



METRO

Agenda

MEETING: METRO COUNCIL
DATE: October 22, 2009
DAY: Thursday
TIME: 2:00 p.m.
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. AUDITOR'S ANNUAL REPORT: BRIEFING Flynn

4. CONSENT AGENDA

4.1 Consideration of Minutes for the October 15, 2009 Metro Council Regular Meeting.

4.2 **Resolution No. 09-4069**, For the Purpose of Updating the Transportation Planning Public Involvement Policy to Conform to Public Involvement Requirements In the Current Federal Transportation Authorization Act.

4.3 **Resolution No. 09-4079**, For the Purpose of Authorizing the Chief Operating Officer to Sell Certain Real Property in the Cooper Mountain Target Area.

4.4 **Resolution No. 09-4080**, For the Purpose of Proclaiming October 24, 2009 As a Global Day of Climate Action and Recognizing the Number 350 as a Message to the Copenhagen Conference on Climate Change.

5. RESOLUTIONS

5.1 **Resolution No. 09-4082**, For the Purpose of Authorizing the Chief Operating Officer to Enter Into An Intergovernmental Agreement With the City of Portland for Management of Natural Areas. Liberty

6. CHIEF OPERATING OFFICER COMMUNICATION

7. COUNCILOR COMMUNICATION

8. EXECUTIVE SESSION TO CONDUCT DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE REAL PROPERTY TRANSACTIONS

ADJOURN

Television schedule for October 22, 2009 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 – Community Access Network www.tvctv.org – (503) 629-8534 2 p.m. Thursday, October 22 (Live)</p>	<p>Portland Channel 30 (CityNet 30) – Portland Community Media www.pcmv.org – (503) 288-1515 8:30 p.m. Sunday, October 25 2 p.m. Monday, October 26</p>
<p>Gresham Channel 30 – MCTV www.mctv.org – (503) 491-7636 2 p.m. Monday, October 26</p>	<p>Washington County Channel 30 – TVC-TV www.tvctv.org – (503) 629-8534 11 p.m. Saturday, October 24 11 p.m. Sunday, October 25 6 a.m. Tuesday, October 27 4 p.m. Wednesday, October 28</p>
<p>Oregon City, Gladstone Channel 28 – Willamette Falls Television www.wftvaccess.com – (503) 650-0275 Call or visit website for program times.</p>	<p>West Linn Channel 30 – Willamette Falls Television www.wftvaccess.com – (503) 650-0275 Call or visit website for program times.</p>

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.

Agenda items may not be considered in the exact order in which they are listed. If you have questions about the agenda, please call the Council Office at (503) 797-1540. Public hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Council Office to be included in the decision record. Documents may be submitted by e-mail, fax, mail or in person at the Council Office. For additional information about testifying before the Metro Council, and for other public comment opportunities, please go to this section of the Metro website www.oregonmetro.gov/participate. For assistance per the American Disabilities Act (ADA), dial Metro’s TDD line (503) 797-1804 or (503) 797-1540 for the Council Office.

Agenda Item Number 3.0

AUDITOR'S ANNUAL REPORT: BRIEFING
PRESENTED BY SUZANNE FLYNN, METRO AUDITOR

Metro Council Meeting
Thursday, October 22, 2009
Metro Council Chamber

ANNUAL REPORT

September 2009

Citizens of the Metro Region,

It has been almost three years since I took office as Metro's Auditor and I am proud of the work that has been completed. Starting this fiscal year, we will begin a new practice and follow up on three of our prior audits to check on progress made. Our purpose will be to identify barriers in completing any recommendations and offer potential solutions. Among our other accomplishments this year:

- The Office completed six audits. Each audit was well received by management and the Metro Council. For a brief description of the audits released, see page 4.
- A total of 54 recommendations were made that, when implemented, will improve the effectiveness and accountability of Metro and MERC programs and the quality of information available to the public.
- In a national competition, the Association of Local Government Auditors awarded our office the 2008 Silver Knighton Award for our Waste Reduction and Outreach audit.
- The first progress report on the new Ethics Line was completed and presented to Council.

I appreciate the support received from the Metro Council and the cooperation extended to us by management and staff. I look forward to continuing our work with the Metro Council, MERC Commission, the Metro Chief Operating Officer, management and staff in finding ways to improve productivity and effectiveness. I also thank citizens who, over the past year, have supported this office's work or provided input for improvement.

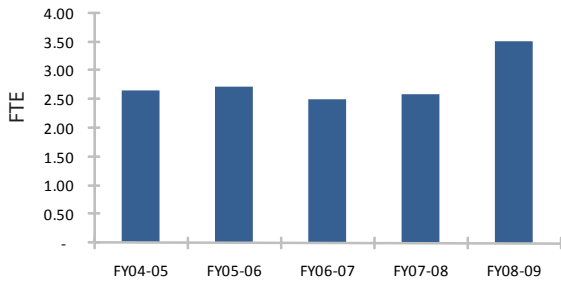
Sincerely,



Suzanne Flynn
Metro Auditor



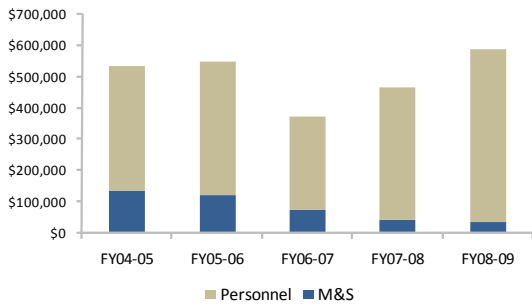
Staffing (full-time equivalency)



This graph represents the actual staffing for the Auditor's Office. The Metro Council approved the addition of a staff auditor beginning in FY09, bringing the number of auditor positions to a total of four. Because of vacancies and leave, the full time equivalency was 3.5 for the fiscal year.



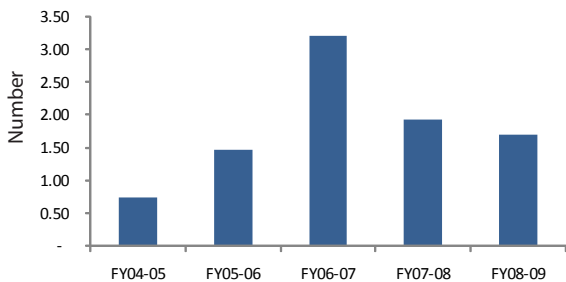
Expenditure (adjusted for inflation)



The addition of a new staff auditor in FY09 is the primary reason for the increase in expenditure from FY08 to FY09. Expenditure on materials and services (M&S) declined in FY07 after the contract for the external auditor was removed from the budget. In FY09, spending on M&S accounted for only 5% of the total.



Audits per FTE



The number of audits that can be completed each year is the result of staff hours available and the audit focus. Vacancies or leave can reduce the hours available. The length of time to complete an audit is affected by the complexity of the subject and size of the program. In FY09, 1.7 audits per FTE were completed, down from 1.9 in FY08. In FY07, the rate was higher because audits required fewer hours to complete and the Office used outside contractors.

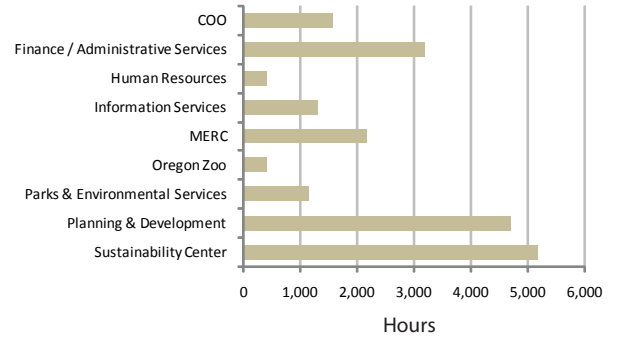




One reason for placing an audit on the schedule is if the department has not been audited extensively or as frequently. The Office is currently working on an audit of the Oregon Zoo and will begin an audit in Fall 2009 of Payroll and Benefits in the Human Resources Department; two areas that have received less attention in the past five years.

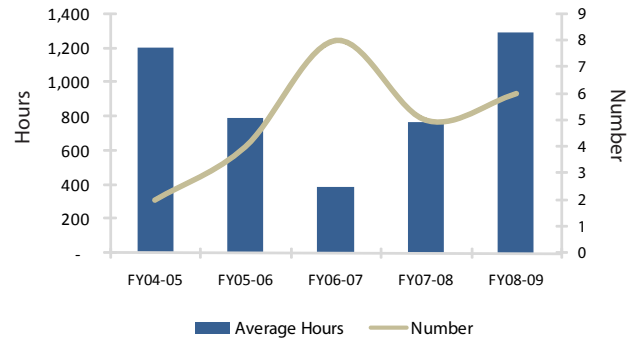


Audit Hours by Department (FY04-FY09)



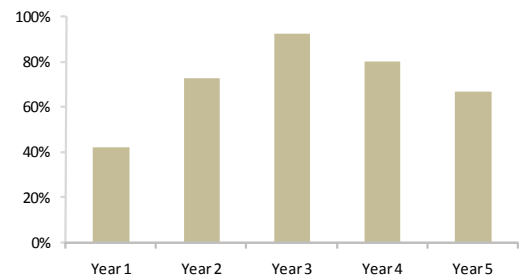
Audits vary in length, depending on their scope and complexity. In FY09, six audits were completed. The hours required to complete those audits ranged from 242 hours to 1,775 hours.

Average Hours per Audit and Number of Audits



Annually, our office surveys auditees, asking them to report on the status of recommendations. This rate represents the percent of recommendations that were implemented from one to five years after the audit was issued. A positive trend would show the percentage increasing as time from audit completion increases. According to the survey completed in January 2009, by the fifth year from an audit's completion, 67%* of recommendations were implemented.

Implementation Rate 1 to 5 years after audit issued



* A lower rate during the fifth year is attributed to recommendations made in FY05 for the Oregon Convention Center expansion audit. No construction has occurred since that time to implement the recommendations.

Audits Completed, Underway and Scheduled



Audits Completed in FY08-09

Below is a summary of audits completed last fiscal year

Transit-oriented Development Program (Aug 2008). The TOD Program was transferred from TriMet in 1996 and is a fairly unique program nationally. The purpose of our audit was to review the management and project selection processes. The Program has undergone changes and completed several projects since its inception, which made this an opportune time to re-examine its objectives and procedures. *(Audit team: King, Lieber)*

Waste Reduction & Outreach (Nov 2008). Our audit took note of the changing environment in determining if this Division of the Department of Solid Waste and Recycling used its resources strategically. Recent events suggested that Metro should realign resources to better support waste prevention activities and we recommended a strategic shift in resources. *(Audit team: Lieber, Taylor, Evans)*

Sustainability Management (Feb 2009). Growing concern about global warming has caused businesses and governments to examine their effect on the environment. The audit looked at Metro's efforts to increase the sustainability of its internal operations. *(Audit team: Evans, King)*

Fleet Management (March 2009). Metro has various methods to provide employees with transportation to its work sites and facilities. The purpose of this audit was to determine if Metro's fleet services were managed efficiently and effectively. *(Auditor: Flynn)*

Procurement Card Program (May 2009). A sampling of procurement card transactions over a two-year period for Metro and MERC was examined. Based upon our review, we were reasonably assured that fraud and abuse did not occur during the period studied. *(Audit team: Wager, King)*

IT Software Controls (June 2009). Management of information technology functions was dispersed between the Information Services Department and departments throughout the agency. Auditors examined three software applications from different service areas at Metro. This audit assessed whether procedures designed to ensure data quality were effective and if key practices were followed to ensure successful IT management. *(Audit team: Evans, Lieber)*

Audits Underway

The following audits are currently underway, with the anticipated audit report release dates noted.

	Start Date	Expected Completion
Oregon Zoo	underway	Nov 2009
Regional Transportation Project Outcomes	underway	Jan 2010
Financial Condition of Metro FY2000-09	underway	May 2010

Future Audits

	Start Date	Expected Completion
Natural Areas Audit follow-up	Nov 2009	Dec 2009
Payroll & Benefits	Nov 2009	April 2010
Public Engagement & Transparency	Jan 2010	July 2010
Budget Performance Measures	March 2010	July 2010
Functional Plan Compliance Audit Follow-up	April 2010	May 2010
Administration / Management of Large Contracts	June 2010	Nov 2010

Audit Staff:

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Read about the Audit Office staff on our website at <http://www.oregonmetro.gov/auditor>

2009 ANNUAL REPORT

Office of the Auditor

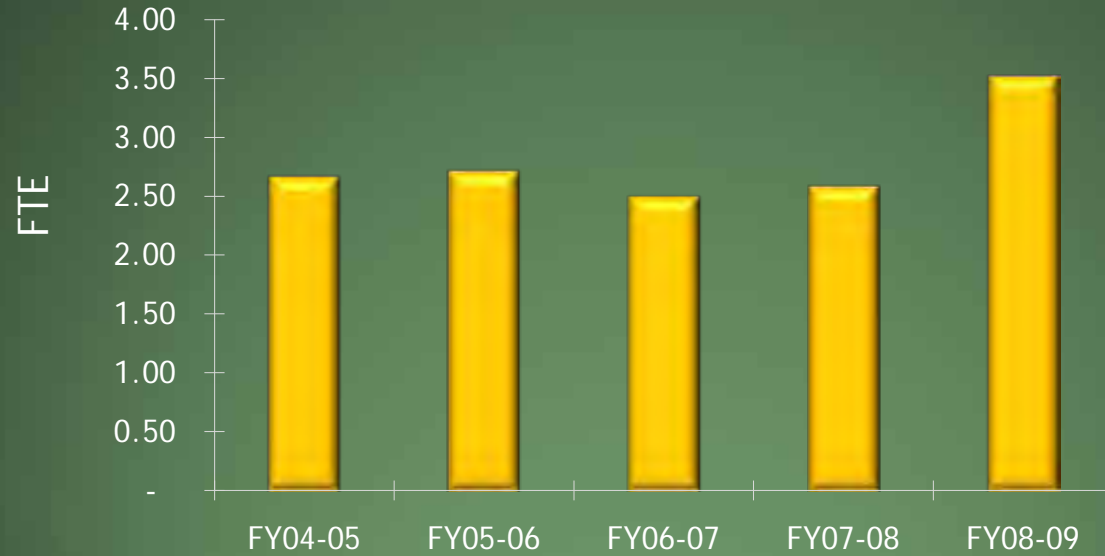
October 2009

Accomplishments

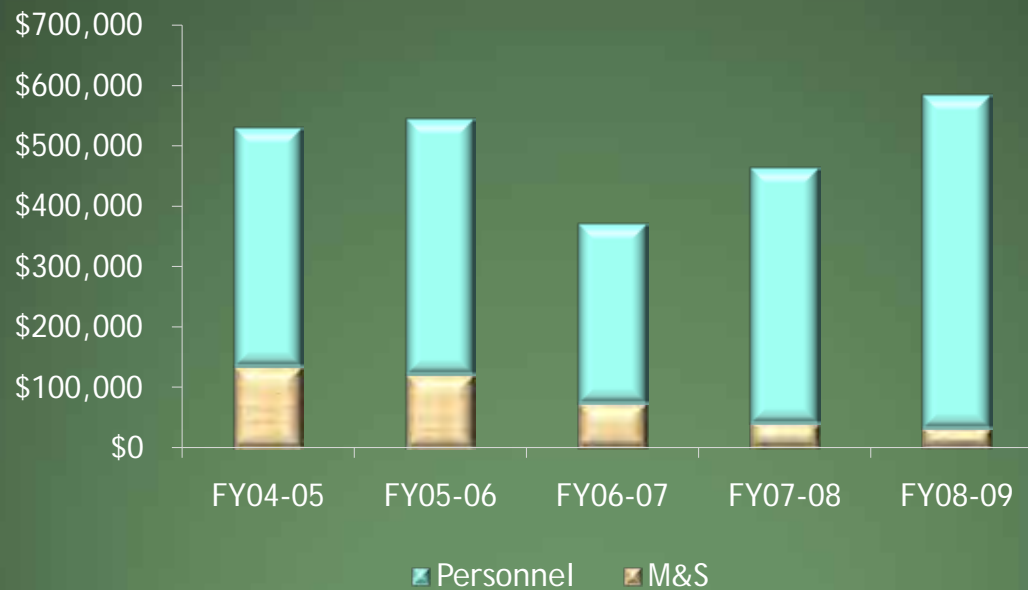
- Completed six audits
- Won national recognition for Waste Reduction & Outreach Audit
- First annual report on Ethics Line
- Placed first follow-up audits on Audit Schedule

