

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 08-3961
TO ENTER INTO AN INTERGOVERNMENTAL)
AGREEMENT WITH THE CITY OF HAPPY) Introduced by Chief Operating Officer
VALLEY REGARDING THE PURCHASE AND) Michael J. Jordan, with the concurrence of
MANAGEMENT OF PROPERTY ACQUIRED) Council President David Bragdon
PURSUANT TO THE 2006 NATURAL AREAS)
BOND MEASURE)

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 East Buttes 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. 07-3852 "Approving The Natural Areas Acquisition Refinement Plan For The East Buttes Target Area" authorizing the Chief Operating Officer to acquire properties in the East Buttes Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan;

WHEREAS, Metro staff has entered into an agreement to purchase certain property located in the City of Happy Valley, which property is more specifically identified on the attached Exhibit A (the "Property"). The Property has been identified as a Tier 1 acquisition priority in the East Buttes Target Area;

WHEREAS, Metro's acquisition of the Property will be in accordance with the Acquisition Parameters and Due Diligence Guidelines of the 2006 Natural Areas Program Implementation Work Plan;

WHEREAS, Metro desires to enter into an intergovernmental agreement with the City of Happy Valley (the "City") whereunder (1) the City will contribute \$100,000 toward the purchase of the Property out of the City's local share funds from the 2006 Metro Natural Areas Bond Measure and (2) the City will assume all management responsibilities for the Property and cooperate with Metro to create a stabilization plan for the Property; and


WHEREAS, Metro and the City also intend for such intergovernmental agreement to address (i) a general process for future property acquisitions in cases where Metro and the City each contribute toward the joint acquisition of property, and (ii) the process whereby the City can decide to assume management responsibilities for future properties acquired solely by Metro within the City; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to enter into an intergovernmental agreement with the City of Happy Valley in substantially the form attached hereto as Exhibit B.

ADOPTED by the Metro Council this 26th day of June, 2008.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney

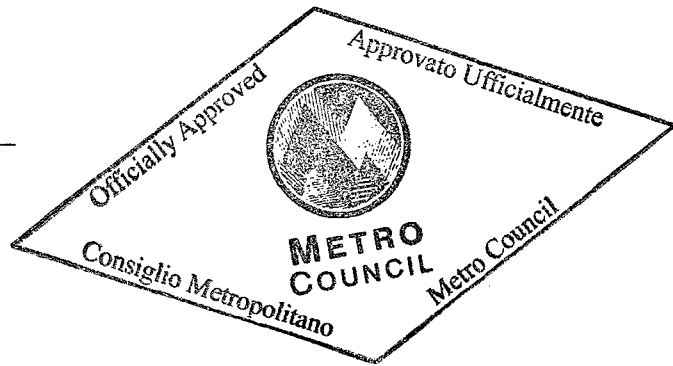


Exhibit A
Property - Legal Description

PARCEL I:

Beginning at the Southwest corner of the Northeast quarter of Section 25, Township 1 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon; thence East 40.0 rods; thence North 28.0 rods; thence West 40.0 rods to the West line of said Northeast quarter of Section 25; thence South 28.0 rods to the place of beginning.

ALSO

Beginning at a point on the West line of the Northeast quarter of Section 25, Township 1 South, Range 2 East of the Willamette Meridian, said point being 28.0 rods North of the Southwest corner of said Northeast quarter; thence North along the West line of said Northeast quarter 41.0 rods; thence East 40.0 rods; thence South 41.0 rods; thence West 40.0 rods to the place of beginning.

EXCEPT the West 20.0 feet thereof reserved for public roads.

PARCEL II:

A portion of the West one-half of the West one-half of the Northeast quarter of Section 25, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as:

Beginning at a point 98 rods North of the East and West one-half section line and 20 feet East of the North and South one-half section line of said Section 25; thence running East 38 rods and 13 feet; thence South 29 rods; thence West 38 rods and 13 feet; thence North 29 rods to the place of beginning, EXCEPTING the North 22 feet of the East 325 feet and EXCEPT the North 186 feet of the West 208 feet, in the County of Clackamas and State of Oregon.

FURTHER EXCEPTING THEREFROM that portion conveyed to John Tesler and Rubye E. Tesler by Bargain and Sale Deed recorded June 13, 1973 as Recorder's Fee No. 73-018433.

FURTHER EXCEPTING THEREFROM that portion conveyed to Clyde H. Miller and Ann J. Miller by Warranty Deed recorded June 13, 1973, as Recorder's Fee No. 73-018435.

