

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ACQUIRE PROPERTIES IN THE JOHNSON CREEK AND EAST BUTTES TARGET AREAS UNDER THE 2006 NATURAL AREAS BOND MEASURE AND TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF GRESHAM REGARDING THE CITY'S FINANCIAL CONTRIBUTION TOWARD THE PURCHASE PRICE OF ONE OF THE ACQUIRED PROPERTIES

RESOLUTION NO. 07-3812

Introduced by Chief Operating Officer Michael J. Jordan, with the concurrence of Council President David Bragdon

WHEREAS, the Metro Council has taken a leadership role in identifying remaining natural areas in the Metro area and planning for their protection; and

WHEREAS, Resolution No. 06-3672B, "For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection," adopted by the Metro Council on March 9, 2006 (the "2006 Natural Areas Bond Measure"), recommended submission to the voters of a general obligation bond to preserve natural areas and clean water and protect fish and wildlife; and

WHEREAS, the voters approved the 2006 Natural Areas Bond Measure at the general election held on November 7, 2006; and

WHEREAS, as provided in the Measure, Metro is currently undertaking a public refinement process to establish specific acquisition strategies, goals and objectives, and confidential tax-lot specific acquisition target maps, for each of the 27 target areas; and

WHEREAS, in advance of completing the refinement process, Metro staff has identified opportunities to purchase specific properties in the 2006 Natural Areas Bond Measure East Buttes and Johnson Creek Target Areas, which properties are identified and further described in Exhibit A; and

WHEREAS, all terms of the transactions contemplated herein shall comply with the 2006 Natural Areas Acquisition Parameters and Due Diligence Guidelines, set forth in Metro Council Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," adopted on March 1, 2007; and

WHEREAS, the City of Gresham has agreed to enter into an intergovernmental agreement with Metro providing for the City to contribute funds toward the purchase of one of the properties in the East Buttes Target Area, a copy of which agreement is attached hereto as Exhibit B; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to:

1. Acquire the properties identified in Exhibit A, in accord with the Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan; and
2. Enter into an intergovernmental agreement with the City of Gresham substantially similar to the agreement attached hereto as Exhibit B.


ADOPTED by the Metro Council this 24<sup>th</sup> day of May 2007.



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David Bragdon, Council President

Approved as to Form:



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Daniel B. Cooper, Metro Attorney

**East Buttes Target Area  
Persimmon Properties**

Tax Lots 200, 300 and 400

**PARCEL I:**

A tract of land in the Southwest one-quarter of Section 22, Township 1 South, Range 3 East, Willamette Meridian, in the City of Gresham, County of Multnomah and State of Oregon, and being more particularly described as follows:

Beginning at the Southwest corner of said Section 22; thence South 89°52'12" East along the South line of said Section 22, 1,791.48 feet to the most Southerly West line of Parcel V as described in Deed Book 2517, Page 2029, recorded March 13, 1992, Multnomah County Records; thence North 01°08'04" East along said most Southerly West line, 1,696.89 feet; thence South 81°27'18" West, 255.69 feet; thence South 75°40'45" West, 103.96 feet; thence South 86°32'08" West, 123.96 feet; thence North 64°52'47" West, 184.69 feet to the most Southerly corner of Lot 64, PERSIMMON NO. 3, a duly recorded plat in Multnomah County; thence tracing the boundary of said PERSIMMON NO. 3 along the following courses: South 66°56'10" West, 284.12 feet; thence South 60°47'23" West, 65.38 feet; thence South 75°32'44" West, 133.60 feet to a point of non-tangent curvature; thence Southwesterly along the arc of a 135.00 foot radius curve right (the radius point of which bears North 61°44'10" West) through a central angle of 04°56'07", 11.63 feet (chord bears South 30°43'54" West, 11.62 feet) to the point of curve left of a 125.00 foot radius curve; thence along the arc of said curve left through a central angle of 31°51'31", 69.50 feet (chord bears South 17°16'12" West, 68.61 feet); thence North 88°39'33" West, 50.00 feet to the most Easterly West line of Parcel III of said Deed Book 2517, Page 2029; thence South 01°20'27" West along said most Easterly West line, 663.76 feet to the most Southerly North line of said Parcel III Tract; thence North 88°39'33" West along said most Southerly North line, 622.29 feet to the West line of said Section 22; thence South 01°20'27" West along said West line, 800.00 feet to the point of beginning.

