

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING  
OFFICER TO ACQUIRE A CONSERVATION  
EASEMENT ON CERTAIN PROPERTY IN  
THE LOWER TUALATIN HEADWATERS  
TARGET AREA UNDER THE 2006  
NATURAL AREAS BOND MEASURE

RESOLUTION NO. 08-3923

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

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved the 2006 Natural Areas Bond Measure, authorizing Metro to sell \$227.4 million in general obligation bonds to fund natural area acquisition and water quality protection;

WHEREAS, the Lower Tualatin River Headwaters Target Area was identified in the 2006 Natural Areas Bond Measure as one of 27 regional target areas for land acquisition;

WHEREAS, on September 13, 2007, the Metro Council adopted Resolution No. 07-3848 "Approving The Natural Areas Acquisition Refinement Plan For The Lower Tualatin River Headwaters Target Area" authorizing the Chief Operating Officer to acquire properties in the Lower Tualatin River Headwaters Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan;

WHEREAS, Kenneth E. Streeter and Julee A. Streeter own approximately 25 acres of real property located within the Lower Tualatin Headwaters Target Area, which property is further described on the attached Exhibit A (the "Streeter Property");

WHEREAS, the Streeters have proposed to sell to Metro a conservation easement (the "Conservation Easement") that would encumber approximately 24 acres of the Streeter Property (the "Protected Property"). A depiction of the Protected Property is attached hereto as Exhibit B;

WHEREAS, the Conservation Easement would restrict uses of the Protected Property such that the natural condition of the Protected Property would be permanently protected and preserved in accordance with the terms and conditions of the easement attached hereto as Exhibit C;

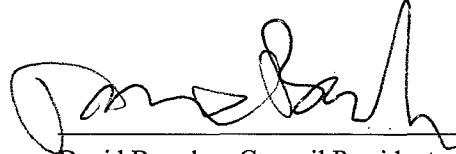
WHEREAS, the Streeters have also agreed to grant to Metro, along with the Conservation Easement, a 20-year option to purchase fee title to Protected Property in the event Metro is successful in achieving a land division necessary to cause the Protected Property to become a legal lot, separate from the remainder of the Streeter Property;

WHEREAS, acquisition of the Conservation Easement would enable Metro to accomplish its Tier 1 objectives in Lower Tualatin Headwaters Target Area by protecting lands along Baker Creek, particularly forested uplands and other intact habitat areas important to wildlife and used by sensitive species; and


WHEREAS, Metro has met the public notice requirements for conservation easements as set forth in Metro Code Section 10.03.06; now therefore

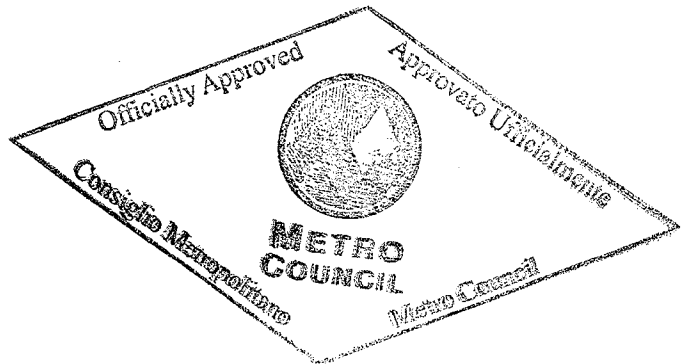
BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to acquire a conservation easement over a portion of the Streeter Property in the Lower Tualatin Headwaters Target Area in substantially the form attached hereto as Exhibit C, provided such acquisition is otherwise in accordance with all the Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Plan.

ADOPTED by the Metro Council this 10<sup>th</sup> day of April, 2008.