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (“Agreement”) is by and between Metro, an Oregon municipal government, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 (“Metro”), and the City of Happy Valley, located at 12915 SE King Road, Happy Valley, Oregon 97236 (“the City”). This Agreement shall be effective on the last date of signature of a party, below (the “Effective Date”).

RECITALS:

WHEREAS, pursuant to 2006 Metro Ballot Measure 26-80 (“Metro Natural Areas Bond Measure”), approved by the voters on November 7, 2006, Metro and the City will acquire property within the City that Metro and the City wish to preserve as natural areas in accordance with the intent of the Metro Natural Areas Bond Measure and the Metro Greenspaces Master Plan;

WHEREAS, Metro and the City have specifically identified property located at 9400 SE 152nd Avenue, Happy Valley, in the County of Clackamas, State of Oregon, commonly known as Tax Lots 2300 and 2600, in Township One South, Range Two East of the Willamette Meridian, Section 25A, as more specifically described in Exhibit A attached hereto, that Metro and the City jointly seek to acquire (hereinafter the “Miller Property”);

WHEREAS, Metro and the City wish to manage the Miller Property and any other properties hereafter acquired by Metro and the City to protect water, habitat, and to restore native species and therefore will enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the allowable uses, management, maintenance, operation and transfers of properties acquired in accordance with the provisions of this Agreement;

Now, therefore, the parties agree as follows:

1. Acquisition of Miller Property

- 1.1 Metro shall make a good faith effort to acquire the Miller Property, as legally described in Exhibit A attached hereto, in accordance with the Acquisition Parameters and Due Diligence Guidelines of the 2006 Natural Areas Implementation Work Plan (the “Work Plan”), as approved on March 1, 2007, in Metro 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.” Metro’s effort shall include undertaking all negotiations, due diligence investigations, and closing procedures, as provided in such Work Plan. Metro shall make the results of its due diligence investigations available to the City for its review prior to closing on the acquisition. If the City requires any due diligence investigations not required by Metro, the City shall be solely responsible for such items.

- 1.2 The City shall contribute \$100,000 toward the purchase of the Miller Property out of the City's local share funds from the 2006 Metro Natural Areas Bond Measure. Metro shall contribute the balance of the purchase price of the Miller Property, and shall also pay all of Buyer's closing costs for the transaction.
- 1.3 Not later than ten days after Closing on acquisition of the Miller Property, in consideration of the City's payment described in Paragraph 1.2 of this Agreement, Metro shall convey to the City by statutory warranty deed an undivided interest in the Property as a tenant in common in proportion to the amount of the City's contribution in relation to the total purchase price of the Miller Property. Such deed from Metro to the City shall include the following deed restriction:

“This conveyance is made on the express condition that Grantee, its successors and assigns shall use the Property only for natural area open space, and that Grantee, its successors and assigns shall maintain the Property in its natural state in perpetuity and, if the premises are ever used for another purpose, or if Grantee fails to maintain the following described real property in its natural state, Grantor, its successors and assigns may reenter and terminate the estate hereby conveyed.”

2. **City's Contribution of Metro Natural Areas Bond Measure Local Share Funds Toward Acquisition of Additional Properties.** The City, by its approval of this Agreement, hereby delegates responsibility to, and authorizes, the person named as the City's representative in Section 16 of this Agreement, or the designee of said person, to commit the City to contribute the City's Metro Natural Areas Bond Measure local share funds towards the joint purchase of property with Metro. If such representative indicates to Metro that the City wishes to contribute a portion of such local share funds towards the joint purchase with Metro of additional natural area property within the City, then the provisions of subsections 1.1 and 1.3 of this Agreement shall apply to such contribution, with any reference therein to the “Miller Property” to be interpreted as a reference to such newly acquired property

3. **Properties To Be Managed Pursuant to this Agreement.**

- 3.1 This Agreement shall be applicable to: (i) the Miller Property, (ii) any property jointly acquired by Metro and the City pursuant to Section 2, above; and (iii) subsequent properties to be acquired solely by Metro within the City pursuant to the Metro Natural Areas Bond Measure, to the extent that Metro has notified the City that Metro wishes the City to manage a property and the City has accepted such responsibilities. Such properties shall be collectively referred to herein as the “Properties,” or individually as a “Property.”
- 3.2 Metro will request City management of properties acquired solely by Metro by providing to the City the form attached hereto as Exhibit B (“Notice of Acquisition or Potential Acquisition”). Metro will include relevant due diligence information that it believes the City does not possess, including, but not limited to planned stabilization work, historic environmental hazard issues, and existing or likely assessments against the property.