EXCEPTING THEREFROM those portions lying within and Northerly of the duly recorded Plats of PERSIMMON NO. 5, PERSIMMON NO. 6 and GOLF VIEW ESTATES.

FURTHER EXCEPTING THEREFROM those parcels of land lying South of the South line of PERSIMMON NO. 5 which were deeded to Tony G. Mele DBA Dolan Creek Homes in Warranty Deed recorded March 17, 2003 as Recorder's Fee No. 2003-058389.

**PARCEL II:**

A tract of land in the Southwest one-quarter and the Southeast one-quarter of Section 22, Township 1 South, Range 3 East, Willamette Meridian, in the City of Gresham, County of Multnomah and State of Oregon, and being described as follows:

Beginning at a point on the East line of said Southwest one-quarter, which point bears North 01°08'04" East, 1,712.59 feet from the South one-quarter corner of said Section 22; thence North 65°56'27" West, 167.85 feet; thence North 88°51'57" West, 183.88 feet; thence North 79°25'54" West, 112.40 feet; thence South 71°26'36" West, 111.02 feet; thence South 15°05'33" East, 179.49 feet to the Northeasterly line of Lot 157, PERSIMMON NO. 5, a duly recorded plat in Multnomah County; thence tracing the boundary of said PERSIMMON NO. 5 along the following courses: South 28°44'16" East, 42.74 feet; thence South 22°32'25" West, 26.21 feet; thence South 64°06'29" West, 143.24 feet to a point of non-tangent curvature; thence

Tax Lots 200, 300 and 400 continued

Northwesterly along the arc of a 150.00 foot radius curve left (the radius point of which bears South 55°00'18" West) through a central angle of 41°00'59", 107.38 feet (chord bears North 55°30'11" West, 105.10 feet); thence South 10°17'48" West, 92.35 feet; thence South 76°15'57" West, 109.96 feet to the most Southerly West line of Parcel V as described in Deed Book 2517, Page 2029, recorded March 13, 1992, Multnomah County Records; thence South 01°08'04" West along said most Southerly West line 1,413.03 feet to the South line of said Section 22; thence South 89°52'12" East along said South line 828.50 feet to the South one-quarter corner of said Section 22; thence continuing along said South line, South 89°52'08" East, 616.62 feet to a point which bears North 89°52'08" West, 2004.36 feet from the Southeast corner of said Section 22; thence leaving said South line, North 01°08'03" East, 1,310.41 feet to the boundary of Parcel "F" as described in Document No. 99-092859, Multnomah County Deed Records; thence tracing the boundary of said Parcel "F" along the following courses: North 89°56'05" West, 61.11 feet; North 68°41'00" West, 344.24 feet; South 89°58'38" West, 194.42 feet; South 00°01'22" East, 33.08 feet; and South 89°58'38" West, 38.62 feet to the North-South centerline of Section 22; thence North 01°08'04" East along said North-South centerline, 311.54 feet to the point of beginning.

EXCEPTING THEREFROM those portions lying within and Northerly of the duly recorded plat of PERSIMMON NO. 6.

Tax Lot 2800

Lot 26, KINGSWOOD HEIGHTS, in the County of Clackamas and State of Oregon.

