

BULL MOUNTAIN NATURE PARK MEMORANDUM OF UNDERSTANDING

This agreement is made and entered into by and between the City of Tigard ("City"), an Oregon municipal corporation and Friends of Bull Mountain Park ("FBMP"), an Oregon non-profit corporation, hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the City of Tigard owns Bull Mountain Park ("Park"), as shown in Exhibit 1, which is designated by the City as a neighborhood park; and

WHEREAS, the City has completed a concept plan of the Park ("Concept Plan"), which included public input from the community in the process; and

WHEREAS, FBMP desires to see the Park developed in accordance with the City's Concept Plan; and

WHEREAS, Metro awarded FBMP a grant as part of Metro's Nature in the Neighborhoods Capital Grants program to develop the Park and has entered into an agreement with Metro regarding use of the grant funds ("Grant Agreement"); and

WHEREAS, the City has agreed to be the Government Sponsor for purposes of FBMP's grant and has entered into a separate agreement with Metro ("Government Sponsor Agreement"); and

WHEREAS, pursuant to the Grant Agreement, FBMP will manage funds from Metro to develop the Park and is responsible for identifying matching funds and making all improvements to the Park; and

WHEREAS, pursuant to the Government Sponsor Agreement, the City will designate all structures as capital assets of the park ("Park Assets") and assume maintenance responsibilities for the structures; and

WHEREAS, the City and FBMP desire to develop a useful neighborhood park which benefits the neighbors of the park and all Tigard citizens.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed by and between the Parties as follows:

1. Scope of Work. FBMP agrees to design and construct the Park Assets, including but not limited to a nature play area, trails, and other recreational facilities at the Park as set forth in the Scope of Work, included as Exhibit A to the Grant Agreement and attached to and made part of this Agreement as Exhibit 2.

2. Term of Agreement. The term of this Agreement shall be for a period commencing upon contract execution through and including April 30, 2017. Should Metro agree to extend the Grant Agreement with FBMP, the City and FBMP agree to extend this Agreement for a like period of time.
3. Financial Obligations. FBMP is solely responsible to Metro, pursuant to the Grant Agreement, for its financial obligations to Metro associated with the development and construction of the Park Assets. The City's financial obligation for the Park Assets only commences after the City has accepted the Park Assets pursuant to Section 5.4 of this Agreement.
4. FBMP Obligations. FBMP shall:
 - 4.1 Obtain approval from City's project coordinator for design and development of the Park. Approval shall be required at 30%, 60%, 90%, and 100% completion for the design phase as well as for any significant changes to the approved design.
 - 4.2 Regularly meet with City's project coordinator as requested by the City.
 - 4.3 Timely obtain all applicable City approvals and permits for the Park Assets, which may include development, engineering, and building permits.
 - 4.4 Track all hours and donations of volunteers and provide records to City.
 - 4.5 Provide construction documents to the City for documentation and as-builts upon completion of the Park Assets or as requested by the City.
 - 4.6 Provide all costs and expenses to the City to develop true asset costs upon completion of the Park Assets or as requested by the City.
 - 4.7 Provide any other information reasonably requested by the City in order for City to meet its obligations in the Government Sponsor Agreement.
5. City Obligations. City shall:
 - 5.1 Provide in-kind support with field staff during the design and construction phases, as the City determines personnel are reasonably available.
 - 5.2 Track all City personnel and contractor time and material costs associated with development and construction in the Park.
 - 5.3 Assign a project coordinator to assist FBMP throughout the process. The project coordinator shall help facilitate meetings between the City and FBMP, advise FBMP as to City standards and policies associated with the work at the Park, and assist FBMP with obtaining all necessary permits and approvals. As of the execution of

this Agreement, Greg Stout shall be the project coordinator. The City may change the project coordinator without amending this Agreement upon written notice to FBMP.