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney



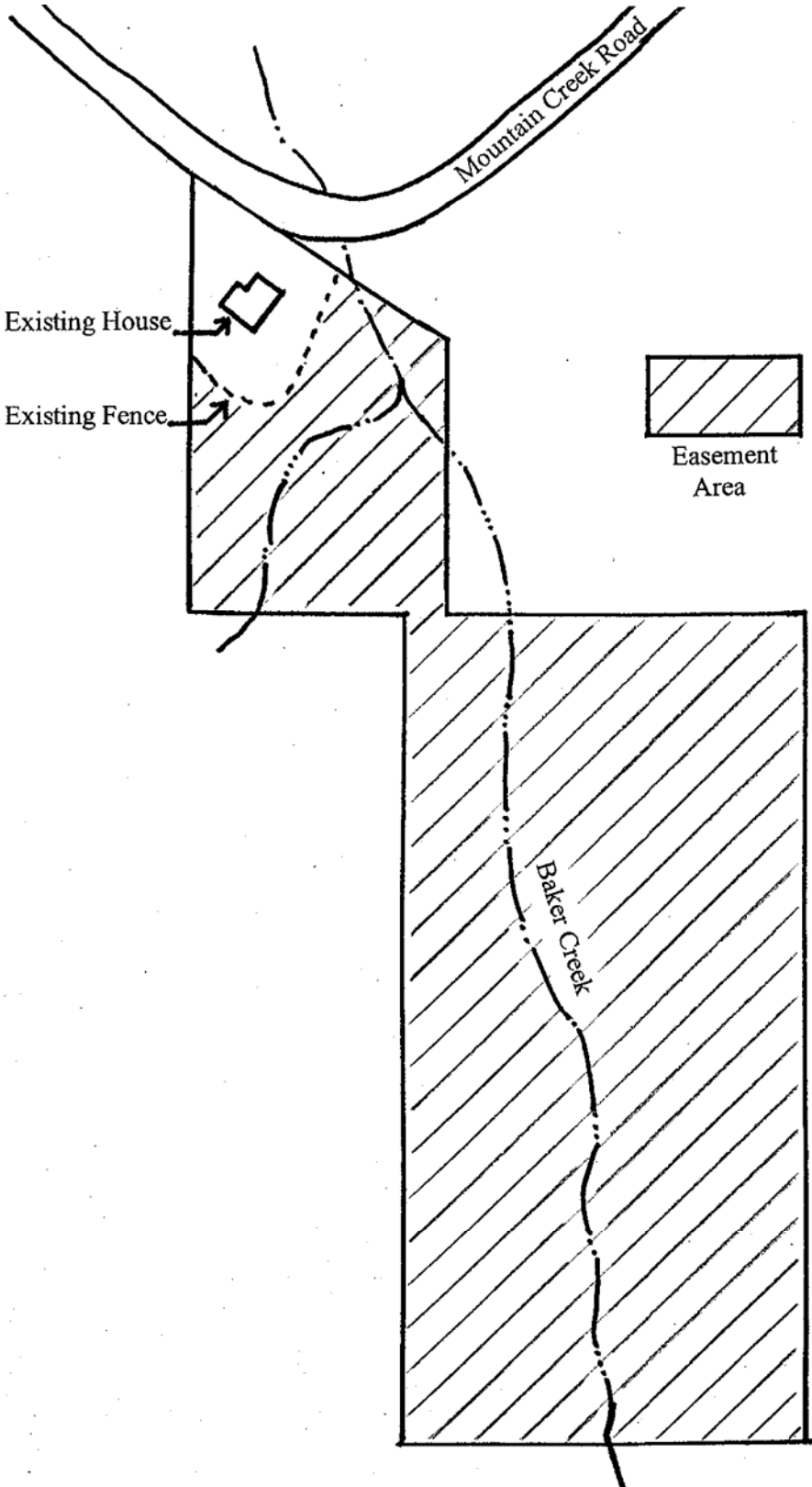
Legal Description of Streeter Property

The East one-half of the Northeast quarter of the Southwest quarter of Section 22, Township 2 South, Range 2 West, Willamette Meridian, in the County of Washington and State of Oregon.

Also, a parcel of land in the Southeast quarter of the Northwest quarter of Section 22, Township 2 South, Range 2 West, Willamette Meridian, in the County of Washington and State of Oregon, and being more particularly described as follows:

Beginning at a point on the North line of the West one-half of the Northeast quarter of the Southwest quarter of Section 22, Township 2 South, Range 2 West, Willamette Meridian, said County and State, South 89°03' East 295.97 feet from the Northwest corner of said West one-half; thence North 0°17' West 707.97 feet to a point; thence South 57°15' East 493.75 feet to a point; thence South 0°17' East 447.66 feet to a point in the North line of the East one-half of the Northeast quarter of the Southwest quarter of said Section 22; thence North 89°03' West 710.0 feet to the place of beginning.

Depiction of the Protected Property



After recording return to:

Office of Metro Attorney  
600 NE Grand Avenue  
Portland, OR 97232-2736

### CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this “Easement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between Kenneth E. Streeter and Julee A. Streeter, as tenants by the entirety (together, “Grantor”) and Metro, an Oregon municipal corporation (“Metro”).

### RECITALS

A. Grantor is the fee simple owner of that certain real property approximately 25.5 acres in size located in the County of Washington, State of Oregon, commonly known as 23890 SW Mountain Creek Road, and more particularly described on the attached Exhibit A (the “Property”).

B. Metro is a qualified recipient of deductible charitable contributions under Internal Revenue Code § 170(b)(1)(A)(v) and § 170(c)(1), whose purpose includes the protection, management, and restoration of urban natural areas and areas in proximity to the urban area deemed to be of regional and metropolitan concern.

C. On November 7, 2006, the voters approved Ballot Measure 26-80 (the “2006 Natural Areas Bond Measure”), which provided Metro with funds for the acquisition of natural areas from willing owners. The 2006 Natural Areas Bond Measure was designed to provide Metro with the ability to protect the region’s significant natural areas, fish and wildlife habitat, greenways, water quality, and lands near rivers and streams.