Staffing

(Full-Time Equivalency)



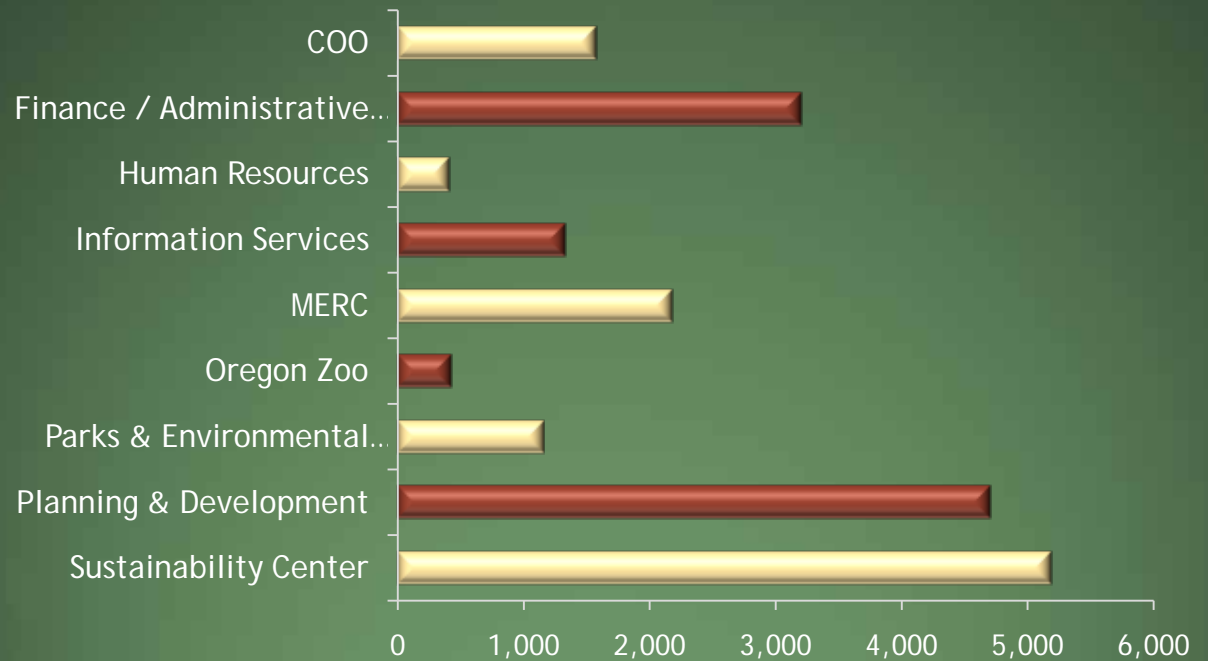
Expenditure (adjusted for inflation)



Audits per FTE



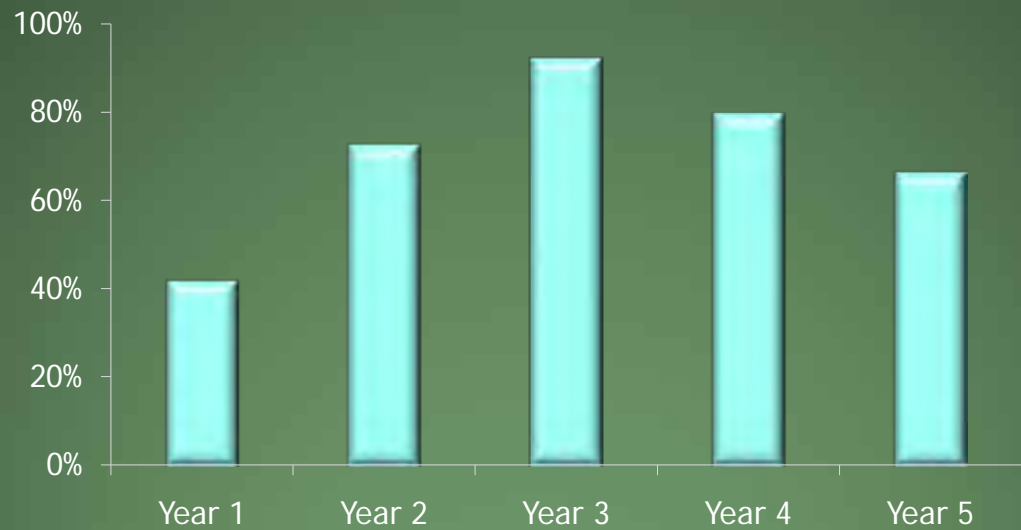
Audit hours by Department



Average Hours per Audit & Number of Audits



Recommendation Implementation Rate (1 to 5 years after audit issued)



Audits Underway

Audit Title	Expected Completion
Oregon Zoo	Nov 2009
Regional Transportation Project Outcomes	Jan 2010
Financial Condition FY00-09	May 2010

Future Audits

Audit Title	Start Date	Expected Completion
Natural Areas 2007 Audit Follow-up	Nov 2009	Dec 2009
Payroll & Benefits	Nov 2009	April 2010
Public Engagement & Transparency	Jan 2010	July 2010
Budget Performance Measures	March 2010	July 2010
Functional Plan Compliance 2008 Audit Follow-up	April 2010	May 2010
Administration/Management of Large Contracts	June 2010	Nov 2010

Questions?

Agenda Item Number 4.1

Consideration of Minutes for the October 15, 2009 Metro Council Regular Meeting.

Consent Agenda

Metro Council Meeting
Thursday, October 22, 2009
Metro Council Chamber

Resolution No. 09-4069, For the Purpose of Updating the Transportation Planning Public Involvement Policy to Conform to Public Involvement Requirements In the Current Federal Transportation Authorization Act.

Consent Agenda

Metro Council Meeting
Thursday, October 22, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF UPDATING THE)	RESOLUTION NO. 09- 4069
TRANSPORTATION PLANNING PUBLIC)	
INVOLVEMENT POLICY TO)	Introduced by Michael Jordan, with
CONFORM TO PUBLIC INVOLVEMENT)	Concurrence of David Bragdon
REQUIREMENTS IN THE CURRENT FEDERAL)	
TRANSPORTATION AUTHORIZATION ACT)	

WHEREAS, federal transportation legislation requires urban areas, through a Metropolitan Planning Organization (MPO), to develop and implement continuing and comprehensive Transportation planning processes that include a public involvement process that is periodically reviewed and updated; and

WHEREAS, the last review and update occurred in 2004; and

WHEREAS, the most current transportation authorization act, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), includes new and enhanced public involvement requirements; and

WHEREAS, the first State of Oregon land use goal is public involvement; and

WHEREAS, Metro supports the goals of providing complete information, timely public notice and early and continuing involvement of the public in the development and review of Metro’s transportation plans, programs and projects and constantly seeks ways to improve public involvement processes; and

WHEREAS, Metro involved the Metro Committee on Citizen Involvement (MCCI) in reviewing the public involvement policy; and

WHEREAS Metro provided for a 45-day public comment period between May 21 and July 6, 2009, during which time the draft policy was posted on the Metro’s web site and electronically distributed to the cities and counties within Metro’s jurisdictional boundary as well as to individuals and groups on all relevant interested parties lists;

NOW THEREFORE, BE IT RESOLVED, by the Metro Council that the Public Involvement Policy for Transportation Planning, as revised in Exhibit A attached and incorporated into this resolution, becomes the practice in Metro's overall regional transportation planning process.

ADOPTED by the Metro Council this 10th day of September, 2009.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

www.oregonmetro.gov

Public involvement policy for transportation planning

DRAFT

July 2009

Metro's web site: www.oregonmetro.gov

Metro is the federally mandated metropolitan planning organization designated by the governor to develop an overall transportation plan and to allocate federal funds for the region. The Joint Policy Advisory Committee on Transportation (JPACT) is a 17-member committee that provides a forum for elected officials and representatives of agencies involved in transportation to evaluate transportation needs in the region and to make recommendations to the Metro Council. The established decision-making process assures a well-balanced regional transportation system and involves local elected officials directly in decisions that help the Metro Council develop regional transportation policies, including allocating federal transportation funds.

NONDISCRIMINATION NOTICE TO THE PUBLIC

Metro hereby gives public notice that it is the policy of the Metro Council to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, Executive Order 12898 on Environmental Justice and related statutes and regulations in all programs and activities. Title VI requires that no person in the United States of America shall, on the grounds of race, color, sex, or national origin, be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Metro receives federal financial assistance. Any person who believes they have been aggrieved by an unlawful discriminatory practice under Title VI has a right to file a formal complaint with Metro. Any such complaint must be in writing and filed with the Metro's Title VI Coordinator within one hundred eighty (180) days following the date of the alleged discriminatory occurrence. For more information, or to obtain a Title VI Discrimination Complaint Form, see the web site at www.oregonmetro.gov or call 503-797-1536.

1.0 INTRODUCTION

This document presents policies and procedures for public involvement to ensure

- that Metro, as the federally mandated, state designated Metropolitan Planning Organization (MPO) for the Portland metropolitan region, meets the spirit and intent of applicable federal and state public involvement laws, regulations and authorities contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU)ⁱ and the guidance in Oregon state planning goal 1: citizen involvementⁱⁱ
- that Metro, as a recipient of federal dollars, promotes equity and environmental justice to meet the spirit and intent of Title VI of the Civil Rights Act of 1964ⁱⁱⁱ, The Civil Rights Restoration ACT of 1987, ^{iv}Executive Order 12898 on Environmental Justice^v; Executive Order 13166 on Limited English Proficiency^{vi}; the National Environmental Policy Act of 1969 (NEPA) ^{vii}; and the Americans with Disabilities Act (ADA)^{viii}
- that regional transportation plans and projects reflect public priorities and values
- transparency and accountability in Metro’s planning and decision-making and promote excellence in regional planning.

Scope

The policies in this document apply to all development of and updates to these policies and to Metro administered transportation planning and investments, including updates to the Regional Transportation Plan (RTP), the Metropolitan Transportation Improvement Program (MTIP) and corridor planning.

For jurisdictions and agencies to receive federal funding through Metro-administered programs or projects, they must certify that they have conducted appropriate public involvement.

Schedule review and revision

These policies will be reviewed at least every four years and revised to reflect changes in federal or state public involvement requirements. A 45-day public comment period will be held prior to adoption of new public involvement policies or major revisions to existing policies.^{ix}

Definitions

A glossary of terms as they are used in this context is included at the end of this document.

2.0 METRO COMMITTEE FOR CITIZEN INVOLVEMENT

The Metro Committee for Citizen Involvement (MCCI) was established under Metro's home-rule charter in 1992 to assist with the development, implementation and evaluation of Metro's citizen involvement program and advise on how to best involve residents in regional planning activities. This committee also fulfills the guideline in state planning goal 1, which calls for regional agencies to use existing local citizen involvement programs established by counties and cities.

MCCI reviews and comments on public involvement plans agency-wide, including those developed for transportation plans and projects. The composition of the committee is not specified in the Metro charter, but state goal 1 (above) requires that the committee include representatives of the geographic areas of interest in land-use decisions. MCCI currently recruits representatives from county citizen involvement organizations, representatives from areas outside Metro's boundary, residents from Council districts in region, and at-large representatives. Recruitment is openly publicized. Terms are for two years, and members have the option of serving up to three terms.

3.0 METRO PUBLIC INVOLVEMENT POLICIES AND PROCEDURES

Metro public involvement policies reflect requirements in SAFETEA-LU; The National Environmental Policy Act of 1969 (NEPA), Title VI of the 1964 Civil Rights Act; Executive Order 12898 on Environmental Justice; Executive Order 13166 on Limited English Proficiency; the Americans with Disabilities Act (ADA); and Oregon state planning goal 1: public involvement.

SAFETEA-LU expanded public involvement requirements first introduced in 1991 with the Intermodal Surface Transportation Equity Act (ISTEA) and strengthened in 1998 in the Transportation Equity Act for the 21st Century (TEA-21). The expanded requirements added the need for early and continuous public involvement in planning, and for information to be presented in ways that make it understandable and accessible to the general public.

The National Environmental Policy Act of 1969 (NEPA) established a national policy for the protection of the environment. NEPA requires the consideration of potential impacts on social and natural resources during transportation decision-making.

The Americans with Disabilities Act (ADA) requires reasonable efforts be made to accommodate citizens with disabilities who wish to attend public meetings.

Title VI of the 1964 Civil Rights Act provides that no person in the United States shall, on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of or otherwise be subjected to discrimination under any program or activity receiving federal financial assistance. Executive Order 12898 on Environmental Justice requires equity in distribution of benefits and burdens of transportation plans and projects, and Executive Order 13166 on Limited English Proficiency requires proactive efforts to engage people with limited English proficiency in the planning process.

Oregon state planning goal 1: citizen involvement requires each governing body to adopt and publicize a program for citizen involvement that is appropriate to the scale of its planning effort. The public involvement program should allow for continuity of information and enable citizens to understand the issues. Goal 1 also calls for regional agencies to use existing local citizen involvement programs established by counties and cities.

These Federal and state requirements form the foundation of Metro public involvement policies with certain procedures required to implement those policies. In addition to the required procedures, Metro may recommend additional activities to help promote more meaningful or effective involvement, greater transparency and accountability in decision-making, and excellence in regional planning.

3.1 Early and continuous public involvement^{xxi}

Required procedures

Plans and programs: Metro will involve the public early and continuously throughout the planning process in developing major plans and programs, including the RTP, the Metropolitan Transportation Improvement Program (MTIP), corridor plans, and high-capacity transit lines plans.

Draft Environmental Impact Statement (DEIS): Metro will involve the public early in developing the DEIS, beginning the Purpose and Need statement and including a formal public comment opportunity.^{xii}

Recommended procedures

Early contact with stakeholders: Stakeholders in the planning process should be identified at the beginning of the planning process and notified of key decision points or opportunities to provide input.

3.2 Reasonable access to information

Required procedures

Access to information: The public will be provided reasonable access to technical information, and public information will be made available in electronically assessable formats, such as the World Wide Web.

Visualization techniques: Metro will employ electronic methods and visualization techniques, such as maps and charts, to provide information to the public. Metro will maintain a project web site where current information on major projects will be posted.

Languages other than English: If a plan or project significantly affects a population known to speak a language other than English, key information about the plan or project, the effect on the area, schedule of events and notices of public involvement opportunities will be made available in that language. Significance can refer either to the impact of the project or to the fact that the project will affect an area in which 5% or more of the people speak another language.

Contact information: Contact information for a staff person who can answer questions and provide more information will be included in all public notices and major publications.

Recommended procedures

Plain language: Information that the public needs to understand a program, project or plan should be written in plain language, with unusual terms defined and a minimum of jargon.

Interactivity: Where appropriate, information should be presented in an interactive format.

3.3 Access to public meetings

Required procedures

Convenient times and locations: All Metro's public meetings will be held at convenient times and in locations that meet the requirements of the Americans with Disabilities

Recommended procedures

Accessible by public transportation: All Metro's public meetings should be held in locations accessible by public transportation. Notices of those meetings should include information about the transit lines that serve those locations as well as the TriMet web address for route-planning and scheduling information.

