

BEFORE THE METRO COUNCIL

APPROVING SECOND ROUND FUNDING FOR ) RESOLUTION NO. 09-4050  
NATURE IN NEIGHBORHOODS CAPITAL )  
GRANTS ) Introduced by Councilor Robert Liberty, with  
) the concurrence of Council President David  
) Bragdon

WHEREAS, Metro Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area A General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection,” was approved by the Metro Council on March 9, 2006.

WHEREAS, at the election held on November 7, 2006, the voters approved Measure 26-80, the Natural Areas Bond Measure; and

WHEREAS, the Measure provided for \$15 million to fund a Nature in Neighborhoods Capital Grants Program (the “Capital Grants Program”) to provide opportunities for the community to actively protect fish and wildlife habitat and water quality near where people live and work. The program can provide funds to purchase lands or easements that increase the presence of natural features and their ecological functions in neighborhoods throughout the region. The program can also provide funding for projects that recover or create additional plant and animal habitats to help ensure that every community enjoys clean water and embraces nature as a fundamental element of its character and livability; and

WHEREAS, the Measure provided for the creation of a grant review committee composed of no fewer than seven members to review grant applications and make grant award recommendations to the Metro Council; and

WHEREAS, on November 1, 2007, the Metro Council adopted Ordinance No. 07-1163, “Amending Metro Code Chapter 2.19 To Establish The Nature in Neighborhoods Capital Grants Review Committee, And Declaring An Emergency”; and

WHEREAS, on November 1, 2007, the Metro Council also adopted Resolution No. 07-3879, “Confirming the Appointment of Members to the Nature in Neighborhoods Capital Grants Review Committee;” and

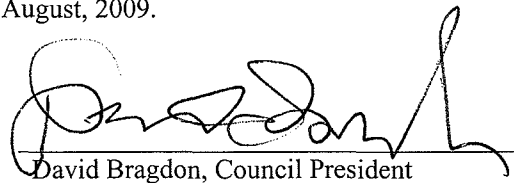
WHEREAS, on February 19, 2009, the Metro Council adopted Resolution No. 09-4027, “Confirming the Reappointment of Members to the Nature in Neighborhoods Capital Grant Review Committee, Designating the Chair, and Appointing a New Metro Natural Resources Staff Representative;” and

WHEREAS, on June 25, 2009 the Grants Review Committee reviewed proposals for grants and is recommending 4 projects that best meet the criteria for the grant program to the Metro Council for funding; now therefore

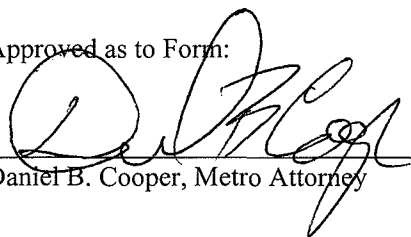
BE IT RESOLVED that the Metro Council hereby:

1. Awards Nature in Neighborhoods Capital Grants to those recipients and projects, and for the funding amounts, listed in Exhibit A to this resolution,
2. Authorizes the Chief Operating Officer to enter into an intergovernmental agreement with each of the grant recipients that are governmental entities substantially in conformance with Exhibit B to this resolution to provide them with such grant funding conditioned on each entity consenting to take fee title to the property being acquired, in part, with grant funds subject to a restriction that ensures that the property will be used consistent with the purpose and goals of the grant program in perpetuity. The form of such restriction shall be approved by, and at the sole discretion of, the Metro Attorney.
3. Authorizes the Chief Operating Officer to enter into a grant agreement with the two grant recipients that are not governmental agencies substantially in conformance with Exhibit C to this resolution to provide them with such grant funding, and to enter into intergovernmental agreements with the government sponsors for such projects, substantially in conformance with Exhibit D to this resolution, to allow the projects to be completed on public property and to commit to treat such projects as capital assets.

ADOPTED by the Metro Council this 13th day of August, 2009.

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney



**Exhibit A to Resolution No. 09-4050**

Nature in Neighborhood Capital Grants Program  
Second Round Grant Awards  
Grant Review Committee Recommendations to the Metro Council

Project: Nadaka Nature Park Expansion  
Recipient: City of Gresham  
Applicant: East Wilkes Neighborhood Association  
Grant Amount: \$220,000

This project entails acquisition of a 1.9 acre site that will improve public access to the existing 10-acre Nadaka Nature Park from NE Glisan. The nature park is a mostly forested site with a small meadow on the south side. It is the only natural area for the East Wilkes Neighborhood as well as for Rockwood Neighborhood, which is south of the acquired site.

This project addresses the goals and criteria of the grant program in the following ways:

Re-nature

The acquisition of the site itself will not enhance biological functions. However, as part of the match for this project the City of Gresham will complete a Management Plan for the entire 11.9 acre site. This plan will ensure that the natural resources on the site are functioning in a healthy ecological condition for the benefit of native species and water quality as well as the community.

Re-green

This project will help strengthen people's physical connection to the region's ecology by enhancing access to the site and making the site more visible.

Universal Access

The park's hard to find entrance and lack of access from the major arterial limits use of the natural area. Opening Nadaka to Glisan will increase visibility and use of the site.

The Grant Review Committee found this project compelling for the following reasons:

- It dramatically improves access to an existing publicly-owned natural area.
- It supports an active, grassroots community group that has been removing invasive plants, planting natives and increasing awareness of the site's assets. The neighborhood organization took the lead on scheduling site tours, engaging partners and raising the enthusiasm for this acquisition throughout Gresham.
- Partners such as Audubon, People for Parks, St. Aiden's Church, H.B. Lee School, the Rockwood Neighborhood, and the Columbia Slough Watershed Council have been actively engaged in the project and not just letter writers.
- The site is located in an area that is deficient of natural areas.
- This purchase allows a greater portion of the existing meadow to be used for restoration and environmental education.

Project:            Greening the I-205 Corridor  
Recipient:        Friends of Trees  
Grant Amount:    \$415, 436

This project includes the planting of 1,300 native trees and 16,000 native shrubs in treated mulch beds in the I-205 right-of-way over the next three planting seasons using 2,400 volunteers giving 9,600 hours of time. Planting will begin in the fall of 2009 and conclude in spring 2011. Establishment, the watering and care of the plantings until they can survive without on-going attention, will occur each summer and run through 2012. Friends of Trees will continue establishment until the end of the summer 2015.

This project will demonstrate the value of volunteer tree planting and the use of native trees and shrubs along transportation corridors. Evaluation and documentation of this effort – from environmental benefits to maintenance costs – will be used by Oregon Department of Transportation (ODOT) Region 1 to frame a statewide discussion regarding policies associated with the agency’s landscaping standards.

This project addresses the goals and criteria of the grant program in the following ways:

Re-nature

Trees have well documented biological functions that address this criterion that include water and air quality. The use of natives and the clustering of the plantings will improve potential habitat benefits for wildlife.

