

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE THE SWAN PROPERTY IN THE FANNO CREEK GREENWAY TARGET AREA ) ) ) ) RESOLUTION NO. 01-3128 Introduced by Mike Burton Executive Officer

WHEREAS, in July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams bond measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; and

WHEREAS, on April 11, 1996, via resolution 96-2331, the Metro Council adopted a refinement plan for the Fanno Creek Greenway target area, which included a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, the Fanno Creek Greenway target area refinement plan identified property owned by the Swans as a Tier I acquisition; and

WHEREAS, Elizabeth E. Swan owns approximately 3.5 acres and has offered to sell the Property to Metro; and

WHEREAS, as a condition of the sale, Mrs. Swan requested to retain a life estate in her home and the surrounding 0.34 acre on the Property; and

WHEREAS, the Open Spaces Implementation Work Plan strongly encourages the use of Life Estate as a strategy to reduce long term landbanking costs; and

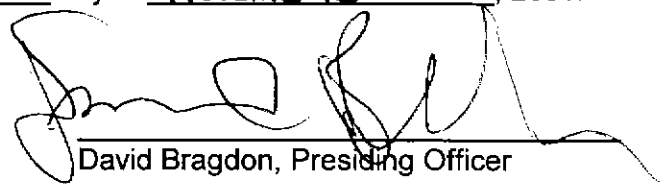
WHEREAS, Mrs. Swan's retention of a life estate is an "unusual circumstance" requiring the specific approval of the Metro Council; and

WHEREAS, there is an underground storage tank on the Property that will be decommissioned in place prior to closing; now, therefore,

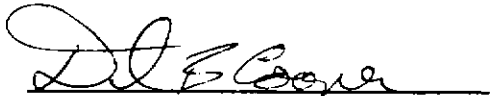
BE IT RESOLVED,

That the Metro Council authorizes the Metro Executive Officer to purchase the Property from Mrs. Swan, subject to Mrs. Swan's life estate as more particularly described in the Agreement of Purchase and Sale for the Property (attached hereto as Exhibit A), including Exhibit C of that Agreement.

ADOPTED by the Metro Council this 29<sup>th</sup> day of NOVEMBER, 2001.

  
David Bragdon, Presiding Officer

Approved as to Form:

  
Daniel B. Cooper, General Counsel



When recorded, mail to:  
Metro  
Office of General Counsel  
600 NE Grand Avenue  
Portland, OR 97232-2736

### Estate for Years Agreement

THIS ESTATE FOR YEARS AGREEMENT ("Estate for Years Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between Metro, a municipal corporation established pursuant to Oregon law and the 1992 Metro Charter ("Metro") and Elizabeth E. Swan ("Mrs. Swan").

### RECITALS


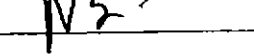
- A. Pursuant to an Agreement of Purchase and Sale dated 7/31, 2001, Metro has purchased from Mrs. Swan approximately 3.5 acres of real property, located at 12060 S.W. Tiedeman Avenue, Tigard, Oregon 97223 in the County of Washington, State of Oregon, commonly known as Tax Parcel 2S103AA 00100, and more particularly described in Exhibit 1, attached hereto and incorporated herein ("the Property").
- B. As part of the consideration of the purchase, Metro agreed to grant Mrs. Swan an Estate for Years in a portion of the Property comprised of her home and the surrounding approximate 0.34-acre, as more particularly shown on the map attached hereto as Exhibit 2 and incorporated herein. A legal description may be finalized prior to Closing, but shall remain substantially as set forth in Exhibit 2, shall be approximately a 0.34-acre in size, and shall include Mrs. Swan's home, the garage and apartment over the garage, and half of the driveway as shown on Exhibit 2. During the term of the Estate for Years, both Mrs. Swan and Metro shall each have full right to use the entire driveway for access purposes.
- C. Both Metro and Mrs. Swan desire to enter into this Estate for Years Agreement to further define the rights and obligations of the parties during the term of the Estate for Years.
- D. The terms of this Estate for Years Agreement are as follows:

### TERMS

1. **Estate for Years Granted.** In consideration of the sale of the Property to Metro and other good and valuable consideration, Metro grants to Mrs. Swan and Mrs. Swan reserves the right to remain in her home and the surrounding 0.34-acre ("Estate for Years"), which right shall terminate on the earlier of Mrs. Swan's death or Mrs. Swan's