D. The Property lies along Baker Creek, within the Lower Tualatin Headwaters, a target area specifically identified in the 2006 Natural Areas Bond Measure, which area is regionally significant due to its wildlife habitat values and its contribution to water quality in the Tualatin River Basin.

E. In order to preserve the natural features of the Property that provide significant wildlife habitat values and contribute to water quality, Grantor desires to grant to Metro, and Metro desires to accept from Grantor, a conservation easement over a certain 23 acre portion of the Property (the “Easement Area”). The Easement Area is more particularly described on the attached Exhibit B and depicted on the attached Exhibit C.

F. Donor intends that a portion of the market value of the Easement Area be a charitable contribution to Metro. Metro makes no representation as to the tax consequences of the transaction contemplated by this Agreement. Grantor will obtain independent tax counsel and be solely responsible for compliance with the gift value substantiation requirements of the Internal Revenue Code.

For valuable consideration, the receipt of which is hereby acknowledged by Grantor, and the mutual covenants, terms, conditions, and restrictions contained herein, the parties hereby agree as follows:

## AGREEMENT

**1. Grant of Conservation Easement.** For and in consideration of the sum of SEVEN HUNDRED AND TWENTY FIVE THOUSAND DOLLARS (\$725,000) and of the mutual promises, terms, conditions, restrictions and undertakings herein set forth, Grantor hereby voluntarily grants to Metro a perpetual conservation easement, in gross, on, over, under, and across the Easement Area. This Easement is being created and acquired in accordance with ORS 271.715 to 271.795, and the provisions herein shall be construed and applied accordingly.

**2. Qualified Conservation Contribution.** It is intended that a portion of this grant shall constitute a “qualified conservation contribution” within the meaning of 26 U.S.C. §170(h)(1) of and any applicable tax laws of the State of Oregon. The provisions of this Easement shall be construed and applied accordingly.

**3. Purpose.**

(a) General Purpose. The general purpose of this Easement is to ensure that the Easement Area will be retained forever predominantly in its natural condition as “a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem” (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended) and to protect natural resources and maintain and enhance water quality as set forth in ORS 271.795(1). The more specific purpose of this Easement is to prevent any use of (or activity on) the Easement Area that will impair or interfere with the Conservation Values, as such term is defined below.

(b) Conservation Values. Grantor and Metro have identified that the site provides valuable natural riparian and upland wildlife habitat and water quality protection along approximately 2,000 feet, including both banks, of Baker Creek. These characteristics of the Easement Area (the “Conservation Values”) shall be preserved, protected, and enhanced under this Easement. The Conservation Values include:

- High degree of unrestricted, natural sinuosity of Baker Creek, which meanders through a flat-bottomed floodplain and branches into several small channels before uniting again at the culvert under Mountain Creek Road. This sinuosity provides beneficial natural streamflow moderation and high-flow water storage capacity, as well as serving a sedimentation and pollution control function.
- Large native forested riparian area that contains primarily Douglas-fir trees (approximately 100 years of age), with western red cedar and western hemlock trees in the understory, as well as native poison oak, snowberry, salal, sword fern, and various other native species. The forested riparian areas allow for recruitment of large woody debris and other organic material into the creek, providing valuable wildlife and ecosystem benefits. The forested riparian areas also maintain a riparian microclimate and provide streamside shade to cool stream water.
- Home to a variety of native wildlife species, including deer, red-tailed hawks, coyotes, rufous-sided towhees, red-breasted sapsuckers, beaver, and pileated woodpeckers, and the potential to provide aquatic, riparian, and upland habitat to an even wider variety of native wildlife species.

**4. Metro's Uses.**

(a) Permitted Activities, Uses, and Access Rights. Metro, its employees, staff, agents, and invitees, shall have the unlimited right to enter upon the Easement Area for any purpose whatsoever, including, but not limited to, the following: (i) to inspect for and monitor Grantor's compliance with and otherwise enforce the terms of this Easement; (ii) to perform restoration, rehabilitation, or maintenance work on the Easement Area as deemed necessary by Metro to protect, restore, or enhance the Conservation Values of the Easement Area; and (iii) for educational, scientific, or recreational purposes. Without limiting the generality of the foregoing, Metro shall have the right to engage in the activities and uses described on the attached Exhibit D.

(b) Signs; Survey Posts; Fences. Metro shall have the right to install one or more signs within the Easement Area identifying Metro's interest in and rights to the Easement Area. Signs are to be of the customary size installed by Metro and may be at locations readable by either adjacent property owners or the public. Metro shall also have the right to establish and maintain visible monuments such as survey posts at prominent locations along the boundary of the Easement Area. Metro may, at Metro's discretion, install and maintain a fence around the Easement Area should Metro deem it necessary to protect the Conservation Values of the Property.