Re-green

FOT’s model of engaging neighbors and community groups in the tree planting will enrich people’s experience of nature. In addition, enhancing the native plantings along this highway corridor will also improve the user experience along the multi-use path for commuters as well as for recreational users. It will also make a better connection for access to natural areas along the trail corridor such as the Columbia Slough, Mount Talbert, and the Springwater Corridor.

Multiple benefits

The partnership with Verde to help create minority green jobs in the nursery industry and will expand environmental education to underserved communities of color by the use of bi-lingual outreach and education materials. This project will be used by ODOT Region1 to reconsider its policies regarding tree planting and maintenance.

Cost effective

Trees are cost-effective multi-taskers addressing many environmental and health impacts in urban settings including air and water quality, stormwater run-off, carbon dioxide emissions, soil erosion, and habitat.

Fish & Wildlife Habitat

These trees will not provide much habitat value beyond providing a potential corridor for migratory song birds. It is worth pointing out that there are several significant natural areas along I-205 in which these trees will support. These include the Columbia Slough, Rocky Butte, Kelly Butte, Mt. Talbert, Johnson Creek and the Clackamas River.

The Grant Review Committee found this project compelling for the following reasons:

- It has the potential to change ODOT’s policy on tree planting and vegetating highway corridors by documenting and evaluating the results of this project.
- The breadth of native tree planting that supports connectivity between existing natural areas such as Rocky Butte, Kelly Butte and Mt. Talbert.
- FOT’s model of engaging volunteers
- Partnership with Verde
- Highly visible project
- Air quality benefits

Project: White Oak Savanna Acquisition  
Recipient: City of West Linn  
Grant Amount: \$334,000

This project entails a contribution of one-third of the purchase price to acquire approximately 14 acres of significant Oregon White Oak savanna in West Linn to protect, restore and manage as a natural area. This project will also initiate a restoration effort through invasive species removal. Access to the site will be enhanced through the creation of a soft surface trail.

This project addresses the goals and criteria of the grant program in the following ways:

Re-nature

The acquisition of the site itself will not enhance biological functions. However, the acquisition will preserve the ecological value of the oak habitat. In addition, the City of West Linn, along with community volunteers, will continue the removal of the invasive species such as blackberry.

Re-green

The ability of this site to link to other natural areas and trails within West Linn will eventually make this site easy to access so that people can enjoy this unique habitat as well as the views to regionally significant natural areas at Canemah and the Willamette Narrows.

Multiple Benefits

There is a large committed volunteer base in West Linn that work on restoration projects. Acquisition of this site will give the volunteers access to remove the invasives while also enjoying the beauty of the site.

Habitats of Concern

According to Oregon Dept of Fish & Wildlife's *Oregon Conservation Strategy*, the Willamette Valley contains only seven percent of the oak habitat in contained in 1850. The *Conservation Strategy* prioritizes the maintenance of all oaks greater than 22 inches dbh (diameter at breast height). Dozens of trees at this site meet this criterion.

The Grant Review Committee found this project compelling for the following reasons:

- Oak Savannas are considered a habitat of concern in the Oregon Conservation Strategy. While there are many invasive plants such as himalayan blackberries, the oaks themselves are healthy and well spaced.
- This acquisition has been community-driven for over four years.
- The acquisition has the support of the City of West Linn.
- Funding is secured to begin restoration as well as create an access trail.
- The site is positioned to eventually be well connected to West Linn's existing and proposed trail system.

Project: Humboldt Learning Garden  
Recipient: Lower Columbia River Estuary Partnership  
Grant Amount: \$33,686

This project will transform a vacant lot adjacent to Humboldt School into a Learning Garden that will be used by both Humboldt students and residents of the Housing Authority of Portland's Humboldt Garden Housing Project. The project will collect and re-use stormwater from the school roof and incorporate native plant materials throughout the site.

Governor Kulongoski designated the Humboldt School Project as an Oregon Solutions Project in March 2008 as a result of Humboldt School's significant loss in enrollment. The capture rate at Humboldt (percentage of students living in the neighborhood who attend Humboldt rather than another District school) is 47% as opposed to Portland's average capture rate of 64%. The goal of the Oregon Solution Partnership was to ensure that efforts in housing, community development and education are coordinated, creative and positive for the neighborhood and the school. This partnership identified the Humboldt Learning Garden as the number one way to improve the relationship between the school and the neighborhood residents.

Housing Authority of Portland constructed Humboldt Gardens with 100 very affordable housing units, 30 moderately priced units and ground floor community and retail services. It opened in 2008.

This project addresses the goals and criteria of the grant program in the following ways:

Re-Nature – The site will improve the biological functions of the site through the use of native plants, a bioswale and a wildflower garden.

Re-Green – While only students and resident of Humboldt Gardens will have access to the site, this includes 285 students and their families as well as residents of 130 housing units. Interpretation and programming at the site will ensure that all users will have the opportunity to understand and connect with the natural elements of the site.

Multiple benefits – The neighborhood's improved impression of the school will hopefully increase school enrollment. The project has already attracted new partners such as the Lower Columbia River Estuary Partnership (LCREP), the Housing Authority of Portland, the neighborhood association, the business association, and Lewis & Clark.

Universal Access – Although the site will limit access to students and Humboldt Garden residents, it will meet ADA standards.

The Grant Review Committee found this project compelling for the following reasons:

- Serves a neighborhood with severely limited access to nature.
- Long term success of the gardens is likely due to strong public-private partnerships and existing commitments for at least five years of maintenance.
- Creates a model within the school district for directing roof run-off to gardens.
- Opportunity to serve a racially diverse, low-income student population as well as residents of Humboldt Gardens.

Project: Natural Areas Capital Grants Program

Contract No. \_\_\_\_\_

INTERGOVERNMENTAL AGREEMENT  
Natural Areas Bond Measure  
Capital Grant Award

This Intergovernmental Agreement (this “Agreement”), entered into under the provisions of ORS chapter 190 and effective on the date the Agreement is fully executed (the “Effective Date”), is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and the \_\_\_\_\_, located at \_\_\_\_\_ (“Grant Recipient”).