Tax Lot 3600

A tract of land in the Northwest one-quarter of Section 22, Township 1 South, Range 3 East, Willamette Meridian, in the City of Gresham, County of Multnomah and State of Oregon, and being more particularly described as follows:

Beginning at the Easterly Northwest corner of Tract "F", PERSIMMON NO. 4, a duly recorded plat in Multnomah County; thence tracing the boundary of said PERSIMMON NO. 4 along the following courses: South 01°32'50" West, 146.43 feet; thence South 30°46'31" West, 100.70 feet; thence North 59°29'19" West, 130.92 feet; thence North 41°16'54" West, 61.31 feet; thence North 64°24'39" West, 36.96 feet; North 82°41'54" West, 81.91 feet; thence North 81°58'08" West, 59.61 feet; North 83°01'23" West, 102.84 feet; thence North 85°29'19" West, 52.94 feet; thence North 89°57'16" West, 76.47 feet; thence South 03°36'00" West, 27.65 feet; thence North 86°24'00" West, 40.00 feet; thence North 78°32'30" West, 57.94 feet; thence North 00°19'47" West, 119.51 feet; thence North 17°24'19" West, 64.07 feet; thence North 06°29'11" West, 156.14 feet; and thence North 90°00'00" West, 22.26 feet to the most Northerly West line of that certain tract of land described as Parcel X in Deed Book 2517, Page 2029, recorded March 18, 1992, Multnomah County Deed Records; thence tracing the boundary of said Parcel X along the following courses: North 01°16'32" East, 262.34 feet; thence South 88°43'28" East, 370.00 feet; thence South 30°43'28" East, 240.00 feet; thence South 59°36'32" East, 236.35 feet; thence South 01°11'57" West, 180.00 feet; thence South 88°48'03" East, 73.40 feet to the point of beginning.

Tax Lot 600

A tract of land in the Southwest one-quarter of Section 22, Township 1 South, Range 3 East, Willamette Meridian, in the City of Gresham, County of Multnomah and State of Oregon, and being described as follows:

Beginning at the Southeast corner of said Section 22; thence North 02°17'34" East, along the East line of said Section 22, a distance of 1466.08 feet; thence leaving said East line, North 87°42'26" West, 175.00 feet to a point on a line which is parallel to and 175.00 feet Westerly of, when measured at right angles to, the East line of said Section 22; thence South 02°17'34" West along said parallel line, 705.26 feet; thence leaving said parallel line, South 13°22'15" West, 312.29 feet; thence South 06°30'29" West, 415.46 feet to a point on a line which is parallel to and 50.00 feet Northerly of, when measured at right angles to, the South line of said Section 22; thence North 89°52'08" West along said parallel line, 602.79 feet to the point of curve right of a 175.00 foot radius curve; thence leaving said parallel line and running along the arc of said curve right through a central angle of 94°03'00", 287.26 feet (chord bears North 42°50'38" West, 256.08 feet); thence North 04°10'52" East, 84.20 feet; thence North 16°51'29" West, 84.24 feet; thence North 33°49'08" West, 321.39 feet; thence North 39°55'29" West, 232.99 feet; thence North 13°29'49" West, 127.81 feet to the point of curve left of a 200.00 foot radius curve; thence along the arc of said curve left through a central angle of 52°45'44", 184.17 feet (chord bears North 39°52'41" West, 177.74 feet); thence North 66°15'33" West, 76.86 feet; thence South 35°16'33" West, 218.75 feet; thence North 88°51'56" West, 257.52 feet; thence South 01°08'04" West, 963.76 feet to the South line of said Section 22; thence South 89°52'08" East along said South line, a distance of 2004.36 feet to the point of beginning.

EXCEPTING THEREFROM that portion lying Easterly of the West line of Parcel "C" of Deed Book 2655, Page 631, recorded March 3, 1993, Multnomah County Deed Records.

**East Buttes Target Area  
Darby Ridge Property**

The Northeast quarter of the Northeast quarter of Section 21, Township 1 South, Range 3 East of the Willamette Meridian, in the City of Gresham, Multnomah County, Oregon.

Excepting therefrom that part thereof conveyed to the City of Gresham, by Deed recorded May 1, 1969, in Book 675, Page 23, Deed Records.