**5. Grantor's Uses.**

(a) Prohibited Uses. Grantor shall not engage in any activity on, or use of, the Easement Area that is inconsistent with the terms of this Easement or materially interferes with or impairs the Conservation Values of the Easement Area. Without limiting the generality of the foregoing, the activities and uses described on the attached Exhibit E are expressly prohibited.

(b) Permitted Uses. Grantor reserves all rights accruing from its ownership of the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not inconsistent with the terms of this Easement or expressly prohibited herein.

**6. Development Rights.** Grantor hereby grants to Metro all development rights appurtenant to and associated with the Easement Area and the parties agree that such rights are hereby released, terminated, and extinguished and may not be used on or transferred to any portion of the Property or the Easement Area, as it is now or hereafter may be bounded or described. In the event that an application is made at any time to a federal, state, or local government authority for permission to develop any other land, including, but not limited to, the Property or other land that is contiguous to any of the Easement Area, which development is conditioned on the existence of a specified quantity of open space or other such restrictions on development, the Easement Area shall not be used to contribute toward the satisfaction of any such open space requirement.

**7. Water Rights Included.** This Easement includes any and all water rights associated with the Easement Area, including all surface water rights and groundwater rights, whether tributary or nontributary, decreed or undecreed, permitted or certificated (the "Water Rights"). Grantor shall not (a) transfer, encumber, sell, lease, or otherwise separate the Water Rights from the Easement Area, (b) use the Water Rights for residential, municipal, industrial, agricultural, or commercial uses, or (c) construct, or permit others to construct, any new water diversion or storage facilities upon the Easement Area. If historic use of the Water Rights are not maintained, or the Water Rights are otherwise subject to a threat of abandonment, Metro shall have the right, but not the obligation, to (i) undertake any and all actions reasonably necessary to continue the use of the historic Water Rights, or to (ii) seek to change the Water Rights to another permitted use. Metro shall also have the right to maintain, repair, and if destroyed, reconstruct any existing facilities related to the Water Rights (such as ditches, wells, and reservoirs).

Notwithstanding the forgoing, nothing in this Section shall restrict or prohibit Grantor from continuing to use, for residential purposes, the existing well that is located on northwest side of the Property, outside of the Easement Area.

**8. Baseline Documentation.** The current condition of the Easement Area is documented in an inventory of relevant features of the Easement Area, dated \_\_\_\_\_, 200\_\_, on file at the offices of Metro, and signed by Grantor for identification purposes (the “Baseline Documentation”). The Baseline Documentation consists of reports, maps, photographs, and other documentation derived from various methods (including field visits) that the parties agree provide an accurate representation and description of the Easement Area at the time of this grant. The Baseline Documentation is intended to serve as an objective, although not exclusive, information baseline for monitoring compliance with the terms of this Easement. The Baseline Documentation may be updated by Metro periodically to reflect the current condition of the Easement Area following any restoration and rehabilitation efforts carried out by Metro in accordance with Section 4(a) above.

**9. Enforcement and Remedies.**

(a) Notice of Violation. Metro shall have the right to prevent any use of, or activity on, the Easement Area that is inconsistent with the purpose and terms of this Easement. If Metro determines that Grantor, or third parties under Grantor’s authority or permission, are in violation of the terms of this Easement, Metro shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. In the event that such violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purpose and terms of this Easement, such notice shall demand that Grantor, at Grantor’s sole cost and expense, restore the portion of the Easement Area so injured to its prior condition in accordance with a plan approved by Metro.

(b) Failure to Cure. If Grantor fails to cure a violation within 30 days after Grantor’s receipt of notice thereof from Metro, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing the violation within the 30-day period, Metro may bring an action at law or in equity to (i) enforce the terms of this Easement, (ii) enjoin the violation by a temporary, preliminary, and/or permanent injunction, (iii) recover any damages to which Metro may be entitled for such violation of the terms of this Easement, and (iv) require the restoration of the Easement Area to the condition and appearance that existed prior to such violation.

(c) Emergency Enforcement. If Metro, in its sole discretion, reasonably determines that the circumstances require immediate action to prevent or mitigate significant damage to the Easement Area, Metro may enter the Easement Area to prevent or mitigate further damage to or alteration of the Easement Area necessary to protect the Conservation Values or otherwise pursue its remedies under this Section 9 without prior notice to Grantor and without waiting for the expiration of the cure period set forth above in subsection (b).

(d) Nature of Remedies. Metro shall have available all legal and equitable remedies to enforce Grantor’s obligations hereunder. Grantor agrees that Metro’s remedies at law for any violation of the terms of this Easement are inadequate, and that Metro shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which Metro may be entitled, including without limitation specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Metro’s rights under this Section 9 shall be cumulative, in addition to all remedies now or hereafter existing at law or in equity, and apply equally in the event of either actual or threatened violations of the terms of this Easement.