- 5.4 Upon final completion of the Park Assets and acceptance of the Park Assets by the City, the City agrees to maintain the Park Assets in the same manner as other City park assets are maintained. The City's acceptance of the Park Assets shall not be unreasonably withheld. This Section 5.4 shall survive the expiration or termination of this Agreement.

6. Liability and Indemnity; Independent Contractor.

- 6.1 This Agreement is for the benefit of the Parties only. Each Party agrees to indemnify and hold harmless the other Party, and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each Party shall be solely responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of the Parties under this Agreement.

- 6.2 FBMP shall be an independent contractor for all purposes. Under no circumstances shall FBMP be considered an employee of City. FBMP shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. FBMP is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work; and for meeting all other requirements of law in carrying out this Agreement.

7. Insurance. Insurance must cover FMBP's operations under this Agreement, whether such operations are by FMBP or by any subcontractor.

- 7.1 FBMP. FBMP shall purchase and maintain at its expense the following types of insurance:

- 7.1.1 Commercial general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per

occurrence. The policy must be endorsed with contractual liability coverage. City, its elected officials, officers, agents, and employees shall be named as an additional insured.

7.1.2 Workers' compensation coverage in such amount as complies with Oregon law.

7.2 Subcontractors: FBMP shall ensure that any subcontractor maintains, at its expense, the following types of insurance:

7.2.1 Commercial general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$2,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. City, its elected officials, officers, agents, and employees shall be named as an additional insured.

7.2.2 Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. City, its elected officials, officers, agents, and employees shall be named as an additional insured. Notice of any material change or policy cancellation shall be provided to City thirty (30) days prior to the change.

7.2.3 Workers' compensation coverage in such amount as complies with Oregon law.

8. Termination. City may terminate this Agreement at any time if City reasonably determines FBMP has failed to comply with any provision of this Agreement and is therefore in default. Prior to terminating this Agreement, City shall provide FBMP the reason(s) that City has concluded that FBMP is in default and includes a description of the steps that FBMP shall take to cure the default. FBMP shall have thirty (30) days from the date such notice is received to cure the default or make reasonable progress towards cure, as determined by the City.

9. Modification of Agreement. No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by both Parties.

10. Excused Performance. In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delay or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than

the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control of the Party to be excused.

11. Severability. If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.
12. Counterparts; Facsimile Execution. This Memorandum of Understanding may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals. Facsimile or e-mail signatures shall operate as original signatures with respect to this Memorandum of Understanding.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.

CITY:

CITY OF TIGARD, a municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

FBMP:

FRIENDS OF BULL MOUNTAIN PARK, an Oregon
nonprofit corporation

By: _____
Name: _____
Title: _____
Date: _____

Exhibit 1
Park



Note:
This conceptual site plan is based on the existing, 2-foot GIS topographic data (as shown). Future concept plan refinements and detailed design development will require a site-based topographic survey, which may necessitate alterations to account for slopes and engineering.

EAST BULL MOUNTAIN PROJECT

CONCEPTUAL SITE PLAN



CITY OF TIGARD

08.22.2013

Luigi Hansen

LANDSCAPE ARCHITECTURE



Note:
This conceptual site plan is based on the existing, 2-foot G.S topographic data (as shown). Future concept plan refinement and detailed design development will require a site-based topographic survey, which may necessitate alterations to account for slopes and engineering.

