

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER)
TO EXECUTE AN INTERGOVERNMENTAL) RESOLUTION NO. 08-3969
AGREEMENT WITH THE CITY OF PORTLAND)
AND THE NORTH CLACKAMAS PARKS AND) Introduced by Chief Operating Officer
RECREATION DISTRICT REGARDING THE) Michael J. Jordan, with the concurrence of
PURCHASE AND MANAGEMENT OF PROPERTY) Council President David Bragdon
IN THE JOHNSON CREEK TARGET AREA)
ACQUIRED 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 Johnson Creek 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. 07-3851 “Approving The Natural Areas Acquisition Refinement Plan For The Johnson Creek Target Area” authorizing the Chief Operating Officer to acquire properties in the Johnson Creek Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan;

WHEREAS, Metro staff has identified an opportunity to partner with the North Clackamas Parks and Recreation District and the City of Portland Bureau of Environmental Services to enter into an intergovernmental agreement (the “IGA” or “Agreement”), a form of which is attached hereto as Exhibit A, to jointly contribute towards the purchase of several adjoining properties, covering more than 13 acres, identified as Tier II acquisition priorities in the 2006 Natural Areas Bond Measure Johnson Creek Target Area Refinement Plan, which properties are identified and further described as Parcels A, B and C in Exhibit A to the IGA (the “Properties”); and

WHEREAS, the Properties include approximately 2,000 feet of stream frontage along Johnson Creek, abut the Springwater Trail, are currently in a degraded environmental condition, and are in an area of the region considered nature-deficient and in need of additional, accessible parks for nearby residents; and

WHEREAS, Metro staff has entered into a purchase agreement with the owner of Parcel A, a ten acre property that includes over 1,400 feet of stream frontage along Johnson Creek and is the primary acquisition target among the Properties; and

WHEREAS, the IGA provides for BES to contribute one third of the purchase price of the Properties in return for easements to allow BES to repair and realign a sewer pipe that crosses Parcel A and to undertake a major channel change, flood prevention, and natural restoration project along the full length of Johnson Creek on the Properties, for which BES already has budgeted funds available; and

WHEREAS, the IGA provides for NCPRD to contribute one third of the purchase price of the Properties in return for a 50% ownership interest in the Properties in order to develop a park on the upland portion of the site, and for NCPRD to manage and maintain the Properties after their acquisition; and

WHEREAS, the IGA provides for Metro to contribute one third of the purchase price of the Properties in return for a 50% ownership interest in the Properties in order to protect fish and wildlife habitat and water quality in the Johnson Creek watershed; and

WHEREAS, acquisition of the Properties will further the Johnson Creek Target Area goal of partnering with other local governments to acquire key parcels adjacent to existing publicly protected resource areas; and

WHEREAS, BES and NCPRD will be able to undertake their restoration and park development projects, respectively, with the acquisition of Parcel A alone, although the successful subsequent acquisition of Parcels B and C would improve and enhance both access to Parcel A for NCPRD's park uses and the scope and impact of the natural area restoration project that BES intends to undertake on the Properties; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to execute an intergovernmental agreement with the City of Portland Bureau of Environmental Services and the North Clackamas Parks and Recreation District to acquire the Properties in substantially the form attached hereto as Exhibit A.

ADOPTED by the Metro Council this _____ day of _____, 2008.

WITHDRAWN
David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

M:\attorney\confidential\16 BondMeas.2006\04 Acquisitions\29 Johnson Creek Target Area\29.009 Emmert Lents II\Res 08-3969 IGA final 100108.doc

Exhibit A
Form of Intergovernmental Agreement

INTERGOVERNMENTAL AGREEMENT

LENTS II

Acquisition and Co-ownership Agreement

This Intergovernmental Agreement (“Agreement”), entered into on the last date of signature below (the “Effective Date”), is by and between Metro, an Oregon municipal corporation (“Metro”); the City of Portland, an Oregon municipal corporation, through its Bureau of Environmental Services (“BES”); and the North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451 (“NCPRD”) (collectively, the “Parties,” and each individually a “Party”).

RECITALS

WHEREAS, the Parties have agreed to cooperate in the purchase and co-ownership of fee simple or easement property interests in the following certain properties, located in unincorporated Clackamas County, more particularly described in Exhibit A, attached hereto and incorporated herein (collectively, the “Properties”):

- Parcel A (intended fee simple ownership): At address 8855 SE 76th Drive, Portland, Oregon, commonly known as Tax Lots 3609, 3700 and 3800, in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian;
- Parcel B (intended fee simple ownership): At address 7800 SE Luther Road, Portland, Oregon, commonly known as Tax Lot 3500 in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian; and
- Parcel C (intended easement ownership): At address 8710 SE 76th Drive, Portland, Oregon, commonly known as Tax Lot 3604 in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian.

WHEREAS, NCPRD will contribute funds from its System Development Charges to purchase an undivided interest in the Properties as a tenant in common or as a co-easement holder, in order to develop a park on a portion of the Properties; and

WHEREAS, Metro will contribute funds from the Natural Areas Bond Measure, approved by the voters in 2006, to purchase an undivided interest in the Properties as a tenant in common or as co-easement holder, in order to protect fish and wildlife habitat and water quality within the Metro Natural Area Acquisition Program’s Johnson Creek Target Area; and

WHEREAS, BES will contribute funds to purchase easements across the Properties to complete the BES Lents II Sewer and Restoration Project (the “Sewer and Restoration Project”), which will include the construction and maintenance of improvements to its sewer line traversing the Properties (for which the City already owns existing sewer easements), the construction of an overflow side channel for Johnson Creek, and the replanting and natural area restoration of its

construction zone as described and shown on the attached Exhibit B (the “Sewer, Channel Change, and Temporary Construction Easements”); and

WHEREAS, Metro shall represent the Parties in negotiations to acquire the Properties according to the terms described herein; and

WHEREAS, NCPRD will manage the Properties after acquisition; and

WHEREAS, the Parties acknowledge that the separate owners of Parcels A, B, and C may or may not be willing to sell their properties, or an easement interest in their properties, to the Parties, and the Parties will therefore communicate with one another and collectively determine whether to proceed with acquisition of one or more of the parcels based on the success of Metro’s negotiations;

NOW, THEREFORE, the Parties agree as follows:

1. Acquisition: Negotiation, Due Diligence, Financial Contributions and Closing

- 1.1 Metro has negotiated a purchase and sale agreement to acquire Parcel A, and Metro shall be responsible for attempting to negotiate the terms of one or more additional purchase and sale agreements for Parcels B and C, or for easement interests Parcels B and C (each referred to as “Purchase Agreement,” or collectively as the “Purchase Agreements”). Metro shall enter into the Purchase Agreements on behalf of the Parties. Metro shall consult with the other Parties during Metro’s negotiations to determine whether all or part of Parcels B and C should also be acquired, conditioned on whether the sellers are willing to sell to the Parties.
- 1.2 Metro shall coordinate due diligence with the Parties where possible, and the Parties shall name each other as co-clients on any third-party due diligence contracts whenever possible. Metro shall conduct commercially reasonable due diligence, as Metro deems appropriate and in accord with Metro Natural Areas Bond Measure practices (see Metro Resolution No. 07-3766A), prior to closing on acquisition of the Properties. BES shall pay for the appraisal and the phase one environmental site assessment for Parcel A. Metro shall pay for the appraisals and for the phase one environmental site assessments for Parcels B and C. BES and Metro shall each pay for one-half of the cost of any phase two environmental site assessments that Metro deems necessary to be performed as part of due diligence pursuant to this Agreement. BES and NCPRD each shall be solely responsible for conducting and paying for any additional due diligence, beyond that which Metro deems necessary and performs as described above, that either BES or NCPRD determines is necessary for its own purposes.
- 1.3 Subject to the review of the results of Metro’s due diligence and approval by all Parties, at closing on the purchase of the Properties each Party shall contribute one-third (1/3) of the negotiated Purchase Price for each Parcel to be acquired, in consideration of which Metro and NCPRD each shall receive an undivided one-half (1/2) interest in the Properties as tenants-in-common and BES shall be entitled to the Sewer and

Restoration Project Easement on the property as provided in Section 2 of this Agreement. BES and NCPRD shall each ensure that its one-third share of the Purchase Price for each Parcel is deposited not later than two days prior to Closing into the escrow account provided by the Title Company designated by Metro in the Purchase Agreement.

- 1.4 Metro shall coordinate closing on the acquisitions of the Properties, including without limitation preparing buyer's escrow instructions. Metro shall pay the recording fees, escrow fees, and other customary closing costs, if any, relating to the acquisitions, in accordance with the terms of the Purchase Agreement(s).

2. BES Lents II Sewer and Restoration Project and Easements

- 2.1 Throughout all phases of the Sewer and Restoration Project, BES shall make a reasonable good faith effort to keep the Parties timely informed of the general planning, design and construction specifications of the Sewer and Restoration Project and any changes thereto, including, without limitation, the total area of the Properties that will be affected by temporary construction activities and that will be permanently affected by the Sewer and Restoration Project. Drafts of the Sewer, Channel Change, and Temporary Construction Easements are attached as Exhibit B to this Agreement, including a depiction of the easement areas for each such easement. Such easements include: a temporary construction easement (TCE) covering the entire site, a permanent channel change easement (PCCE) covering all areas on the site not designated for active park use development, and a new permanent sewer easement (PSE) over the Lents Interceptor sewer extending 15 feet on each side of the pipe centerline for a total width of 30 feet along the alignment. BES reserves the right to modify the easement areas of these easements within the limits described in 3.1 below to accommodate the sewer and restoration design at the site.
- 2.2 The Sewer, Channel Change, and Temporary Construction Easements shall be consistent with the provisions of Section 2.3, below, and shall be in a form substantially similar to the drafts attached as Exhibit B. BES shall prepare a survey of the easement areas to be attached to the final Sewer, Channel Change, and Temporary Construction Easements, which survey and easements shall be subject to review and approval by staff of both Metro and NCPRD, which approvals shall not be unreasonably withheld. If no such easements are agreed to within ten years from the latest date of acquisition for the Properties, then this requirement shall terminate. BES shall be responsible for management of any enhancement and restoration activities performed in the area protected by the Sewer and Channel Change Easements, if any, in accord with the terms of this Agreement and the terms of such Easements. Such management by BES shall include a commitment to maintain such enhancement and restoration activities for a minimum of five years beginning with the completion of the restoration work, and until such time as BES satisfies the survivability and performance criteria stipulated by regulatory permitting agencies for the project. Following the management period BES will meet with NCPRD on an annual basis to discuss project performance in the PCCE area.

- 2.3 By their approval of this Agreement, the Metro Council and the NCPRD Board authorize their respective staffs, upon acquisition of one or more of the Properties, to grant the Sewer, Channel Change, and Temporary Construction Easements to BES, in a form substantially in conformance with the provisions of this Agreement. In addition to any other applicable provisions of this Agreement regarding such easements, such easements shall:
- 2.3.1 Permit and require BES to access, repair, reconstruct, construct, maintain, and monitor the existing sewer pipe that traverses the Properties, including remedying the fact that the sewer pipe is currently exposed where it traverses Johnson Creek;
 - 2.3.2 Permit BES to access, construct, manage, and monitor an overflow side channel to Johnson Creek on the Properties and other natural area habitat and water quality enhancement and restoration activities on the Properties;
 - 2.3.3 Provide BES with access to an area no greater than the area generally described in Exhibit B, attached hereto and incorporated herein;
 - 2.3.4 Require BES to obtain any local, state, or federal permits necessary to undertake any work on the Properties authorized by the Sewer and Restoration Project Easement; and
 - 2.3.5 Require BES to restore all areas on the Properties that BES disturbs as part of its construction activities.

3. NCPRD Park Development and Management of Lents II Park and Natural Area

- 3.1 NCPRD shall be responsible for development and management of a park that will provide and allow active recreational park uses (“Park Development”). Such park shall occupy approximately four (4) acres of the Properties, but in no event shall it occupy more than five (5) acres of the Properties (unless approved by the partners during a joint master planning process), and it shall not occupy any of the area of the Properties described on Exhibit B within the PCCE area.
- 3.2 The Park Development shall occur after the Sewer and Restoration Project is completed in conformance with the Sewer, Channel Change, and Temporary Construction Easements. In the event that NCPRD is prepared to move forward with the Park Development before the Sewer and Restoration Project has commenced or has been completed, then BES and NCPRD shall agree to terms of a separate intergovernmental agreement to coordinate construction activities on the Properties.
- 3.3 NCPRD shall be responsible for obtaining any local, state or federal permits necessary to undertake any work on the Properties related to the Park Development.