Also excepting those portions conveyed to the City of Gresham for street purposes, by Deeds recorded April 13, 1971, in Book 781, Pages 1564 and 1566.

**Johnson Creek Target Area  
Allesina Property**

The following described real property in Section 14, Township 1 South, Range 3 East, of the Willamette Meridian, County of Multnomah, State of Oregon:

Commencing at the Southwest corner of said Section 14; thence South 88° 51' East, 330 feet; thence North 0° 13-1/2' East 174.79 feet to an iron pipe; thence North 76° 03' East, 329.65 feet to an iron pipe, which is the true point of beginning, being the Southwest corner of the tract to be described; thence North 82° 14' East 418.10 feet to the center line of Johnson Creek; thence along the center line of Johnson Creek North 5° 06' West, 139.08 feet; thence North 40° 57' West, 123 feet; thence North 63° 42' West 48 feet; thence North 84° 07' West, 60 feet; thence South 60° 33' West, 85 feet; thence South 42° 03' West 43 feet; thence South 79° 48' West 174 feet; thence leaving said Johnson Creek and running thence South 43° 49' West, 37 feet; thence South 46° 11' East 47.54 feet; thence South 17° 33' East, 158.07 feet to the true point of beginning; TOGETHER WITH the right-of-way to County Road No. 608, also known as Hogan Road, as described in deed from Beulah Russell, to Hirsh Investment Company, an Oregon corporation, dated July 23, 1938, recorded July 29, 1938 in P.S. Deed Book 458, Page 469. Records of Multnomah County.

EXHIBIT B  
RESOLUTION NO. 07-3812

**INTERGOVERNMENTAL AGREEMENT**

**Regarding the Darby Ridge Property**

This Intergovernmental Agreement (“IGA”), effective on the date it is fully executed (the “Effective Date”), is by and between Metro, a metropolitan service district and municipal corporation organized under the laws of the state of Oregon and the Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 (“Metro”), and the City of Gresham, a municipal corporation, located at 1333 NW Eastman Parkway, Gresham, Oregon 97030-3813 (“the City”).

**RECITALS**

**WHEREAS**, Wellner Morey-Gresham I, LLC, (“Seller”) is acquiring approximately 37 acres of real property known as the Darby Ridge Property (the "Property"), located on Southwest Gabbert Road in Gresham, Oregon, commonly known as Tax Lot 100, Section 21A, Township 1 South, Range 3 East, and more particularly described in Exhibit A attached hereto and incorporated herein;

**WHEREAS**, the Property is within the East Buttes regional target area, as identified in the Open Spaces, Parks and Streams 1995 Ballot Measure 26-26, approved by the voters in 1995 and the property has been identified as an acquisition priority in the Metro Open Space Acquisition Program Refinement Plan for East Buttes, approved by the Metro Council by its adoption of Resolution No. 96-2361 on July 25, 1996;

**WHEREAS**, the voters of the Metro region approved Ballot Measure 26-80 on November 7, 2006, authorizing Metro to issue \$227.4 million in bonds to preserve natural areas, clean water, and protect fish and wildlife (the “2006 Metro Natural Areas Acquisition Measure”);

**WHEREAS**, as provided in the 2006 Metro Natural Areas Acquisition Measure, a portion of the proceeds from the 2006 Natural Areas Acquisition Measure will be provided to the City of Gresham to fund natural areas property acquisition and capital improvements that are priorities for the City (the “Gresham Local Share Funds”);

**WHEREAS**, the Property is within the East Buttes regional target area, as identified in the 2006 Natural Areas Acquisition Measure;

**WHEREAS**, on March 1, 2007, the Metro Council adopted Resolution No. 07-3766A to approve the *Acquisition Parameters* and *Due Diligence Guidelines* that establish the rules with which Metro staff must comply in order to acquire property using 2006 Natural Areas Acquisition Measure funds;

**WHEREAS**, Seller wishes to sell the Property to Metro and the City for THREE MILLION SIX HUNDRED THOUSAND DOLLARS (\$3,600,000);