3.4 Timely information

Required procedures

Timely manner: Information about projects and plans will be provided to the general public, affected public agencies, representatives of transportation agencies, private sector transportation entities and other interested parties, including segments of the community affected by transportation plans, programs, and projects in a timely manner.

3.5 Adequate public notice^{xiii}

Required procedures

Timing of notices: Notice of public involvement opportunities will be provided with adequate time for public review and comment prior to key decisions. Notice of RTP, MTIP and DEIS public comment opportunities must be published on Metro's web site 45 days prior to the opening of the opportunity.

Notice to minority, low-income, and people with limited English proficiency: Staff must take steps to notify minority and low-income people and people with limited English proficiency of comment opportunities. Notices must describe how to request translators, interpreters or services for those with a hearing disability.

Recommended procedures

Notice to organizations: Interested organizations that hold monthly meetings should receive notice of RTP, MTIP and DEIS public involvement opportunities 45 days prior to the opportunity, to allow time for one meeting cycle to occur where members can be informed of the opportunity. The general public should receive notice at least one week before the opportunity.

Notice content: At a minimum, notices should name the project, plan or program; describe how to participate in the opportunity at hand; provide the location of events or how and where to submit comments; and provide the beginning and ending times and dates for all public comment opportunities.

3.6 Public comment opportunities

Required procedures

General: Public comment will be sought prior to adoption of a final RTP, the allocation of funding to projects in the MTIP process and public involvement policies and on major changes or amendments to these plans and policies.

Public involvement policies: The public comment period on new or revised public involvement policies shall be at least 45 days.

RTP and MTIP: The public comment period on a draft RTP or MTIP and major amendments to the RTP or MTIP shall be at least 30 days for transportation plans and 45 days for those that involve land-use actions that trigger requirements for local plan updates. If the final plan or project differs significantly from the review draft, a second public comment opportunity must be offered.

RTP and MTIP Air-quality conformity: The draft conformity determination of the RTP and MTIP and supporting documentation shall be made available for a 30-day public comment period. Written notice shall be made of the availability of this material, and the material shall be provided to anyone who requests it. Comments made during the comment period shall be made part of the final decision record.^{xiv}

DEIS: The lead agency must involve participating agencies and the public in developing the DEIS purpose and need statement. Timing of the involvement is flexible,--i.e., it may take place early in the process before the statement is adopted or during the environmental review. The completed DEIS must offer a public comment opportunity. Unless the lead agency and all participating agencies agree to a longer comment period, the length of the comment period may not exceed *60 days* beginning on the day the document is published in the *Federal Register*.

Recommended procedures

Early input on DEIS: Input should be sought from participating agencies and the public earlier rather than later, and prior to adopting the statement of purpose and need. Although later review of purpose and need is acceptable, early involvement is strongly encouraged as it allows for any discrepancies to be addressed early in the process.

Decisions with short timelines: When a decision has a very short timeline over which Metro has no control, notice will be sent as soon as possible after learning of the opportunity, and the length of the comment period shall be as long as possible. *This section shall not apply to major amendments made to the RTP.*

3.7 Consideration of public comments

Required procedures

Consideration of public comment: Decision makers will consider public comment in all major decisions related to adoption of regional transportation plans and programs. Metro will compile and respond to or summarize as appropriate, substantive comments submitted on the draft RTP, MTIP, and DEIS.

Record of public comment: A public comment report on major transportation plans, programs and projects will be compiled and made available to decision-makers and the public. The public comments received during formal, specified public comment periods will be archived and retained for a period of time specified by an official retention schedule that meets federal, state and regional requirements.

Recommended procedures

Availability of public comment records: The full text of public comments will be made available to the public in electronic formats, with hard copies provided upon request.

3.8 Consideration of the needs of traditionally underserved

Required procedures

Proactive consideration: The needs of populations traditionally underserved in the transportation arena, including low-income and minority people and people with limited English proficiency, will be considered in the planning process. Metro will seek input from minority and low-income populations in developing major transportation plans and programs, including proactive recruitment for Citizen Advisory Committees and, as appropriate, for

technical or policy advisory committees that are integral to the planning process. The needs of those populations will be explicitly considered in developing those plans and programs.

Interpreter and translator services: Services for people with hearing impairments or limited English proficiency will be provided at any public meeting with 24-hour advance notice.

Recommended procedures

Proactive notification and recruitment: Recruitment notices for community members on advisory committees that are integral to transportation plan development and decision-making and notices of public involvement opportunities will be sent to media outlets that serve minority populations and those with limited English proficiency.

3.9 Evaluation of public involvement activities

Required procedures

Activities to be evaluated: The public involvement program associated with each major plan, program or project will be evaluated for effectiveness and include an evaluation of the outreach to underrepresented populations as defined by Title VI and Executive Order 12898 on Environmental Justice. Metro's public involvement procedures will be reviewed by FHWA and the FTA during certification reviews.^{xv} Metro shall collect demographic information for major comment opportunities and public events and analyze the results at least annually.

Timing of evaluation: To ensure full and open access to all, Metro will review its public involvement efforts at least every four years, when the public involvement policies and procedures are reviewed and updated.

Recommended procedures

Timing of evaluation: At the close of major public involvement efforts, the success of those efforts should be evaluated for effectiveness using, for example, checklists, surveys or before and after tests. If the effort involved collection of demographic information, that information should be analyzed and the results captured in order to improve the next public involvement effort.

3.10 Coordination with state public involvement efforts

Required procedures

Coordination with state public involvement: Metro will coordinate public involvement efforts with those of the Oregon Department of Transportation whenever possible. Coordination may include holding joint open houses or hearings, forming joint citizen advisory committees, or developing joint public notices.

Recommended procedures

Joint public events: Metro will coordinate public events with ODOT in developing the MTIP and State TIP when timelines and schedules coincide. Coordination includes issuing joint public notices, holding joint public open houses and offering joint public hearings. Regional transit agencies may also be invited to participate in open houses where transit is a key part of the plan or program.

3.11 Development and maintenance of a public participation policy

Required procedures

Consultation with interested parties: Metro will develop and update public involvement policies in consultation with interested parties as defined in the current federal transportation authorization. Interested parties as defined in SAFETEA-LU include the general public, affected public agencies, public transportation employees, private transportation providers, public transportation users, freight shippers, users of bicycle and pedestrian facilities, disabled, and others as appropriate to the plan or project.

Policy review and updating: Those policies will be reviewed and updated every four years or sooner if there are major changes in federal or state requirements.

Recommended procedures

Plain language: Policies should be succinct and clearly written in plain language, with a minimum of jargon. A glossary should be included to define unfamiliar terms.

Numbering: Policy elements should be numbered for easy reference.

3.12 Development of public involvement plans

Required procedures

Public participation plans for major plans, projects and programs: SAFETEA-LU stipulates that MPOs must develop and utilize a public participation plan prior to adopting the RTP and the MTIP. Those public participation plans must be developed in consultation with interested parties, and the public must have input. In keeping with this requirement and the requirement for early and often involvement of the public in major planning projects, Metro will develop a public involvement plan before beginning the RTP or the MTIP in consultation with interested parties. The plan will be reviewed by the Metro Committee for Citizen Involvement (MCCI) as a representative of the general public.

Recommended procedures

Public review of plans: Public involvement plans for major plans, programs and projects, such as the RTP, the MTIP and corridor plans and projects, should be reviewed by interested parties and the general public in addition to MCCI.

Content of plans: Plans should list the types of public involvement opportunities that will be offered (e.g., citizen advisory committees, workshops, open houses, comment periods and formal public hearings), when the opportunities will be offered, strategies for addressing the concerns of minority and low-income populations, and key decision points where public comment will be sought.

Citizen Advisory Committee (CAC): If a CAC is used, it should be recruited as early as possible in the planning process. Application and service requirements should be widely disseminated. Major stakeholders and/or geographic should be represented. Special effort should be made to recruit people who can represent the interests of minority, low-income, elderly and disabled people.

GLOSSARY

Corridor—A transportation corridor is a swath of land in which at least one main line for transportation, such as a road to rail line, has been built. New transport lines may be built in existing corridors to minimize pollution or supplement mobility. Corridor plans may include plans for new light rail lines, parallel arterials or multi-use paths.

DEIS and FEIS—Draft and Final Environmental Impact Statements required by the National Environmental Policy Act for federal government agency actions that significantly affect the quality of the human environment. The document has four parts:

- (1) statement of the Purpose and Need
- (2) description of the Affected Environment,
- (3) description of the Range of Alternatives
- (4) description of the environmental impacts of the alternatives

The lead agency is required to seek public input on the Purpose and Need statement and seek public comment on the completed DEIS, but is generally not required to seek public comment on the FEIS.

Federal Register—Official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents. The *Federal Register* is published by the Office of the Federal Register, National Archives and Records Administration (NARA).

High capacity transit (HCT)—Public transit that has an exclusive right of way, a non-exclusive right of way or a combination and that make fewer stops, travels at higher speeds and carries more people than local service transit. Examples include light rail, commuter rail and bus rapid transit.

Major amendment (to the RTP or MTIP)—Changes to an RTP or MTIP that involve additions or deletions of projects or a significant change in scope of the project location or function. The addition of project details, minor elements or the adjustment of funding levels to previously approved projects or programs are not considered major amendments.

The following types of projects are *not* considered a major amendment: Bridge repair or replacement projects less than \$5 million in total cost; Preservation projects less than \$5 million on the Interstate system or less than \$2 million on the arterial system; Operations projects less than \$2 million; bicycle or pedestrian projects less than \$500,000; general planning or corridor studies less than \$200,000; appropriations for projects previously identified and approved by Metro resolution as regional priorities for federal earmarks; grants awarded through the ODOT Public Transit Division discretionary grant program; and emergency additions where imminent public safety hazard is involved. Additionally, projects that are exempt from air quality conformity analysis by federal rule or are determined to not be regionally significant for air quality purposes are not considered major amendments.

Metropolitan Planning Organization (MPO)—A federally mandated, state-designated transportation policy-making organization made up of representatives from local government and transportation authorities Urbanized areas with populations greater than 50,000 must have an MPO in order to receive federal transportation funding.^{xvi}

Metropolitan Transportation Improvement Program (TIP)—The federally required documentation of transportation investments scheduled for a metropolitan region during a four-year cycle. In the Portland metropolitan area, the MTIP includes federal funding for

transportation projects and programs administered by the Oregon Department of Transportation, Metro, TriMet and SMART.

Public involvement plan—A plan for involving key stakeholders and the general public in developing a specific, time-limited project, program, or plan. Public involvement plans identify key stakeholders, communication media, public involvement strategies and a timetable.

Public involvement policy—An organization’s overarching public involvement guidelines, such as those in this document. In this document, the public involvement policies are distinguished from public involvement plans by their general rather than specific application.

Regional Transportation Plan (RTP)— A plan that MPOs are required to develop for their metropolitan area and update every four years. The plan includes policies to guide the design of the transportation system and transportation system plan that looks ahead at least 20 years. Federal regulations may refer to this as the Metropolitan Transportation Plan.

Stakeholders—Individuals and organizations with an interest in or who are affected by the transportation planning process. Stakeholders include federal, state, regional and local officials, jurisdictions, institutions, community groups, transit operators, freight companies, shippers, the general public. SAFETEA-LU specifically names bicycle, pedestrian and freight interests and people who have traditionally been underrepresented in the planning process as stakeholders in transportation planning process.

-
- i SAFETEA-LU emphasizes strong planning processes and public involvement.
- ii Oregon's Statewide Planning Goals and Guidelines, goal 1: citizen involvement OAR 660-015-0000(1).
- iii Title VI of the Civil Rights Act of 1964 declares that no person shall be excluded from participating in any program receiving federal assistance on the basis of race, color or national origin.
- iv The Civil Rights Restoration Act of 1987 restored the broad application of the Civil Rights Act of 1964 to include the entire agency or organization that receives federal funding as well as sub-recipients and contractors, 20 USC 1681.
- v Executive Order 12898 on Environmental Justice requires mitigation or avoidance of actions that disproportionately and adversely affect minority and low income populations.
- vi Executive Order 13166 on Limited English Proficiency requires providing access to services for people with limited English proficiency.
- vii National Environmental Policy Act (NEPA) requires consideration of impacts on human environments.
- viii 28 CFR 36 Americans with Disabilities Act requires government programs to be accessible to people with disabilities.
- ix 23 CFR part 450, sub-part C, (i) requires a 45-day public comment period prior to adoption of public involvement process.
- x 23 CFR 450.210 and 450.316 requires early and continuous public involvement.
- xi FHWA/FTA Interim Policy on Public Involvement requires effective public involvement processes custom tailored to local conditions.
- xii 23 CFR 771 Environmental Impact and Related Procedures requires early coordination and public involvement in project development.
- xiii 23 USC 135 Provides for reasonable access to comment on proposed plans .
- xiv State Conformity rule 340-252-0060 describes required consultations on air-quality determinations, including required public involvement.
- xv 23 CFR part 450, subpart C, (x) addresses FHWA and FTA evaluation of the effectiveness of public involvement procedures as part of their MPO certification review.
- xvi 23 USC 134 and 135 govern statewide and metropolitan transportation planning.



Metro | *People places. Open spaces.*

Clean air and clean water do not stop at city limits or county lines. Neither does the need for jobs, a thriving economy and good transportation choices for people and businesses in our region. Voters have asked Metro to help with the challenges that cross those lines and affect the 25 cities and three counties in the Portland metropolitan area.

A regional approach simply makes sense when it comes to protecting open space, caring for parks, planning for the best use of land, managing garbage disposal and increasing recycling. Metro oversees world-class facilities such as the Oregon Zoo, which contributes to conservation and education, and the Oregon Convention Center, which benefits the region's economy.

Metro representatives

Metro Council President – David Bragdon

Metro Councilors

Rod Park, District 1

Carlotta Collette, District 2

Carl Hosticka, District 3

Kathryn Harrington, District 4

Rex Burkholder, District 5

Robert Liberty, District 6

Auditor – Suzanne Flynn

[www.oregon**metro.gov**](http://www.oregonmetro.gov)

Metro

600 NE Grand Ave.
Portland, OR 97232-2736
503-797-1700

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4069, FOR THE PURPOSE OF UPDATING THE TRANSPORTATION PLANNING PUBLIC INVOLVEMENT POLICY TO CONFORM TO PUBLIC INVOLVEMENT REQUIREMENTS IN THE CURRENT FEDERAL TRANSPORTATION AUTHORIZATION ACT

Date: July 29, 2009

Prepared by: Pat Emmerson
503-797-1551

BACKGROUND

The first Transportation Planning Public Involvement Policy was adopted by the Metro Council in July 1995, in response to new requirements in the federal transportation funding legislation. Those policies called for review and revision every three years. The last review and revision occurred in 2004. This revision was undertaken to clarify policy requirements as distinguished from recommendations; to meet enhanced public involvement requirements in the most recent transportation authorization, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); and to address provisions in Metro's Title VI plan that pertain to public involvement of and outreach to minorities and other groups who have been historically under-represented in transportation decision-making.

Exhibit A to the resolution incorporates revisions identified during a periodic review of the Transportation Planning Public Involvement Policy. Revisions include:

- Simplifying the policy to clearly distinguish actions that are required by state or federal law from those recommended by Metro.
- Adding language that acknowledges requirements contained in the current transportation authorization act, SAFETEA-LU, directing staff to employ creative means to reach the public.
- Clarifying language that acknowledges requirements contained in Title VI of the 1984 Civil Rights Act and related executive orders, directing staff to proactively involve minority, low-income, and people with limited English proficiency who have been historically under-represented in the transportation planning and decision-making process.
- Eliminating language that named specific communication media to be used for notification and outreach purposes, in recognition of the fact that communication technology is changing rapidly.
- Removing the public involvement checklist for local jurisdictions from policy, but offering it as a checklist for local jurisdictions to use as the basis of a public involvement certification letter required for projects to be eligible for regional flexible funding (Attachment 1). Regional flexible funding is that portion of federal Congestion Mitigation and Air Quality/Surface Transportation Program funding that is administered in the Portland metropolitan region by Metro.