- 4. Grant of Access Easement Across Springwater Trail.** BES shall secure an access easement over the Springwater Trail granted by the City of Portland benefiting Metro and NCPRD as owners of Parcel A, as provided in this Section, and BES as an easement holder on the parcel. Metro and NCPRD shall not be obligated to close on acquisition of Parcel A unless such access easement has been approved by the City of Portland, which approval may be conditioned on the acquisition of Parcel A by Metro and NCPRD. Such access easement shall permit Metro, NCPRD and BES staff vehicles, and vehicles of contractors hired by Metro, NCPRD and BES to undertake park-related work on the Properties, and to travel on and across the Springwater Trail from where said trail crosses Luther Road and thence along said trail to the southeast until the point where Parcel A no longer abuts said trail. Such easement may require that Metro and NCPRD repair any damage caused by such use of the Springwater Trail to at least a condition comparable to said trail's condition prior to any such use.
- 5. Public Uses and Permits.** Any public uses of the Properties authorized by NCPRD or Metro and any permits granted to third parties by any of the Parties for the Properties shall comply with the terms, requirements, and restrictions set forth in the Sewer, Channel Change, and Temporary Construction Easements and this Agreement.
- 6. Property Stabilization.** Prior to closing on the acquisition of the Properties (as permitted by the prior landowner) and in the period immediately following closing on the purchase of the Properties, Metro may take whatever actions it deems appropriate to stabilize Metro's ownership interest in the Properties, 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 BES and NCPRD before taking such actions to ensure that the actions will not unreasonably affect NCPRD's ongoing management responsibilities for the Property or BES's Sewer and Restoration Project. To the extent NCPRD objects to such stabilization activities, Metro may continue with the activities; provided, however, that notwithstanding Section 7.1 hereof, Metro shall then be responsible for the operation, management and maintenance of such stabilization activity projects.
- 7. NCPRD Shall Manage, Maintain, and Operate the Properties.**

 - 7.1 NCPRD shall be responsible for the ongoing management, maintenance, and operation of the Properties at all times, in accordance with the terms of this Agreement. Except for the area of the Properties within the Park Development, the Properties shall be managed, maintained, operated, and protected in accordance with their intended use as natural areas, one of the goals being protection of the Properties' natural resources, enhancement and protection of wildlife habitat, and another goal being public recreation. NCPRD's responsibilities shall include management, maintenance, 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 6 of this Agreement with NCPRD's consent. By accepting management responsibility for the Properties, NCPRD agrees to be responsible for funding the operation and

maintenance of the Properties, including, but not limited to payment of taxes and assessments, with NCPRD's own financial and staffing resources. Metro shall periodically review the Properties to ensure that their management is in accordance with this Agreement.

- 7.2 NCPRD and Metro shall coordinate to respond in a timely manner to resolve nuisance complaints, with NCPRD taking the primary responsibility for such matters, as the manager of the Properties. If Metro is issued a nuisance notice for the Properties by a governmental body with authority to issue a notice that is not also issued to NCPRD as co-owner of the Property, Metro shall forward such notice to NCPRD. To the extent a governmental body with authority requires the expenditure of significant funds with respect to the Property, NCPRD and Metro agree to meet and discuss the nature of the requirement and appropriate cost-sharing.
- 7.3 As required by Metro's Metropolitan Greenspaces Master Plan, the long-term management guidelines for the Properties must be set forth in a Master Plan for the site ("Master Plan"). This Agreement sets forth (1) the interim protection guidelines and use limitations applicable to the Properties, and (2) the requirements applicable to NCPRD's development of a Master Plan for the Properties.
- 7.4 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 Master Plan for the Property has been completed.
- 7.5 NCPRD shall be responsible for obtaining any authorizations or permits necessary for management, maintenance, and operation of the Properties. Any permits granted by NCPRD to users of the Properties shall comply with the terms and limitations set forth in this Agreement and in the applicable Master Plan for the Properties. NCPRD shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance, and operational issues that may arise with respect to the Properties. Metro will be consulted not fewer than twenty (20) days prior to NCPRD applying for any development permit.
- 7.6 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, passed by the Metro Council on November 6, 1997, attached hereto as Exhibit C, except that the Sewer, Channel Change, and Temporary Construction Easements shall be exempt from this requirement. Requests shall also be submitted to NCPRD for review and approval by the NCPRD Board of Directors. No easement or other real property interest in the Property, including a security interest, may be granted without the express written consent of both the Metro Council and the NCPRD Board of Directors.

8. Interim Protection Guidelines.

- 8.1 In the interim period prior to the adoption of a Master Plan (the “Interim Period”), the Properties shall be managed, maintained, and operated by NCPRD in accordance and in a manner consistent with the Metro Greenspaces Master Plan, the 2006 Natural Areas Bond Measure, NCPRD’s Comprehensive Plan, the Sewer and Restoration Project Easement, and this Agreement, specifically Section 7 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 greatest level of detail shall govern unless such Plan is inconsistent with the Sewer and Restoration Project, the 2006 Natural Areas Bond Measure, or with the Park Development.
- 8.2 In the Interim Period, NCPRD shall use commercially reasonable efforts to control access to the Properties.
- 8.3 In the Interim Period, NCPRD may, at its discretion, allow informal public access to the Properties for passive recreation, habitat enhancement, pedestrian activity, and non-motorized bicycle use; provided, however, that no such passive recreation, including without limitation pedestrian or bicycle access, shall be permitted in any area that is part of the Sewer and Restoration Project described in Section 2 of this Agreement. All uses of the Properties in the Interim Period shall be consistent with this Agreement and with the Plans. NCPRD shall not allow any such informal use if to do so would, in NCPRD’s reasonable judgment, effectively preclude any other likely potential uses of the Properties that could later be allowed in the Master Plan.
- 8.4 In the Interim Period, NCPRD shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Properties, except for the control of exotic, non-native, invasive, or pest plant species, as necessary to prevent the Properties’ degradation, or to address public safety concerns. If NCPRD believes that an improvement, trail, or alteration of any water or timber resource on the Properties is necessary prior to adoption of a Management Plan for the Properties, Metro shall have the right to approve of such action, which approval shall not be unreasonably withheld or conditioned, and NCPRD 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 Properties. In any event, no capital improvements or trails shall be constructed on the Properties 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 Properties that could later be allowed in the Management Plan.

9. Resource Management/Master Plan for The Properties.

- 9.1 NCPRD shall undertake a good faith effort to develop and adopt an area-specific Master plan for the Properties. The Master 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 Properties. If not previously completed, NCPRD shall take an inventory of the natural resources and improvements

on the Properties as part of the process of developing the Master Plan. The Master Plan shall ensure that the Properties are managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Properties comply with the Metro Greenspaces Master Plan and with this Agreement. The Master Plan shall also ensure that, except as otherwise provided in the Sewer and Permanent Channel Change Easements or by the Park Development, the Properties are maintained as a natural area open space, with the primary goals being protection and restoration of the Properties' natural resources, enhancement and protection of wildlife habitat, and public recreation.