RECITALS

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

WHEREAS, the Measure allocated \$15 million from bond proceeds to the Nature in Neighborhoods Capital Grants Program to complement the regional and local share portions of the Measure by providing opportunities for the community to actively protect fish and wildlife habitat and water quality in areas where people live and work;

WHEREAS, Metro has determined to make a grant award to Grant Recipient to fund [SPECIFY PROJECT] (the “Project”) as more specifically identified within the Scope of Work attached hereto as Exhibit A (the “Work”);

WHEREAS, the Grant Recipient is the owner of certain property where the Project is to occur and be located, which is more specifically identified in Exhibit A;

WHEREAS, this Agreement between Metro and Grant Recipient is now needed to satisfy the terms and conditions of the Nature in Neighborhoods Capital Grants Program as provided for in the Measure; and

WHEREAS, except as specifically provided in this Agreement, including the scope of work attached hereto as Exhibit A, and otherwise notwithstanding any statements or inferences to the contrary, Metro neither intends nor accepts any (1) direct involvement in the Project (2) sponsorship benefits or supervisory responsibility with respect to the Project; or (3) ownership or responsibility for care and custody of the tangible products which result from the Project;

NOW THEREFORE, the parties agree as follows:

1. Purpose; Scope of Work; Limitations

The purpose of this Agreement is to implement the Measure and facilitate the funding of a Nature in Neighborhoods Capital Grants Program project. Grant Recipient shall perform all activities described in the Scope of Work attached hereto as Exhibit A (the "Work"). As a condition precedent to Metro's agreement to fund the Project, Grant Recipient hereby approves the Project and agrees to comply with the terms and conditions of this Agreement and the applicable provisions of the Measure. At no time will Metro have any supervisory responsibility regarding any aspect of the Work. Any indirect or direct involvement by Metro in the Work shall not be construed or interpreted by Grant Recipient as Metro's assumption of a supervisory role.

2. Declaration of Capital Project

In accordance with the Measure, Metro may only provide funds to Grant Recipient for the Project so long as such funds are exclusively used for capital expenses. Grant Recipient hereby confirms that the Project will result in the creation of a capital asset to be owned by Grant Recipient. Grant Recipient covenants that it will (a) own and hold all such capital improvements and real property interests acquired pursuant to this Agreement, and (b) record the asset created by the Project as a fixed, capital asset in Grant Recipient's audited financial statement, consistent with Generally Accepted Accounting Principles ("GAAP") and with Grant Recipient's financial bookkeeping of other similar assets.



3. Contract Sum and Terms of Payment

Metro shall compensate Grant Recipient for performance of the Work as described in Exhibit A. Metro shall not be responsible for payment of any materials, expenses or costs other than those that are specifically described in Exhibit A.

4. Limitations on Use of the Capital Asset That Results from the Project

Throughout the term of this Agreement, Grant Recipient shall maintain and operate the capital asset that results from the Project in a manner consistent with one or more of the following intended and stated purposes of the Measure (the “Nature in Neighborhood Approved Purposes”):

- To safeguard water quality in local rivers and streams;
- To protect and enhance fish and wildlife habitats;
- To promote partnerships that protect and enhance nature in neighborhoods; and
- To increase the presence of ecological systems and plant and animal communities in nature deficient and other disadvantaged neighborhoods;

Grant Recipient may not sell, use, or authorize others to use such capital asset in a manner inconsistent with such purposes.

Notwithstanding the foregoing, secondary uses that arise as a result of such capital asset being used primarily in accordance with the Nature in Neighborhood Approved Purposes will be permitted, but only to the extent such secondary uses affect a *de minimis* portion of such capital asset or are necessary in order to facilitate the primary Nature in Neighborhood Approved Purposes. For example, if, as part of a land use review proceeding initiated to obtain the necessary approvals to operate such capital asset consistent with the Nature in Neighborhood Approved Purposes, a portion of such capital asset was required to be dedicated as a road, such road dedication would be a permitted secondary use.

5. Funding Recognition

Grant Recipient shall recognize in any publications, media presentations, or other presentations referencing the Project produced by or at the direction of Grant Recipient, including, without limitation, any on-site signage, that funding for the Project came from the Metro Natural Areas Bond Measure’s Nature in Neighborhoods Capital Grants Program. Such

recognition shall comply with the recognition guidelines detailed in the Measure. Grant Recipient shall place at or near the Project's location signage that communicates that funding for the Project came from the Metro Natural Areas Bond Measure's Nature in Neighborhoods Capital Grants Program.

6. Term

It is the intent of the parties for the Project to have been completed, and for all Metro funding to have been provided to Grant Recipient prior to [INSERT PROJECT DEADLINE]. Notwithstanding the forgoing, all provisions set forth in this Agreement, and the obligations of Grant Recipient hereunder, shall continue in effect after the completion of the Project until June 30, 2027.

7. Termination for Cause

A. Subject to the notice provisions set forth in Section 7.B below, Metro may terminate this Agreement, in full or in part, at any time during the term of the Agreement if Metro reasonably determines that Grant Recipient has failed to comply with any provision of this Agreement and is therefore in default.

B. Prior to terminating this Agreement in accordance with Section 7.A above, Metro shall provide Grant Recipient with written notice that describes the reason(s) that Metro has concluded that Grant Recipient is in default and includes a description of the steps that Grant Recipient shall take to cure the default. From the date that such notice of default is received by Grant Recipient, Grant Recipient shall have 30 days to cure the default. In the event Grant Recipient does not cure the default within the 30-day period, Metro may terminate all or any part of this Agreement, effective on any date that Metro chooses following the 30-day period. Metro shall notify Grant Recipient in writing of the effective date of the termination.

C. Grant Recipient shall be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default. Following such termination, should Metro later determine or a court find that Grant Recipient was not in default or that the default was excusable (e.g. due to a labor strike, fire, flood, or other event that was not the fault of, or was beyond the control of, Grant Recipient) this Agreement shall

be reinstated or the parties may agree to treat the termination as a joint termination for convenience whereby the rights of Grant Recipient shall be as set forth below in Section 8.

8. Joint Termination for Convenience

Metro and Grant Recipient may 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 only upon the mutual, written termination agreement signed by both Metro and Grant Recipient.

9. Oregon Constitution and Tax Exempt Bond Covenants

Grant Recipient acknowledges that Metro's source of funds for the Nature in Neighborhoods Capital Grants Program 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. Grant Recipient 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 Grant Recipient breaches this covenant, Grant Recipient shall undertake whatever remedies are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof, including, without limitation, reimbursing Metro for any Projects funded under this Agreement that resulted in Grant Recipient's breach of its covenant described in this Section.

10. Liability and Indemnification

As between Metro and Grant Recipient, Grant Recipient assumes full responsibility for the performance and content of the Work; provided, however, that this provision is not intended to, and does not, create any rights by third parties. Grant Recipient shall indemnify, defend, 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 Grant Recipient or Grant Recipient's officers, agents, or employees, subject to the limitations and conditions of the

Oregon Tort Claims Act, ORS chapter 30. Grant Recipient is solely responsible for paying Grant Recipient's contractors and subcontractors. Nothing in this Agreement shall create any contractual relationship between Metro and any such contractor or subcontractor.

11. Contractors' Insurance

A. Grant Recipient shall require all contractors performing any of the Work to purchase and maintain at each contractor's expense, the following types of insurance covering the contractor, its employees and agents:

1. Commercial general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. Grant Recipient and Metro, and their elected officials, departments, employees and agents, shall be named as additional insureds.

2. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. Grant Recipient and Metro, and their elected officials, departments, employees, and agents, shall be named as additional insureds. Notice of any material change or policy cancellation shall be provided to Grant Recipient thirty (30) days prior to the change.