**WHEREAS**, Metro and the City wish to acquire the Property to preserve it as a natural area in accordance with the 2006 Natural Areas Acquisition Measure;

**WHEREAS**, Metro has entered into an Agreement of Purchase and Sale with Seller, effective March 13, 2007, for the purchase of the Property, contingent on the approval of this IGA by the City (the "Purchase and Sale Agreement");

**WHEREAS**, the Purchase and Sale Agreement provides for closing on the sale of the Property to occur on or before June 15, 2007 ("Closing" or "Closing Date");

**WHEREAS**, the City will contribute a total of NINE HUNDRED THOUSAND DOLLARS (\$900,000.00) toward the purchase price of the Property, as described herein, and Metro will provide the balance of the purchase price; and

**WHEREAS**, Metro and the City wish to enter into this IGA to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, and operation of the Property;

**NOW, THEREFORE**, the parties agree as follows:

**Acquisition**

1. At Closing, Metro shall pay THREE MILLION SIX HUNDRED THOUSAND DOLLARS (\$3,600,000.00), the total purchase price for the Property, from the following funds:
  - a. THREE MILLION TWO HUNDRED THOUSAND DOLLARS (\$3,200,000.00) shall come from regional 2006 Metro Natural Areas Acquisition Measure funds; and
  - b. FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) shall come from the Gresham Local Share Funds.
2. The City's total payments toward the purchase of the Property shall be NINE HUNDRED THOUSAND DOLLARS (\$900,000.00), payable as follows:
  - a. FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) shall come from the Gresham Local Share Funds, as described in Paragraph 1 .b, above; and
  - b. Not later than five years following the Closing Date, the City shall pay to Metro the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) (the "Additional City Payments") The Additional City Payments may be made at any time the City



chooses; provided, however, that the City shall make payment(s) totaling not less than FIFTY THOUSAND DOLLARS (\$50,000.00) in each fiscal year (July 1 through June 30 of the following year), with the first such payment due sometime in the 2007-2008 fiscal year.

3. Not later than ten days after Closing, in consideration of the payment described in Paragraph 2.a of this IGA, Metro shall convey to the City by statutory warranty deed an undivided 11.11% interest in the Property as a tenant in common.
4. Not later than ten days after the City has made all payments described in Paragraph 2.b of this IGA, Metro shall convey to the City by statutory warranty deed an additional undivided 13.89% interest in the Property as a tenant in common, at which point the City's total undivided interest in the Property as a tenant in common shall be 25% and Metro's total undivided interest in the Property as a tenant in common shall be 75%.
5. The deeds for the Property shall be subject to all the provisions of this IGA and to all existing covenants and restrictions that encumber the Property.

#### **Management, Maintenance, and Operation**

6. Metro shall be responsible for the ongoing management, maintenance, and operation of the Property until such time as Metro and the City enter into a separate intergovernmental agreement regarding management of the Property. Prior to entering into such separate management intergovernmental agreement, Metro will manage, maintain and operate the Property consistent with Metro's Greenspaces Master Plan and in accordance with its intended use as a natural area open space and not inconsistent with future potential passive recreational use on the Property.
7. City employees, volunteers, contractors and agents may enter the Property at any time without notification to Metro for the purpose of undertaking activities related to the future management, maintenance and operation of the Property. The Property shall not be posted, nor otherwise made available, for general public access until the management plan is completed and adopted by Metro and the City.
8. The City shall not adopt any comprehensive plan amendment relating to the management, maintenance or operation of the Property without providing Metro with written notice not less than 45 days in advance of such adoption. Such notice shall be addressed to the Director of the Metro Parks and Greenspaces Department, 600 NE Grand Avenue, Portland, Oregon 97232.
9. The Property shall not be subdivided or partitioned, nor shall any development rights, timber rights, mineral rights, or other rights related to the Property be sold or otherwise granted, nor shall there be any alteration of any water or timber resource, except as necessary for construction of a trail or other improvements approved in advance by Metro.