(e) Costs of Enforcement. Grantor shall reimburse Metro for any costs or expenses incurred by Metro in enforcing the terms of this Easement, including, without limitation, all reasonable court costs, attorney fees, expert witness fees, and costs of restoration mitigation necessitated by Grantor’s violation of the terms of this Easement.

(f) Metro’s Discretion to Enforce. Enforcement of the terms of this Easement is at the discretion of Metro. Any forbearance by Metro to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees, or licensees shall not be deemed or construed to be a waiver by Metro of such term under this Easement. No delay or omission by Metro in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

(g) Waiver of Certain Defenses. Grantor acknowledges that it has carefully reviewed this Easement and has had the opportunity to consult with and been advised by legal counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Metro or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, adverse possession, or prescription.

(h) Acts Beyond Grantor’s Control. Nothing contained in this Easement shall be construed to entitle Metro to bring any action against Grantor to abate, correct, or restore any condition on the Easement Area or to recover damages for any injury to, or change in, the Easement Area resulting from (1) causes beyond Grantor’s control including, without limitation, natural changes, fire, flood, storm or earth movement, acts of trespassers, or (2) any reasonable and prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.

**10. Costs; Taxes.** Grantor shall bear all costs related to the ownership of the Easement Area and the Property. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area and the Property by competent authority (collectively “taxes”), and shall furnish Metro with satisfactory evidence of payment upon request. If Grantor fails to pay any taxes when due Metro may, but is not obligated to, make or advance such payment of taxes upon ten days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate. Should Metro make or advance such payment of taxes, Grantor shall be obligated to reimburse Metro and such payment shall bear interest at the maximum rate allowed by law until Grantor has reimbursed Metro in full. Grantor shall also be responsible for and shall bear all costs associated with ensuring compliance with all federal, state, and local laws, regulations, rules, and ordinances. Any lawful tax or assessment on this Easement shall be paid by Metro.

**11. Liability and Indemnification.**

(a) Liability. The parties acknowledge and agree that because Grantor is the fee owner of the Easement Area, except as specifically provided for under subsection (b) below, the general liability for risks, damages, injuries, claims, or costs arising by virtue of Grantor’s ownership and use of the Easement Area shall remain with Grantor as a normal and customary incident of the right of Property ownership. Nothing in this Easement shall be construed as giving rise to any right or ability of Metro to become an “owner” or “operator” of the Easement Area within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

(b) Indemnification. Grantor shall indemnify, defend, and hold harmless Metro (and Metro’s officers, employees and agents) from and against all claims, suits, actions, losses, damages,

liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Grantor and Grantor's invitees on the Property. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300, Metro shall indemnify, defend, and hold harmless Grantor from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from, arising out of, or relating to the activities of Metro (or Metro's officers, employees and agents) on the Easement Area, except to the extent such damages are due to Grantor's or Grantor's invitees' negligence or willful misconduct, or to any breach of this Conservation Easement by Grantor or Grantor's invitees.

**12. Covenants Running With the Land.** The parties acknowledge and agree that the covenants and agreements set forth in this Easement are intended to bind Grantor, Metro, and their respective successors and assigns. The Property and the Easement Area shall be held, conveyed, mortgaged, pledged as security for a debt, leased, used, and occupied subject to the covenants, conditions, restrictions, and other limitations set forth in this Easement (the "Restrictions"). All and each of the Restrictions are imposed as equitable servitudes upon the Property and every part thereof shall run with the land. Furthermore, all and each of the Restrictions shall be binding upon and burden, and shall inure to the benefit of, all persons having or acquiring any right, title, or interest to either the Property or the Easement Area.

**13. Termination of Easement.** This Easement can only be terminated or extinguished by judicial proceedings in a court having jurisdiction. The total loss of all Conservation Values on the Easement Area is the only grounds under which this Easement can be terminated. The amount of the proceeds to which Metro shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Easement Area subsequent to such termination or extinguishment, shall be equal to the fair market value of this Easement at the time of extinguishment, as determined by a competent appraiser; provided, however, that such amount shall not be less than the amount determined by multiplying all proceeds from such sale, exchange, or voluntary conversion by the ratio of the value of this Easement at the time of the effective date of this Easement to the value of the Easement Area as a whole as of the effective date of this Easement, without deduction for the value of this Easement. In no event shall the "economic hardship" of Grantor constitute a changed circumstance that would allow Grantor to unilaterally terminate this Easement.

**14. Subsequent Property Transfers and Encumbrances.**

(a) Transfers. Any subsequent transfer, including, without limitation, conveyance, lease, or mortgage of the Property or the Easement Area, shall be subject to this Easement. Grantor shall incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in the Easement Area. Grantor shall also give written notice to Metro of the transfer of any interest in all or a portion of the Easement Area no later than 15 days prior to the date of such transfer. Such notice to Metro shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative. Failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

(b) Encumbrances. The grant of any additional easements or use restrictions by Grantor against Property is hereby prohibited, except with the written permission of Metro, which permission may be withheld in Metro's sole and absolute discretion. Within 45 days after receiving written notice from Grantor requesting such permission, Metro provide Grantor with a written response either granting or denying Grantor's request. Notwithstanding the forgoing, nothing in this Easement should be construed as impairing the ability of Grantor to use the Easement Area or the Property as collateral for subsequent borrowing.