The revised Transportation Planning Public Involvement Policy was posted for a 45-day public review and comment period from May 21 to July 6, 2009. Notice of the public comment period and availability of the policy was posted on Metro's web site and distributed electronically to public affairs specialists in the cities and counties within Metro's jurisdiction, the Oregon Department of Transportation, the Federal Highway Administration, the Federal Transit Administration, and individuals and organizations on Metro's e-notification lists. The draft policy document was presented to the Metro Committee for Citizen Involvement (MCCI) for review prior to releasing it for public comment. MCCI members provided

comments on the policy, which were incorporated prior to public release of the draft. No additional comments on the draft public involvement policies were received during the comment period.

ANALYSIS/INFORMATION

Known Opposition

None

Legal Antecedents

Previous related Metro Council actions include:

- Metro Resolution 95-2174A, For the Purpose of Adopting Public Involvement Policies For Regional Transportation Planning and For Local Jurisdictions Submitting Projects to Metro For RTP and MTIP Consideration, adopted on July 27, 1995
- Metro Resolution 04-3450, For the Purpose of Revising the Transportation Planning Public Involvement Policy to Update the Policy and to Consolidate Metro and Local Government Standards, adopted June 10, 2004

Anticipated Effects

Improved public involvement procedures for Metro transportation planning, Metro-administered funding, and Metro-led projects; clearer public involvement expectations and improved accountability for local projects applying for federal funding that is administered by Metro.

Budget Impacts

None.

RECOMMENDED ACTION

Adopt Resolution 09-4069.

Regional flexible funding call for projects

Local public involvement checklist

This checklist is intended to guide local jurisdictions in the public involvement activities to be carried out on the local level for local projects to be eligible for a regional flexible funding allocation. The flexible funding allocation comes from the portion of federal Congestion Mitigation and Air Quality/Surface Transportation Program funding that is administered in the Portland metropolitan region by Metro and listed in the Metropolitan Transportation Improvement Program.

The statement that follows the checklist must be signed by the local elected body or comparable authority certifying that a public involvement process (summarized in the statement) has taken place. The signed statement must accompany regional flexible funding project application packages that are submitted to Metro.

Project sponsors should retain a file of the information on their public involvement program (shown in *italic*) in the event of a dispute.

Checklist

1. At the beginning of the transportation plan or program, a public involvement program was developed and applied that met the breadth and scope of the plan/program. Public participation was broad-based, with early and continuing opportunities throughout the plan/program's lifetime.

Keep copy of applicable public involvement plan and/or procedures.

2. Appropriate interested and affected groups were identified, and the list was updated as needed.

Maintain list of interested and affected parties.

3. Announced the initiation of the plan/program and solicited initial input. If the plan/ program's schedule allowed, neighborhood associations, citizen planning organizations and other interest groups were notified 45 calendar days prior to (1) the public meeting or other activity used to kick off public involvement for the plan/program; and (2) the initial decision on the scope and alternatives to be studied.

Keep descriptions of initial opportunities to involve the public and to announce the project's initiation. Keep descriptions of the tools or strategies used to attract interest and obtain initial input.

4. Provided reasonable notification of key decision points and opportunities for public involvement in the planning and programming process. Neighborhood associations, citizen planning organizations and other interest groups were notified as early as possible.

Keep examples of how the public was notified of key decision points and public involvement opportunities, including notices and dated examples. For announcements sent by mail, document the number of persons/groups on mailing list.

5. Provided a forum for timely, accessible input throughout the lifetime of the plan/program.

Keep descriptions of opportunities for ongoing public involvement in the plan/program, including citizen advisory committees. For key public meetings, this includes the date, location and attendance.

6. Provided opportunity for input in reviewing screening and prioritization criteria.

Keep descriptions of opportunities for public involvement in reviewing screening and prioritization criteria. For key public meetings, this includes the date, location and attendance. For surveys, this includes the number received.

7. Provided opportunity for review/comment on staff recommendations.

Keep descriptions of opportunities for public review of staff recommendations. For key public meetings, this includes the date, location and attendance. For surveys, this includes the number received.

8. Considered and responded to public comments and questions. As appropriate, the draft documents and/or recommendations were revised based on public input.

Keep record of comments received and response provided.

9. Provided adequate notification of final adoption of the plan or program. If the plan or program's schedule allows, the local jurisdiction should notify neighborhood associations, citizen participation organizations and other interest groups 45 calendar days prior to the adoption date. A follow-up notice should be distributed prior to the event to provide more detailed information.

Keep descriptions of the notifications, including dated examples. For announcements sent by mail, keep descriptions and include number of persons/groups on mailing list.

Regional flexible funding call for projects

Public involvement certification statement

Summarize (maximum 2 pages) the key elements of the public involvement process for this plan, program or group of projects.

(project sponsor/agency/jurisdiction) certifies the public involvement process summarized above.

(signed)

(date)

Agenda Item Number 4.3

Resolution No. 09-4079, For the Purpose of Authorizing the Chief Operating Officer to Sell Certain Real Property in the Cooper Mountain Target Area.

Consent Agenda

Metro Council Meeting
Thursday, October 22, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING)
THE CHIEF OPERATING OFFICER TO)
SELL CERTAIN REAL PROPERTY IN)
THE COOPER MOUNTAIN TARGET)
AREA)

RESOLUTION NO. 09-4079

Introduced by Michael Jordan,
Chief Operating Officer, with the
Concurrence of David Bragdon,
Metro Council President

WHEREAS, on July 23, 1992, via Resolution No. 92-1637, (“For the Purpose of Considering Adoption of the Metropolitan Greenspaces Master Plan”), Metro Council adopted the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, the Cooper Mountain Area was identified as a regionally significant natural area by the Metro Greenspaces Master Plan; and

WHEREAS, in May 1995 the Metro electors approved ballot measure 26-26, authorizing Metro to issue \$135.6 million for bonds for Open Spaces, Parks and Streams (“ the 1995 Metro Open Spaces Bond Measure”), and

WHEREAS, in February of 1996, via Resolution No. 96-2275A, (“ For the Purpose of Approving a Refinement Plan for the Cooper Mountain Target Area as Outlined in the Open Space Implementation Work Plan”), Metro Council adopted a refinement plan which identified acquisition of over 400 acres to protect and enhance Cooper Mountain’s unique biological diversity; and

WHEREAS, between February 1997 and December 1999, Metro Parks and Greenspaces acquired ten parcels on Cooper Mountain Plan including a 15.95 acre parcel located on Scholls Ferry Rd. (the “Metro Parcel”) purchased in September of 1999 and attached hereto as Exhibit A; and

WHEREAS, at the time of purchase it was hoped the Metro Parcel would ultimately be connected to the other Metro-owned parcels; and

WHEREAS, in January 2004 Metro Parks planning team initiated a 20-month public master planning process for the Cooper Mountain Natural Area, working closely with Tualatin Hills Park and Recreation District, the City of Beaverton (both financial partners on the Master Plan), Washington County Planning Department, a 16 member Project Advisory Committee, adjacent landowners and interested citizens (resulting in the Cooper Mountain Master Plan and Management Recommendations); and

WHEREAS, in October of 2005 Metro staff presented a summary of the Cooper Mountain Master Plan and Management Recommendations to Metro Council and Washington County Board of Commissioners; and provided a four week period for public review for which there was no known opposition to the plan; and

WHEREAS, Council approved the Cooper Mountain Master Plan and Management Recommendations (the “Master Plan”) in December, 2005 via Resolution 05-3643; and

WHEREAS, the Master Plan noted that Metro was unsuccessful in purchasing the additional properties needed to create a contiguous, publicly owned connection between the main parcels and Scholls Ferry Rd. and recommended that “ if properties between Scholls Ferry and the currently southern

boundary of the natural area ultimately become developed, Metro should consider the Scholls Ferry property as surplus and sell it in order to redirect public funds.”, and

WHEREAS, 207 acres of the approximately 227 acres between the Cooper Mountain Nature Park southern boundary and the Metro Parcel are the subject of Measure 49 claims for increased development density, indicating the likelihood these parcels will remain in private ownership and be subject to future development; and

WHEREAS, 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”) adopted by the Council in March of 2006 (the “2006 Natural Areas Bond Measure”), recommended submission to the voters of a general obligation bond to preserve natural areas and clean water and protect fish and wildlife; and

WHEREAS, at the general election held on November 7, 2006 the voters approved the 2006 Natural Areas Bond Measure which identified the Cooper Mountain Target Area goal of acquiring remaining oak communities and streamside forests to build on the investment already made; and

WHEREAS, Council approved the Cooper Mountain Target Area refinement plan for the 2006 Natural Areas Bond Measure in September of 2007 via Resolution No. 07-3836 (“Approving the Natural Areas Acquisition Refinement Plan for the Cooper Mountain Target Area”) with a Tier One objective to “Acquire lands adjacent to the Cooper Mountain Nature Park...” and a Tier Two objective to “Secure a corridor between the planned Cooper Mountain Nature Park and other regional and local trails (including the Westside Trail) and natural areas; and

WHEREAS, the Metro Parcel is not included in the Cooper Mountain Nature Park Master Plan, and is not adjacent to the Cooper Mountain Nature Park and is not part of a regional trail alignment, it therefore does not fulfill the objectives outlined in the 2006 Bond Measure Refinement Plan; and

WHEREAS, disposition of the Metro Parcel and reinvestment of the proceeds according to the 1995 Metro Openspaces Bond Measure is considered the best resolution for future use of the Metro Parcel allowing these funds to be reinvested in the same program for the same purpose as intended; now therefore

BE IT RESOLVED that the Metro Council concludes that the Metro Parcel, as described in Exhibit A, is not needed for public use and that the public interest will be furthered by the sale of the Metro Parcel and hereby authorizes the Chief Operating Officer to sell the Metro Parcel using an equitable, commercially reasonable, and appropriate process, as determined by the Chief Operating Officer in his sole discretion.

ADOPTED by the Metro Council this _____ day of _____, 2009.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper

Exhibit A
Metro Lin Property
Legal Description

PARCEL 1: Commencing at a point on the section line South 0° 13' East and a distance of 2679.5 feet from the stone at the Northwest corner of Section 6, Township 2 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon; thence North 88° 53' East a distance of 30.0 feet to an iron pipe found to be 30 feet North of the center line of Scholls Ferry Road; thence continuing North 88° 53' East a distance of 600 feet to an iron pipe; and the place of beginning of the tract herein described; thence North 0° 13' West 871.2 feet to an iron pipe; thence North 45° 16' East 420.7 feet to an iron pipe; thence South 0° 13' East a distance of 1161.6 feet to an iron pipe 30 feet North of the center line of Scholls Ferry Road; thence South 88° 53' West 300.0 feet to the point of beginning of the above described tract, situated in the County of Washington and State of Oregon, and:

PARCEL 2: Tract in the Northwest one-quarter of Section 6, Township 2 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon, as follows:

Beginning at an iron pipe on the Easterly line of a 30.0 foot private roadway which iron pipe is reached from the stone at the corner of Sections 36, 31, 1 and 6, by going North 89° 36' East 240.76 feet to an iron pipe on the North line of Section 6, and on the Easterly line of a 30.0 foot private roadway; thence along said roadway line South 20° 04' East 869.6 feet to an iron pipe and angle point; thence South 17° 02' West, 284.08 feet to an iron pipe; thence continuing along said roadway line South 24° 21' West 126.9 feet to the true point of beginning; thence North 89° 36' East 371.2 feet to an iron pipe; thence South 28° 34' East 339.3 feet to an iron pipe at the Northeasterly corner of a 7 acre tract; thence South 45° 16' West along the Northerly line of said 7 acre tract 420.7 feet to an iron pipe at the Northwesterly corner of same, and at the Northeasterly corner of a 12.0 acre tract; thence along the Northerly line of said 12.0 acre tract South 88° 53' West 600.0 feet to an iron pipe on the Easterly line of the 30.0 foot private roadway; thence following the Easterly private roadway line North 0° 13' West 274.2 feet to an iron pipe; thence North 55° 57' East 380.8 feet to an iron pipe; thence North 24° 21' East 127.0 feet to the true point of beginning, situated in Washington County, Oregon.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4079 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO SELL CERTAIN REAL PROPERTY IN THE COOPER MOUNTAIN TARGET AREA

Date: October 22, 2009

Prepared by: Kathleen Brennan-Hunter
(503) 797-1948

BACKGROUND

Resolution No. 09-4079 requests authorization for the Chief Operating Officer to sell certain real property, described in Exhibit A to the resolution (the “Metro Parcel”), purchased by Metro with 1995 Open Spaces Bond Measure (the “1995 Bond Measure”) proceeds. Proceeds from such sale shall be restricted to open space acquisition consistent with the requirements of the 1995 Bond Measure.

State law authorizes the governing body of any political subdivision within Oregon to sell real property owned by the political subdivision that is “not needed for public use, or whenever the public interest may be furthered.” ORS 271.310(1). Metro Code section 2.04.026(a)(2) requires that the Chief Operating Office obtain the authorization of the Metro Council prior to executing any contract for the sale of real property owned by Metro.

In 1995 voters in the Metro Area approved the Bond Measure authorizing Metro to acquire property in 14 regional natural areas and six regional trails and greenways. The goals for the 14 areas varied according to the nature of the intrinsic resources. Each property that was acquired was stabilized and “landbanked” until such time as the property and perhaps other properties in the immediate area could be master planned for its ultimate purpose, taking into consideration all the necessary public safety and amenity issues involved.

Cooper Mountain was identified as a target area and the Cooper Mountain Refinement Plan set forth acquisition guidelines developed to acquire enough land to create a new regional nature park. 255 acres were purchased as a result of 10 separate transactions. Of the 255 acres, 231 acres are contiguous and comprise the Cooper Mountain Nature Park, opened to the public in June of this year. A non-contiguous 9 acre parcel on the northeast slope of Cooper Mountain is being managed by Tualatin Hills Park and Recreation District. The Metro Parcel, a second non-contiguous 15.95 acre parcel located on SW Scholls Ferry Road, southwest of the Nature Park and isolated from it, was acquired on September 24, 1999.

The Metro Parcel was intended to provide an important potential access point to Metro’s Cooper Mountain land holdings. The property is zoned AF-20, and bounded to the north, east and west by agricultural lands. AF-20 (Agricultural and Forest Use) restricts the property to these uses. The property’s neighborhood is characterized by agricultural and forest uses with increasing rural residential developments.

The majority of the site is a former tree farm, and a portion of the property is wooded with a seasonal creek. A mobile home was on the property and was recently removed. Metro staff believes that a purchaser could construct one residence on the site, within certain time limits set by Washington County. The property was appraised in 1999 with highest and best use identified in the appraisal report as a rural residential home site. There are no other partnerships on this site

and Metro has not made any investments in habitat restoration on the property. The site is subject to vandalism in the form of camping and off-road driving from time to time.

In December of 2005, the Metro Council approved Resolution No. 05-3643, “For the Purpose of Approving the Cooper Mountain Master Plan and Management Recommendations” (the “Master Plan”), representing a vision for an important regional natural area that provides for habitat enhancement and compatible public use within a neighborhood context. Washington County has also adopted the Master Plan. In a section referring to the Metro Parcel titled “Potential Surplus Property”, the Master Plan states:

In the acquisition of open space properties in the Cooper Mountain Target Area, Metro purchased a parcel along Scholls Ferry Road in 1999. The acquisition also represented potentially important access to Cooper Mountain provided other parcels could also be purchased. Metro was unsuccessful in purchasing the additional properties needed to create a contiguous, publicly owned connection down to Scholls Ferry Road. If properties between Scholls Ferry and the currently southern boundary of the natural area ultimately become developed, Metro should consider the Scholls Ferry property as surplus and sell it in order to redirect public funds.