10. If the Property is ever sold, acquired by eminent domain, or otherwise liquidated:
  - a. Prior to the City making all payments described in Paragraph 1 .b of this IGA, then the City shall be entitled to 11.11% of the proceeds from such sale, condemnation or liquidation and Metro shall be entitled to 88.9% of such proceeds;
  - b. After the City has made all payments described in Paragraph 1 .b of this IGA, then the City shall be entitled to 25% of the proceeds from such sale, condemnation or liquidation and Metro shall be entitled to 75% of such proceeds; and
  - c. The Parties shall obtain an appraisal of the fair market value of the Property, and shall direct funds equal to the greater amount of the sales price for the Property or that fair market value to purchase other property for use as public natural areas.

### **General Provisions**

11. Indemnification. The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro and Metro's officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of or relating to the City's performance of this IGA or access to the Property by City employees or agents. Metro, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless the City and the City's officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of or relating to the Metro's performance of this IGA or access to the Property by Metro employees or agents.
12. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of this Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the City breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.

13. **Funding Declaration.** Metro and the City shall document on-site and in any publication, media presentation or other presentations providing information about the Property, that funding for the acquisition came from the 2006 Metro Natural Areas Acquisition Measure bond proceeds, with regional and local share contributions by Metro and the City. On-site signage that provides recognition of Metro funding shall be subject to prior review and comment by Metro. All signage shall be consistent with Metro guidelines for Natural Areas Projects.
14. **Joint Termination for Convenience.** Metro and the City may by mutual agreement terminate all or part of this IGA based upon a mutual determination that such action is in the public interest.
15. **Documents are Public Property.** All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the acquisition, management, maintenance or operation of the Property shall become public property. Nothing in this section or in any other part of this IGA shall be construed as limiting Metro's or the City's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).
16. **Law of Oregon.** The laws of the state of Oregon shall govern this IGA, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187, 279, 279A, 279B and 279C, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this IGA including but not limited to ORS 279B.220 through 279B.235. Specifically, it is a condition of this Agreement that the parties are subject employers that will comply with ORS 656.017.
17. **Assignment.** The City may not assign any of its rights or responsibilities under this IGA without prior written consent from Metro, except the City may delegate or subcontract for performance of any of its responsibilities under this IGA.
18. **Severability.** If any covenant or provision in this IGA 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 IGA.
19. **Entire Agreement.** This IGA constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to this Property. No waiver, consent, modification or change of terms of this IGA shall bind either party unless in writing and signed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have set their hands on the day and year set forth below.

**CITY OF GRESHAM**

**METRO**

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Michael Jordan

Title: \_\_\_\_\_

Chief Operating Officer

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

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

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3812, AUTHORIZING THE CHIEF OPERATING OFFICER TO ACQUIRE PROPERTIES IN THE JOHNSON CREEK AND EAST BUTTES TARGET AREAS UNDER THE 2006 NATURAL AREAS BOND MEASURE AND TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF GRESHAM REGARDING THE CITY'S FINANCIAL CONTRIBUTION TOWARD THE PURCHASE PRICE OF ONE OF THE ACQUIRED PROPERTIES.

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Date: May 24, 2007

Prepared by: Kathleen Brennan Hunter

## BACKGROUND

Resolution No. 07-3812 requests authorization for Metro to purchase property in the East Buttes Target Area and Johnson Creek Target Area as described in the resolution's Exhibit A. This resolution proposes authorization for the purchase of the properties subject to the terms of a Purchase and Sale Agreement executed between Metro and the Seller. Authorization from Council is needed because Metro Council has not yet approved an acquisition refinement plan for the East Buttes Target Area or the Johnson Creek Target Area under the 2006 Natural Areas Bond Measure.