B. This insurance required by Grant Recipient, as well as all workers' compensation coverage for compliance with ORS 656.017, must cover all contractors' operations under this Agreement, whether such operations are by a contractor, by any subcontractor, or by anyone directly or indirectly employed by any contractor or subcontractor.

C. Grant Recipient shall require all contractors performing any of the Work to provide Grant Recipient with a certificate of insurance complying with this section and naming Grant Recipient and Metro as additional insureds within fifteen (15) days of execution of a contract between Grant Recipient and any contractor or twenty-four (24) hours before services such contract commence, whichever date is earlier.

D. In lieu of the insurance requirements in Sections 11.A through 11.D, above, Grant Recipient may accept evidence of a self-insurance program from any contractor. Such contractor shall name Grant Recipient and Metro as additional insureds within fifteen (15) days of

execution of a contract between Grant Recipient and any contractor or twenty-four (24) hours before services such contract commence, whichever date is earlier.

12. Safety

Grant Recipient shall take all necessary precautions for the safety of employees, volunteers and others in the vicinity of the Work and the Project, and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

13. Metro's Right to Withhold Payments

Metro shall have the right to withhold from payments due Grant Recipient such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Grant Recipient's performance or failure to perform under this Agreement or the failure of Grant Recipient to make proper payment to any suppliers, contractors or subcontractors. All sums withheld by Metro under this Section shall become the property of Metro and Grant Recipient shall have no right to such sums to the extent that Grant Recipient has breached this Agreement.

14. Project Records, Audits, and Inspections

A. For the term of this Agreement, Grant Recipient shall maintain comprehensive records and documentation relating to the Project and Grant Recipient's performance of this Agreement (hereinafter "Project Records"). Project Records shall include all records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models, that are prepared or developed in connection with any Project.

B. In accordance with Section 2 above, Grant Recipient shall maintain all fiscal Project Records in accordance with GAAP. In addition, Grant Recipient shall maintain any other records necessary to clearly document:

(i) Grant Recipient's performance of its obligations under this Agreement, its compliance with fair contracting and employment programs, and its compliance with Oregon law on the payment of wages and accelerated payment provisions;

(ii) Any claims arising from or relating to (a) Grant Recipient's performance of this Agreement, or (b) any other contract entered into by Grant Recipient that relates to this Agreement or the Project;

(iii) Any cost and pricing data relating to this Agreement; and

(iv) Payments made to all suppliers, contractors, and subcontractors engaged in any work for Grant Recipient related to this Agreement or the Project.

C. Grant Recipient shall maintain Project Records for the longer period of either (a) six years from the date the Project is completed, or (b) until the conclusion of any audit, controversy, or litigation that arises out of or is related to this Agreement or the Project and that commences within six years from the date the Project is completed.

D. Grant Recipient shall make Project Records available to Metro and its authorized representatives, including, without limitation, the staff of any Metro department and the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places, regardless of whether litigation has been filed on any claims. If the Project Records are not made available within the boundaries of Metro, Grant Recipient agrees to bear all of the costs incurred by Metro to send its employees, agents, or consultants outside the region to examine, audit, inspect, or copy such records, including, without limitation, the expense of travel, per diem sums, and salary. Such costs paid by Grant Recipient to Metro pursuant to this Section shall not be recoverable costs in any legal proceeding.

E. Grant Recipient authorizes and permits Metro and its authorized representatives, including, without limitation, the staff of any Metro department and the Metro Auditor, to inspect, examine, copy, and audit the books and Project Records of Grant Recipient, including tax returns, financial statements, other financial documents relating to this Agreement or the Project. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provision of Section 12(F) below.

F. Grant Recipient agrees to disclose Project Records requested by Metro and agrees to the admission of such records as evidence in any proceeding between Metro and Grant Recipient, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

G. In the event the Project Records establish that Grant Recipient owes Metro any sum of money or that any portion of any claim made by Grant Recipient against Metro is not warranted, Grant Recipient shall pay all costs incurred by Metro in conducting the audit and inspection.

15. Public Records

All Project Records shall be public records subject to the Oregon Public Records Law, ORS 192.410 to 192.505. Nothing in this Section shall be construed as limiting Grant Recipient's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).

16. Law of Oregon; Public Contracting Provisions

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 187, 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement. Specifically, it is a condition of this Agreement that Grant Recipient and all employers working under this Agreement are subject to and will comply with ORS 656.017 and that, for public works subject to ORS 279C.800 to 279C.870 pertaining to the payment of prevailing wages as regulated by the Oregon Bureau of Labor and Industries, Grant Recipient and every contractor and subcontractor shall comply with all such provisions, including ORS 279C.836 by filing a public works bond with the Construction Contractors Board before starting work on the project, unless exempt under that statute.

17. Notices and Parties' Representatives

Any notices permitted or required by this Agreement shall be addressed to the other party's representative(s) as set forth below and shall be deemed received (a) on the date they are personally delivered, (b) on the date they are sent via facsimile, or (c) on the third day after they are deposited in the United States mail, postage fully prepaid, by certified mail return

receipt requested. Either party may change its representative(s) and the contact information for its representative(s) by providing notice in compliance with this Section of this Agreement.

Grant Recipient’s Designated Representatives:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax \_\_\_\_\_

Metro’s Designated Representatives:

Natural Areas Bond Program Manager  
Metro Regional Center  
600 N.E. Grand Ave.  
Portland, OR 97223  
Fax (503)-797-1849

with copy to:

Metro Attorney  
600 N.E. Grand Ave.  
Portland, OR 97223  
Fax (503) 797-1792

18. Assignment

Grant Recipient may not assign any of its responsibilities under this Agreement without prior written consent from Metro, which consent shall not be unreasonably withheld.

19. Severability

If any term or provision in this Agreement shall be adjudged invalid or unenforceable, such adjudication shall not affect the validity or enforceability of the remainder of the Agreement, which remaining terms and provisions shall be valid and be enforced to the fullest extent permitted by law.

20. No Waiver of Claims; Modifications

Metro’s failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision of this Agreement. This Agreement may be amended



only by written instrument signed by both Metro and Grant Recipient and no waiver, consent, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

21. Integration of Agreement Documents

All of the provisions of any proposal documents including, but not limited to, Requests for Proposals, Grant Proposals and Scopes of Work that were utilized in conjunction with the award of this Grant are hereby expressly incorporated herein by reference; provided, however, that the terms described in Sections 1 through 21 of this Agreement and in Exhibit A shall control in the event of any conflict between such terms and such other incorporated documents. Otherwise, this Agreement represents the entire and integrated agreement between Metro and Grant Recipient and supersedes all prior negotiations, representations or agreements, either written or oral. The law of the state of Oregon shall govern the construction and interpretation of this Agreement. The Parties, by the signatures below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

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

**[Name of City/County/District]**

**METRO**

\_\_\_\_\_  
Signature

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

Metro Chief Operating Officer

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

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

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

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

APPROVED AS TO FORM BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Paul A. Garrahan  
Senior Assistant Metro Attorney

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

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

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

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

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Metro Contract No:

**NATURE IN NEIGHBORHOODS CAPITAL GRANTS CONTRACT**

THIS Contract is entered into between Metro, an Oregon municipal corporation, located at 600 Northeast Grand Avenue, Portland, Oregon 97232-2736, and NAME, located at ADDRESS, Portland, Oregon 972--, hereinafter referred to as the "Contractor."