The situation today has not changed since the Master Plan analysis, in that other desirable contiguous natural area properties have not been acquired by Metro. In addition, road improvements to 175th Ave. north of Scholls Ferry Road have enhanced the entry at the northern end of the Cooper Mountain Nature Park,. When funds are available, a second entry at Grabhorn Road is included in the approved Master Plan.

Notwithstanding the above, Metro will continue to pursue opportunities in the Cooper Mountain Target Area, which has been identified as a Target Area in the 2006 Natural Areas Bond Measure, building on the investment it has made in protecting Oregon white oak and rare prairie habitat at Cooper Mountain and protecting wildlife habitat acquired and restored to date. The Tier 1 objective is to acquire lands adjacent to the Cooper Mountain Nature Park. The Tier 2 objective is to secure a corridor between the Nature Park and other regional and local trails and natural areas. The Metro Parcel meets neither of these objectives.

The combination of factors referenced above lead to the conclusion that the Metro Parcel is not only extraneous to the Cooper Mountain Nature Park design and the 2006 Natural Areas Bond Measure objectives, therefore not needed for public use, but continued ownership of the property is not beneficial and a drain on Metro’s resources. Metro has considered natural resource protection, future trail potential and optimizing value in this analysis. There are no natural resources on the property that warrant protection beyond those already in place by virtue of jurisdictional authority. The property has no water rights for agricultural purposes. The property is best suited for one single family residence development.

A public agency planning to sell real property may sometimes first offer such property to other agencies that have jurisdiction or interest in the area, and some agencies are required to make such an offer (but Metro is not so required). Per the mandate of the 1995 Open Spaces acquisition Program, Metro provided Washington County the opportunity to take assignment of the purchase and sale agreement for the property shortly before the property was acquired in 1999. The County exhibited no interest in the property. The highest and best use of the property as a single-family residential development does not lend itself to use by other Metro departments or public agencies. Notwithstanding, notice shall be provided to Metro departments, Washington

County and relevant park districts before the property is marketed to the general public. Due to the contemplated sale of the property “as is,” staff will provide personal notification to directly adjacent property owners and property owners who share easement responsibilities on Strobel Road. Staff also will provide a general notification to “Friends of Cooper Mountain” in respect of their vested interest in the process to provide access to Cooper Mountain open spaces, for which this property was once intended. This general notification will be provided as part of Metro’s regular notification to such persons regarding Cooper Mountain park development. Metro Staff will follow the framework outlined in Attachment 1 to this staff report, “Disposition Guidelines” to successfully dispose of the Metro Parcel.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

ORS 271.310(1) authorizes the governing body of any political subdivision within Oregon to sell real property owned by the political subdivision that is “not needed for public use, or whenever the public interest may be furthered.”

Metro Code section 2.04.026(a)(2) requires that the Chief Operating Office obtain the authorization of the Metro Council prior to executing any contract for the sale of real property owned by Metro.

Metro Resolution No. 05-3643, “For the Purpose of Approving the Cooper Mountain Master Plan and Management Recommendations,” which resolution concluded that the Metro Parcel is not needed in conjunction with the creation and management of the Cooper Mountain Nature Park.

The tax-exempt status of the bonds sold to finance the purchase of the Metro Parcel imposes some limitations and requirements on whether and how the property may be sold, and on the use of the proceeds of such sale. Staff has consulted with the Office of Metro Attorney, which has consulted with Metro’s bond counsel regarding this issue. The sale of the property will be in compliance with the advice of the Metro Attorney and bond counsel to ensure that the tax-exempt status of the bonds is maintained.

3. Anticipated Effects

The Metro Parcel will be declared surplus and not needed for public use, and will be offered for sale at a price sufficient to protect Metro’s financial investment in the property. Disposition of the Metro Parcel is consistent with the covenants of the Bond Measure, whose funds were used to acquire and stabilize the property, provided that the anticipated proceeds will be administered within the guidelines of the Bond Measure rules. The sale of the property will relieve Metro of maintenance obligations and property taxes for the residence. After sale, a home will likely be developed on the property. Such development would be generally consistent with surrounding rural residential development.

4. Budget Impacts

Net revenues from sale of the property, after payment of any appraisal, brokerage, closing, or other out-of-pocket costs associated with the sale, will be returned to the 1995 Bond Measure account for use to acquire other real property consistent with the goals and requirements of such measure.

RECOMMENDED ACTION

Staff recommends the adoption of Resolution No. 09-4079.

ATTACHMENT 1
TO STAFF REPORT TO RESOLUTION NO. 09-4079

DISPOSITION GUIDELINES
The Metro Parcel in the Cooper Mountain Target Area

The following disposition transaction procedures are the elements of analysis, outreach and sale that have and will be followed by Metro staff in the disposition of the Metro Parcel, to assure fair and honest dealings with potential purchasers and protection of public investment in this natural area property. Staff shall not proceed to Outreach and Sale of the Metro Parcel described in Resolution No. 09-4079, as outlined below until Metro Council has authorized the disposition.

Procedures:

1. Analysis

- Original Acquisition. Review of the original acquisition file and stabilization efforts since Metro's acquisition of the property is the first step in the disposition process. Staff has conducted research to ensure that sale of the property would not conflict with the restrictions imposed by the original acquisition funding. The Metro Parcel acquisition (purchased from the Lin family) was funded entirely by 1995 Open Spaces, Parks and Streams bond funds. As noted in the Staff Report for Resolution No. 09-4079 there are several compelling reasons for Metro to remove the Metro Parcel from its holdings.
- Title Review. Staff will review a current title report to make sure the Metro Parcel is free and clear of liens that could interfere with a transfer of title to the prospective purchaser.
- Physical Inspection. Metro staff has physically inspected the property to identify possible hazards, unrecorded easements etc. and made a preliminary evaluation of the condition of any structures and improvements. Staff will inspect the property to identify any encroachments and take measures to correct them, if possible.

2. Outreach

- Assessment of community impact: An assessment of community impact has been made and the sale of the property is not known or anticipated to have a negative effect on relationships with partners and community.
- Recommendation for stakeholder and public notice: A specific recommendation for stakeholder notice and public notice for the sale shall be developed by the Natural Areas Public Affairs Specialist and reviewed by the Program Director. This recommendation will likely include targeted stakeholder contact to parties including the Cooper Mountain area neighborhood association, and Washington County, as well as a written notice to a small radius of neighbors.

3. Sale Process

- Market Value and Negotiated Sale Price. Market value for the property shall be established by an appraisal completed by an independent certified appraiser that states a conclusion of the market value of the property or, if appropriate, a range of value. The appraisal shall be completed

in accordance with the Uniform Standards of Professional Appraisal Practice and may be a summary format report.

The negotiated sale price, or the total value of money and real property received, for the property shall be:

- Not greater than that which will ensure that Metro does not violate any of its bond covenants, including any applicable bond arbitrage limitations, as determined by the Metro Attorney in consultation with the Metro Chief Financial Officer; and
- Except when limited by the foregoing provision, not less than:
 - a) the market value as established by the appraisal process described below; or
 - b) 90% of such market value, with the authorization of the Chief Operating Officer upon review of a recommendation from the Natural Areas Program Director finding that:
 - i) The property has been on the market for a reasonable exposure period and a disposition transaction has not been completed; and
 - ii) It is in the public interest to sell the property at the reduced value.
- Marketing and Sale of Property. Metro or its authorized agents shall advertise the Metro Parcel for sale by commercially reasonable means which may include signage, direct marketing, newspaper advertising, or listing on public real estate listing services. Contracting agents for the sale of the property shall be at the discretion of the Natural Areas Program Director and shall be established in accordance with Metro Code.
 - The Metro Parcel will be offered for sale ‘as is’ directly by Metro. The property will be signed and advertised for Sale By Owner. A one page flier will be available at the property and on request. A detailed information package, including a title report, a copy of the relevant zoning code, the form of purchase and sale agreement and any other information deemed relevant to the transaction will be provided to interested parties at a cost according to the standard public information request rates. (\$30 for a CD, or \$30 plus \$0.05 black and white or \$0.15 per color paper copies). Staff will hold not less than 2 open houses at the property for interested parties. Offers will be accepted by sealed bid process not less than 60 days after the property is listed. There will be a reserve price of not less than 10% less than the appraised value. The winning bid shall be determined by the following factors: date the bid was received by Metro, offer price, and other terms deemed to be relevant to a successful transaction as determined by the Metro Chief Operating Officer, in his sole discretion.
 - Should Natural Areas staff be unsuccessful selling the property by the above means, or the property circumstances warrant, a third party auction house may be hired to manage a similar sealed bid process.
- Distribution of proceeds from sale. The Metro Chief Financial Officer shall determine the distribution of the proceeds from the disposition transaction, in consultation with the Metro Attorney, in order to ensure that such distribution is consistent with bond covenants and the intent of the bond measures approved by the voters.

- Notice to Metro Council. The Natural Areas Bond Program Director or his/her designees shall notify the Council promptly following the closing of any disposition transaction.
- Document Retention. Documents related to disposition transactions shall be retained as determined appropriate by the Metro Attorney, consistent with Metro's records retention policies.

Agenda Item Number 4.4

Resolution No. 09-4080, For the Purpose of Proclaiming October 24, 2009 As a Global Day of Climate Action and Recognizing the Number 350 as a Message to the Copenhagen Conference on Climate Change.

Consent Agenda

Metro Council Meeting
Thursday, October 22, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF PROCLAIMING)
OCTOBER 24, 2009 AS A GLOBAL DAY OF)
CLIMATE ACTION AND RECOGNIZING THE)
NUMBER 350 AS A MESSAGE TO THE)
COPENHAGEN CONFERENCE ON)
CLIMATE CHANGE)

RESOLUTION NO. 09-4080

Introduced by Councilor
RexBurkholder

WHEREAS, 350 is the number scientists have determined is the safe level of carbon dioxide parts per million for our atmosphere; and

WHEREAS, the current level of carbon dioxide in our atmosphere stands at 389 parts per million and rising; and

WHEREAS, the number 350 appears in the draft Copenhagen treaty, and the organization 350.org wants that most important number to remain in the final treaty; and

WHEREAS, action events are planned by groups of people in nations all over the world, in the United States, and throughout the state of Oregon; and

WHEREAS, in Portland, the list of "350" events is growing daily. Events already scheduled for the October 24th Day of Climate Action in the Portland area include: a kayak and canoe formation of the number "350" on the Willamette; Students, bicyclists, and walkers supporting the 350-mile coastal trek; Families and concerned individuals convening in Pioneer Square, where performers and speakers will help to mark this special day; and

WHEREAS, Metro’s efforts to plan for a region that supports walking, biking, and public transport as alternatives to the automobile are in accordance with 350.org’s mission of reducing global carbon emissions. A Global Day of Climate Action will help raise awareness of the significance of global climate change and encourage residents to take action.

BE IT RESOLVED, that in recognition of the need for action on climate change, the Metro Council proclaims the day of October 24, 2009 as a Global Day of Climate Action and encourages citizens to use the number 350 to send a message to the Copenhagen Conference to reduce levels of carbon in the Earth’s atmosphere.

ADOPTED by the Metro Council this ____ day of _____, 2009.

David Bragdon, Council President

Approved as to Form:

Dan Cooper, Metro Attorney

Agenda Item Number 5.1

Resolution No. 09-4082, For the Purpose of Authorizing the Chief Operating Officer to Enter Into An Intergovernmental Agreement With the City of Portland for Management of Natural Areas.

COUNCILOR LIBERTY

Metro Council Meeting
Thursday, October 22, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 09-4082
TO ENTER INTO AN INTERGOVERNMENTAL)
AGREEMENT WITH THE CITY OF PORTLAND) Introduced by Chief Operating Officer
FOR MANAGEMENT OF NATURAL AREAS) Michael J. Jordan, with the concurrence of
Council President David Bragdon

WHEREAS, pursuant to 1995 Metro Ballot Measure 26-26 (“Metro Open Spaces Bond Measure”) and 2006 Metro Ballot Measure 26-80 (“Metro Natural Areas Bond Measure”), Metro and the City of Portland (the “City”) have acquired and will continue to acquire property within the City that Metro and the City wish to preserve as natural areas in accordance with both the Metro Greenspaces Master Plan and the Portland Parks and Recreation 2020 Vision Plan and Natural Area Acquisition Strategy;

WHEREAS, Metro and the City have agreed to manage these natural areas, herein after referred to collectively as the “Properties,” with the primary goal being protection and enhancement of the Properties’ natural resources and wildlife habitat;

WHEREAS, the City wishes to apply applicable City code provisions, regulations, and policies to the management of the Properties, and make capital investments in the Properties from time to time;

WHEREAS, in order to efficiently and cost-effectively manage the Properties within the City limits of Portland and deliver high-quality oversight and protection of same, Metro and the City have negotiated the intergovernmental agreement attached to this resolution as Exhibit A (the “IGA”);

WHEREAS, the IGA supersedes any prior oral or written agreements or representations relating to management of the Properties, which are more specifically identified in Exhibit A to the IGA;

WHEREAS, the Portland City Council approved the IGA at its August 26, 2009 meeting; 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, substantially in the form attached hereto as Exhibit A, to authorize the City of Portland to manage the Properties.

ADOPTED by the Metro Council this _____ day of _____, 2009

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") is by and between Metro, an Oregon municipal corporation, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Portland, located at 1120 SW 5th Avenue, Portland, Oregon 97204 ("the City"). This Agreement shall be effective on the last date of signature of a party, below (the "Effective Date").

RECITALS:

WHEREAS, pursuant to 1995 Metro Ballot Measure 26-26 ("Metro Open Spaces Bond Measure"), approved by the voters on May 16, 1995, Metro and the City have acquired property within the City that Metro and the City wish to preserve as open space in accordance with the Metro Open Spaces Bond Measure, the Metro Greenspaces Master Plan, and the Portland Parks & Recreation 2020 Vision Plan and Natural Area Acquisition Strategy;

WHEREAS, pursuant to 2006 Metro Ballot Measure 26-80 ("Metro Natural Areas Bond Measure"), approved by the voters on November 7, 2006, Metro and the City have and will acquire property within the City that Metro and the City wish to preserve as natural areas in accordance with the intent of the Metro Natural Areas Bond Measure, the Metro Greenspaces Master Plan and the Portland Parks & Recreation 2020 Vision Plan and Natural Area Acquisition Strategy;

WHEREAS, Metro and the City wish to manage the properties acquired pursuant to the Metro Open Spaces Bond Measure and the Metro Natural Areas Bond Measure to protect water, habitat, and to restore native species and therefore will enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the allowable uses, management, maintenance, operation and transfers of properties acquired in accordance with the provisions of this Agreement and

WHEREAS, the City wishes to apply applicable City code provisions, regulations, and policies to the management of such properties that the City becomes responsible for under this Agreement and to make capital investments in those properties from time to time;

Now, therefore, the parties agree as follows:

1. Properties To Be Managed Pursuant to this Agreement.

- 1.1 This Agreement shall be applicable to: (i) properties owned by Metro within the City of Portland that are identified on Exhibit A attached hereto and incorporated by reference herein; (ii) properties to be acquired by Metro within the City of Portland pursuant to the Metro Natural Areas Bond Measure, to the extent that Metro has notified the City that Metro wishes the City to manage a property and the City has accepted such responsibilities; and (iii) other properties owned by Metro within the City where Metro requests the City to manage such properties and the City accepts such responsibilities in

accordance with this Agreement. Such properties shall be collectively referred to herein as the "Properties," or individually as a "Property."