(c) Estoppel Certificate. Upon written request by Grantor, Metro shall within 60 days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies that to the best of Metro’s knowledge Grantor is in compliance with any obligation of Grantor contained in this Easement or which otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Easement Area as of Metro’s most recent inspection.

**15. Amendment.** Grantor and Metro may mutually agree to amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Metro under any applicable laws, including 26 U.S.C. § 170(h), as amended (or any successor provision(s) then applicable), and ORS 271.715-795. Any such amendment shall (a) be consistent with the purpose of this Easement, (b) either enhance or have no effect on the Conservation Values, (c) not affect this Easement’s perpetual duration, (d) be in writing and be signed by both parties hereto (or their respective successors or assigns), and (e) be recorded in the official real property records of Washington County, Oregon. In no event shall the "economic hardship" of Grantor constitute a changed circumstance that would allow Grantor to unilaterally amend this Easement.

**16. Assignment.** This Easement is transferable by Metro, but Metro may only assign its rights and obligations hereunder to an organization that is a “qualified organization” at the time of the transfer under 26 U.S.C. § 170(h)(3) (or any successor provision then applicable) and authorized to acquire and hold conservation easements under ORS 271.715 to 271.795 (or any successor provisions then applicable). Metro shall notify Grantor in writing, at Grantor’s last known address, in advance of such assignment. In the event that an assignee assumes the obligations of Metro hereunder, then Metro shall have no further liability with respect to this Easement.

**17. Recording.** Grantor shall immediately record this instrument in the official records of Washington County, Oregon, and in any other appropriate jurisdictions, and Metro may re-record it at any time as may be required to preserve Metro’s rights in this Easement.

**18. Notice and Addresses.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, to the address set forth below. Any party may change the address to which its notices are to be sent by duly giving notice pursuant to this Section.

To Grantor:                      Kenneth Streeter and Julee Streeter  
   23890 SW Mountain Creek Road  
   Sherwood, Oregon 97140  
   Phone No. (503) 628-1541

To Metro:                              Metro  
   Regional Parks and Greenspaces Department  
   Attn: Director  
   600 NE Grand Avenue  
   Portland, OR 97232

With a copy to:                      Office of Metro Attorney  
   600 NE Grand Avenue  
   Portland, OR 97232

**19. General Provisions.**

(a) Governing Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Oregon.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of ORS Chapter 271. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Conservation Intent. Any ambiguities in this Easement shall be construed in a manner which best effectuates the Conservation Values for the Easement Area.

(d) Severability. If any provision of this Easement, or its application to any person, entity, or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

(e) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement Area and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement Area, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 15.

(f) No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.

(g) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon assignment of the party's interest in the Easement or transfer of the Easement Area, except that liability for acts or omissions occurring prior to transfer shall survive assignment or transfer.

(h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

IN WITNESS WHEREOF, the parties have executed this Easement as of the date first set forth above.

METRO, an Oregon municipal corporation

GRANTOR:

By: \_\_\_\_\_  
Michael Jordan, Chief Operating Officer

\_\_\_\_\_  
Kenneth E. Streeter

\_\_\_\_\_  
Julee A. Streeter

State of OREGON  
County of MULTNOMAH

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by Michael Jordan as Chief Operating Officer of Metro.

\_\_\_\_\_  
Notary Public - State of Oregon

State of OREGON  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by Kenneth E. Streeter.

\_\_\_\_\_  
Notary Public - State of Oregon

State of OREGON  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by Julee A. Streeter.

\_\_\_\_\_  
Notary Public - State of Oregon

Legal Description of Streeter Property

The East one-half of the Northeast quarter of the Southwest quarter of Section 22, Township 2 South, Range 2 West, Willamette Meridian, in the County of Washington and State of Oregon.

Also, a parcel of land in the Southeast quarter of the Northwest quarter of Section 22, Township 2 South, Range 2 West, Willamette Meridian, in the County of Washington and State of Oregon, and being more particularly described as follows:

Beginning at a point on the North line of the West one-half of the Northeast quarter of the Southwest quarter of Section 22, Township 2 South, Range 2 West, Willamette Meridian, said County and State, South 89°03' East 295.97 feet from the Northwest corner of said West one-half; thence North 0°17' West 707.97 feet to a point; thence South 57°15' East 493.75 feet to a point; thence South 0°17' East 447.66 feet to a point in the North line of the East one-half of the Northeast quarter of the Southwest quarter of said Section 22; thence North 89°03' West 710.0 feet to the place of beginning.