Metro has established the Nature in Neighborhoods Capital Grants program with the purpose of funding capital projects throughout the metropolitan region. Except as specifically provided in this Contract, including the scope of work attached hereto as Attachment A, and otherwise notwithstanding any statements or inferences to the contrary, Metro neither intends nor accepts any (1) direct involvement in these projects (2) sponsorship benefits or supervisory responsibility with respect to the projects; or (3) ownership or responsibility for care and custody of the tangible products which result from the projects.

**THE PARTIES AGREE AS FOLLOWS:**

**1. SCOPE OF WORK**

Contractor shall perform all activities described in the Scope of Work attached hereto as Attachment "A" (the "Work"). Contractor shall not commence or undertake any of the Work unless and until Metro and the public entity that owns the real property where the Work will occur (the "Local Government Sponsor") have entered into a separate intergovernmental agreement in a form acceptable to Metro requiring, in part, that the Local Government Sponsor commit to treat the Work as a capital improvement.

**2. TERM OF CONTRACT**

The term of this Contract shall be for a period commencing upon contract execution through and including XXX-END DATE. Metro may, at its discretion, grant a single six month extension of the Contract term provided that Contractor provides to Metro a written extension request, submitted not later than 30 days prior to the expiration date of this Contract, demonstrating a compelling need for such extension.

**3. CONTRACT SUM AND TERMS OF PAYMENT**

Metro shall compensate the Contractor for performance of the Work as described in Attachment "A." Metro shall not be responsible for payment of any materials, expenses or costs other than those that are specifically described in Attachment "A."

**4. LIABILITY AND INDEMNITY**

Contractor is an independent contractor and assumes full responsibility for the performance of the Work and the content of its work and performance of Contractor's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract. Contractor shall indemnify and hold harmless Metro and Metro's agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorneys' fees, arising out of or in any way connected with Contractor's performance of this Contract. Contractor is solely responsible for paying Contractor's

subcontractors. Nothing in this Contract shall create any contractual relationship between any subcontractor and Metro.

## 5. TERMINATION

Metro may, in its discretion, terminate this Contract at any time upon giving Contractor seven (7) days written notice. Without limiting the foregoing, if Metro concludes, in its discretion, that Contractor has failed to make substantial progress toward completing the Work at any time after one year following the effective date of this Contract then Metro will terminate this Contract as provided in the preceding sentence. In the event of termination, Contractor shall be entitled to payment for work performed prior to the date of termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro will not waive any claim or remedies that Metro may have against the Contractor.

## 6. INSURANCE

Contractor shall purchase and maintain at Contractor's expense, the following types of insurance covering the Contractor, its employees and agents.

A. Commercial general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. **Metro, its elected officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.**

B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. **METRO, its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.** Notice of any material change or policy cancellation shall be provided to METRO thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover Contractor's operations under this Contract, whether such operations are by Contractor, by any subcontractor, or by anyone directly or indirectly employed by Contractor or any subcontractor.

Contractor shall provide METRO with a certificate of insurance complying with this section and naming METRO as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

In lieu of the above, Metro will accept evidence of a self-insurance program. Contractor shall name METRO as an additional insured within (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

Contractor shall not be required to provide the liability insurance described in this section only if an express exclusion relieving Contractor of this requirement is contained in the Scope of Work.

## 7. MAINTENANCE OF RECORDS

[IF GRANT AWARD IS FOR LESS THAN \$50,000 USE THE FOLLOWING TEXT]

Contractor and subcontractors shall maintain all records relating to the Work in accordance with generally accepted accounting principles and shall allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor and subcontractors for six years after Metro makes final payment and all other pending matters are closed.

[IF GRANT AWARD IS FOR \$50,000 OR MORE USE THE FOLLOWING TEXT]

Contractor and subcontractors shall:

- A. Maintain all records relating to the Work in accordance with generally accepted accounting principles.
- B. Maintain all records relating to the Work necessary to clearly document:
  - (1) The performance of the contractor, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
  - (2) Any claims arising from or relating to the performance of the contractor or subcontractor under a public contract;
  - (3) Any cost and pricing data relating to the contract; and
  - (4) Payments made to all suppliers and subcontractors.
- C. Maintain all records for the longer period of (a) six years from the date of final completion of the contract to which the records relate or (b) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.
- D. Make all records relating to the Work available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.
- E. Authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such

documents confidential to the extent permitted by Oregon law, subject to the provisions of subsection F of this section.

F. Disclose any records related to the Work as requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

G. Pay all costs incurred by Metro in conducting any audit and inspection that reveals that records related to the Work disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted. Metro may withhold such costs from any sum that is due or that becomes due from Metro.

## **8. PUBLIC CONTRACTS**

Contractor shall comply with all applicable provisions of ORS Chapters 187, 279A, 279B and 279C. All conditions and terms required to be inserted into public contracts in the state of Oregon pursuant to any provisions of ORS Chapters 279A, 279B and 279C are hereby inserted by reference into this Contract and made requirements of this Contract as if such provisions were separately enumerated herein.

In particular, for public works subject to ORS 279C.800 to 279C.870 pertaining to the payment of prevailing wages as regulated by the Oregon Bureau of Labor and Industries, Contractor and every subcontractor shall comply with all such provisions, including ORS 279C.836 by filing a public works bond with the Construction Contractors Board before starting work on the project, unless exempt under that statute.

## **9. ATTORNEY'S FEES**

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and court costs, including fees and costs on appeal to any appellate courts.

## **10. SUBCONTRACTORS**

Contractor shall contact Metro prior to negotiating any subcontracts and Contractor shall obtain approval from Metro before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract. Metro reserves the right to reasonably reject any subcontractor or supplier and no increase in the Contractor's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this Contract. Contractor shall be fully responsible for all of its subcontractors as provided in Section 4.

## **11. RIGHT TO WITHHOLD PAYMENTS**

Metro shall have the right to withhold from payments due Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Contractor's performance or failure to perform under this Contract or the failure of Contractor to make proper payment to any suppliers or subcontractors. If a liquidated damages provision is contained in the Scope of Work and if Contractor has, in Metro's opinion, violated that provision, Metro shall have the right to withhold from payments due Contractor such sums

as shall satisfy that provision. All sums withheld by Metro under this Section shall become the property of Metro and Contractor shall have no right to such sums to the extent that Contractor has breached this Contract.