- 1.2 The City has managed Properties acquired by Metro pursuant to the Metro Open Spaces Bond Measure and the Metro Natural Areas Bond Measure by following the City Code, and the City's adopted policies, procedures, and plans (hereinafter, the "City Natural Area Management Framework"). Metro agrees that the existing City Natural Area Management Framework has been consistent with the intent of each of those Measures and with the Metro Greenspaces Master Plan. The City agrees to continue to manage the Properties, and any additional Properties for which the City has accepted management responsibilities, consistent with the intent of the Measures and with the Metro Greenspaces Master Plan.
 - 1.3 Metro will request City management of newly acquired natural areas or other Metro properties by providing to the City the form attached hereto as Exhibit B ("Notice of Acquisition or Potential Acquisition"), or a form substantially similar to Exhibit B. Metro will include relevant due diligence information that it believes the City does not possess, including, but not limited to planned stabilization work, property management information (if available), historic environmental hazard issues, and existing or likely assessments against the property.
 - 1.4 Not later than thirty (30) days after receiving Metro's Request to Accept Property Management Responsibility, the City shall provide to Metro written notification stating whether the City will accept management responsibility for the property in accordance with this Agreement. If Metro has informed the City that the closing date on acquisition of a property is less than thirty (30) days from the date the City receives Metro's Request to Accept Property Management Responsibility, then the City shall make a good faith best effort to provide Metro with such notification prior to the closing date for the acquisition. The City's written notification shall indicate whether the City has already adopted a specific park or natural area management plan that would be applicable to the property, with the name of the specific plan identified in the letter.
2. **Authority of the City Parks Director.** The City, by its approval of this Agreement, hereby delegates responsibility to, and authorizes the Director of the Portland Bureau of Parks and Recreation, or the Director's designee, (hereinafter the "City Parks Director") to act on behalf of the City under this Agreement, without any further approval or consent from City Council, unless said approval or consent is required in accordance with acquisition procedures adopted by City Council under Ordinance No. 181710 or amendments thereto.
 3. **Property Stabilization.** Prior to closing on its acquisition of a Property (as permitted by the prior landowner) and in the period immediately following closing on its purchase of a Property, Metro may take whatever actions it deems appropriate to stabilize Metro's ownership interest in a Property, at Metro's discretion, cost, and expense. Such stabilization activities may include construction, maintenance, or repair of facilities, projects, or improvements such as fences, gates, removal of invasive plants, and replanting of native

plants. Metro will consult with the City before taking such actions to ensure that the actions will not unreasonably affect the City's ongoing management responsibilities for the Property.

4. The City Shall Manage, Maintain, Improve, Secure, and Operate the Properties.

- 4.1 The City shall be responsible for the ongoing management, maintenance, security, improvements to, and operation of the Properties at all times, in accordance with the terms of this Agreement. The Properties shall be managed, maintained, operated, and protected in accordance with their intended use as natural areas, with the primary goals being protection of the Properties' natural resources and water quality, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing. The City's responsibilities shall include management, maintenance, security, and operation of any facilities, projects, or improvements (e.g. fences, gates, removal of invasive plants, replanting of native plants, etc.) made by Metro pursuant to Section 2 of this Agreement. By accepting management responsibility for the Properties, the City agrees to be responsible for funding the operation and maintenance of the Properties, including, but not limited to payment of taxes and assessments, with the City's own financial and staffing resources. Metro shall periodically review the Properties to ensure that their management is in accordance with this Agreement.
- 4.2 Subject to Metro's written approval, which will not be unreasonably withheld, the City shall have the authority to make capital improvements to the Properties; provided, however, that such improvements shall be consistent with the intended use of the Properties as described in Section 4.1 of this Agreement and consistent with an approved Management Plan (as described in Section 6 of this Agreement) for the Property where they are constructed. Acceptable improvements could include the construction of trails, trailhead facilities (including parking areas, restrooms, and signage), picnic facilities and shelters, and other similar improvements. Active-use recreation facilities, such as athletic fields or courts, recreation centers, swimming facilities, and other similar improvements, shall not be constructed on the Properties.
- 4.3 The City shall act in a timely manner to resolve nuisance complaints and mitigate threats to the resources of the natural area. If Metro is issued a nuisance notice for the Property by a governmental body with authority to issue a notice, Metro shall forward such notice to the City and the City will make a good faith effort to abate said nuisance in accordance with timeframes established in the nuisance notice or otherwise negotiate with the noticing authority to address the complaint in a manner satisfactory to such noticing authority.
- 4.4 Metro grants to the City, and to the City's agents and contractors, the right to enter the Properties for the purpose of performing all activities, including enforcement of the City's code and policies related to City Natural Areas, reasonably necessary for the management, maintenance, and operation of the Properties and for the fulfillment of the City's duties and responsibilities under this Agreement. Metro grants public access to the Properties only to the extent that said public access is consistent with public access

policies and procedures provided for in the City Natural Area Management Framework or in an approved park or natural resources management plan applicable to a Property.

- 4.5 The City shall be responsible for obtaining any authorizations or permits necessary for management, maintenance, security, and operation of the Properties. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance, security, and operational issues that may arise with respect to the Properties. Metro will be consulted not fewer than thirty (30) days prior to the City applying for any development permit. Metro's acceptance of such permitting activity will be implied unless otherwise communicated in writing by Metro within twenty (20) days of such consultation.

5. Easements, Rights of Way, and Leases.

- 5.1. All requests for easements, rights of way, and leases on or affecting the Properties shall be submitted to and adjudicated by the majority owner of the Property in accordance with its procedures, policies, and practices, with the Parties to consult with one another before making a final decision on said requests. If the ownership interest of the parties in the Property or Properties is shared and there is no majority owner, all requests for easements, rights of way, and leases on or affecting the Properties shall be submitted to and adjudicated by Metro in accordance with its procedures, policies, and practices, with consultations with the City prior to making a final decision. Final decisions will be consistent with the intent of the Metro bond measures under which the Properties were acquired and, to the extent reasonable, will provide for consideration to be provided in the form of annual rents which will be used to offset the City's ongoing cost of management of said Properties. The adjudicating party will require the applicant to pay one hundred percent (100%) of all adjudication costs, including the cost of outside consultants, if necessary, with the collected fees used to reimburse all those involved in the adjudication within thirty (30) days of receiving said fees.
- 5.2. This Section 5 shall also apply to all improvements (e.g., residences) on the Properties that would normally be managed through third-party agreements (e.g., rental agreements), that is, the majority owner shall oversee and manage all such agreements, or in the event of evenly split ownership, then Metro shall oversee and manage such agreements. For Properties for which Metro has such management responsibilities, Metro will consult with the City regarding impacts, if any, said management will have on the City's ongoing responsibilities under this Agreement.
- 5.3. If Metro and the City mutually agree in writing that the City's management of the third-party transaction would better serve the overall purposes of this Agreement, then the management, maintenance, and repair responsibility for such improvements will be transferred to the City, with transaction proceeds, if any, to be used to offset the City's administrative, maintenance, and repair costs associated with such improvements and the City's management costs incurred under this Agreement.

- 5.4. Metro shall indicate in the Request to Accept Property Management Responsibility that it provides to the City whether a tenant or lessee has lived on the property since before Metro acquisition and if, therefore, such person may be entitled to relocation assistance benefits or payments if such person's lease is terminated. If Metro has so notified the City and the City has accepted management responsibility of such property, then the City shall not take any action that results in the displacement of such tenant without Metro's prior written consent. If Metro provides such consent, then Metro agrees to provide all such relocation benefits and payments. If the City takes an action that dislocates such person without Metro's prior written consent, then the City agrees to provide all such relocation benefits and payments. If Metro indicates on the Request to Accept Property Management Responsibility that there is not a tenant or lessee who may be eligible for such benefits or payments, but liability for such payments or benefits arises at a later time, then Metro shall pay all such benefits or payments.
- 5.5. All requests for uses of the Property by the public that do not affect title to the Property will be processed by the City in accordance with the City Natural Area Management Framework, provided that the City shall not grant any such request if the requested use will (i) conflict with the provisions of any easements or other restrictions applicable to the Property, or (ii) have a significant or long-term impact on the natural resources on the Property. Application and use fees associated with the requested use will be retained by the City to offset ongoing management costs associated with the affected Property or to reimburse the City for its administrative costs associated with the requested use. Metro shall be provided a copy of any request seeking a permit for use of a Property by a group of more than 100 persons, or for any comparably significant use, not later than seven (7) days after the City receives such permit request and not fewer than seven (7) days prior to the City approving any such request. Metro's acceptance of such permitting activity will be implied unless otherwise communicated in writing by Metro within five (5) days of receiving such notice.

6. Resource Management/Master Plan for Each Property.

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

- 6.2 As part of the City's process of developing and adopting a Management Plan, the City shall regularly consult with a Metro staff member designated by the Metro Parks and Greenspaces Department Director. In addition to any other approvals required by the City, the Management Plan shall be subject to approval by the Metro Council prior to the plan's implementation, which approval shall not be unreasonably withheld and shall be based on consistency with this Agreement, the Metro Greenspaces Master Plan and the intent of the Measures.
7. **Signage and Acknowledgement.** The City shall recognize and document on each Property, and in any publications, media presentations, or other presentations referencing such Property that are produced by or at the direction of the City, that funding for acquisition of the Project came from the Metro Opens Spaces Bond Measure or the Metro Natural Areas Bond Measure. Such recognition shall comply with the Metro Funding Recognition Guidelines attached as Exhibit C to this Agreement and hereby incorporated herein. The City may provide on-site signage informing the public that the City is managing the Property.
8. **Transfer of Interests between the Parties.** The Parties wish to maintain a flexible and responsive framework for transferring management responsibilities and property rights necessary to achieve their natural area preservation goals. In accordance with this shared intent, the Parties may use the mechanisms described below in this Section to carry out their respective responsibilities hereunder. Actions taken by the Parties in accordance with this Agreement will require no further approvals by the Metro Council or the Portland City Council unless said approvals are required by the Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan adopted by Metro, or by comparable acquisition procedures adopted by the City Council under Ordinance No. 181710 or amendments thereto.
- 8.1 **Grant of Easement.** When the City accepts management authority and responsibility for Metro-acquired land in which the City has no ownership interest, as provided for herein, Metro will grant the City a natural area management easement over said property in substantially the form as the easement attached hereto as Exhibit D, to be recorded in the official records of the county where such property is located.
- 8.2 **Joint Acquisitions.** This subsection shall apply when the parties consent, each in its sole discretion, to share the cost of an acquisition. If one party (hereinafter the "Contributing Party") contributes a portion of the purchase price of a property being acquired by the other party (hereinafter the "Acquiring Party"), then, not later than thirty days following the later date of the Acquiring Party both (a) closing on such purchase and taking a deed to such property and (b) receiving such payment from the Contributing Party, the Acquiring Party shall record a deed transferring to the Contributing Party an undivided ownership interest in the property such that (i) unless otherwise agreed, Metro's ownership interest in the property shall be in proportion to the amount of Metro's contribution in relation to the purchase price of the property, and (ii) the City receives the balance of the ownership interest in the property. Such deed from the Acquiring Party to the Contributing Party shall be subject to all existing

covenants and restrictions that encumber the property. When the Contributing Party's share of funds used for acquisition of a property is solely from the Metro Natural Areas Bond Measure then, at the Acquiring Party's sole discretion, such deed may also be subject to a condition that the Contributing Party use such property only for open space and agree to maintain the property in its natural state in perpetuity and, if the Contributing Party fails to maintain the property in its natural state, that the Acquiring Party may reenter and terminate the estate conveyed by such deed. The Acquiring Party shall list the Contributing Party as co-client on third-party due diligence contracts regarding the property, including environmental and appraisal contracts, entered into by the Acquiring Party after the date that the Contributing Party has informed the Acquiring Party in writing that the Contributing Party will contribute toward the purchase price of the property. Metro will not grant the City a natural area management easement as to said property.

- 8.3 Trail Easements.** Whenever Metro seeks to acquire fee title to, or an easement over, real property located in one of Metro's target areas within the City, for the primary purpose of permitting the construction of a bicycle, pedestrian, or bicycle and pedestrian trail across such property, Metro may, at Metro's sole discretion and only after obtaining the City's prior written consent, provide for fee title to be transferred to the City or, in the case of an easement, for the City to be named as the grantee. Metro shall follow the process described in Sections 1.3 and 1.4 of this Agreement to request the City's written consent for such a transfer or, in the case of an easement, grant to the City. Unless otherwise agreed by the parties during the course of an individual easement acquisition, Metro shall pay all costs of acquisition and due diligence, including relocation payments, if any, required to be paid to any persons as a result of the acquisition of such easement. Metro shall list the City as co-client on third-party due diligence contracts regarding the property, including environmental and appraisal contracts, entered into by Metro after the date that the City has informed Metro in writing that the City consents to take title to the property, or to be named as grantee of an easement. Provided that the City Parks Director has provided the City's consent as described in this section, the City shall accept such easement in substantially the form of the trail easement attached as Exhibit E to this Agreement or the trail and greenway easement attached as Exhibit F to this Agreement. Any substantial amendments to such easement forms shall be subject to approval by the City Parks Director.
- 8.4 Other Mechanisms.** In addition to mechanisms provided for in Sections 8.1 through 8.3 of this Agreement, the City Parks Director and the Metro Sustainability Center Director, or the designees of such persons, are authorized to use mutually acceptable mechanisms to transfer property rights or management responsibilities consistent with the intent of this Agreement, with said mechanisms to include, but not be limited to, assignment of purchase contracts prior to closing or assignment of an undivided interest as a tenant in common after closing.

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

10. Termination.

- 9.1 **Joint Termination for Convenience.** Metro and the City may, by written agreement signed by both parties, jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective as provided in such termination agreement.
- 9.2 **Termination for Cause.** Either party may terminate this Agreement in full, or in part, at any time if that party (the "terminating party") has determined, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default (the "defaulting party"). The terminating party shall promptly notify the defaulting party in writing of that determination and document such default as outlined herein. The defaulting party shall have thirty (30) days to cure the default described by the terminating party. If the defaulting party fails to cure the default within such thirty (30) day period, then this Agreement shall terminate ten (10) days following the expiration of such thirty (30) day period.
- 9.3 **Termination of Natural Area Management Easements.** The Parties will execute, and either of the Parties may record, a Release and Quitclaim of Easement as to any of the Properties affected by any termination proceedings pursuant to either Section 9.1 or 9.2 of this Agreement.

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

12. **Records.** At the time Metro transfers management responsibility for any property to the City, Metro will provide the City with copies of records related to the property that are not already in the City's possession, including title records, surveys, stabilization plans, and resource inventories.

13. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for the acquisition of Properties is from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11, 11b, 11c, 11d and 11e of the Oregon Constitution, and that the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that it will take no actions that would jeopardize the current status of the real property taxes imposed to repay these bonds as exempt from Oregon's constitutional

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

14. Laws of Oregon; Public Contracts. The laws of the State of Oregon shall govern this Agreement, and the parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS chapters 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated by this reference as if such provisions were a part of this Agreement.

15. Assignment. Neither party may assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except that a party may delegate or subcontract for performance of any of its responsibilities under this Agreement.

16. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by both (1) electronic mail or fax, and (2) regular mail. Notices shall be deemed delivered on the date personally delivered or the date of such electronic or fax correspondence, unless such delivery is on a weekend day, on a holiday, or after 5:00 p.m. on a Friday, in which case such notice shall be deemed delivered on the next following weekday that is not a holiday.