Seller

Metro

- action to Vacate the premises as defined below. Metro shall have no obligation to repair the premises, or rebuild the premises in case of fire, flood or other <sup>122099</sup> ~~casualty~~.
2. **Premises.** The Premises over which Mrs. Swan's Estate for Years attaches consists of Mrs. Swan's existing home, the garage and the apartment over the garage, and the 0.34-acre surrounding the home, plus the right to use the driveway, as shown on the map attached hereto as Exhibit 2 and incorporated herein ("the Premises").
  3. **Vacation of the Premises.** The Premises shall be deemed Vacated and the Estate for Years shall automatically terminate if any of the following events occur:
    - (a) Mrs. Swan's death; or
    - (b) Metro receives written notice from Mrs. Swan that Mrs. Swan has elected to vacate the Premises; or
    - (c) Mrs. Swan lives off the Premises for a one-year consecutive period of time; or
    - (d) Any other person occupies the Premises while Mrs. Swan is not also physically occupying the Premises; but, notwithstanding the foregoing, a caregiver or house sitter may occupy the Premises during Mrs. Swan's life without Mrs. Swan present for a period of up to six months; or
    - (e) Failure to comply with any term or condition set forth in the Agreement of Purchase and Sale or in this Estate for Years Agreement.
  4. **Removal of Personal Property.** After the Premises have been Vacated as set forth herein, Mrs. Swan's heirs and assigns shall have up to ninety (90) days to remove Mrs. Swan's personal property and effects from the Premises.
  5. **Quitclaim Deed.** Upon the Vacation of the Premises, a quitclaim deed shall be recorded, which deed shall quitclaim to Metro all of Mrs. Swan's right, title and interest in the Premises and the Property to Metro. The quitclaim deed shall be executed at the Effective Date of this Estate for Years Agreement and shall be held in escrow until the Premises are Vacated as set forth herein, at which point Metro may record such Quitclaim Deed.
  6. **Estate for Years is Personal to Mrs. Swan; No Assignment, Rentals.** The right to occupy the Premises and other rights associated with the Estate for Years are personal to Mrs. Swan, and may not be transferred, assigned, leased or sublet in any way. No other person shall occupy the Premises unless such other person is a caregiver doing so while Mrs. Swan also physically occupies the Premises.
  7. **Mrs. Swan's Responsibilities During Estate for Years; Warranties and Representations.** During the Estate for Years, Mrs. Swan agrees, warrants, represents and covenants that she will fulfill all of the following obligations:

- Seller @  
T. E. S.  
Metro @
- (a) Mrs. Swan shall be solely responsible for payment of all real estate taxes and assessments on the Premises;
- (b) Mrs. Swan shall pay when due all claims or bills for work she has had done on the Premises, and shall keep the Premises free and clear of all liens, mortgages, and encumbrances;
- (c) Mrs. Swan shall maintain the Premises in its present state, which includes making all ordinary improvements and repairs to the residence, and shall not cause or allow any waste or destruction of the Premises; *provided seller shall not be obligated to repair flood damage.*
- (d) Mrs. Swan shall not cause or permit any Hazardous Materials to be brought upon, kept, or used in or about the Property and/or Premises, and shall comply with all government regulations related to the Premises;
- (e) Mrs. Swan shall not interfere with, and shall not allow her guests or invitees to interfere with, Metro's intended use of the Property as open space; and shall not change the use of the Premises; and shall not allow any tree cutting;
- (f) Mrs. Swan shall keep all existing insurance policies affecting the Premises in full force and effect, excepting that the existing flood hazard insurance policy may be discontinued;
- (g) Mrs. Swan shall indemnify and defend Metro from any claim, loss, or liability arising out of or relating to the Premises. Mrs. Swan shall carry public liability, home insurance, and property damage insurance, naming Metro as an additional insured, with liability limits of not less than \$500,000 for injury to persons or property per occurrence.
- (h) The Premises and Property shall be kept clear of all unsightly or offensive materials; and
- (i) Mrs. Swan warrants and represents that all representations and warranties in the Agreement of Purchase and Sale and in this Estate for Years Agreement will be true and correct at the end of the Estate for Years.