- 9.2 As part of NCPRD's process of developing and adopting a Master Plan, NCPRD 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 NCPRD, the Master Plan shall be subject to review and 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, the Metro Greenspaces Master Plan, and the intent of the 2006 Natural Areas Bond Measure.

10. Signage and Acknowledgement.

- 10.1 Each Party shall recognize and document in any on-site signs, publications, media presentations, web site information, press releases, or other written materials or presentations referencing the Properties, that are produced by or at the direction of such Party, that funding for acquisition of the Properties came in part from the Metro 2006 Natural Areas Bond Measure, in part from NCPRD, and in part from BES. As part of NCPRD's Park Development, NCPRD shall install signs at the Properties consistent with this paragraph, and if BES installs signs regarding its restoration work at the Properties they also shall be consistent with this paragraph. Signs erected on the Properties shall be in prominent and highly visible locations near each primary public access point or viewing access area to acknowledge the property acquisition funding partnership described in this Agreement. Regarding acknowledgment of Metro's funding share, such signage shall be either: (a) a standard, free-standing sign provided by Metro, which Metro shall make available to NCPRD and BES upon request, or (b) the inclusion of Metro's logo and script in NCPRD's and BES's signage, with Metro's logo and script of a size equal and comparable to the size of NCPRD's and BES's logo and script (Metro shall make its graphics available to NCPRD and BES upon request). If NCPRD or BES chooses to incorporate Metro's logo and script into its own sign, it shall do so at its own cost and expense.
- 10.2 When the Properties are opened to the public, if any party plans and holds any community/media events to publicize the Properties, such party agrees to provide the other parties with written notice of any such event at least three weeks prior to the scheduled event in order to coordinate with and allow for participation by staff and elected officials from all parties and appropriate recognition of the sources of funding for acquisition of the Properties.

11. General Provisions

- 11.1 Mutual Indemnification. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Metro shall defend, indemnify and hold harmless the other parties to this Agreement, their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from Metro's performance of its responsibilities under this Agreement. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, BES shall defend, indemnify and hold harmless the other parties to this Agreement, their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from BES' performance of its responsibilities under this Agreement. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, NCPRD shall defend, indemnify and hold harmless the other parties to this Agreement, their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from NCPRD's performance of its responsibilities under this Agreement.
- 11.2 Oregon Constitution and Tax-Exempt Bond Covenants. The source of Metro's contribution to the acquisition of the Properties is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bondholders is currently exempt from federal and Oregon income taxes. BES and NCPRD covenant that they will take no actions that would cause Metro to be unable to maintain the current exemption from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event BES and/or NCPRD breach this covenant, Metro shall be entitled to whatever remedies are available either to cure the default or to compensate Metro for any loss it may suffer as a result thereof.
- 11.3 Term. This Agreement shall continue in perpetuity unless terminated as provided in Section 11.4 or 11.5.
- 11.4 Joint Termination for Convenience. The Parties hereto may mutually agree to terminate all or part of their responsibilities and obligations under this Agreement, based upon a determination that such action is in the public interest. Termination under this

provision shall be effective ten (10) days following the execution of a written agreement to terminate, signed by all Parties to this Agreement.

- 11.5 Termination for Cause. Any party may terminate this Agreement, whenever that party determines, in its sole discretion, that another party has failed to comply with a material term or condition of this Agreement and is therefore in default. The terminating party shall promptly notify the other parties in writing of that determination and document such default with reasonable particularity. The defaulting party shall then be provided with thirty (30) days to cure the problem, or to substantially pursue such a cure, if it is not possible to complete a cure within thirty days.
- 11.6 Laws of Oregon; Public Contracts. This Agreement shall be governed by the laws of the State of Oregon, 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.
- 11.7 Amendment. This Agreement may be amended at any time with the written consent of all Parties.
- 11.8 Assignment. Except as otherwise provided herein, the Parties may not assign any of their rights or responsibilities under this Agreement without prior written consent from the other Parties, except the Parties may delegate or subcontract for performance of any of their responsibilities under this Agreement.
- 11.9 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 fax and regular mail, addressed as follows:

To Metro: Metro Natural Areas Bond Measure Program Director
 Kathleen Brennan Hunter
 600 N.E. Grand Avenue
 Portland, OR 97232-2736
 Tel. 503-797-1948
 Fax 503-797-1849

To NCPRD: North Clackamas Parks and Recreation District
 Director
 9101 SE Sunnybrook Blvd.
 Clackamas, OR 97015
 Tel. 503-353-4661
 Fax 503-794-8005

To BES: City of Portland
 Bureau of Environmental Services
 Attn: Maggie Skendarian
 1120 SW Fifth Ave., 10th Floor
 Portland, Oregon 97204
 Tel. 503-823-5334

- 11.10 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.
- 11.11 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to the Properties. No waiver, consent, modification or change of terms of this Agreement shall bind the Parties unless in writing and signed by each party.

[Signature Page Follows]

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

METRO

NORTH CLACKAMAS PARKS AND RECREATION DISTRICT

Michael Jordan
Chief Operating Officer

By: _____

Title: _____

Date: _____

Date: _____

**CITY OF PORTLAND
BUREAU OF ENVIRONMENTAL SERVICES**

By: _____

Title: _____

Date: _____

- Exhibit A Property Descriptions
- Exhibit B Sewer, Channel Change, and Temporary Construction Easements
- Exhibit C Metro Easement Policy, Resolution No. 97-2539B

M:\attorney\confidential\16 BondMeas.2006\04 Acquisitions\29 Johnson Creek Target Area\29.009 Emmert Lents II\LENTS II ACQ IGA final 100108.doc

Exhibit A Property Descriptions

PARCEL A (Lots 3609, 3700 and 3800)

Tax Lot 3609

Part of the North one-half of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point 2.00 chains South and 18.01 chains East of the Northwest one-quarter of the Northeast one-quarter of said Section, said point also being the Northwest corner of that tract conveyed to Herbert C. Wilton, et ux, by Deed recorded February 12, 1974, Recorder's Fee No. 74-3543, Clackamas County Records; thence South along the West line of said Wilton Tract to a point on the Southerly line of that tract conveyed to The Oregon Water Power and Railway Company by Deed recorded February 19, 1903, in Book 86, page 239, Clackamas County Deed Records, and the true point of beginning; thence continuing South along the West line of said Wilton Tract to a point in the thread of Johnson Creek said point also being the most Northerly corner of JOHNSON CREEK-76th INDUSTRIAL PARK, a recorded plat; thence Southerly along the thread of Johnson Creek and the boundary of said recorded plat to a point on the South line of the Northwest one-quarter of the Northeast one-quarter of said Section; thence West along said South line to the Southeast corner of that tract described as Parcel III in Affidavit executed by Augusta L. Wie recorded May 11, 1971, Recorder's Fee No. 71-10059, Clackamas County Records; thence North along the East line of said Wie Tract 385 feet, more or less, to a point on the Southerly line of the aforementioned Oregon Water Power and Railway Company Tract; thence Northeasterly along said Southerly line to the true point of beginning.