Metro Council has directed staff to bring forward for consideration for purchase any high quality sites that are available now, under some threat of being lost if not acted upon at this time, and highly likely to be recommended by key stakeholders and staff as priority sites for acquisition when the refinement plan for their respective target areas are brought forward.

### ***EAST BUTTES TARGET AREA***

As stated in the 2006 Natural Areas bond description of the East Buttes Target Area, as adopted by Metro Council,

*The remaining undeveloped wooded slopes of extinct lava domes in our eastern metropolitan region provide opportunities to protect water quality and large areas for wildlife habitat and wildlife corridors from the outer reaches of the Cascades to the inner Portland urban area such as Scouter Mountain and buttes in the Damascus area. Panoramic vistas east and south from the butte tops provide stunning views of valleys, farmland and the Cascades. The forested buttes frame the valleys, create a unique geography for local residents and provide welcome visual relief from surrounding land uses. Expansion of the urban growth boundary in and around Damascus presents a sense of urgency to preserve these features.*

### **Hogan Butte – Hogan Creek Headwaters**

Staff has secured an opportunity to protect over 93 acres of forested butte in this target area. Purchase of this property advances the vision, initiated with the 1995 bond measure, to link

wildlife habitat from Gresham to the Clackamas River. Acquisition of these ridgetops protects a vital scenic resource and provides visual relief to urban neighborhoods.

The property consists of two separate parcels. The larger parcel, a contiguous 84 acres is located just west of Hogan Road and south of Butler Road on the Southern boundary of Gresham before Damascus on a hillside offering panoramic views. The other 8-acre parcel is located northwest of Butler Road, surrounded by properties previously purchased and protected by Metro and the City of Gresham.

The second growth hillsides, comprising most of the property provide much-needed canopy for drainages that feed into the upper reaches of Johnson Creek. The properties also host various ground species and migratory birds. Both parcels are highly visible ridgelines and butte tops, the development of which would have a significant impact on water quality, wildlife corridor protection and visual aesthetics. The larger parcel includes one single-family residence that will be retained in the near term.

Development that would significantly impact the wildlife habitat and natural resources threaten both parcels. The larger parcel is in the final stages of permitting and building approvals from the city of Gresham, as the final phase of the Persimmon development. If this offer is not acted upon, the developer will proceed with development. There is a common principal for each of the entities that are the sellers of the two parcels and that principal and its related entities have been the developer of the adjacent Persimmon residential and golf development. The seller of both parcels is the developer of the adjacent Persimmon residential and golf development. The developer is offering these sites to Metro on a very limited time basis at a price that staff believes will prove to be far below their appraised market value. Thus this purchase will likely include a significant land donation. As such, this opportunity is a significant one.

The city of Gresham strongly supports this purchase and has agreed to assume management of both parcels.

### **Darby Ridge**

Over the past several years, Metro has assembled a broad, forested corridor of natural area within the East Buttes/Boring Lava Domes Target Area to protect a viable wildlife habitat area as a buffer against urban encroachment. To date, Metro has acquired approximately 439 acres of some of the most valuable property in the region, both from a natural area and development perspective. However, Metro's 439 acres currently do not comprise a completely viable wildlife habitat corridor because a few key, privately-owned parcels interrupt Metro's and the City of Gresham's ownership. If developed, these parcels would become obstacles within the natural area corridor and prevent Metro and the City of Gresham from achieving a contiguous intact habitat corridor. Consequently, Metro had identified these parcels, located between Gresham Butte and Borges Road, as Tier I acquisitions in the 1995 bond measure.

Within this area, Metro staff identified an opportunity to acquire a 37-acre property located north of Butler Road and west of SE Regner Road within the City of Gresham in an area commonly referred to as Gresham Butte ("Darby Ridge"). Directly adjacent to the west of the Property is natural area previously acquired by Metro, and adjacent to the south and northeast of the Property is natural area owned by the city of Gresham. The Property was identified as a "Tier I"

acquisition priority in the 1995 Open Spaces Bond Measure refinement plan for the East Buttes/Boring Lava Domes Target Area.