8. **Driveway Maintenance.** During the term of the Estate for Years, both Mrs. Swan and Metro shall each have full right to use the entire driveway for access purposes. Neither party may interfere with the others' right to access its property. The driveway shall be maintained to its current condition as of the date of Closing of the transaction. Maintenance costs for the driveway shall be allocated between the parties in accordance with frequency of use and the size and weight of vehicles used in the driveway area. If, during the term of the Estate for Years, either party damages the driveway area due to

negligence or use beyond normal wear and tear, that party shall repair the damage at its sole expense.

9. **Property Vacant and Ready for Possession by Metro; No Leaseholds or Tenancies.** At the expiration, Vacation, or termination of the Estate for Years, the entire Premises must be vacant and ready for exclusive possession by Metro, and there shall be no leaseholds or tenancies on the Premises.
10. **Notices.** All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Seller: Elizabeth E. Swan  
12060 S.W. Tiedeman Avenue  
Tigard, Oregon 97223

Copy to: J. Terrence Bittner  
Bittner & Hahs, P.C.  
Attorneys at Law  
1 S.W. Columbia Street Suite 1800  
Portland, OR 97258  
Fax. No. (503) 228-8566  
Phone No. (503) 228-5626

To Metro: Metro  
Office of General Counsel  
600 NE Grand Avenue  
Portland, Oregon 97232-2736  
Fax No. (503) 797-1792  
Phone No. (503) 797-1511

Copy to: Metro  
Open Spaces Manager  
600 NE Grand Avenue  
Portland, Oregon 97232-2736  
Fax No. (503) 797-1588  
Phone No. (503) 797-1914

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended. Telephone and fax numbers are for information only.

11. **Miscellaneous.**

(a) **Partial Invalidity.** If any term or provision of this Estate for Years Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Estate for Years Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Estate for Years Agreement shall be valid and be enforced to the fullest extent permitted by law.

(b) **Waivers.** No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

(c) **Entire Agreement.** This Estate for Years Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter of the Agreement and supersedes all prior understandings with respect to it. This Estate for Years Agreement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.

12. **Governing Law.** The parties acknowledge that this Estate for Years Agreement has been negotiated and entered into in the state of Oregon. The parties expressly agree that this Estate for Years Agreement shall be governed by and interpreted in accordance with the laws of the state of Oregon.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date of signature specified below.

METRO:  
a Municipal corporation

  
\_\_\_\_\_  
Mike Burton, Executive Officer

SELLER:

  
\_\_\_\_\_  
Elizabeth E. Swan

Date: July 21, 2001

Date: 7-20-01

Attachments:

- Exhibit 1 - Property Description
- Exhibit 2 - Map of Premises

Exhibit 1  
Page 1 of 2

PARCEL I:

Beginning at a point on the line between Sections 2 and 3, Township 2 South, Range 1 West, of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, 36.41 chains North of the quarter section, corner between said Sections 2 and 3; thence West 489.2 feet to the center of the county road; thence North 0°35' East 410.5 feet to the division line between the North and South halves of the John L. Hicklin Donation Land Claim; thence with said division line, South 89°45' East 485.1 feet to the above described section line; thence South 0°47' West 415 feet to the place of beginning, being a portion of Lot 22 of NORTH TIGARVILLE ADDITION, and sometimes known as Lot 3, a subdivision of Lot 23, of said NORTH TIGARVILLE ADDITION.

EXCEPTING THEREFROM that portion of the above described Parcel I lying Westerly of the West line of S.W. Tiedman Avenue, as described in Deed to School District No. 23J, recorded April 22, 1971 in Book 813, page 927.

ALSO EXCEPTING THEREFROM those portions taken for the widening a relocation of S.W. Tiedman Avenue by Dedication Deeds recorded June 4, 1996 as Fee No. 96050124 and recorded January 30, 1997 as Fee No. 97009122.

AND FURTHER EXCEPTING THEREFROM those portions lying within the boundaries of S.W. Katherine Street and Johnson Avenue.

PARCEL II:

The North 100 feet of the following described real property situated in the City of Tigard, County of Washington and State of Oregon, to-wit:

Beginning at an iron pipe set at the Northwest corner of Lot 1, NORTH TIGARVILLE ADDITION, (amended plat), and running thence along the North boundary line of said Lot 1, South 89°10' East 289.5 feet to an iron pipe; thence South 0°06' East 473.74 feet to an iron pipe; thence West 296.81 feet to an iron pipe set in the Westerly boundary line of said Lot 1; thence North 0°47' East 479.0 feet along said Easterly boundary line to the point of beginning of this description.