3.3 Not later than thirty (30) days after receiving Metro's Notice of Potential Acquisition, the City shall provide to Metro written notification stating whether the City will accept management responsibility for the property in accordance with this Agreement. If Metro has informed the City that the closing date on acquisition of a property is less than thirty (30) days from the date the City receives Metro's Notice of Potential Acquisition, then the City shall make its good faith best effort to provide Metro with such notification prior to the closing date for the acquisition. The City's written notification shall indicate whether the City has already adopted a specific park or natural area management plan that would be applicable to the property, with the name of the specific plan identified in the letter.

3.4 The City, by its approval of this Agreement, hereby delegates responsibility to, and authorizes, the person named as the City's representative in Section 16 of this Agreement, or the designee of said person, to determine whether the City will accept management responsibility for properties identified by Metro on a Notice of Potential Acquisition. Such representative of the City is authorized to bind the City to manage such properties in accordance with this Agreement without any further approval or consent from the City Council.

4. **Property Stabilization.** Prior to closing on its acquisition of a Property (as permitted by the prior landowner) and in the period immediately following closing on its purchase of a Property, Metro may take whatever actions it deems appropriate to stabilize Metro's ownership interest in a Property, at Metro's discretion, cost, and expense. Such stabilization activities may include construction, maintenance, or repair of facilities, projects, or improvements such as fences, gates, removal of invasive or competing plants, and replanting of native plants. Metro will consult with the City before taking such actions to ensure that the actions will not unreasonably affect the City's ongoing management responsibilities for the Property.

5. **The City Shall Manage, Maintain, Secure, and Operate the Properties.**

3.1 The City shall be responsible for the ongoing management, maintenance, security, and operation of the Properties at all times, in accordance with the terms of this Agreement. The Properties shall be managed, maintained, operated, and protected in accordance with their intended use as natural areas, with the primary goals being protection of the Properties' natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing. The City's responsibilities shall include management, maintenance, security, and operation of any facilities, projects, or improvements (e.g. fences, gates, removal of invasive plants, replanting of native plants, etc.) made by Metro pursuant to Section 4 of this Agreement. By accepting management responsibility for the Properties, the City agrees to be responsible for funding the operation and maintenance of the Properties, including, but not limited to payment of taxes and assessments, with the City's own financial and staffing resources. Metro shall periodically review the Properties to ensure that their management is in accordance with this Agreement.

- 3.2 The City shall act in a timely manner to resolve nuisance complaints and mitigate threats to the resources of the natural area. If Metro is issued a nuisance notice for the Property by a governmental body with authority to issue a notice, Metro shall forward such notice to the City and the City shall abate the nuisance not less than three (3) days prior to the deadline as provided in the notice. If the City does not abate the notice within the time described in the preceding sentence, Metro may, at its sole option, abate the notice and provide the City with an invoice for the cost of such work, which the City shall be liable to pay to Metro, and shall pay to Metro within thirty (30) days of receiving such invoice.
- 3.3 As required by Metro's Metropolitan Greenspaces Master Plan, the long-term management guidelines for each Property must be set forth in a Resource Management/Master Plan ("Management Plan") applicable to such Property. If a Property is within an area for which the City has already adopted a Management Plan that would be applicable to the Property (and the City has identified such applicable plan as described in Section 3.2, above), then the City shall manage such Property consistent with such Management Plan. For Properties for which an applicable Management Plan has not been adopted at the time of their acquisition, this Agreement sets forth (1) the interim protection guidelines and use limitations applicable to such Properties, and (2) the requirements applicable to the City's development of Management Plans for such Properties.
- 3.4 In accordance with the Metro Greenspaces Master Plan, formal public use of a Property and site development on the Property shall not begin until a Management Plan for the Property has been adopted.
- 3.5 Metro grants to the City, and to the City's agents and contractors, the right to enter the Properties for the purpose of performing all activities, including enforcement of the City's code and policies related to City Natural Areas, reasonably necessary for the management, maintenance, and operation of the Properties and for the fulfillment of the City's duties and responsibilities under this Agreement and pursuant to the Management Plans applicable to the Properties. Metro grants public access to the Properties only as provided in an approved Management Plan adopted consistent with the requirements of this Agreement. For any Property acquired prior to the effective date of this Agreement for which a Management Plan had already been adopted, such Management Plan shall be deemed consistent with the requirements of this Agreement.
- 3.6 The City shall be responsible for obtaining any authorizations or permits necessary for management, maintenance, security, and operation of the Properties. Any permits granted by the City to users of the Properties shall comply with the terms and limitations set forth in this Agreement and in the applicable Management Plans for the Properties. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance, security, and operational issues that may arise with respect to the Properties. Metro will be consulted not fewer than thirty (30) days prior to the City applying for any development permit.

