policies of NCPRD (the "NCPRD Rules"); or (d) any regulations that apply specifically to the applicable Supervised Property (the "Property Rules"), as set forth in any park rules or management plan adopted for such property. In the event of a conflict among any of the jurisdictions' code sections or rules, the more restrictive shall apply. The City acknowledges and agrees that the City has the authority to enforce Metro's code, the Metro Rules, any Property Rules, and the NCPRD Rules for each of the Supervised Properties pursuant to Ordinance No. 222 and the administrative rules adopted thereunder, attached as Exhibit B to this Agreement. While either Metro (or its assignee), the City, or NCPRD may have the responsibility to manage the Supervised Properties to, among other things, discourage any disturbances or code or rule violations in general, the City shall have the right pursuant to this Agreement to take any action that it deems appropriate in response to specific violations of such codes or rules by individuals. The City may issue citations for such violations and bring actions to the City's Municipal Court for adjudication.

2.3. Amendments to Metro Code, Metro Rules or Property Rules. Metro agrees to provide the City and NCPRD with a copy of any amendments to the Metro code, Metro Rules or Property Rules that pertain to any of the Supervised Properties within fifteen (15) calendar days of such amendments taking effect. The City agrees to amend the administrative rules, attached as Exhibit B to this Agreement, to reflect any such amendments. The City shall not be responsible for enforcing any provision of the Metro code, Metro Rules or Property Rules for which Metro has not provided notice under this section or of which the City personnel who are responsible for enforcement have had no actual notice. Metro shall, pursuant and subject to the terms and conditions of Section 5.1 of this Agreement, defend and indemnify the City in any action brought against the City to the extent that it is based upon the City's enforcement of a provision of the Metro code, Metro Rules or Property Rule, which has no equivalent in any State, County or City code that the City would otherwise have authority to enforce, and except to the extent such action is based upon the City's negligence or intentional misconduct in the enforcement of such provision. The parties agree that Metro shall have no duty to defend and indemnify the City pursuant to this Section or Section 5.1 in any action brought against the City based upon the City's enforcement of a provision of the Metro code, Metro Rules or Property rules when (a) the code provision or rule being enforced by the City was repealed prior to the enforcement action; and (b) the City had notice of such repeal pursuant to this section prior to the enforcement action or City personnel who are responsible for enforcement had actual notice of such repeal prior to the enforcement action.

2.4. Amendments to NCPRD Rules. NCPRD agrees to provide the City and Metro with a copy of any amendments to the NCPRD Rules that pertain to any of the Supervised Properties within fifteen (15) calendar days of such amendments taking effect. The City agrees to amend the administrative rules, attached as Exhibit B to this Agreement, to reflect any such amendments. The City shall not be responsible for enforcing any provision of the NCPRD Rules for which NCPRD has not provided notice under this section or of which the City personnel who are responsible for enforcement have had no actual notice. NCPRD shall, pursuant and subject to the terms and conditions of Section 5.1 of this Agreement, defend and indemnify the City in any action brought against the City to the extent that it is based upon the City's enforcement of a provision of the NCPRD Rules, which have no equivalent in any State, County or City code that the City would otherwise have authority to enforce, and except to the extent such action is based upon the City's negligence or intentional misconduct in the enforcement of such provision. The parties agree that NCPRD shall have no duty to defend and indemnify the City pursuant to this Section or Section 5.1 in any action brought against the City based upon the City's enforcement of a provision of the NCPRD Rules when (a) the rule being enforced by the City was repealed prior to the enforcement action, and (b) the City had notice of such repeal pursuant to this section prior to the enforcement action or City personnel who are responsible for enforcement had actual notice of such repeal prior to the enforcement action.

2.5. Amendments to the City Code. The City agrees to provide NCPRD and Metro with a copy of any amendments to the City's code that modify rules and regulations applicable to any Supervised Property within fifteen (15) calendar days of such amendments taking effect, unless said amendments could modify or conflict with applicable Metro or NCPRD rules or ordinances, in which case City shall provide a copy of the proposed amendment no later than thirty (30) days prior to the first reading of such proposed amendment.

**3. Right of Entry.** Metro and NCPRD grants to the City (and its respective agents) the right to enter onto the Supervised Properties for the purpose of performing all duties and responsibilities under this Agreement.

**4. Term; Termination.**

4.1. Term. This Agreement shall continue in effect unless modified to include a shorter term or unless terminated as provided herein.

4.2. Termination for Convenience. Metro, the City, and NCPRD may, by written agreement signed by all Parties, jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective as provided in such termination agreement.