PARCEL III:

The following described real property being a portion of Lot 2, in subdivision of Lot 23, NORTH TIGARVILLE ADDITION, situated in the City of Tigard, County of Washington and State of Oregon, to-wit:

Beginning at the quarter section corner common to Sections 2 and 3, Township 2 South, Range 1 West, Willamette Meridian, and running thence along the section line, North 0°47' East 2385.4 feet to an iron pipe; said iron pipe marking the true point of beginning of this description; thence West 115.3 feet to an iron pipe; thence South 0°49' West 100 feet to an iron pipe; thence East 115.3 feet along the North line of CLYDESDALE, a duly recorded plat of Washington County, Oregon, to a point on the section line between Sections 2 and 3, Township 2 South, Range 1 West of the Willamette Meridian; thence North 0°47' East along said section line 100 feet to the point of beginning.



Exhibit 1  
Page 2 of 2

PARCEL IV:

The following described real property being a portion of Lot 2, in subdivision of Lot 23, NORTH TIGARDVILLE ADDITION, situated in the City of Tigard, County of Washington and State of Oregon, to-wit:

Beginning at the quarter section corner common to Sections 2 and 3, Township 2 South, Range 1 West, of the Willamette Meridian, and running thence along the section line North 0° 47' East 2385.4 feet to an iron pipe; thence West 115.3 feet to an iron pipe; said point being the true point of beginning of the herein described parcel; thence continuing West 154.0 feet to an iron pipe; thence along the East line of that tract of land conveyed to Ray A. Jenkins, et ux, by Deed recorded February 9, 1950 in Book 303, page 179, South 0° 49' West 100.0 feet to an iron pipe; thence East along the North line of Clydesdale, a duly recorded plat in Washington County, 154.0 feet to an iron pipe; thence North 0° 49' East 100.0 feet to the true point of beginning of this description.



- Key**
- Developed land (derived from July, 2000 aerial photography)
  - Undeveloped land (derived from July, 2000 aerial photography)
  - Federal
  - State
  - County
  - City
  - School District
  - Service District (fire/sewer/water)
  - Nature Conservancy
  - Wetlands Conservancy
  - Parks/Open Space
  - Bond Measure Acquisitions
  - Homes on Property

approx 3.85 acres

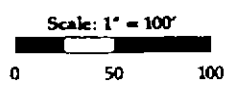
approx fence line  
center of driveway to gate

Area defined by fence/driveway, approx .34 acres

SW 106T

CLYDESDALE  
PI

Resolution # 01-3128  
Exhibit A, Exhibit 2  
Map



Metro Open Spaces, Parks and Streams Bond Measure  
Fanno Creek Target Area - Swan Property Outlined in Orange



## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 01-3128 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE THE SWAN PROPERTY IN THE FANNO CREEK GREENWAY TARGET AREA**

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**DATE:** November 14, 2001

**Presented by:**

**Charles Ciecko  
Jim Desmond**

#### DESCRIPTION

**Resolution No. 01-3128 requests authorization for the Executive Officer to purchase the Swan property in the Fanno Creek Greenway Target Area.**

#### EXISTING LAW

The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 95-2228A, as amended by Resolution 96-2424, was established to implement the Open Spaces, Parks and Streams bond measure passed by the voters of the region in 1995. The Work Plan established acquisition parameters that authorize the Executive Officer to purchase property, within certain criteria, in the Council-approved target area refinement plan maps. "Unusual circumstances" as defined in the Work Plan require Council approval prior to acquisition. Via Resolution 96-2331, the Metro Council approved the Fanno Creek Greenway target area refinement plan and tax lot-specific map. Via Resolution 00-2926A, the Metro Council amended the Fanno Creek Greenway target area refinement plan and tax lot-specific map and extended the challenge grant program through December 31, 2002. Metro Council Resolution 01-3106, adopted September 27, 2001 authorizing a modification to the Open Spaces Work Plan, does not apply to this acquisition since the Purchase and Sale Agreement was executed on July 31, 2001, prior to that resolution.