Metro's acceptance of such permitting activity will be implied unless otherwise communicated in writing by Metro within twenty (20) days of such consultation

- 3.7 All requests for easements, rights of way, and leases on or affecting the Properties shall be submitted to Metro in accordance with the Metro Easement Policy, Resolution No. 97-2539B "For The Purpose Of Approving General Policies Related To The Review Of Easements, Right Of Ways, And Leases For Non-Park Uses Through Properties Managed By The Regional Parks And Greenspaces Department", passed by the Metro Council on November 6, 1997, attached hereto as Exhibit C.

6. Interim Protection Guidelines.

- 4.1 For each Property for which a long term Management Plan has not yet been adopted, in the interim period prior to the adoption of a Management Plan (the "Interim Period"), such Property shall be managed, maintained, secured, and operated by the City in accordance and in a manner consistent with the Metro Greenspaces Master Plan, the City's Comprehensive Plan, and this Agreement, specifically Section 5 of this Agreement (this Agreement and these plans collectively referred to herein as "the Plans"). In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
- 4.2 In the Interim Period, the City shall control security and access to the Property, and shall respond to neighborhood or citizen complaints regarding improper use on the Property.
- 4.3 In the Interim Period, the City may, at its discretion, allow informal public access to the Property for passive recreation, habitat enhancement, pedestrian activity, and non-motorized bicycle use. All uses of the Property in the Interim Period shall be consistent with this Agreement and with the Plans. The City shall not allow any such informal use if to do so would effectively preclude any potential uses of the Property that could later be allowed in the Management Plan.
- 4.4 In the Interim Period, the City shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Property, except for the control of exotic, non-native, invasive, or pest plant species, as necessary to prevent Property degradation, or to address security or public safety concerns. If the City believes that an improvement, trail, or alteration of any water or timber resource on the Property is necessary prior to adoption of a Management Plan for the Property, Metro shall have the right to approve of such action, and the City shall provide Metro 60 days advance written notice of its intent to construct any improvements, trails, or alteration of water or timber resource on the Property. In any event, no capitol improvements or trails shall be constructed on the Property, and no alteration of water or timber resource shall occur, that are inconsistent with this Agreement or that would effectively preclude any potential uses of the Property that could later be allowed in the Management Plan.

7. Resource Management/Master Plan for Each Property.

5.1 The City shall make its good faith best effort to develop and adopt an area-specific park or natural resources management plan for Properties not being managed in accordance with an existing area-specific management plan (the "Management Plan"). The Management Plan shall set forth the acceptable management, operation, maintenance, and types and levels of programmed and public use and trail and improvement standards applicable to the Property. If not previously completed, the City shall take an inventory of the natural resources and improvements on the Property as part of the process of developing the Management Plan. The Management Plan shall ensure that the Property is managed, maintained, secured, and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Property comply with the Metro Greenspaces Master Plan and with this Agreement. The Management Plan shall also ensure that the Property is maintained as a natural area open space, with the primary goals being protection and restoration of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing.

5.2 As part of the City's process of developing and adopting a Management Plan, the City shall regularly consult with a Metro staff member designated by the Metro Parks and Greenspaces Department Director. In addition to any other approvals required by the City, the Management Plan shall be subject to approval by the Metro Council prior to the plan's implementation, which approval shall not be unreasonably withheld and shall be based on consistency with this Agreement and the Metro Greenspaces Master Plan and the intent of the Measures.

8. City's Opportunity to Contribute Toward the Purchase Price of a Property and Ownership Interest Therein. If the City contributes a portion of the purchase price of a property being acquired by Metro, and such contribution is more than five percent (5%) of such purchase price, then Metro shall, not later than thirty days following the later date of both (a) closing on such purchase and taking a deed to such property, and (b) receiving such payment from the City, record a deed transferring to the City an undivided share of ownership of such property as a tenant in common proportional to the percentage contributed by the City of the total property purchase price. Such deed shall be subject to all existing covenants and restrictions that encumber the Property and may, at Metro's sole discretion, also be subject to a condition that the City use such property only for open space and agree to maintain the property in its natural state in perpetuity and, if the City fails to maintain the property in its natural state, that Metro may reenter and terminate the estate conveyed by such deed. Metro shall not be obligated as provided in this Section 7 of this Agreement unless the City has provided Metro with written notice of the City's intent to make such contribution toward the purchase price of a property prior to Metro closing on such transaction. Metro shall list the City as co-client on third-party due diligence contracts regarding the property, including environmental and appraisal contracts, entered into by Metro after the date that the City has informed Metro in writing that the City will contribute to the purchase price of the property.