**Easement Area Description**

[TO BE INSERTED FROM SURVEY OBTAINED BY METRO]

**Depiction of Easement Area**

[TO BE INSERTED FROM SURVEY OBTAINED BY METRO]



**Metro’s Permitted Uses and Activities**

1. The removal or alteration of existing non-native, invasive, and competitive vegetation (including the use of mowing, digging, hand removal and herbicides).
2. The planting and maintenance of native vegetation for the purpose of establishing a native plant community.
3. The alteration of the land surface to restore natural systems and enhance the Conservation Values.
4. The alteration of water courses to restore natural systems and enhance the Conservation Values.
5. The removal of native species if necessary to meet management objectives (including releasing oaks, thinning overstocked stands, creating snags).
6. The installation of monitoring devices as appropriate for scientific survey or management (including structures, bat/bird wildlife boxes).
7. Painting, flagging and posting boundaries of the Easement Area.
8. Improving physical access to the Easement Area.
9. The erection of a fence or any other restraining feature if such feature is necessary to protect the Conservation Values within the Easement Area.

**Grantor's Prohibited Uses and Activities**

1. The partition, division, subdivision, defacto division of the Easement Area.
2. The filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting of minerals, oil, gas, coal, and other hydrocarbons, soils, sands, gravel, rocks or any other materials on or below the surface of the Easement Area or other significant grading of the topography of the property.
3. The manipulation or alteration, diminution, or drainage of any natural water course, wetland, stream bank, riparian area, shoreline, or body of water on the Easement Area or any activity that causes or is likely to cause significant pollution of any surface of subsurface waters.
4. Any commercial or industrial activities of any kind.
5. Agricultural activities of any kind, including, without limitation, the establishment and maintenance of a livestock corral, personal gardens, row crops, haying, grazing, livestock watering, pasture uses, horseback riding or domestic animals.
6. Constructing, placing, or maintaining any building, cabin, garage, barn, shed, greenhouse, mobile home, house trailers, permanent tent facilities, huts, tree houses, play structures, or other temporary or permanent structures of facilities on, above, or below the Easement Area.
7. Placing, constructing, or maintaining any signs, billboards, or outdoor advertising structures on the Easement Area other than a reasonable number of signs needed to temporarily advertise the sale or lease of the Easement Area or the Property.
8. Paving or otherwise covering with concrete, asphalt, gravel, or any other paving material of any portion of the Easement Area.
9. The granting of any major utility corridor right-of-way easements, or the construction or installation of above ground water facilities (pumps, pipelines, ponds, ditches, and similar improvements), utility systems or structures, septic systems, septic drain fields, communication devices, or aerial lines.
10. The installation of underground storage tanks or placing, filling, storing, processing, dumping, or otherwise disposing on the Easement Area any soil, refuse, trash, rubbish, debris, junk, waste, or other such substance.
11. Dumping, depositing, abandonment, discharging, or release of any gaseous, liquid, solid, or hazardous wastes, substances, materials, trash, or debris of whatever nature on, in, over, or under the ground or into the surface or ground water of the Easement Area.
12. The gathering, harvesting, or removal of any timber or plants on the Easement Area or the cutting, removing, pruning, manipulation or alteration of any vegetation on the Easement Area.

13. The hunting or trapping of any fish, birds, or other game animals or any disruption of wildlife breeding, foraging, and nesting activities on the Easement Area.
14. The discharge of firearms, bows and arrows, air guns, slingshots or similar devices.
15. The erection of a fence or any other restraining feature.
16. The operating of motorcycles, dune buggies, snowmobiles, or any other type of off-road motorized vehicles.
17. The use of all forms of fireworks on the Easement Area.

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 08-3923, AUTHORIZING THE CHIEF OPERATING OFFICER TO ACQUIRE A CONSERVATION EASEMENT ON CERTAIN PROPERTY IN THE LOWER TUALATIN HEADWATERS TARGET AREA UNDER THE 2006 NATURAL AREAS BOND MEASURE

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Date: April 10, 2008

Prepared by: Kathleen Brennan-Hunter

## BACKGROUND

Metro staff has entered into an agreement, subject to Council approval, to purchase a conservation easement over approximately 24 acres on the Streeter Property (the "Easement Area"). The Streeter's residence will remain on the 1-acre portion of the Streeter Property that lies outside the Easement Area.

The acquisition of a conservation easement over 24 acres of the Streeter Property will further Metro's Tier 1 objectives in the Lower Tualatin Headwaters Target Area by protecting lands along Baker Creek, particularly forested uplands and other intact habitat areas important to wildlife and used by sensitive species. The conservation easement would, among other things, (1) prohibit development so that the natural condition of the Easement Area would be retained, (2) provide Metro with unlimited access rights to the Easement Area for monitoring, restoration, and enhancement purposes, and (3) restrict the Streeters from engaging in any activity that is inconsistent with the conservation values established under the conservation easement. Metro's permitted uses and the Streeter's prohibited uses are more particularly set forth on Exhibit D and Exhibit E to the proposed conservation easement, which easement is attached as Exhibit C to the resolution.