A developer has optioned the property, and if Metro and the City of Gresham do not acquire this property from the developer, it is likely to be developed with up to 76 single-family homes. The acquisition fills existing critical gaps between public ownership, and the purchase of this site would connect three parcels owned by the city of Gresham and Metro.

The City of Gresham will commit to pay \$900,000—or 25% of the total purchase price of the property (\$400,000 at the time of purchase and the balance over the course of the next five years), as described in the intergovernmental agreement attached as Exhibit B to this resolution. The City of Gresham strongly supports this purchase and has agreed to work on an additional intergovernmental agreement providing for the City to assume management of the site.

### ***JOHNSON CREEK TARGET AREA***

#### **Ambleside / Allesina Property**

Staff has identified an opportunity to acquire a 1-acre in-holding within Metro property acquired under the 1995 Bond Measure known as “Ambleside” or Hogan Cedars. The existing Metro natural area is over 40 acres, is contiguous with Johnson Creek and the Springwater Corridor Trail, and contains the only known remaining native grove of Hogan Cedars in the Gresham area. Through partnerships with the Johnson Creek Watershed Council, SOLV, the Gresham Buttes Neighborhood Association, and Oregon Watershed Enhancement Board, Metro has built strong community partnerships for the protection and restoration of this unique site. The property now available was previously considered part of the East Buttes Target Area, and is now within the Johnson Creek Target Area.

This 1-acre inholding (“Allesina property”) is one of the last impediments to managing the site uniformly and effectively for public use. The property includes a house, which will be retained in the near term and leased. The Allesina property is on the essential property list for acquisition in the previous Bond Measure under the East Buttes Target Area and it is anticipated that closing gaps such as these will be prioritized in all Target Area Refinement Plans under the 2006 Natural Areas bond measure. Staff recommends acquisition of the Allesina property as a priority for both the East Buttes and Johnson Creek regional target areas.

### **ANALYSIS/INFORMATION**

#### **1. Known Opposition**

None.

#### **2. Legal Antecedents**

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisitions and Water Quality Protection,” adopted on March 9, 2006.

The voters' approval of Metro's 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

This Resolution No. 07-3812 proposes to authorize the purchase of the Property subject to the terms of Purchase and Sale Agreements executed by the Property owners and Metro.

This authorization assumes that the purchase will meet the terms of the Acquisition Parameters and Due Diligence Guidelines of the 2006 Natural Areas Implementation Work Plan on matters such as appraisal review, environmental audit and title matters. This authorization does not cover any "unusual circumstances" and to the extent any "unusual circumstances" arise during Metro's due diligence process, further Council review and authorization will be required.

### **3. Anticipated Effects**

Assuming that no unusual circumstances arise, Metro will close on the purchase of these properties and will own two of them outright, while the third will ultimately be owned 75% by Metro and 25% by the City of Gresham, as described above. Metro will manage the Ambleside property, while Metro and the City of Gresham have committed to negotiate an intergovernmental agreement to provide for the City to manage the Darby Ridge property. Management of the Hogan Butte parcels may also be negotiated with the City of Gresham.

Acquisition and ownership of the two parcels along Hogan Butte would protect important headwaters sites as well as a significant habitat and visual amenities.

Acquisition of the Darby Ridge property would help complete an important wildlife habitat corridor of natural area in the East Buttes Target Area where prior significant public investment has been made and would serve to buffer against urban encroachment.

Acquisition of the Ambleside / Allesina Property would complete the existing Ambleside Natural Area and facilitate more efficient and effective property management and restoration.

### **4. Budget Impacts**

The properties are scheduled to close prior to July 31, 2007 and will be purchased utilizing 2006 Regional Bond proceeds. Landbanking and future management costs will be borne by Metro until such time as Metro and the City of Gresham enter into a separate intergovernmental agreement regarding management of the two of the properties.

## **RECOMMENDED ACTION**

Staff recommends passage of Resolution No. 07-3812.