9. **Signage and Acknowledgement.** The City shall recognize and document on each Property, and in any publications, media presentations, or other presentations referencing such Property that are produced by or at the direction of the City, that funding for acquisition of the Project came from the Metro Opens Spaces Bond Measure or the Metro Natural Areas Bond Measure. Such recognition shall comply with the Metro Funding Recognition Guidelines attached as Exhibit D to this Agreement and hereby incorporated herein. The City may provide on-site signage informing the public that the City is managing the Property.

10. **Term.** This Agreement shall continue in effect unless modified or terminated as provided herein.

11. **Termination.**

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

9.2. **Termination for Cause.** Either party may terminate this Agreement in full, or in part, at any time if that party (the “terminating party”) has determined, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default (the “defaulting party”). The terminating party shall promptly notify the defaulting party in writing of that determination and document such default as outlined herein. The defaulting party shall have thirty (30) days to cure the default described by the terminating party. If the defaulting party fails to cure the default within such thirty (30) day period, then this Agreement shall terminate ten (10) days following the expiration of such thirty (30) day period.

12. **Mutual Indemnification.** The City shall indemnify and hold Metro and Metro’s agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney’s fees, arising out of or in any way connected with the performance of this Agreement by the City or the City’s officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30. Metro shall indemnify and hold the City and the City’s agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney’s fees, arising out of or in any way connected with the performance of this Agreement by Metro or Metro’s officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30.

13. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for the acquisition of Properties is from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11, 11b, 11c, 11d and 11e of the Oregon Constitution, and that 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 not to be able to maintain the current status of the real property taxes imposed to repay these bonds as exempt from

Oregon's constitutional property tax limitations or the income tax exempt status of the bond interest under IRS rules. In the event the City breaches this covenant, the City shall undertake whatever remedies are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof. In such an event, Metro shall work cooperatively with the City to address such breach.

14. **Laws of Oregon; Public Contracts.** The laws of the State of Oregon shall govern this Agreement, and the parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS chapters 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 by this reference as if such provisions were a part of this Agreement.
15. **Assignment.** Neither party may assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except that a party may delegate or subcontract for performance of any of its responsibilities under this Agreement.
16. **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by both (1) electronic mail or fax, and (2) regular mail. Notices shall be deemed delivered on the date personally delivered or the date of such electronic or fax correspondence, unless such delivery is on a weekend day, on a holiday, or after 5:00 p.m. on a Friday, in which case such notice shall be deemed delivered on the next following weekday that is not a holiday.

To Metro: Director, Metro Regional Parks and Greenspaces
600 N.E. Grand Avenue
Portland, OR 97232-2736

To City: Jason Tuck
Economic and Community Development Director
12915 SE King Road
Happy Valley, OR 97236
Tel: (503) 595-6161
Fax: (503) 760-9397
jasont@ci.happy-valley.or.us

17. **Severability.** If any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
18. **Entire Agreement; Modifications.** This Agreement constitutes the entire agreement between the parties and, except as provided in Section 1.1, supersedes any prior oral or written agreements or representations relating to the Properties. No waiver, consent, modification, amendment, or other change of terms of this Agreement 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 HAPPY VALLEY

METRO

By: _____

Michael Jordan, Chief Operating Officer

Print Name: _____

Title: _____

Date: _____

Date: _____

Exhibits:

- Exhibit A – Miller Property Legal Description
- Exhibit B - Form of Notice of Potential Acquisition
- Exhibit C - Metro Easement Policy and Metro Resolution No. 97-2539B

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EXHIBIT A
Miller Property Legal Description

PARCEL I:

Beginning at the Southwest corner of the Northeast quarter of Section 25, Township 1 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon; thence East 40.0 rods; thence North 28.0 rods; thence West 40.0 rods to the West line of said Northeast quarter of Section 25; thence South 28.0 rods to the place of beginning.

ALSO

Beginning at a point on the West line of the Northeast quarter of Section 25, Township 1 South, Range 2 East of the Willamette Meridian, said point being 28.0 rods North of the Southwest corner of said Northeast quarter; thence North along the West line of said Northeast quarter 41.0 rods; thence East 40.0 rods; thence South 41.0 rods; thence West 40.0 rods to the place of beginning.

EXCEPT the West 20.0 feet thereof reserved for public roads.