**12. SAFETY**

If services of any nature are to be performed pursuant to this Contract, Contractor shall take all necessary precautions for the safety of employees, volunteers and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

**13. INTEGRATION OF CONTRACT DOCUMENTS**

All of the provisions of any proposal documents including, but not limited to, Requests for Proposals, Proposals and Scopes of Work that were utilized in conjunction with the award of this Contract are hereby expressly incorporated herein by reference; provided, however, that the terms described in sections 1 through 15 of this Contract and in Attachment "A" shall control in the event of any conflict between such terms and such other incorporated documents. Otherwise, this Contract represents the entire and integrated agreement between Metro and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Metro and Contractor. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

**14. NO WAIVER OF CLAIMS.**

Metro's failure to enforce any provision of this Contract shall not constitute a waiver by Metro of that or any other provision of this Contract.

**15. ASSIGNMENT**

Contractor shall not assign any rights or obligations under or arising from this Contract without prior written consent from Metro.

NAME

METRO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Project: Natural Areas Capital Grants Program

Contract No. \_\_\_\_\_

INTERGOVERNMENTAL AGREEMENT  
Natural Areas Bond Measure  
Capital Grants Component

This Intergovernmental Agreement (this “Agreement”), entered into under the provisions of ORS chapter 190 and effective on the date the Agreement is fully executed (the “Effective Date”), is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and the \_\_\_\_\_, located at \_\_\_\_\_ (the “Local Government Sponsor”).

RECITALS

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

WHEREAS, the Measure allocated \$15 million from bond proceeds to the Nature in Neighborhoods Capital Grants Program to complement the regional and local share portions of the Measure by providing opportunities for the community to actively protect fish and wildlife habitat and water quality in areas where people live and work;

WHEREAS, Metro has determined to make a grant award to [SPECIFY GRANT APPLICANT] (the “Grant Recipient”) to fund a [SPECIFY PROJECT] (the “Project”) in accordance with a grant contract between Metro and the Grant Recipient, the form of which contract is attached hereto as Exhibit A (the “Grant Contract”);

WHEREAS, the Local Government Sponsor, a local government jurisdiction, is the owner of certain property where the Project is to occur and be located, which property is more specifically identified in the Grant Contract (the “Property”); and

WHEREAS, the Local Government Sponsor has approved of the Project and an agreement between Metro and the Local Government Sponsor is now needed to satisfy the



terms and conditions of the Nature in Neighborhoods Capital Grants Program as provided for in the Measure.

NOW THEREFORE, the parties agree as follows:

1. Local Government Sponsor's Consent and Agreement

The Local Government Sponsor hereby approves the Project described in the Grant Contract and authorizes such project to take place on the Property. As a condition precedent to Metro's agreement to fund the Project, the Local Government Sponsor hereby agrees to comply with the terms and conditions of this Agreement, the applicable provisions of the Measure, and the attached Grant Contract.

2. Declaration of Capital Project

In accordance with the Measure, Metro may only provide funds to the Grant Recipient for the Project so long as such funds are exclusively used for capital expenses. The Local Government Sponsor hereby confirms that the Project will result in the creation of a capital asset to be owned by the Local Government Sponsor. The Local Government Sponsor covenants that it will (a) own and hold all such capital improvements and real property interests acquired pursuant to this Agreement, and (b) record the asset created by the Project as a fixed, capital asset in the Local Government Sponsor's audited financial statement, consistent with Generally Accepted Accounting Principles ("GAAP") and with the Local Government Sponsor's financial bookkeeping of other similar assets.

3. Funding

Metro has no financial obligation to the Local Government Sponsor under this Agreement. Metro's funding is being provided to the Grant Recipient pursuant to the Grant Contract between Metro and the Grant Recipient.

4. Purpose; Limitations

A. The purpose of this Agreement is to implement the Measure and facilitate the funding of a Nature in Neighborhoods Capital Grants Program project on the Property.

B. At no time will Metro have any supervisory responsibility regarding any aspect of the Project or the Property. Any indirect or direct involvement by Metro in the Project shall not

be construed or interpreted by the Local Government Sponsor as Metro's assumption of a supervisory role.

5. Term

It is the intent of the parties for the Project to have been completed, and for all Metro funding to have been provided to Grant Recipient prior to [INSERT PROJECT DEADLINE]. Notwithstanding the forgoing, all provisions set forth in this Agreement, and the obligations of the Local Government Sponsor hereunder, shall continue in effect after the completion of the Project until June 30, 2027.

6. Limitations on Use of Property

A. Real Property and Associated Buildings and Improvements

Throughout the term of this Agreement, the portion of the Property upon which the Project will be located (the "Project Area") shall be maintained and operated in a manner consistent with one or more of the following intended and stated purposes of the Measure (the "Nature in Neighborhood Approved Purposes"):

- To safeguard water quality in local rivers and streams;
- To protect and enhance fish and wildlife habitats;
- To promote partnerships that protect and enhance nature in neighborhoods; and
- To increase the presence of ecological systems and plant and animal communities in nature deficient and other disadvantaged neighborhoods;

Notwithstanding the forgoing, secondary uses that arise as a result of the Project Area being used primarily in accordance with the Nature in Neighborhood Approved Purposes will be permitted, but only to the extent such secondary uses affect a *de minimis* portion of the Project Area or are necessary in order to facilitate the primary Nature in Neighborhood Approved Purposes. For example, if, as part of a land use review proceeding initiated to obtain the necessary approvals to operate the Project Area consistent with the Nature in Neighborhood Approved Purposes, a portion of the Project Area was required to be dedicated as a road, such road dedication would be a permitted secondary use of the Project Area.

B. Construction of Buildings or Other Capital Improvements

All buildings and other capital improvements constructed on the Property using funds provided by Metro pursuant to the Grant Contract shall be maintained in accordance with the Nature in Neighborhood Approved Purposes. The Local Government Sponsor may not sell, use, or authorize others to use such buildings or improvements in a manner inconsistent with the intended and stated purposes of the Measure.

7. Oregon Constitution and Tax Exempt Bond Covenants

The Local Government Sponsor acknowledges that Metro's source of funds for the Nature in Neighborhoods Capital Grants Program 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 Local Government Sponsor 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 Local Government Sponsor breaches this covenant, the Local Government Sponsor shall undertake whatever remedies are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof, including, without limitation, reimbursing Metro for any Projects funded under this Agreement that resulted in the Local Government Sponsor's breach of its covenant described in this Section.

8. Funding Recognition

The Local Government Sponsor shall recognize in any publications, media presentations, or other presentations referencing the Project produced by or at the direction of the Local Government Sponsor, including, without limitation, any on-site signage, that funding for the Project came from the Metro Natural Areas Bond Measure's Nature in Neighborhoods Capital Grants Program. Such recognition shall comply with the recognition guidelines detailed in the Measure. The Local Government Sponsor shall also permit the Grant Recipient to place at or near the Project's location signage that communicates that funding for the Project came from the Metro Natural Areas Bond Measure's Nature in Neighborhoods Capital Grants Program.