EAST BULL MOUNTAIN PROJECT

CONCEPTUAL SITE PLAN

Exhibit 2
Scope of Work

Scope Of Work – Exhibit A

Metro Contract No. 933913

CAPITAL GRANTS PROGRAM GRANTS AGREEMENT

- I. Project Title/Project Number: Bull Mountain Nature Park
- II. Grant Recipient contact: Toraj Khavari
Friends of Bull Mountain Park
13293 SW Woodshire Lane
Tigard, Oregon 97223
503-706-3548
Toraj.khavari@gmail.com
- III. Government sponsor contact: Steve Martin
City of Tigard
13125 SW Hall Blvd
Tigard, OR 97223
503-718-2583
Steve@tigard-or.gov
- IV. Budget at time of award
- | | |
|------------------------|-----------|
| Grant award | \$125,943 |
| Financial match | \$ 77,517 |
| In-kind match | \$230,950 |
| Total cost of project: | \$434,409 |
- V. Project location Bull Mountain Park - 13950 SW Alpine Crest, Tigard, Oregon 97223. And Morningstar and Gaarde Connection.
- VI. Scope of Work
This scope of work specifies the work and requirements Friends of Bull Mountain Park and the City of Tigard shall undertake as part of Metro's Nature in Neighborhoods Capital Grants program grant award. Except as modified or added to herein, the original grant application (see Attachment 1) sets forth the Scope of Work.
- The project budget is revised as indicated in Attachment 2.
 - As the designs for the nature play area and trails are finalized, grant funds that are not needed as projected in a budget line item may be applied toward other budget line items described in the budget within Attachment 2, with Metro's approval.
 - Implementation of the project scope is revised to include two distinct phases as described below.
 - The Grant Recipient and Government Sponsor shall develop an approach to protecting rare and sensitive plant species within the Nature Park from construction impacts. E.g., *Cephalanthera austiniae*, also known as, phantom orchid and snow orchid.

Scope Of Work – Exhibit A

- The deliverables of the project has been divided into the following two phases. Prior to beginning the second phase, Metro must review the deliverables of the first phase and give notice to proceed. Metro review shall complete within 20 work days after the phase one project completion notice.

Phase One will include the completion of the following elements:

- Consultant services for community engagement, park design and construction documents, including a land survey
- Construction of the picnic shelter and installation of picnic tables
- Design of the trail system to Gaarde Street from SW Morningstar Water Quality's access area
- Installation of Gaarde Street trails. This element does not need to be completed before starting on the Phase Two elements. However, matching funds or in-kind support for the trails must be secured in order to ensure that the resources are available to complete this element.

The following elements have been constructed since Metro Council's approval of this grant award on July 9, 2015. The financial expenses and in-kind donations associated with these elements can be used to meet the matching requirements of this contract.

- House demolition
- Construction of the toolshed and restroom shelter
- Construction of concrete picnic pads
- Installation of three benches and soft trails between two benches
- Cost associated with securing design consultant and initial design consultant work.

Deliverables:

- Metro to review preferred design alternative for the park to ensure that the final design remains consistent with the goals of the Nature in Neighborhoods Capital Grant award.
- Progress report: In addition to the progress report elements described below, the Grant Recipients shall report on the following:
 - Description of the approach to protecting sensitive species
 - Description of community engagement in design and the preferred alternative
 - Fundraising status for Phase Two
- Documentation of all expenses, in-kind donations and volunteer time including consultant invoices, volunteer tracking spreadsheet, City of Tigard staff time documents, and documentation of the value of in-kind donations from the donors.

Phase Two will include the following elements

- Site preparation and grading for Nature Play and ADA Trail/s
- Nature play area
- ADA trail/s
- Water fountain

Scope Of Work – Exhibit A

Deliverables:

Documentation of all expenses, in-kind donations and volunteer time including consultant invoices, volunteer tracking spreadsheet, City of Tigard staff time documents, and documentation of the value of in-kind donations from the donors.

Publicity

As provided in Section 5 of the Intergovernmental Agreement, Grant Recipient shall place at the Project's location signage that communicates that funding for the Project came from the Metro Natural Areas Bond Measure's Nature in Neighborhoods Capital Grants Program. Metro may withhold final reimbursement payment until such signage has been placed. In addition, Grant Recipient shall recognize in any publications, media presentations, or other presentations referencing the Project, produced by or at the direction of Grant Recipient, that funding for the Project came from the Metro Natural Areas Bond Measure's Nature in Neighborhoods Capital Grants Program. Nothing herein shall prohibit Grant Recipient from also recognizing other funding sources for the Project.