PARCEL II:

A portion of the West one-half of the West one-half of the Northeast quarter of Section 25, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as:

Beginning at a point 98 rods North of the East and West one-half section line and 20 feet East of the North and South one-half section line of said Section 25; thence running East 38 rods and 13 feet; thence South 29 rods; thence West 38 rods and 13 feet; thence North 29 rods to the place of beginning, EXCEPTING the North 22 feet of the East 325 feet and EXCEPT the North 186 feet of the West 208 feet, in the County of Clackamas and State of Oregon.

FURTHER EXCEPTING THEREFROM that portion conveyed to John Tesler and Rubye E. Tesler by Bargain and Sale Deed recorded June 13, 1973 as Recorder's Fee No. 73-018433.

FURTHER EXCEPTING THEREFROM that portion conveyed to Clyde H. Miller and Ann J. Miller by Warranty Deed recorded June 13, 1973, as Recorder's Fee No. 73-018435.

EXHIBIT B
Form of Notice of Potential Acquisition

Notice of Proposed Acquisition

_____, 200__

City of Happy Valley
Parks and Recreation Department

, OR

Re: Notice of Potential Acquisition of Property within the _____ Target Area
_____(State Tax ID #); Metro File No. _____

Dear _____:

Pursuant to the Metro Natural Areas Bond Measure 26-80, and the Intergovernmental Agreement between Metro and _____ dated _____, 2008, attached hereto (“Intergovernmental Agreement”), this shall serve as notice of Metro’s potential acquisition of the following property within the _____ Target Area:

[Property Address], in the City of _____, County of _____ and State of Oregon, being more particularly described in the legal description and depicted on the Assessor’s map attached hereto (“the Property”).

Pursuant to the Intergovernmental Agreement, Metro requests that the City manage, maintain, secure, and operate this Property upon its successful acquisition by Metro. As provided in the Intergovernmental Agreement, please notify Metro in writing within thirty (30) days, on or before _____ (date) indicating whether the City will accept management responsibility for this Property. Metro intends to close on the purchase of this property on _____, 200__. Should you accept management of the Property, Metro’s stabilization manager will contact you after the property is acquired.

If the City will accept such management responsibility, please sign a copy of this letter, below, and also indicate whether there is an existing Natural Resources Management Plan/Master Plan that would be applicable to the City’s management of this Property and, if so, its name.

If you have any questions, please do not hesitate to contact me at 503-797-1948.

Sincerely,

Kathleen Brennan Hunter, Manager
Metro Natural Areas Acquisition Program

cc: Kate Holleran, Stabilization Manager, Metro Regional Parks and Greenspaces
Paul Garrahan, Senior Assistant Metro Attorney
[Appropriate City Parks staff person—as identified by Kate]

EXHIBIT B
Form of Notice of Potential Acquisition

CITY’S CONSENT TO MANAGE THE PROPERTY

The City of Happy Valley hereby agrees to accept management of the Property pursuant to the terms of the Intergovernmental Agreement between Metro and the City.

_____ (signature)

by: _____ (name)

check one:

Management of the Property would be subject to the terms of _____
_____, (Natural Resources Management Plan/Master Plan), dated _____.

A management plan/master plan that would govern management of the Property does not currently exist.

EXHIBIT C

Metro Easement Policy and Metro Resolution No. 97-2539B

BEFORE THE METRO COUNCIL IS A COMPLETE AND EXACT COPY OF THE ORIGINAL THEREOF.

Rebecca V. Shoemaker, Clerk
Clerk of the Metro Council

FOR THE PURPOSE OF APPROVING GENERAL) RESOLUTION NO. 97-2539B
POLICIES RELATED TO THE REVIEW OF)
EASEMENTS, RIGHT OF WAYS, AND LEASES)
FOR NON-PARK USES THROUGH PROPERTIES)
MANAGED BY THE REGIONAL PARKS AND) Introduced by
GREENSPACES DEPARTMENT.) Mike Burton, Executive Officer

WHEREAS, Metro currently owns and manages more than 6,000 acres of regional parks, open spaces, natural areas, and recreational facilities; and

WHEREAS, additional lands are being acquired through the Open Space, Parks, and Streams Bond Measure, approved by voters in May of 1995; and

WHEREAS, the primary management objectives for these properties are to provide opportunities for natural resource dependent recreation, protection of fish, wildlife, and native plant habitat and maintenance and/or enhancement of water quality; and

WHEREAS, Metro will be approached with proposals to utilize regional parks, open spaces, natural areas, and recreational facilities property for utility, transportation, and other non-park purposes; and

WHEREAS, Metro seeks to insure that these uses have no negative impact upon the primary management objectives of Metro Regional Parks and Greenspaces properties; and

WHEREAS, it would be in Metro's best interest to provide for the orderly evaluation and consideration of proposals to utilize portions of Metro Regional Parks and Greenspaces properties for utility, transportation and other non-park uses; NOW THEREFORE,

BE IT RESOLVED, that the Metro Council hereby adopts the policy attached as Exhibit "A" for any and all requests related to formal proposals for the use of Metro Regional Parks and Greenspaces properties for the purposes noted therein.