TOGETHER WITH an Easement for ingress and egress over the following described tracts:

A tract of land being a portion of Lots 1, 4 and 5, JOHNSON CREEK-76TH INDUSTRIAL PARK, in the County of Clackamas and State of Oregon, to-wit:

Beginning at a point in the South boundary of Lot 1, JOHNSON CREEK-76TH INDUSTRIAL PARK, which point is 10 feet North 89°50' East from the Southeast corner of Lot 5, of said JOHNSON CREEK-76TH INDUSTRIAL PARK; thence Northerly to a point which is 10 feet West from an iron rod which is North 0°01' West 169.06 feet from the aforesaid Southeast corner of Lot 5; thence continuing Northerly to the North boundary of said Lot 5, in the thread of Johnson Creek; thence upstream along the thread of Johnson Creek to a point which is 32 feet Easterly from the previous described line when measured at right angles therefrom; thence Southerly, parallel with and 32 feet Easterly from the first line herein described, to the South boundary of Lot 1, JOHNSON CREEK-76TH INDUSTRIAL PARK; thence tracing said South boundary, South 89°50' West to the place of beginning.

AND a tract of land in the Southwest one-quarter of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, to-wit:

Beginning at the East one-quarter corner of Section 29, Township 1 South, Range 2 East of the Willamette Meridian; thence North 89°55' West 1303.2 feet; thence North 0°01' East 1312.5 feet; thence South 89°48' West 407.06 feet to the Northeast corner of the tract conveyed to Glenn S. Cook, et ux, in Book 402, page 628; thence continuing South 89°48' West along the North boundary of said Cook tract, 65 feet to the true point of beginning of the tract herein to be described; thence continuing South 89°48' West along the North boundary of said Cook Tract 50 feet; thence South 0°01' East a distance of 217 feet to a point on the North line of Parcel II in that Mortgage recorded January 21, 1970, Recorder's Fee No. 70-1309; thence North 89°48' East parallel with the North line of said Cook Tract 50 feet; thence North 0°01' West parallel with the West boundary of said Cook Tract 217 feet to the true place of beginning.

AND a tract of land in the Southwest one-quarter of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, to-wit:

The Easterly 40 feet of the following described property, as measured along the Northerly line thereof;

Beginning at the East one-quarter corner of Section 29, Township 1 South, Range 2 East of the Willamette Meridian; thence North 89°55' West 1303.2 feet; thence North 0°01' East 1312.5 feet; thence South 89°48' West 607.05 feet; thence South 0°01' East 217 feet to the true point of beginning; thence continuing South 0°01' East 83 feet; thence North 89°48' East 85 feet; thence South 0°01' East to the Northerly line of Johnson Creek Boulevard; thence Northeasterly along the Northerly line of said Johnson Creek Boulevard, to the Southwesterly corner of a tract conveyed to Harold R. Stier and Charlotte Stier, husband and wife, by Deed recorded in Deed Book 466, page 646; thence North 0°01' West along the Westerly line of said Stier Tract to the Northwest corner thereof; thence South 89°48' West, a distance of 125 feet to the true point of beginning.

Exhibit A Property Descriptions

A portion of the North one-half of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Southeast corner of that tract conveyed as Parcel B in that Deed to Ben Bader, recorded September 20, 1944 in Book 331, page 692, Deed Records, said corner being on the South line of Government Lot 3 in said Section, and 147.5 feet East of the Southwest corner thereof; thence East 95 feet, more or less, to the Southwest corner of that tract conveyed to Ben Bader by Deed recorded February 13, 1945 in Book 339, page 26, Deed Records; thence North along the West line of said Bader Tract 385 feet, more or less, to the Northwest corner thereof, said corner being on the South line of The Oregon Water Power Railway Company's right-of-way; thence Southwesterly along said South right-of-way line 130 feet, more or less, to the Northeast corner of that tract conveyed as Parcel B to Ben Bader in Book 331, page 692, Deed Records; thence South along the East line of said Bader Tract 298 feet, more or less, to the place of beginning.

Beginning at the most Southerly Southwest corner of Government Lot 3, Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon; thence East on the South line of said Lot, 147.5 feet to a line parallel with and 365.5 feet East of the center line of Kindorf Road extended Southerly; thence North to the Southerly line of the right-of-way of The Portland Railway Light and Power Co., formerly Oregon Water Power and Railway Company; thence Westerly along said Southerly line to the East line of the Hector Campbell Donation Land Claim; thence South on said East line to the place of beginning.

Tax Lot 3700

A portion of the North one-half of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Southeast corner of that tract conveyed as Parcel B in that Deed to Ben Bader, recorded September 20, 1944 in Book 331, page 692, Deed Records, said corner being on the South line of Government Lot 3 in said Section, and 147.5 feet East of the Southwest corner thereof;

Thence East 95 feet, more or less, to the Southwest corner of that tract conveyed to Ben Bader by Deed recorded February 13, 1945 in Book 339, page 26, Deed Records; thence North along the West line of said Bader Tract 385 feet, more or less, to the Northwest corner thereof, said corner being on the South line of The Oregon Water Power Railway Company's right-of-way;

Thence Southwesterly along said South right-of-way line 130 feet, more or less, to the Northeast corner of that tract conveyed as Parcel B to Ben Bader in Book 331, page 692, Deed Records;

Thence South along the East line of said Bader Tract 298 feet, more or less, to the place of beginning.

Tax Lot 3800

BEGINNING AT THE MOST SOUTHERLY SOUTHWEST CORNER OF GOVERNMENT LOT 3, SECTION 29, TOWNSHIP 1 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON; THENCE EAST ON THE SOUTH LINE OF SAID LOT, 147.5 FEET TO A LINE PARALLEL WITH AND 365.5 FEET EAST OF THE CENTER LINE OF KINDORF ROAD EXTENDED SOUTHERLY; THENCE NORTH TO THE SOUTHERLY LINE OF THE RIGHT-OF-WAY OF THE PORTLAND RAILWAY LIGHT AND POWER CO., FORMERLY OREGON WATER POWER AND RAILWAY COMPANY; THENCE WESTERLY ALONG SAID SOUTHERLY LINE TO THE EAST LINE OF THE HECTOR CAMPBELL D.L.C.; THENCE SOUTH ON SAID EAST LINE TO THE PLACE OF BEGINNING.