To Metro: Director, Metro Sustainability Center
 600 N.E. Grand Avenue
 Portland, OR 97232-2736

With Copy To: Office of Metro Attorney

To City: Director, Portland Bureau of Parks and Recreation
 City of Portland
 1120 SW 5th Avenue, Suite 1302
 Portland, OR 97204-1933

With Copy To: Bond Measure Program Manager

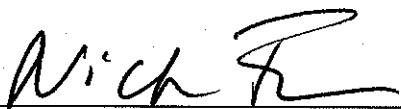
17. Severability. If any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.

18. Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the Properties. No waiver, consent, modification, amendment, or other change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

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

CITY OF PORTLAND

METRO



Nick Fish, Commissioner
Portland Bureau of Parks and Recreation

Michael Jordan, Chief Operating Officer

Date: 8-26-09

Date: _____

Exhibits:

- Exhibit A – List of Metro Properties That City Currently Manages
- Exhibit B - Form of Request to Accept Property Management Responsibility
- Exhibit C – Metro Funding Recognition Policy
- Exhibit D – Form of Metro to City Management and Restoration Easement
- Exhibit E – Form of Trail Easement
- Exhibit F– Form of Trail and Greenway Easement

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APPROVED AS TO FORM


CITY ATTORNEY

Exhibit A
Properties To Be Managed By The City of Portland

Exhibit A to Resolution No. 09-4082

City	Parcel ID	Owner	Acq. Date	Ac. Size	Code	Code	Code	Code	Code	Code	Code	Code
East Buttes	02.02	Emmert	11/27/2001	5.05	1S2E13D	-00500	R816600170	34	66			
East Buttes	02.02	Emmert	11/27/2001	1.32	1S2E13D	-00600	R816600400	34	66			
East Buttes	02.02	Emmert	11/27/2001	5.82	1S2E13D	-00700	R816600480	34	66			
East Buttes	02.02	Emmert	11/27/2001	0.89	1S2E13D	-00800	R816600720	34	66			
East Buttes	02.021	Brownwood	10/7/1998	1.33	1S2E13DD	-00100	R816602550	29	71			
East Buttes	02.021	Brownwood	10/7/1998	14.76	1S3E18C	-03800	R993180250	29	71			
East Buttes	02.024	Featherston	7/11/1997	3.02	1S3E18B	-02900	R428501500	25	75			
East Buttes	02.025	Yu Living Trust	12/1/2000	0.24	1S3E18B	-02802	R649751370	2	98			
East Buttes	02.025	Yu Living Trust	12/1/2000	2.51	1S3E18B	-02803	R649751380	2	98			
East Buttes	02.031	Schultz	9/26/1997	1.36	1N2E28BA	-17800	R942281840	25	75			
East Buttes	02.031	Schultz	9/26/1997	0.41	1N2E28BA	-17900	R942282330	25	75			
East Buttes	02.031	Schultz	9/26/1997	0.02	1N2E28BA	-18100	R942282350	25	75			
East Buttes	02.031	Schultz	9/26/1997	0.17	1N2E28BD	-01800	R138200250	25	75			
East Buttes	02.031	Schultz	9/26/1997	0.17	1N2E28BD	-01900	R138200230	25	75			
East Buttes	02.031	Schultz	9/26/1997	0.01	1N2E28BA	-18000	R942282340	25	75			
East Buttes	02.032	Hilgedick	6/25/1998	0.18	1N2E28BD	-02000	R138200210	25	75			
East Buttes	02.033	MJD Development	10/1/1998	1.70	1N2E28BD	-00100	R942280280	25	75			
East Buttes	02.041	Walters, Ingram and Bryan	8/7/1997	1.06	1S2E09AD	-00300	R992092220	25	75			
East Buttes	02.059	Garrison	3/30/1998	1.47	1S3E18A	-01800	R993180230	75	25			
East Buttes	02.076	Djonegoro	10/1/1998	0.22	1N2E28AB	-01300	R868630140	25	75			
East Buttes	02.076	Djonegoro	10/1/1998	0.21	1N2E28AB	-01400	R868630120	25	75			
East Buttes	02.076	Djonegoro	10/1/1998	0.23	1N2E28AB	-01500	R868630100	25	75			
East Buttes	02.076	Djonegoro	10/1/1998	0.16	1N2E28AB	-03400	R868630220	25	75			
East Buttes	02.086	Hartono	6/4/1999	0.25	1N2E28AB	-01100	R868630180	25	75			
East Buttes	02.086	Hartono	6/4/1999	0.24	1N2E28AB	-01200	R868630160	25	75			
East Buttes	02.086	Hartono	6/4/1999	0.16	1N2E28AB	-03500	R868630200	25	75			
East Buttes	02.089	Olson	10/19/1999	2.72	1S3E18C	-03400	R428503300	25	75			
East Buttes	02.127	Gentemann Trusts	1/24/2002	26.63	12E25A	00100	34803	25	75			
East Buttes	02.127	Gentemann Trusts	1/24/2002	14.60	12E25A	00102	1463785	25	75			
East Buttes	02.127	Gentemann Trusts	1/24/2002	28.20	12E25A	00103	1463794	25	75			
East Buttes	02.001	Camp Fire Council	2/27/2001	2.04	1S2E23CA	-01100	R992231280	25	75			
East Buttes	02.001	Camp Fire Council	2/27/2001	2.54	1S2E23CB	-00500	R992230450	25	75			
East Buttes	02.019	Hathaway	7/7/2000	1.25	1S2E10B	-00500	R992101220	25	75			
Fanno Creek	16.004	Kenny (Taylor Woods)	1/28/1997	3.31	1S1E30DC	-02800	R185703270	25	75			
Fanno Creek	16.015	Edwards	9/15/1997	0.82	1S1E30DC	-01100	R185701250	25	75			
Fanno Creek	16.016	Arcon/ Heritage	12/30/1997	0.83	1S1E18BA	-04300	R049500670	40	60			
Fanno Creek	16.016	Arcon/ Heritage	12/30/1997	0.08	1S1E18BA	-05000	R049501570	40	60			
Fanno Creek	16.016	Arcon/ Heritage	12/30/1997	1.02	1S1E18BA	-05100	R049500640	40	60			
Fanno Creek	16.026	Johnstone Trust	1/7/2000	1.00	1S1E20CC	-06000	R669403530	25	75			
Fanno Creek	16.026	Johnstone Trust	1/7/2000	0.11	1S1E20CC	-06600	R669403420	25	75			
Fanno Creek	16.026	Johnstone Trust	1/7/2000	0.11	1S1E20CC	-06700	R669403430	25	75			
Fanno Creek	16.026	Johnstone Trust	1/7/2000	0.11	1S1E20CC	-06800	R669403440	25	75			
Fanno Creek	16.026	Johnstone Trust	1/7/2000	0.16	1S1E20CC	-06900	R669403450	25	75			
Fanno Creek	16.036	Inner City Properties	11/8/2000	0.14	1S1E17BC	-01300	R320201860	25	75			
Fanno Creek	16.036	Inner City Properties	11/8/2000	0.14	1S1E17BC	-01400	R320201840	25	75			
Fanno Creek	16.036	Inner City Properties	11/8/2000	0.14	1S1E17BC	-01500	R320201780	25	75			
Fanno Creek	16.039	Inner City Properties	8/29/2001	0.63	1S1E17BC	-00800	R743500130	25	75			
Fanno Creek	16.039	Inner City Properties	8/29/2001	1.11	1S1E17BC	-00900	R743500040	25	75			
Fanno Creek	16.039	Inner City Properties	8/29/2001	0.49	1S1E17BC	-01000	R743501340	25	75			
Fanno Creek	16.039	Inner City Properties	8/29/2001	0.09	1S1E17BC	-01100	R743500100	25	75			
Forest Park	06.001	Camp Fire Council	9/19/1995	1.81	1N1W11BD	-00800	R546002890	0	100			
Forest Park	06.003	Wyatt	10/2/1995	4.83	1N1W05AA	-01200	R522702230	0	100			
Forest Park	06.004	Ramsey I	4/19/1999	48.30	1N1W04	-00100	R961040010	0	100			
Forest Park	06.004	Ramsey I	4/19/1999	23.89	1N1W04	-00200	R961040480	0	100			
Forest Park	06.007	Norvich and Miller	4/25/1997	2.19	1N1W11CA	-04500	R907205110	0	100			
Forest Park	06.007	Norvich and Miller	4/25/1997	1.03	1N1W11CA	-04600	R907205290	0	100			
Forest Park	06.013	Gebhart	11/17/1997	1.23	2N1W34CB	-00400	R359601500	0	100			
Forest Park	06.017	Martin	3/19/1998	0.55	1N1W13DC	-00701	R915500620	0	100			
Forest Park	06.018	Michael and Lakeman	1/14/2000	7.43	1N1E32CC	-00100	R941320370	0	100			
Forest Park	06.023	Thomas	12/17/1996	27.67	1N1W25B	-00200	R961250060	0	100			
Forest Park	06.023	Thomas	12/17/1996	0.68	1N1W25BD	-00500	R961250330	0	100			
Forest Park	06.023	Thomas	12/17/1996	0.08	1N1W25BD	-00600	R961250620	0	100			
Forest Park	06.023	Thomas	12/17/1996	1.01	1N1W25BD	-00800	R961250680	0	100			
Forest Park	06.023	Thomas	12/17/1996	0.01	1N1W25BD	-00900	R961251140	0	100			
Forest Park	06.024	Rivera	12/5/1996	2.51	2N1W34	-01500	R971340420	0	100			
Forest Park	06.024	Rivera	12/5/1996	0.73	2N1W34DC	-00900	R971340050	0	100			
Forest Park	06.027	Wilson	5/22/1997	4.02	1N1E31B	-00100	R941310450	0	100			
Forest Park	06.029	Moyer Theatres	10/10/1997	34.67	1N1W15A	-00100	R961150230	0	100			
Forest Park	06.031	Friends of FP	7/14/1997	4.33	1N1E31AA	-00500	R590300160	0	100			
Forest Park	06.031	Friends of FP	7/14/1997	3.27	1N1E31AA	-00800	R590300030	0	100			

Metro Target Area	Metro File #	Metro File Name	Closing Date	Acres	TaxLotID*	RNO ID*	% City Ownership	% Metro Ownership
Forest Park	06.033	Voss	6/20/1997	0.28	1N1E31AB -00600	R590301370	0	100
Forest Park	06.033	Voss	6/20/1997	1.90	1N1E31AB -00700	R590301210	0	100
Forest Park	06.041	White, Baker and Archer	2/22/1999	1.44	1N1W10D -01700	R540000900	0	100
Forest Park	06.044	Harrold	10/5/1998	0.34	1N1W11BA -05800	R546001100	0	100
Forest Park	06.044	Harrold	10/5/1998	0.43	1N1W11BA -06200	R546001320	0	100
Forest Park	06.046	WQ Properties	2/3/1999	19.34	1N1W14 -00401	R464710120	0	100
Forest Park	06.046	WQ Properties	2/3/1999	19.57	1N1W14 -00402	R464710220	0	100
Forest Park	06.046	WQ Properties	2/3/1999	5.25	1N1W23B -00100	R464710200	0	100
Forest Park	06.046	WQ Properties	2/3/1999	6.79	1N1W23B -00200	R464710100	0	100
Forest Park	06.047	OR Jewish Com. Found.	2/11/2000	0.75	1N1W11BA -07400	R320504360	0	100
Forest Park	06.047	OR Jewish Com. Found.	2/11/2000	0.22	1N1W11BA -07500	R320504480	0	100
Forest Park	06.047	OR Jewish Com. Found.	2/11/2000	0.00	1N1W11BA -07600	R320504470	0	100
Forest Park	06.047	OR Jewish Com. Found.	2/11/2000	0.04	1N1W11BA -07700	R320504490	0	100
Forest Park	06.048	Ramsey II	12/19/2002	31.00	1N1W04 -01100	R961040070	62	38
Forest Park	06.048	Ramsey II (PLA - COP)	12/19/2002	9.68	1N1W04 -01000	R961040450	62	38
Forest Park	06.055	Moskee	11/14/2002	0.04	1N1E32CC -00101	R941321380	0	100
Forest Park	06.057	James	3/24/2005	1.37	1N1W02CC -07400	R873001740	0	100
Forest Park	06.061	Cleaveland	12/19/2006	0.64	1N1W03DD -00100	R873000700	0	100
Johnson Creek	29.001	Wong	6/22/2007	10.32	1S2E13C -01200	R315200050	0	100
Johnson Creek	29.002	Spani/Seely	12/29/2006	0.45	1S1E26AA -00400	R752717760	0	100
Johnson Creek	29.002	Spani/Seely	12/29/2006	0.58	1S1E26AA -00500	R752717720	0	100
Johnson Creek	29.006	Clatsop Buttes	7/13/2007	0.05	1S2E23AA -00900	R144200290	0	100
Johnson Creek	29.006	Clatsop Buttes	7/13/2007	4.34	1S2E23AA -01200	R992230030	0	100
Johnson Creek	29.006	Clatsop Buttes	7/13/2007	0.59	1S2E23AA -01201	R992232260	0	100
Johnson Creek	29.006	Clatsop Buttes	7/13/2007	0.02	1S2E23AA -01202	R992232270	0	100
Johnson Creek	29.006	Clatsop Buttes	7/13/2007	4.75	1S2E23AA -01300	R992230020	0	100
Johnson Creek	29.006	Clatsop Buttes	7/13/2007	6.21	1S2E23AD -00100	R992232190	0	100
Johnson Creek	29.006	Clatsop Buttes	7/13/2007	15.55	1S2E24B -01300	R431104000	0	100
Johnson Creek	29.006	Clatsop Buttes	7/13/2007	16.93	1S2E24B -01400	R431104340	0	100
Johnson Creek	29.006	Clatsop Buttes	7/13/2007	0.26	1S2E24BB -01000	R431103520	0	100
Johnson Creek	29.007	Clatsop Buttes II	1/7/2008	0.09	1S2E24BD -01700	R431104840	0	100
Johnson Creek	29.007	Clatsop Buttes II	1/7/2008	0.27	1S2E24BD -01800	R431104800	0	100
Johnson Creek	29.007	Clatsop Buttes II	1/7/2008	1.20	1S2E24BD -01900	R431104820	0	100
Johnson Creek	29.008	Reeves	11/30/2007	52.70	1S2E24C -00100	R992240420	0	100
Johnson Creek	29.011	Emmert	5/30/2008	10.70	1S2E24C -00500	R992241030	75	25
Mult Co Local Share	20.001	Klein	8/9/1995	4.86	1N2E18BA -03100	R506001140	50	50
Mult Co Local Share	27.002	Talbert	9/18/1995	0.64	1N2E18BA -03200	R506001080	0	100
Mult Co Local Share	27.003	Stickler	9/8/1995	0.64	1N2E18BA -03300	R506001020	0	100
Mult Co Local Share	27.004	Krueger, T. & C.	11/28/1995	0.09	1N2E18BD -00500	R942183540	0	100
Mult Co Local Share	27.004	Krueger, T. & C.	11/28/1995	0.56	1N2E18BD -00600	R506000960	0	100
Mult Co Local Share	27.008	Hayes, E.	11/7/1997	2.08	1N2E18BD -00401	R942183960	0	100
Multnomah Co Local Share	27.009	Espedal, C.	12/3/1996	4.49	1N2E18A -01500	R942180020	0	100
Pen Crossing Trail	25.001	Hill	4/4/1997	1.51	1N1E06DD -02300	R941060250	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.17	1S1E32BA -12200	R894608910	0	100
Tryon Creek	14.001	Larry and Nina Lindstrom	10/3/1995	0.11	1S1E32BA -12400	R894608970	0	100
Tryon Creek	14.001	Larry and Nina Lindstrom	10/3/1995	0.34	1S1E32BA -12600	R894608930	0	100
Tryon Creek	14.001	Larry and Nina Lindstrom	10/3/1995	0.51	1S1E32BB -02700	R894608840	0	100
Tryon Creek	14.001	Larry and Nina Lindstrom	10/3/1995	0.11	1S1E32BB -02800	R894608880	0	100
Tryon Creek	14.001	Larry and Nina Lindstrom	10/3/1995	0.17	1S1E32BB -03100	R894608990	0	100
Tryon Creek	14.001	Larry and Nina Lindstrom	10/3/1995	0.46	1S1E32BB -03300	R894608780	0	100
Tryon Creek	14.001	Larry and Nina Lindstrom	10/3/1995	0.12	1S1E32BB -03600	R894608680	0	100
Tryon Creek	14.001	Larry and Nina Lindstrom	10/3/1995	0.23	1S1E32BB -04100	R894608730	0	100
Tryon Creek	14.001	Larry and Nina Lindstrom	10/3/1995	0.12	1S1E32BB -04400	R894606420	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.97	1S1E32BC -00100	R894610380	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.51	1S1E32BC -00200	R894610510	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	2.05	1S1E32BC -00300	R894613140	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.11	1S1E32BC -05500	R894612980	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.11	1S1E32BC -05600	R894612970	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.17	1S1E32BC -05700	R894613010	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.23	1S1E32BC -05800	R894613020	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.17	1S1E32BC -05900	R894613040	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.11	1S1E32BC -06000	R894613060	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.11	1S1E32BC -06100	R894613050	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.80	1S1E32BC -06200	R894610660	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.23	1S1E32BC -06300	R894610570	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.79	1S1E32BC -06400	R894610590	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.23	1S1E32BC -06500	R894610550	0	100