Resolution No. 08-3923 requests authorization for the Chief Operating Officer to acquire a conservation easement over certain property owned by Kenneth and Julee Streeter located in the Lower Tualatin Headwaters Target Area (the "Streeter Property"). The Streeter Property is approximately 25 acres in total size. A legal description of the Streeter Property is attached as Exhibit A to the resolution.

The Streeter property provides valuable riparian and upland wildlife habitat and water quality protection along approximately 2000 feet, including both banks, of Baker Creek. Baker Creek meanders through a flat-bottomed floodplain and branches into several small channels before uniting again at the culvert under Mt. Home road. The floodplain is currently dominated by reed canarygrass but has high restoration potential, particularly in combination with management of the associated upland for recruitment of large woody debris. Due to the width of the valley bottom, the stream exhibits a high degree of sinuosity. In general, the site has the potential to provide aquatic, riparian and upland habitat to a wide variety of wildlife species.

The forested riparian area adjacent to the floodplain is dominated by a Douglas-fir forest (age estimate is approximately 100 years), with western redcedar and western hemlock in the understory as well as poison oak, snowberry, salal, sword fern and other native species. The western slope of the Streeter property, above the approximately 100' wide forested riparian area, has been thinned to remove trees identified as dead or dying from root disease. This has resulted in a somewhat simplified forest structure and composition, which can be remedied with underplanting with trees and shrubs.

Metro's science staff observed evidence of deer, red-tailed hawks, coyotes, rufous-sided towhees and red-breasted sapsuckers during a site visit. In addition, the owner reported the past presence of beaver and pileated woodpeckers.

In addition to granting Metro the conservation easement, the Streeters have also agreed to provide Metro with a 20-year option to purchase fee title to the Easement Area. There would be no additional purchase price paid to the Streeters should Metro exercise the option. Metro is presently unable to purchase fee title to the Easement Area due to land division restrictions currently in the Washington County Code. Metro staff intends to work with Washington County and other local partners to encourage approval of a land division in this case pursuant to ORS 215.783, a law adopted during the 2007 legislative session (effective January 1, 2008). ORS 215.783 allows a division of land that would otherwise be prohibited in forest and forest/farm zones if the purpose of such division is to preserve one of the resulting parcels as a park or open space.

The purchase of the conservation easement over the Streeter property is contingent on the purchase of certain property owned by Kevin and J'leane Cole (the "Cole Property") located adjacent to and directly to the north of the Easement Area. The Cole Property is approximately five acres in size and will provide Metro with suitable access to the Easement Area. The Cole Property is undeveloped, contains significant habitat and resource values, and is also an identified Tier 1 property within the Lower Tualatin Headwaters Target Area.

This authorization assumes that the purchase of the conservation easement will comply with all other terms of the Acquisition Parameters and Due Diligence Guidelines of the 2006 Natural Areas Implementation Work Plan, such as the standard appraisal requirements, environmental inspection, and title review.

Council's consideration of Resolution No. 08-3923 at its April 10, 2008, regular weekly council meeting will satisfy the public hearing requirement set forth in Metro Code Section 10.03.06.

## **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" was adopted on March 9, 2006.

The voters approved Metro's 2006 Natural Areas Bond Measure at the general election held on November 7, 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" was adopted by the Metro Council on March 1, 2007, and established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 07-3848 “Approving The Natural Areas Acquisition Refinement Plan For The Lower Tualatin River Headwaters Target Area” was adopted by the Metro Council on September 13, 2007, and established the Acquisition priorities for Lower Tualatin Headwaters Target Area.

Metro Code Chapter 10.03, entitled “Conservation Easements,” authorizes Metro to purchase and accept conservation easements. Metro Code Section 10.03.020 states that the purpose of Chapter 10 is to “encourage the voluntary retention and protection of natural, scenic, or open values of real property...through sale, donation, or dedication of conservation easements to Metro.”

Metro Code Section 10.03.060 provides that, prior to the acquisition or acceptance of a conservation easement, Metro shall hold one or more public hearings on the proposal, with notice as stated therein, and at the conclusion of the hearing, the Council shall decide whether to accept, reject, or condition such easement, and upon acceptance Metro may execute all necessary documents to obtain the grant of the conservation easement.

**3. Anticipated Effects**

Acquisition of the conservation easement over the Streeter Property provides Metro an opportunity to expand, enhance, and protect the riparian buffer on Baker Creek in the Lower Tualatin Headwaters Target Area.

**4. Budget Impacts**

The conservation easement will be purchased utilizing 2006 Natural Areas Bond Measure proceeds. Future management costs will be borne by Metro.

**RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of Resolution No. 08-3923.