**Exhibit A
Property Descriptions**

PARCEL B

Tax Lot 3500

PART OF THE NORTHWEST ONE-QUARTER OF SECTION 29, TOWNSHIP 1 SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING 2 CHAINS SOUTH AND 18.01 CHAINS EAST OF THE NW CORNER OF THE NE 1/4 OF SAID SECTION;
THENCE SOUTH 24 RODS;
THENCE EAST 20 RODS;
THENCE NORTH 24 RODS;
THENCE WEST 20 RODS TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM 20 FEET ON THE EAST SIDE OF THE ROAD AND EXCEPTING ALSO THE RIGHT OF WAY CONVEYED TO THE OREGON WATER POWER AND RAILWAY COMPANY.

PARCEL C

PARCEL I:

A TRACT OF LAND SITUATED IN SECTION 29, TOWNSHIP 1 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING 2 CHAINS SOUTH AND 18.01 CHAINS EAST OF THE NORTHWEST CORNER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION;
THENCE SOUTH 24 RODS TO A POINT;
THENCE EAST 20 RODS TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;
THENCE SOUTH 100 FEET TO A POINT;
THENCE WEST 200 FEET TO A POINT;
THENCE NORTH 100 FEET TO A POINT;
THENCE EAST 200 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH AND SUBJECT TO AN EASEMENT FOR INGRESS AND EGRESS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED PROPERTY;
THENCE NORTH ALONG THE WEST BOUNDARY LINE OF A TRACT OF LAND CONVEYED TO EVA VAN GALDER, ET AL, BY DEED RECORDED AUGUST 9, 1965, FEE NO. 13262, DEED RECORDS, A DISTANCE OF 476 FEET TO THE SOUTH RIGHT OF WAY LINE OF LUTHER ROAD;
THENCE WEST ALONG THE SOUTH RIGHT OF WAY THEREOF, A DISTANCE OF 20 FEET;
THENCE SOUTH ALONG THE EAST BOUNDARY LINE OF A TRACT OF LAND CONVEYED TO ALVIN ELLEFSON, ET UX, BY BOOK 263, PAGE 537, DEED RECORDS, AND ITS SOUTHERLY EXTENSION, A DISTANCE OF 476 FEET;
THENCE EAST A DISTANCE OF 20 FEET TO THE POINT OF BEGINNING.

ALSO TOGETHER WITH A 15 FOOT SEWER EASEMENT DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE ABOVE DESCRIBED TRACT;
THENCE SOUTH A DISTANCE OF 15 FEET;
THENCE WEST TO THE CENTERLINE OF THE CITY OF PORTLAND SEWER AS DESCRIBED IN BOOK 174, PAGE 281, DEED RECORDS;
THENCE NORTH 38° 26' EAST ALONG SAID CENTERLINE TO A POINT WHICH IS DUE WEST FROM THE SOUTHWEST CORNER OF A TRACT OF LAND DESCRIBED CONTRACT OF SALE TO HERBERT C. WILTON, ET UX, BY INSTRUMENT RECORDED OCTOBER 25, 1962, BOOK 612, PAGE 409, DEED RECORDS;
THENCE EAST TO THE SOUTHWEST CORNER OF AFORESAID WILTON TRACT;
THENCE CONTINUING EAST ALONG THE SOUTH BOUNDARY LINE OF SAID WILTON TRACT TO THE POINT OF BEGINNING.

Exhibit A
Property Descriptions

THENCE SOUTH 100 FEET TO A POINT;
THENCE WEST 200 FEET TO A POINT;
THENCE NORTH 100 FEET TO A POINT, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;
THENCE WEST ALONG THE SOUTH BOUNDARY LINE OF A TRACT OF LAND CONVEYED TO HERBERT C. WILTON, ET UX, BY CONTRACT OF SALE, RECORDED OCTOBER 25, 1962, IN BOOK 612, PAGE 409, DEED RECORDS, TO THE SOUTHWEST CORNER THEREOF;
THENCE NORTH ALONG THE WEST BOUNDARY LINE THEREOF A DISTANCE OF 8 FEET TO THE CENTERLINE OF THE CITY OF PORTLAND SEWER AS DESCRIBED IN BOOK 174, PAGE 281, DEED RECORDS;
THENCE SOUTH 38° 26' WEST ALONG THE SAID CENTERLINE TO A POINT WHICH IS WEST 1 FOOT FROM THE WEST BOUNDARY LINE OF SAID WILTON TRACT WHEN MEASURED AT RIGHT ANGLES THERETO;
THENCE SOUTH PARALLEL WITH WEST BOUNDARY LINE THEREOF A DISTANCE OF 6.86 FEET;
THENCE EAST TO A POINT WHICH IS SOUTH FROM THE TRUE POINT OF BEGINNING;
THENCE NORTH 1 FOOT TO THE TRUE POINT OF BEGINNING.

Draft

PERMANENT SEWER EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that, Metro, an Oregon municipal corporation, and the North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451 (“NCPRD”), collectively “Grantors,” in consideration of the sum of * (\$*) and no/100 Dollars, and other good and valuable consideration, to them* paid by the City of Portland, a municipal corporation of the State of Oregon (Grantee), do* hereby grant unto said City of Portland, an exclusive and perpetual sewer easement of not more than thirty (30) feet in width for the purpose of laying down, constructing, reconstructing, operating, inspecting, monitoring and maintaining a sewer or sewers and appurtenances, through, under, over and along the property described commonly known as Tax Lots 3609, 3700 and 3800, in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian, and more specifically described in **Exhibit A** attached hereto and by this reference made a part hereof (the Property), as depicted in **Exhibit B** attached hereto and by this reference made a part hereof..

IT IS UNDERSTOOD and agreed that:

- A. Grantee shall obtain any local, state, or federal permits necessary to undertake any work on the Properties authorized by this Easement
- B. Grantee will restore the easement area to a condition that is as good as or better than the condition existing prior to the original construction, except as to permanent changes made necessary by and authorized under the easement.
- C. No other utilities, buildings, facilities, easements, material storage, grade change or tree planting will be allowed within the easement boundaries without prior written consent of the Director of the Bureau of Environmental Services. Landscaping which by its nature is shallow-rooted and may be easily removed to permit access to the sewer lines and facilities authorized by this easement, shall not require consent.