9. Termination for Cause

A. Subject to the notice provisions set forth in Section 9B below, Metro may terminate this Agreement, in full or in part, at any time during the term of the Agreement if Metro reasonably determines that the Local Government Sponsor has failed to comply with any provision of this Agreement and is therefore in default.

B. Prior to terminating this Agreement in accordance with Section 9A above, Metro shall provide the Local Government Sponsor with written notice that describes the reason(s) that Metro has concluded that the Local Government Sponsor is in default and includes a description of the steps that the Local Government Sponsor shall take to cure the default. The Local Government Sponsor shall have 30 days from the date such notice is received of default to cure the default. In the event the Local Government Sponsor does not cure the default within the 30-day period, Metro may terminate all or any part of this Agreement. Following such termination, Metro shall notify the Local Government Sponsor in writing of effective date of the termination.

C. The Local Government Sponsor shall be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default. Following such termination, should Metro later determine or a court find that the Local Government Sponsor was not in default or that the default was excusable (e.g. due to a labor strike, fire, flood, or other event that was not the fault of, or was beyond the control of the Local Government Sponsor) this Agreement shall be reinstated or the parties may agree to treat the termination as a joint termination for convenience whereby the rights of the Local Government Sponsor shall be as set forth below in Section 10.

10. Joint Termination for Convenience

Metro and the Local Government Sponsor may 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 only upon the mutual, written, signed agreement of both Metro and the Local Government Sponsor.

11. Mutual Indemnification

The Local Government Sponsor shall indemnify, defend, 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 Local Government Sponsor or the Local Government Sponsor’s officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30. Metro shall indemnify, defend, and hold the Local Government Sponsor and the Local Government Sponsor’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.

12. Project Records, Audits, and Inspections

A. For the term of this Agreement, the Local Government Sponsor shall maintain comprehensive records and documentation relating to the Project and the Local Government Sponsor’s performance of this Agreement (hereinafter “Project Records”). Project Records shall include all records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models, that are prepared or developed in connection with any Project.

B. In accordance with Section 2 above, the Local Government Sponsor shall maintain all fiscal Project Records in accordance with GAAP. In addition, the Local Government Sponsor shall maintain any other records necessary to clearly document:

(i) The Local Government Sponsor’s performance of its obligations under this Agreement, its compliance with fair contracting and employment programs, and its compliance with Oregon law on the payment of wages and accelerated payment provisions;

(ii) Any claims arising from or relating to (a) the performance of the Local Government Sponsor under this Agreement, (b) Local Government Sponsor’s relationship with the Grant Recipient, or (c) any other contract entered into by the Local Government Sponsor that relates to this Agreement or the Project;

(iii) Any cost and pricing data relating to this Agreement; and

(iv) Payments made to all suppliers and subcontractors engaged in any work for the Local Government Sponsor related to this Agreement or the Project.

C. The Local Government Sponsor shall maintain Project Records for the longer period of either (a) six years from the date the Project is completed, or (b) until the conclusion of any audit, controversy, or litigation that arises out of or is related to this Agreement or the Project and that commences within six years from the date the Project is completed.

D. The Local Government Sponsor shall make Project Records available to Metro and its authorized representatives, including, without limitation, the staff of any Metro department and the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places, regardless of whether litigation has been filed on any claims. If the Project Records are not made available within the boundaries of Metro, the Local Government Sponsor agrees to bear all of the costs incurred by Metro to send its employees, agents, or consultants outside the region to examine, audit, inspect, or copy such records, including, without limitation, the expense of travel, per diem sums, and salary. Such costs paid by the Local Government Sponsor to Metro pursuant to this Section shall not be recoverable costs in any legal proceeding.

E. The Local Government Sponsor authorizes and permits Metro and its authorized representatives, including, without limitation, the staff of any Metro department and the Metro Auditor, to inspect, examine, copy, and audit the books and Project Records of the Local Government Sponsor, including tax returns, financial statements, other financial documents relating to this Agreement or the Project. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provision of Section 12(F) below.

F. The Local Government Sponsor agrees to disclose Project Records requested by Metro and agrees to the admission of such records as evidence in any proceeding between Metro and the Local Government Sponsor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

G. In the event the Project Records establish that the Local Government Sponsor owes Metro any sum of money or that any portion of any claim made by the Local Government

Sponsor against Metro is not warranted, the Local Government Sponsor shall pay all costs incurred by Metro in conducting the audit and inspection.

13. Public Records

All Project Records shall be public records subject to the Oregon Public Records Law, ORS 192.410 to 192.505. Nothing in this Section shall be construed as limiting the Local Government Sponsor's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or as requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.410 to 192.505) or Public Meetings Law (ORS 192.610 to 192.690).

14. Law of Oregon; Public Contracting Provisions

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 187, 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement. Specifically, it is a condition of this Agreement that the Local Government Sponsor and all employers working under this Agreement are subject to and will comply with ORS 656.017 and that, for public works subject to ORS 279C.800 to 279C.870 pertaining to the payment of prevailing wages as regulated by the Oregon Bureau of Labor and Industries, the Local Government Sponsor and every contractor and subcontractor shall comply with all such provisions, including ORS 279C.836 by filing a public works bond with the Construction Contractors Board before starting work on the project, unless exempt under that statute.

15. Notices and Parties' Representatives

Any notices permitted or required by this Agreement shall be addressed to the other party's representative(s) as set forth below and shall be deemed received (a) on the date they are personally delivered, (b) on the date they are sent via facsimile, or (c) on the third day after they are deposited in the United States mail, postage fully prepaid, by certified mail return receipt requested. Either party may change its representative(s) and the contact information for its representative(s) by providing notice in compliance with this Section of this Agreement.

Local Government Sponsor's Designated Representatives:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax \_\_\_\_\_

Metro's Designated Representatives:

Natural Areas Bond Program Manager  
Metro Regional Center  
600 N.E. Grand Ave.  
Portland, OR 97223  
Fax (503)-797-1849

with copy to:

Metro Attorney  
600 N.E. Grand Ave.  
Portland, OR 97223  
Fax (503) 797-1792

16. Assignment

The Local Government Sponsor may not assign any of its responsibilities under this Agreement without prior written consent from Metro, which consent shall not be unreasonably withheld.

17. Severability

If any term or provision in this Agreement shall be adjudged invalid or unenforceable, such adjudication shall not affect the validity or enforceability of the remainder of the Agreement, which remaining terms and provisions shall be valid and be enforced to the fullest extent permitted by law.