VII. Reporting Requirements:

- a. **Bi-Annual Progress Reports:** At the end of Phase One, Grant Recipient shall provide to Metro a progress report, documenting the status of the Project at least every six months or at the completion of one of the phases described above. A progress report shall be included with every reimbursement request submitted by Grant Recipient and when the Project benchmarks identified above are met.
- b. All progress reports shall provide the following details: an account of the work accomplished to date, a statement regarding Grant Recipient's progress, a statement as to whether the Project is on schedule or behind schedule, a description of any unanticipated events. All progress reports submitted by Grant Recipient shall be in the Progress Report Form provided by Metro unless Metro approves another reporting method in order to provide consistency with other project funders.
- c. **Final Report:** Grant Recipient must submit a final report and final reimbursement request within 60 days of the earlier of (a) the Project completion date or (b) the expiration date of the Intergovernmental Agreement. The final report shall include full and final accounting of all expenditures, the value and source of matching funds, a description of work accomplished, volunteer hours and participation, Project photos (including a photo of the signage acknowledging the Nature in Neighborhoods Capital Grants Program participation), and data on success indicators defined below. The final report submitted by Grant Recipient shall be in the Final Report Form provided by Metro unless Metro approves another reporting method in order to provide consistency with other project funders.

I. Project Payment and Reimbursement

- a. Metro will reimburse Grant Recipient \$1.00 for every \$3.00 of out-of-pocket costs expended after the effective date of the Intergovernmental Agreement to complete the project, consistent with the original grant application, up to but not exceeding Metro's total grant award of ONE HUNDRED TWENTY-FIVE THOUSAND, NINE HUNDRED FORTY-THREE AND 00/100TH DOLLARS (\$125,943).

Scope Of Work — Exhibit A

- b. Payments will be processed as reimbursement for costs incurred and paid by the Grant Recipient.
- c. **RETAINAGE:** Metro will reserve as retainage from any reimbursement payment an amount equal to five (5%) percent of the requested reimbursement amount. The retainage will not be disbursed to Grant Recipient until the Project is fully completed and the final report is received by Metro. Following completion of the Project and approval by Metro, Metro will deliver to Grant Recipient the entire retainage as part of the final reimbursement payment.
- d. To request the reimbursement of allowable expenses, Grant Recipient will complete Metro's Reimbursement Request Form and submit an itemized statement of work completed and an accounting of all expenses incurred during the current reimbursement period. A progress report shall accompany all reimbursement requests. The form, statement, and report shall be sent to:

METRO
ATTN: ORIANA QUACKENBUSH
600 NE GRAND AVE
PORTLAND OR 97232-2736

- e. Metro will make a reimbursement payment for those items identified in the Scope of Work or subsequent amendments to the Intergovernmental Agreement. Substitutions or changes of elements of the Project that have not been approved by Metro are not eligible for reimbursement.
- f. Payment shall be made by Metro on a Net Fifteen (15) day basis upon approval of reimbursement request.

II. Success Indicators

Grant recipient agrees to monitor the Project for three consecutive years following the completion of the Project and Grant Recipient agrees to report the following information to Metro upon completion of the Project.

- 1. Final report/s indicating the completion of the following deliverables.
 - Complete design drawing and documentation
 - House demolition
 - Picnic Shelter and Tables
 - A toolshed
 - A Restroom shelter
 - Concrete picnic pads and table per pad
 - Two benches and soft trails between them
 - One added bench in west trail
 - A Morningstar and Gaarde connection soft trail

Scope Of Work — Exhibit A

- Site prep and grading for Picnic Shelter, Nature Play and ADA Trail/s areas
 - Nature play area
 - ADA trail/s
 - Water fountain
2. City of Tigard staff acceptance of all improvements
 3. Commitment from the City of Tigard to maintain the improvements according to a documented maintenance plan