After Recording Return to:

- D. Grantee agrees that it will make every reasonable effort to minimize construction impacts and will maintain Grantors' access and use of the easement area during revegetation, to the extent practicable.
- E. This easement does not grant or convey to Grantee any right or title to the surface of the soil along the route of said sewer except for the purpose of laying down, constructing, reconstructing, operating, inspecting and maintaining the same.
- F. Grantors reserve all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted.
- G. This easement shall bind the heirs and assigns of Grantors and shall inure to the benefit of the successors in title of Grantee.
- H. The parties acknowledge that they each have disclosed to the other parties all knowledge of any release of hazardous substances onto or from the property, and disclosed any known report, investigation, survey, or environmental assessment regarding the subject property. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- I. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantee, its successors and assigns, agrees to defend, indemnify and hold harmless the Grantors, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- J. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantors, their successors and assigns, agree to defend, indemnify and hold harmless the Grantees, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantors. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- K. If the parties to this agreement (Grantors and Grantee) discover preexisting environmental contamination at the site it is agreed that the contamination will be remediated and the cost for such remediation will be split equally in thirds between the parties.

IN WITNESS WHEREOF, the Grantors above named, have hereunto set their hands this _____ day of _____, 2008.

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on _____, 2008,
by *.

Notary Public for Oregon
My Commission expires _____

APPROVED AS TO FORM:

City Attorney

APPROVED:

Bureau of Environmental Services Director
or his designee

Draft

PERMANENT CHANNEL CHANGE EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that Metro, an Oregon municipal corporation, and the North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451 (“NCPRD”), collectively “Grantors,” in consideration of the sum of * and no/100 Dollars (\$*), and other good and valuable consideration, to them* paid by the City of Portland, a municipal corporation of the State of Oregon (“Grantee”), do hereby grant unto said City of Portland, an exclusive and perpetual easement for a channel change over and across the property commonly known as Tax Lots 3609, 3700 and 3800, in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian, and more specifically described in **Exhibit A** attached hereto and by this reference made a part hereof (the Property), as depicted in **Exhibit B** attached hereto and by this reference made a part hereof.

IT IS UNDERSTOOD and agreed that:

- A. Grantee shall have the right to go upon the Property for the purpose of making a channel change in Johnson Creek as necessitated by the construction and improvement of the Lents II Interceptor Project. Grantee may use and appropriate for the project, without additional compensation, all material excavated in the making of said channel change.
- B. Grantee shall obtain any local, state, or federal permits necessary to undertake any work on the Properties authorized by this Easement.
- C. Upon completion of the channel change, the relocated channel shall become the natural channel of Johnson Creek for all intents and purposes. Grantee and Grantors acknowledge that Johnson Creek is a natural system and its channel and floodplain may change over time. The Permanent Channel Change Easement area is established to accommodate reasonable changes in the Johnson Creek channel alignment. Grantee shall have the right, although it is not obligated to do so, to manage, monitor, repair and replace said Johnson Creek in its relocated channel and Grantee may go

After Recording Return to: _____

upon the Property as necessary for such purposes. Grantee agrees to coordinate with Grantors regarding proposed channel modifications and Grantors agree to defer to Grantees judgment regarding proposed channel changes within the Permanent Channel Change Easement area.

- D. In the event that Johnson Creek leaves or threatens to leave the Permanent Channel Change Easement area, Grantee and Grantors agree to cooperate in any flood mitigation and channel change measures that are pursued and to share personnel and other costs as agreed to by the parties at that time.
- E. Grantee will restore the easement area to a condition that is as good as or better than the condition existing prior to the original construction, except as to permanent changes made necessary by and authorized under the easement.
- F. No other utilities, buildings, facilities, easements, material storage, or grade change will be allowed within the easement boundaries without prior written consent of the Director of the Bureau of Environmental Services.
- G. Grantors reserve all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted.
- H. This easement shall bind the heirs and assigns of Grantors and shall inure to the benefit of the successors in title of Grantee.
- I. The parties acknowledge that they each have disclosed to the other parties all knowledge of any release of hazardous substances onto or from the property, and disclosed any known report, investigation, survey, or environmental assessment regarding the subject property. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- J. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantee, its successors and assigns, agrees to defend, indemnify and hold harmless the Grantors, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- K. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantors, their successors and assigns, agree to defend, indemnify and hold harmless the Grantees, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers,

agents or employees of the Grantors. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.

- L. If the parties to this agreement (Grantors and Grantee) discover preexisting environmental contamination at the site it is agreed that the contamination will be remediated and the cost for such remediation will be split equally in thirds between the parties.

IN WITNESS WHEREOF, the Grantors above named, have hereunto set their hands this _____ day of _____, 2008.

*

*

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on _____, 2008,
by *.

Notary Public for Oregon
My Commission expires _____

APPROVED AS TO FORM:

City Attorney
APPROVED:

Bureau of Environmental Services Director
or his designee

Draft

TEMPORARY CONSTRUCTION EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that Metro, an Oregon municipal corporation, and the North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451 (“NCPRD”), collectively “Grantors,” in consideration of the sum of One (\$1.00) and other good and valuable consideration, to them* paid by the City of Portland, a municipal corporation of the State of Oregon (Grantee), do* hereby grant unto said City of Portland a temporary easement for the purpose of construction, construction support and revegetation activities associated with the Lents II Interceptor Project through, under, over and along the property commonly known as Tax Lots 3609, 3700 and 3800, in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian, and more specifically described in **Exhibit A** attached hereto and by this reference made a part hereof (the Property), as depicted in **Exhibit B** attached hereto and by this reference made a part hereof.

IT IS UNDERSTOOD and agreed that:

- A. This temporary easement is granted for a term of six years, commencing no earlier than May 15, 2011, and terminating no later than May 14, 2017, for the following activities: (a) Grantee shall have exclusive use of the easement area for construction and construction support activities from May 15, 2011, to December 21, 2011; (b) non-exclusive use of the easement area between December 22, 2011, and May 15, 2012, for the purpose of revegetation and stream restoration activities, and; (c) non-exclusive use of the easement area for 4 days each year between May 16, 2012, and May 14, 2017, for the purpose of monitoring, revegetation establishment and construction activities necessary to assure conformance with project design criteria.
- B. Grantee agrees to provide Grantors* with at least seven (7) days written notice prior to commencing work under this easement.

State ID #*

After Recording Return to:

R/W #

106/800/Teresa Talbott

Tax Statement shall be sent to:

No Change

Sewer, Channel Change, and Temporary Construction Easements

- C. Grantee agrees that it will make every reasonable effort to minimize construction impacts and will maintain Grantors'* access and use of the easement area during revegetation and reconstruction to the extent practicable.
- D. Grantee will restore the easement area to a condition that is as good as or better than the condition existing prior to the original construction.
- E. Grantors* reserve* all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted.
- F. This easement shall bind the heirs and assigns of Grantors* and shall inure to the benefit of the successors in title of Grantee.
- M. Grantee will provide Grantors* a copy of the revegetation plan for the easement area.
- N. Grantors* agree* not to disturb the plantings in the easement area during the term of this easement.
- O. The parties acknowledge that they each have disclosed to the other parties all knowledge of any release of hazardous substances onto or from the property, and disclosed any known report, investigation, survey, or environmental assessment regarding the subject property. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- P. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantee, its successors and assigns, agrees to defend, indemnify and hold harmless the Grantors, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- Q. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantors, their successors and assigns, agree to defend, indemnify and hold harmless the Grantees, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantors. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- R. If the parties to this agreement (Grantors and Grantee) discover preexisting environmental contamination at the site it is agreed that the contamination will be remediated and the cost for such remediation will be split equally in thirds between the parties.