18. Entire Agreement; Modifications

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no



understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The Parties, by the signatures below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

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

**[Name of City/County/District]**

**METRO**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Michael Jordan  
Metro Chief Operating Officer

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

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

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

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

APPROVED AS TO FORM BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Paul A. Garrahan  
Senior Assistant Metro Attorney

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

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

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

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

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 09-4050, APPROVING SECOND ROUND FUNDING FOR NATURE IN NEIGHBORHOODS CAPITAL GRANTS**

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Date: August 13, 2009

Prepared by: Kathleen Brennan-Hunter  
503-797-1948  
Mary Rose Navarro  
503-797-1781

#### **Background**

The Nature in Neighborhoods capital grants program is funded by the 2006 natural areas bond measure, approved by voters to protect the region's water quality, fish and wildlife habitat and provide the public with greater access to nature. The Natural Areas program consists of three elements

1. Regional natural area and trail corridor acquisition in the amount of \$168.4 million.
2. Local share program providing \$44 million to cities, counties and park districts on a per capita basis to meet its own needs for acquiring natural areas, restoring habitat, enhancing public access to nature, and designing and constructing trails.
3. Nature in Neighborhoods capital grants program in the amount of \$15 million. Up to \$2.25 million is available annually through the life of the program.

The Nature in Neighborhoods capital grants program is intended to complement the regional and local share elements of the 2006 natural areas bond measure by funding projects that protect and enhance natural resources on public lands at a neighborhood level.

With a required match of at least \$2 for every \$1 in grant funding, the \$15 million available through this program is expected to provide at least \$45 million of investment in the region's nature-based infrastructure.

#### **Eligibility Requirements**

Proposed projects must fulfill the following minimum requirements to be considered:

- The total project cost must be at least \$50,000.
- The project must result in a publicly-owned capital asset within Metro's jurisdictional boundary or the region's urban growth boundary.
- The project must address at least three of the seven key criteria for the grant program.
- The project must demonstrate public and private partners who can and will leverage human and financial resources for the project.
- The project must commit to providing matching resources.

#### **Evaluation Criteria**

Project proposals are evaluated and competitively reviewed based on information provided in the application. Applicants must address how the project meets both the key and supplemental criteria as well as project feasibility factors such and the applicant's ability to implement the project. The key criteria are:

- "Re-nature" neighborhoods by increasing the presence and function of ecological processes.
- "Re-green" urban neighborhoods to enrich peoples' experience of nature and help strengthen a physical connection to the region's ecology.
- Demonstrate multiple benefits for people and natural systems.

- Demonstrate cost-efficient ecological design solutions.
- Increase the region's fish and wildlife inventory.
- Restore and/or improve habitats of concern.
- Provide universal access to the public.

### **Review Process**

The nine-member Grant Review Committee, staffed by Metro, reviews all applications based on the above criteria. The Grant Review Committee engages in a thoughtful and extensive evaluation of each application that included staff assessments, site visits and two Grant Review Committee meetings to arrive at recommendations for funding. The Metro Council decides all final grant awards.

### **Program Funding to Date**

The Capital Grants program was first announced in September of 2007. The Metro Council approved the first round of funding in August 2008 awarding three projects a total of \$389,500. As with any new grant program, early funding decisions set an important precedent. The first three projects funded actively engaged a wide variety of both public and private partners, had benefits that reached beyond the project itself, and are located in nature-deficient neighborhoods.

Since then sixteen letters of interest have been reviewed. Of these letters, six were invited to participate in the final grant application process and five submitted full applications. On June 25, 2009, the Grant Review Committee met to review the final slate of applications and to make a recommendation to the Metro Council.

### **The Recommendation**

The Grant Review Committee recommends the following four projects for funding totaling \$1,003,000 from the Nature in Neighborhoods Capital Grants Program.

- A \$220,000 grant for the Nadaka Nature Park Expansion,
- A \$415,436 grant for Greening the I-205 Corridor,
- A \$334,000 grant for the White Oak Savanna Acquisition, and
- A \$33,686 grant for the Humboldt Learning Garden.

These projects address the goals of the Natural Areas Bond Measure and meet the intent of the Nature in Neighborhoods Capital Grant program because they:

- Increase the presence and function of ecological processes
- Enrich people's experience of nature and strengthen their physical connection to the region's ecology
- Demonstrate benefits beyond the project itself
- Have been initiated and driven by the community
- Engage a diverse array of partners.

These projects are described in detail in Exhibit A to the Resolution.

What the committee found most compelling about these projects is not readily apparent in the project descriptions.

- For the acquisition projects, it was not enough to simply acquire the site. The Grant Review Committee was concerned about the future use and management of the site and looked for assurances that the goals of the Natural Areas Bond Program would be carried out. The jurisdictions sponsoring the two acquisition projects (Gresham and West Linn) have both made a commitment to completing management plans and conducting restoration efforts, either through their own staff or by supporting local community groups.

- While planting trees and native shrubs along the I-205 corridor has ecological benefits, the Grant Review Committee was concerned about the precedent the decision to fund this project would set for other highway right-of-way projects. They did not feel that highway right-of-ways offered the best opportunity to protect and enhance natural resources on public lands at a neighborhood level. What they found most compelling about this project is that it presented an opportunity to document the multiple ways that planting native trees and shrubs can meet ODOT goals such as the reduction of diesel emissions and cost-effective maintenance. In addition, ODOT Region 1 will use Friends of Trees planting standards to improve out-of-date landscaping standards to improve health, survivability and cost effectiveness of all their landscaping projects.
- In regards to community gardens, the decisions illustrate that while the Capital Grants program will not fund project components directly related to community gardens; it is acceptable that community gardens are an incidental component of a project's scope.

## **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 Acquisition and Water Quality Protection" was adopted March 9, 2006.

Ordinance No. 07-1163, "Amending Metro Code Chapter 2.19 to Establish the Nature in Neighborhoods Capital Grants Review Committee, and Declaring an Emergency" was adopted November 1, 2007

Metro Code Section 2.19.230, "Nature in Neighborhoods Capital Grants Review Committee," establishing the committee and prescribing its authority to review capital grants applications and make grant funding recommendations to the Metro Council.

Resolution No. 07-3874, "Confirming the Appointment of the Chair of the Nature in Neighborhoods Capital Grants Review Committee" was adopted December 6, 2007

Resolution No. 07-3879, "Confirming the Appointment of Members to the Nature in Neighborhoods Capital Grants Review Committee" was adopted November 1, 2007

Resolution No. 08-3965, "Approving First Round Funding for Nature in Neighborhoods Capital Grants" was adopted August 7, 2008

Resolution No. 09-4027, "Confirming the Reappointment of Members to the Nature in Neighborhoods Capital Grants Review Committee, Designating the Chair, and Appointing a New Metro Natural Resources Staff Representative" was adopted February 19, 2009.

### **3. Anticipated Effects**

This Resolution awards Nature in Neighborhoods capital grants and begins the individual contract award process for the selected grant applicants. Projects are from one to three years in length.

#### **4. Budget Impacts**

The 2006 Natural Areas Bond authorized spending up to \$15 million toward this program, with no more than \$2.25 million spent in any given fiscal year. This is the second round of grants recommended for funding. The adopted FY 2009-10 budget includes the necessary appropriation authority for reimbursement of these grants.

#### **RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of Resolution No. 09-4050.