#### BACKGROUND

Metro has entered into a purchase and sale agreement with Elizabeth E. Swan for 3.5 acres located along the west side of Fanno Creek in Tigard ("the Property"). The Property is situated directly across the creek from a 6.8-acre parcel recently purchased by Metro (the former Lowery property), adjacent to a Tigard City Park (Woodard Park) and directly across SW Tiedemann Avenue from Fowler Middle School. The Property is in Tier I of the adopted Fanno Greenway Target Area Refinement Plan. Known as Swan Farm, it is a former farm that has been owned and operated by the Swan family for over thirty years, and has been managed to preserve the Property's habitat value.

The Swan property has approximately 129 linear feet of frontage along Fanno Creek and provides direct, low bank access to this creek. It is one of the few remaining relatively large sites located along Fanno Creek and has the potential to serve as a passive natural-area recreation site. Fanno Creek is known for providing habitat for native cutthroat trout.

Oregon Department of Transportation (ODOT) has already completed a wetland restoration and enhancement project on the adjacent Metro (former Lowery) property, and the Property

would provide complimentary opportunities. In this case, there is an opportunity to not only preserve existing flood plain for flood storage purposes, but to also develop an emergent wetland on the Property and to restore a native pine and oak forest habitat on the upland portion of the Property. Additionally, the City of Tigard indicated that it would be interested in cooperatively managing this site with Metro. The City has voiced interest in seeing this site developed as a possible environmental education resource for Fowler Middle School students, which could provide students with direct wetland restoration and enhancement experiences. When combined with the former Lowery property, the acquisition of this Property would place approximately 10.3 acres of creek side property in Metro ownership.

There is one unusual circumstance regarding the transaction for which Council approval is required under the Open Spaces Implementation Work Plan. Mrs. Swan would like to retain a life estate in her existing home and surrounding 0.34-acres. It is customary for Metro to take possession of property at closing. In this case, however, Mrs. Swan, who is 70 years old and recently widowed, is considering retiring to the Oregon Coast at some point in the future. Due to her long tenure on the Property and the sheer volume of personal property and equipment that has accumulated on the site over the years, she has requested that she be able to decide whether to relocate, or live out the remainder of her life on the Property. As Metro has no funding available to immediately develop a master plan and open the site for public use, this delay in obtaining full possession of the site is not considered significant by staff.

Mrs. Swan's existing home contributes little or no value to the overall market value of the Property (a market appraisal estimated that the existing home would be razed in order to make way for a residential subdivision development on the Property). In exchange for granting Mrs. Swan a life estate, Metro would receive the benefit of having a constant presence on the Property by one who is intimately familiar with the Property. At nearly 7,200 acres and growing, it is an ongoing challenge for the Parks and Greenspaces Department staff to find creative solutions to effectively monitor the activities and conditions of the properties Metro owns. The management and occupation of residences pose particular operations and maintenance challenges for the Department. The life estate scenario will provide a savings to Metro of staff time and incidental costs. Metro and Mrs. Swan have entered an Agreement for Estate for Years, which defines the responsibilities and obligations of each party.

There is also an underground storage tank located on the Property. However, the storage tank will be decommissioned in place prior to Closing.

The Acquisition Committee met on November 14, 2001 and voted to recommend that the Property be purchased subject to the terms and conditions set forth in the Agreement of Purchase and Sale, including the Estate for Years (the life estate).

## **FINDINGS**

Acquisition of the Property with the above-stated terms is recommended based on the following:

- The Property lies in Tier I of the Fanno Creek Greenway Target Area and fulfills the goals of the Fanno Creek Greenway Refinement Plan.

- The site provides a rare opportunity to preserve existing flood plain and enhance or restore former native wetland areas and upland forest habitat on a large block of land along Fanno Creek.
- The site provides safe, low bank access to Fanno Creek.
- Fanno Creek offers some habitat for native cutthroat trout.
- The size of the Property is suitable for a passive natural-area recreational use and has educational and interpretive potential for local middle school students.
- It would be beneficial to Metro to have Mrs. Swan remain on the Property to ensure that the residence is occupied and maintained, and to provide a constant presence on the Property.

### **BUDGET IMPACT**

Bond funds would supply acquisition money. Land banking costs are expected to be minimal. The life estate is expected to provide a savings in landbanking costs with Mrs. Swan living on the site.

### **OUTSTANDING QUESTIONS**

None.

### **EXECUTIVE OFFICER'S RECOMMENDATION**

The Executive Officer recommends passage of Resolution No.01-3128.