4.3. Termination for Cause. Metro, NCPRD, or the City may terminate this Agreement in full, or in part, at any time if that Party (the "terminating Party") has determined, in its sole discretion, that the other Party has failed to comply with the conditions of this Agreement and is therefore in default (the "defaulting Party"). The terminating Party shall promptly notify the defaulting Party in writing of that determination and document such default as outlined herein. The defaulting Party shall have thirty (30) days to cure the default described

by the terminating Party. If the defaulting Party fails to cure the default within such thirty (30) day period, then this Agreement shall terminate ten (10) days following the expiration of such thirty (30) day period. With respect to any termination pursuant to this Section 4.3 applicable to the Scouter Mountain Property or the Mt. Talbert Property, both Metro and NCPRD must agree to such termination.

4.4. Termination for Budgetary Reasons. The City may terminate this Agreement in full, or in part, at any time if the City has determined, in its sole discretion, that it no longer has available the budgetary resources for funding the costs of the services required under this Agreement. The City agrees to provide Metro and NCPRD with thirty (30) days' written notice of the City's intent to terminate this Agreement under this Section. Metro and NCPRD shall have the right during this thirty (30) day period to renegotiate this Agreement with the City to address the budgetary concerns raised by the City. This Agreement shall terminate once this thirty (30) day period has expired unless the Parties have agreed to an amendment to the Agreement that satisfies the City's budgetary concerns.

## 5. General Provisions

5.1. Mutual Indemnification. Each Party shall defend, indemnify and hold the other Parties (and such other Parties' agents, employees, and elected officials) harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees (collectively, "Claims"), arising out of or in any way connected with the performance of this Agreement by such indemnifying Party or such Party's officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30, and the Oregon Constitution. In executing this Agreement, the City does not assume liability or responsibility for any Claims that arise from the existence or effect of provisions of the Metro code, Metro Rules, Property Rules, or NCPRD Rules to the extent that there is no State, City, or County equivalent that the City would otherwise have authority to enforce. In any Claim which the enforceability and/or validity of any provision of the Metro code, Metro Rules, or Property Rules is at issue, Metro shall defend the same at its sole expense, and if judgment is entered or damages are awarded against the City, Metro, NCPRD, or any combination thereof, Metro agrees to satisfy the same, including all third-party costs and attorney's fees. In any Claim which the enforceability and/or validity of any provision of the NCPRD Rules is at issue, NCPRD shall defend the same at its sole expense, and if judgment is entered or damages are awarded against the City, Metro, NCPRD, or any combination thereof, NCPRD agrees to satisfy the same, including all third-party costs and attorney's fees.

5.2. Laws of Oregon. This Agreement shall be governed by the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof, and the Parties agree to submit to the jurisdiction of the courts of the State of Oregon.

5.3. Amendment. This Agreement may be amended at any time with the written consent of all Parties.



5.4. Assignment. Except as otherwise provided herein, the Parties may not assign any of their rights or responsibilities under this Agreement without prior written consent from the other Party.

5.5. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail, addressed as follows:

To Metro: Metro Natural Areas Bond Measure Program Director  
Kathleen Brennan Hunter  
600 N.E. Grand Ave.  
Portland, OR 97232-2736  
Tel. 503-797-1948  
Fax 503-797-1849

To NCPRD: North Clackamas Parks and Recreation District  
Michelle Healy, Deputy Director  
150 Beaver Creek Rd.  
Clackamas, OR 97045  
Tel. 503-742-4348  
Fax 503-742-4349

To the City: The City of Happy Valley  
Jason Tuck, City Manager  
16000 SE Misty Dr.  
Happy Valley, OR 97086  
Tel. 503-783-3800  
Fax 503-658-5174

5.6. Severability. If any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.

5.7. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to the Property. No waiver, consent, modification or change of terms of this Agreement shall bind the Parties unless in writing and signed by each Party.

 **DRAFT**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**METRO**

**NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

\_\_\_\_\_  
Jim Desmond, Director  
Metro Sustainability Center

\_\_\_\_\_, Chair

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF HAPPY VALLEY**

\_\_\_\_\_  
Jason Tuck, City Manager

Date: \_\_\_\_\_

Exhibit A Depiction of Supervised Properties  
Exhibit B City Ordinance Re: Enforcement Authority

 **DRAFT**





# Exhibit A

## Patrol and Enforcement Agreement

- Mt. Talbert Property
- Scouter Mountain Property
- Miller Property
- Rogers Property
- Burrigh Property
- City Boundary



Source: 1996 Aerial Photographs & County GIS (2002)  
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