ADOPTED by the Metro Council this 6th day of November, 1997.

Jon Kvistad
Jon Kvistad, Presiding Officer

ATTEST:

Cheryl
Recording Secretary

Approved as to Form:

Daniel B. Cooper
Daniel B. Cooper, General Counsel

EXHIBIT C
Metro Easement Policy and Metro Resolution No. 97-2539B

METRO POLICY RELATED TO THE REVIEW OF
EASEMENTS, RIGHT OF WAYS, AND LEASES
FOR NON-PARK USES

Metro owns and manages, either on its own or in partnership with other government and private entities, several thousand acres of regional parks, open spaces, natural areas and recreational facilities. These facilities are maintained to promote and preserve natural resources and recreational opportunities for the public consistent with the Greenspaces Master Plan adopted by the Metro Council in 1992, the Open Spaces Bond Measure approved by the voters in 1995 and other restrictions limiting the uses of specific properties in existence at the time of its acquisition by the public. Nothing in this policy shall be construed to allow these facilities to be used in any manner which detracts from this primary purpose. This policy is written from the perspective of Metro as the property owner, however, in those cases in which Metro co-owns a property with other entities, all decisions concerning the use of the property in question will be fully coordinated with the other owners. In addition, all new development and all proposed work within Water Quality Resource Areas or other environmentally sensitive work will be conducted in accordance with Metro or local government policies, to include where appropriate, application for permits and completion of environmental reviews. In the event that local government policies are less restrictive than the Metro Model ordinances, Metro will apply the more restrictive Metro policies.

Regarding requests for easements, right of ways, and leases for non-park uses in Metro owned or managed regional parks, natural areas or recreational facilities, it is Metro's policy to:

- 1) Provide for formal review of all proposed easements, right of ways, and leases for non-park, uses by the Regional Parks and Greenspaces Advisory Committee, the Regional Facilities Committee and the full Council. Notwithstanding satisfaction of the criteria set forth herein, the final determination of whether to approve a proposed easement, right of way, or lease is still subject to the review and approval by the full Metro Council.
- 2) Prohibit the development of utilities, transportation projects and other non-park uses within corridors or on sites which are located inside of Metro owned or managed regional parks, natural areas, and recreational facilities except as provided herein.
- 3) Reject proposals for utility easements, transportation right of ways and leases for non-park uses which would result in significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.
- 4) Accommodate utility easements, transportation right of ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right of way or non-park use can be accommodated without significant impact to

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natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and that the impacts can be minimized and mitigated:

5) Require full mitigation and related maintenance, as determined by the Department, of all unavoidable impacts to natural resources, recreational facilities, recreational opportunities or their operation and management associated with the granting of easements, right of ways, or leases to use Metro owned or managed regional parks, natural areas or recreational facilities for non-park uses.

6) Limit rights conveyed by easements, right of ways, and leases for non-park uses to the minimum necessary to reasonably accomplish the purpose of any proposal.

7) Limit the term of easements, right of ways and leases to the minimum necessary to accomplish the objectives of any proposal.

8) Require "reversion", "non-transferable" and "removal and restoration" clauses in all easements, right of ways and leases.

9) Fully recover all direct costs (including staff time) associated with processing, reviewing, analyzing, negotiating, approving, conveying or assuring compliance with the terms of any easement, right of way, or lease for a non-park use.

10) Receive no less than fair market value compensation for all easements, right of ways, or leases for non-park uses. Compensation may include, at the discretion of the Department, periodic fees or considerations other than monetary.

11) Require full indemnification from the easement, right of way or lease holder for all costs, damages, expenses, fines or losses related to the use of the easement, right of way or lease. Metro may also require appropriate insurance coverage and/or environmental assurances if deemed necessary by the Office of General Counsel.

12) Limit the exceptions to this policy to: grave sales, utilities or transportation projects which are included in approved master/management plans for Metro regional parks, natural areas and recreational facilities; projects designed specifically for the benefit of a Metro regional park, natural area, or recreational facility, or interim use leases as noted in the Open Spaces Implementation Work Plan.