IN WITNESS WHEREOF, the Grantors* above named, have* hereunto set their* hand*
this _____ day of _____, 200*.

*

*

STATE OF OREGON

County of Multnomah

This instrument was acknowledge before me on _____, 200*,
by *.

Notary Public for Oregon
My Commission expires _____

APPROVED AS TO FORM:

City Attorney

APPROVED:

Bureau of Environmental Services Director
or his designee

Exhibit B
Sewer, Channel Change, and Temporary Construction Easements

Exhibit A to Resolution 08-3969

Produced by Systems Analysis: Map Request 4803 (KDR, TJP) September, 16th, 2008 \\Cassio\GIS\3\Projects_Arc\16947\MD\DLents_II_Interceptor_Easments.mxd



Legend

- City of Portland
- Taxlots

Easements

- Permanent Sewer Easement (PSE)
- Permanent Channel Change Easement (PCCCE)
- Temporary Construction Easement (TCE)

Existing Sewer System

- Lents Trunk
- Sanitary Sewer Pipes
- Stormdrain Pipes
- Clarkamas County Sanitary Sewer Pipes
- Inlets
- Sanitary Manholes
- Stormwater Outfalls

Scale

1 inch equals 150 feet

0 150 300 Feet

Overview

Exhibit B
Draft BES Project Easements

1 OF 1

Date Printed: 09/16/08

ENVIRONMENTAL SERVICES
Systems Analysis
Spatial Analysis and Modeling

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

I HEREBY CERTIFY THAT THE FOREGOING
IS A COMPLETE AND EXACT COPY OF THE
ORIGINAL THEREOF

BEFORE THE METRO COUNCIL

Rebecca Y. Sheemaker
METRO COUNCIL ARCHIVIST

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 B...
Recording Secretary

Approved as to Form:
Daniel B. Cooper
Daniel B. Cooper, General Counsel

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

Exhibit "A"

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 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

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

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.

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

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 requirements.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3969 AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND AND THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT REGARDING THE PURCHASE AND MANAGEMENT OF PROPERTY IN THE JOHNSON CREEK TARGET AREA ACQUIRED PURSUANT TO THE 2006 NATURAL AREAS BOND MEASURE

Date: October 16, 2008

Prepared by: Kathleen Brennan-Hunter

BACKGROUND

Metro staff desires to enter into an Intergovernmental Agreement (“IGA”) with City of Portland Bureau of Environmental Services (“BES”) and the North Clackamas Parks and Recreation District (“NCPRD”) for the purpose of acquiring, restoring, developing and managing three adjoining properties in the Johnson Creek Target Area of the 2006 Natural Areas Bond Measure. The properties are commonly known as “Lents II,” and are more specifically identified on Exhibit A to the IGA attached to this resolution (the “Properties”). Metro staff has entered into an agreement with a private landowner to purchase the largest of the properties, approximately 10 acres in size.

The Properties are located along the Springwater Corridor, with approximately 2,000 total feet of frontage on Johnson Creek, in unincorporated Clackamas County in the neighborhood of SE 76th Drive and Johnson Creek Boulevard. The Properties have been identified, as a Tier II acquisition priority in the Johnson Creek Target Area, to protect key properties adjacent to publicly owned resource areas and to promote partnership.

The IGA provides that the purchase of the Properties, if successfully negotiated, will be jointly funded by BES, NCPRD and Metro. BES will contribute funds to purchase one or more easements across the Property to complete a sewer project including the replanting and natural area restoration of the length of the creek on the property, improvement of two significant outfalls and construction of a side channel. NCPRD will contribute funds from its System Development Charges to purchase an undivided 50% fee interest in the Property as a tenant in common, in order to develop a community park on a portion of the Property; and Metro will contribute funds from the Natural Areas Bond Measure, approved by the voters in 2006, to purchase an undivided 50% fee interest in the Property as a tenant in common, in order to protect fish and wildlife habitat and water quality.

In its current state the Properties attract nuisance uses and are in a degraded environmental condition. BES’s commitment to a major restoration project, anticipated for construction in 2010, combined with future active park use to be developed by NCPRD, will make an enormous

impact on the health of Johnson Creek and for the entire neighborhood, providing a community amenity and flood abatement.

The IGA will provide as follows:

- 1) Metro shall be responsible for negotiating for purchase of, conducting due-diligence and coordinating closing for purchase and sale for the Properties;
- 2) Upon acquisition of one or more of the Properties, Metro and NCPRD agree to grant the sewer and restoration project easements to BES, to permit and require BES to access, repair, reconstruct, construct, maintain and monitor the existing sewer pipe that traverses the Properties, invest significantly in natural habitat and water quality enhancement and restoration activities along the creek and potentially replace a side channel to Johnson Creek on the Properties; and
- 3) NCPRD shall be responsible for development of active recreation on approximately four acres of the Properties and be responsible for long-term management and maintenance.

The proposed form of IGA is attached as Exhibit A to this resolution.

Acquisition, restoration and management of the Properties under the IGA is a unique collaboration of three agencies with different but aligned interests, pooling resources to establish a public asset to support improved water quality, habitat and create a community resource. Acquisition of the Properties will meet the Tier II and partnership objectives set forth in the Johnson Creek Target Area Refinement Plan, and will be conducted in accordance with the Natural Areas Work Plan.

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

Metro and NCPRD shall each hold a 50% interest in the Property and BES shall hold an easement for its sewer and related improvements. BES shall be responsible for restoration of the Properties and NCPRD for development of a community park and for the Properties' long-term maintenance and management.

4. Budget Impacts

The Properties will be purchased utilizing 2006 Regional Bond proceeds. Stabilization, restoration, and management costs will be borne exclusively by NCPRD and BES pursuant to the terms of the IGA.

RECOMMENDED ACTION

The Chief Operating Officer recommends passage of Resolution No. 08-3969.

M:\attorney\confidential\16 BondMeas.2006\04 Acquisitions\29 Johnson Creek Target Area\29.009 Emmert Lents II\Res 08-3969 IGA stfrpt final 100108.doc