13) Provide for the timely review and analysis of proposals for non-park uses by adhering to the following process:

a) The applicant shall submit a detailed proposal to the Department which includes all relevant information including but not limited to: purpose, size, components, location, existing conditions, proposed project schedule and phasing, and an analysis of other alternatives which avoid the Metro owned or managed regional park, natural area or recreational facility which are considered infeasible by the applicant. Cost alone shall not constitute infeasibility.

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- b) Upon receipt of the detailed proposal, the Department shall determine if additional information or a Master Plan is required prior to further review and analysis of the proposal. For those facilities which have master plans, require that all proposed uses are consistent with the master plan. Where no master plan exists all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.
- c) Upon determination that the necessary information is complete, the Department shall review and analyze all available and relevant material and determine if alternative alignments or sites located outside of the Metro owned or managed regional park, natural area, or recreational facility are feasible.
- d) If outside alternatives are not feasible, the Department shall determine if the proposal can be accommodated without significant impact to park resources, facilities or their operation and management. Proposals which cannot be accommodated without significant impacts shall be rejected. If the Department determines that a proposal could be accommodated without significant impacts, staff shall initiate negotiations with the applicant to resolve all issues related to exact location, legal requirements, terms of the agreement, mitigation requirements, fair market value, site restoration, cultural resources, and any other issue relevant to a specific proposal or park, natural area or recreational facility. The Department shall endeavor to complete negotiations in a timely and business-like fashion.
- e) Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval as noted in item "1" above. In no event shall construction of a project commence prior to formal approval of a proposal.
- f) Upon completion of all Metro tasks and responsibilities or at intervals determined by the Department, and regardless of Metro Council action related to a proposed easement, right of way or lease for a non-park use, the applicant shall be invoiced for all expenses or the outstanding balance on expenses incurred by Metro.
- g) Permission from Metro for an easement or right of way shall not preclude review under applicable federal, state or local jurisdiction requirement.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3961, AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF HAPPY VALLEY REGARDING THE PURCHASE AND MANAGEMENT OF PROPERTY ACQUIRED PURSUANT TO THE 2006 NATURAL AREAS BOND MEASURE

Date: June 26, 2008

Prepared by: Kathleen Brennan-Hunter

PROPOSED ACTION

Resolution No. 08-3961 requests authorization for the Chief Operating Officer to execute an intergovernmental agreement (“IGA”) with the City of Happy Valley (the “City”) for joint ownership and management of certain property in the East Buttes Target Area.

BACKGROUND

Metro staff has entered into a Purchase and Sale Agreement to purchase certain property, approximately 21 acres in size, located in the City of Happy Valley in the East Buttes Target Area (the “Property”). Using its Natural Areas Bond Measure local share funds, the City has committed to contribute 3.3% of the purchase price, while Metro will contribute the remaining portion of the purchase price. Following the acquisition of the Property, the City has agreed to assume all management, maintenance, security, and operational responsibilities for the Property. Metro and the City will work together to adopt a stabilization plan for the Property.

As set forth in the proposed IGA, Metro would purchase the Property from the current owners, and then would subsequently convey a 3.3% interest in the Property to the City. The City and Metro would hold title to the Property as tenants in common. The deed delivered to the City by Metro would be a restricted bargain and sale deed that limits the use of the Property, in perpetuity, to use as a natural area and open space.

In addition to the forgoing, the proposed IGA also sets forth a general process through which (1) the City may contribute a portion of its local share funds towards the joint purchase with Metro of additional natural area property within the East Buttes Target Area, and (2) Metro may request and the City may accept to assume the ongoing management, maintenance, security, and operational responsibilities for subsequent properties acquired solely by Metro within the City limits.

The proposed form of IGA is attached as Exhibit B to the Resolution.

The Happy Valley City Council has already authorized its adoption of the IGA.

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 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,” 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.

3. **Anticipated Effects**

The City will contribute 3.3% towards the purchase price of the Property using its local share funds. After acquiring the Property, Metro will convey a 3.3% interest in the property to the City via a deed that contains a perpetual restriction on the Property prohibiting that the Property from being used for any purpose other than a natural area and open space.

For future acquisitions in the East Buttes Target Area, the IGA allow for Metro and the City to acquire properties together as tenants in common. In addition, the IGA will facilitate a process through which the City can agree to assume all management responsibilities for natural area properties owned solely by Metro within the City limits.

4. **Budget Impacts**

The Property will be purchased utilizing 2006 Natural Area Bond Measure proceeds. Stabilization and restoration will be shared by Metro and the City of Happy Valley pursuant to the terms of the IGA. The City of Happy Valley will have sole responsibility for all future management and operational costs related to the Property.

RECOMMENDED ACTION

The Chief Operating Officer recommends passage of Resolution No. 08-3961.