Property Name	Parcel No.	Owner Name	Acquiring Date	Acres	CRS Code	CRS ID	CRS Value	CRS Status
Tryon Creek	14.001	Lindstrom	10/3/1995	0.12	1S1E32BC -07100	R894610870	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.11	1S1E32BC -07100	R894610870	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.06	1S1E32BC -08100	R894610870	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.34	1S1E32BC -08200	R894612870	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.57	1S1E32BD -06800	R894610460	0	100
Tryon Creek	14.002	Tree Products/ Balmer/ Foley	7/16/1996	0.34	1S1E28BC -01100	R991280430	0	100
Tryon Creek	14.002	Tree Products/ Balmer/ Foley	7/16/1996	0.49	1S1E28BC -01200	R991280390	0	100
Tryon Creek	14.002	Tree Products/ Balmer/ Foley	7/16/1996	6.32	1S1E28BC -01300	R052001240	0	100
Tryon Creek	14.002	Tree Products/ Balmer/ Foley	7/16/1996	0.23	1S1E28BC -01800	R236500710	0	100
Tryon Creek	14.002	Tree Products/ Balmer/ Foley	7/16/1996	0.61	1S1E28BC -01900	R236500670	0	100
Tryon Creek	14.002	Tree Products/ Balmer/ Foley	7/16/1996	1.59	1S1E28BC -02300	R236500540	0	100
Tryon Creek	14.004	Jensen	7/25/1996	2.28	1S1E28BD -04500	R534001500	50	50
Tryon Creek	14.005	Victory Fellowship	10/7/1996	0.17	1S1E32BB -03500	R894608830	0	100
Tryon Creek	14.007	Pollack and Carpenter	6/17/1997	0.11	1S1E32BA -12300	R894608900	0	100
Tryon Creek	14.007	Pollack and Carpenter	6/17/1997	0.17	1S1E32BA -12500	R894608960	0	100
Tryon Creek	14.007	Pollack and Carpenter	6/17/1997	0.11	1S1E32BB -02900	R894608890	0	100
Tryon Creek	14.007	Pollack and Carpenter	6/17/1997	0.11	1S1E32BB -03000	R894608980	0	100
Tryon Creek	14.007	Pollack and Carpenter	6/17/1997	0.11	1S1E32BB -03200	R894608770	0	100
Tryon Creek	14.007	Pollack and Carpenter	6/17/1997	0.06	1S1E32BB -04000	R894608720	0	100
Tryon Creek	14.007	Pollack and Carpenter	6/17/1997	0.11	1S1E32BB -04200	R894608760	0	100
Tryon Creek	14.007	Pollack and Carpenter	6/17/1997	0.11	1S1E32BB -04300	R894608750	0	100
Tryon Creek	14.007	Pollack and Carpenter	6/17/1997	0.57	1S1E32BD -06500	R894610310	0	100
Tryon Creek	14.007	Pollack and Carpenter	6/17/1997	0.46	1S1E32BD -06600	R894610270	0	100
Tryon Creek	14.009	Portland Public Schools	4/2/1999	9.03	1S1E29DD -03100	R134900010	0	100
Tryon Creek	14.001	Lindstrom	10/3/1995	0.11	1S1E32BA -11700	R894606250	0	100
Willamette River GW	20.004	TPL (Marquam Woods)	6/12/1996	14.19	1S1E16 -00100	R991160810	10	90
Willamette River GW	20.004	TPL (Marquam Woods)	6/12/1996	0.88	1S1E16AA -00500	R669104790	10	90
Willamette River GW	20.004	TPL (Marquam Woods)	6/12/1996	0.90	1S1E16AA -00600	R669104910	10	90
Willamette River GW	20.004	TPL (Marquam Woods)	6/12/1996	0.69	1S1E16AA -00700	R669106280	10	90
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.61	1S1E22A -01000	R991220510	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	5.12	1S1E22DA -00100	R991220570	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.67	1S1E22DD -01000	R752721590	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.11	1S1E11BB -05400	R921300260	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.22	1S1E11BC -07500	R865200560	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.30	1S1E11BC -07600	R865200350	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	2.63	1S1E11BC -07800	R991110750	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.35	1S1E11BC -07900	R991111630	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.17	1S1E11CB -08600	R929400870	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.09	1S1E11CB -08700	R710100290	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.08	1S1E11CB -08800	R710100390	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.16	1S1E11CB -08900	R709900710	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	2.94	1S1E11CB -09000	R709900010	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	1.27	1S1E11CB -09100	R710100010	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.45	1S1E11CB -09200	R929400770	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.59	1S1E11CB -09300	R929400670	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	7.14	1S1E11CC -01000	R709900150	0	100

Water System	Stream ID	Owner/Title Holder	Binding Date	Acres	Land Use	Assessor ID	Parcel ID	County	Ownership
River GW	24.001	PGE/Enron	5/1/1998	7.76	1S1E14B	-00500	R991141250	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.02	1S1E14C	-00200	R991140970	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	4.26	1S1E14C	-00201	R991141260	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.05	1S1E14C	-00202	R991141270	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.46	1S1E14C	-00400	R991141220	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.59	1S1E26AA	-08600	R752724056	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.49	1S1E26AA	-08700	R752724080	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.03	1S1E26AA	-08800	R752724236	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.40	1S1E26BA	-16100	R752722800	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.56	1S1E26BA	-16200	R752723200	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.57	1S1E26BB	-08300	R752722620	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	1.05	1S1E10AA	-00700	R921300010	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	0.38	1S1E11BB	-06500	R448700660	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	1.39	1S1E11BC	-07700	R991110500	0	100
Willamette River GW	24.001	PGE/Enron	5/1/1998	11.52	1S1E23	-00600	R991230730	0	100
Willamette River GW	24.004	U P RR	12/19/2001	0.86	1S1E26AA	-08900	R752717590	0	100
Willamette River GW	24.004	U P RR	12/19/2001	0.04	1S1E26BB	-03901	R752701750	0	100
Willamette River GW	24.004	U P RR	12/19/2001	4.19	11E25BB08000		7450	0	100
Willamette River GW	24.006	PGE	3/14/2003	0.67	1S1E26BB	-03900	R752701760	0	100
Willamette River GW	24.006	PGE	3/14/2003	0.30	1S1E26BB	-04000	R752701620	0	100
Willamette River GW	24.008	Prell/Morton	5/26/2006	0.17	1S1E26BA	-07100	R752723190	0	100
		Begger's Tick		1.55	1S2E15CA	-01500	R304101210	0	100
		Begger's Tick		1.69	1S2E15CA	-01600	R304101240	0	100
		Begger's Tick		5.86	1S2E15CA	-01700	R992153470	0	100
		Begger's Tick		1.00	1S2E15CA	-01800	R561207010	0	100
		Begger's Tick		1.00	1S2E15CA	-02100	R561206410	0	100
		Begger's Tick		1.00	1S2E15CA	-02200	R561206310	0	100
		Begger's Tick		1.71	1S2E15CD	-00100	R304101270	0	100
		Begger's Tick		0.60	1S2E15CD	-00200	R304101390	0	100
		Begger's Tick		3.94	1S2E15CD	-00300	R992152970	0	100
		Begger's Tick		0.49	1S2E15CD	-00400	R561207200	0	100
		Begger's Tick		0.39	1S2E15CD	-00700	R561207290	0	100

* The parties acknowledge that tax lot identification and assessor identification numbers may change at the discretion of the County assessor's office. These numbers were those in effect on the Effective Date of the IGA. In the event any of these identification numbers are changed, the parties intend for such changes to automatically apply and for this list to be so updated at such time.

EXHIBIT B

Request to Accept Property Management Responsibility

_____, 200__

City of Portland
Bureau of Parks and Recreation
1120 SW 5th Avenue, Suite 1302
Portland, OR 97204-1933

Re: Request to Accept Property Management Responsibility of Property within the _____
_____ Target Area
_____ (State Tax ID #); Metro File No. _____

Dear _____:

Pursuant to the Intergovernmental Agreement between Metro and the City of Portland dated _____, 2009, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of Metro's potential acquisition and/or intended transfer of management responsibilities for the following property within the _____ Target Area:

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

Pursuant to the Intergovernmental Agreement, Metro requests that the City agree to manage, maintain, secure, and operate this Property in accordance with the Intergovernmental Agreement. Metro hereby provides notice that there is is not (mark one) a current lessee or tenant on the property who may be entitled to relocation assistance benefits or payments if displaced from the Property. As provided in the Intergovernmental Agreement, please notify Metro in writing within thirty (30) days, on or before _____ (date) indicating whether the City will accept management responsibility for this Property. Metro intends to close on the purchase of this property and/or transfer management responsibilities for the Property on _____, 200__. Should you accept management of the Property, Metro's stabilization manager will contact you after the property is acquired or before management responsibilities are transferred.

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

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

Sincerely,

Kathleen BrennanHunter, Natural Areas Program Director

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

CITY'S CONSENT TO MANAGE THE PROPERTY

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

_____ (signature)

by: _____ (name)

check one:

Management of the Property will be subject to the terms of the following Park/Natural Resources Management Plan/Master Plan: _____, dated _____.

A management plan applicable to the Property does not exist and the property will be managed in accordance with the Intergovernmental Agreement until an applicable management plan is adopted.

EXHIBIT C
Metro Funding Recognition Policy

As provided in this document, the City shall recognize that funding to acquire a Property was provided from the Metro 1995 Open Spaces Bond Measure or the Metro 2006 Natural Areas Bond Measure. Such recognition shall be included in and on on-site documentation (e.g. signs), any published final products and visual presentations, web site information, collateral materials, newsletters, and press releases.

Signage shall be installed at the Properties in prominent and highly visible locations near each primary public access point or viewing access area (but not located in a manner that would have a detrimental impact on any natural area viewshed) to acknowledge Metro's funding of acquisition of the Property. Signage shall be either:

- a. A standard, free-standing sign provided by Metro, which Metro shall make available to the City upon request; or
- b. Inclusion of Metro's logo and script in other signage, with Metro's logo and script of a size equal and comparable to the size of the City's logo and script. Metro shall make its graphics available to the City upon request.

When a Property is opened to the public, if the City plans and holds any community/media events to publicize the Property, the City agrees to provide the Metro Natural Areas Program Director 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 Metro staff and elected officials, and appropriate recognition of the source of funding for acquisition of the Property.

EXHIBIT D**NATURAL AREA MANAGEMENT EASEMENT**

THIS MANAGEMENT AND RESTORATION EASEMENT (this "Easement") is entered into between Metro, an Oregon municipal corporation, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro" and "Grantor") and the City of Portland (the "City" and "Grantee"), located at 1120 SW 5th Avenue, Portland, OR 97204-1933, acting by and through its Bureau of Parks and Recreation, with the Grantor and Grantee collectively referred to as "the Parties" herein. This Easement shall be effective on the last date of signature of a party, below (the "Effective Date").

RECITALS

1. Grantor is the owner of certain real property (the "Property") depicted and described, respectively, on Exhibits A and B hereto.
2. The Parties have entered into that certain Intergovernmental Agreement dated _____ (the Agreement) which establishes certain responsibilities and obligations between the Parties as to the Property, with the overall intent of the Agreement being the protection and enhancement of the Property's natural resources, water quality, wildlife habitat, and public recreation values. The Agreement is a public record available on request from the City or Metro.
3. The City agrees, by accepting this Easement, to honor the intention of the Grantor to preserve and protect the Property in perpetuity according to the terms of this Easement, as further clarified by the Agreement, as it may be amended from time to time.

AGREEMENT

1. **Grant.** In consideration of the foregoing and the mutual terms, conditions, and restrictions contained in this Easement and the Agreement, Grantor, as to its interest in the Property, does hereby grant and convey to the City a natural area management easement on, over, and across the Property of the nature, to the extent, and on the terms set forth in this Easement..
2. **Purpose.** The purpose of this Easement is to ensure the Property will be managed, maintained, restored, improved, secured, and operated consistent with their intended use as natural areas, with the primary goal being protection of the Property's natural resources and water quality, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing, and, except as provided in this Easement, to prevent uses of the Property that will materially impair or interfere with the Property's natural resources, water quality, or wildlife habitat. Grantor intends that this Easement will limit the uses of the Property to activities consistent with this purpose, with said uses to be consistent with use of the Property as a natural area park.
3. **Rights and Obligations of City.** To accomplish the purpose of this Easement, Grantor conveys to the Grantee the right and obligation to:
 - A. Enter the Property at any time for the purpose of managing, maintaining, restoring, improving, securing, and operating the Property in a manner consistent with the intent of this Easement and the Agreement. Authorized uses will include making capital improvements to the Property, subject to the written approval of the Grantor, which will not be unreasonably withheld; provided, however, that such improvements shall be consistent with the purpose of this Easement and consistent with an adopted natural resources Management Plan (as described in Section 4 of the

Agreement) for the Property. Acceptable improvements may include the construction of trails, trailhead facilities (including parking areas, restrooms, and signage), picnic facilities and shelters, and other similar improvements. Active-use recreation facilities, such as athletic fields or courts, recreation centers, swimming facilities, and other similar improvements, shall not be constructed on the Properties;

- B. Prevent, through appropriate enforcement actions, any activity on or use of the Property that is inconsistent with the purpose of this Easement and the Agreement and to restore or require the restoration of such features of the Property as may be damaged by an inconsistent activity or use;
 - C. Install, own, maintain, repair, and reconstruct capital improvements that are made by the Grantee on the Property consistent with Section 3.A of this Easement; and
 - D. When exercising rights granted herein, the Grantee shall keep the Property in a good and safe condition, consistent with like properties held by the City for park and open space purposes.
4. **City's Authority to Permit Public Use.** The City may grant access and use rights to the Property to the general public through this Easement, provided that a management plan has been adopted for the Property consistent with the terms of the Agreement. The rights of the general public granted under this Easement will be limited to those uses that are consistent with the purpose of the Easement and the Agreement. Public use of the Property will be subject to Chapter 20 of the Portland City Code, as currently enacted or hereafter amended, as well as any rules, regulations, and policies of the Portland Bureau of Parks and Recreation. [I don't understand the intent of this last sentence, so I have deleted it.]
 5. **Rights Reserved to Grantor.** Grantor reserves for itself and its successors and assigns, any and all rights not granted herein, but will not exercise said rights in any manner which is inconsistent with the intent of this Easement and the Agreement.
 6. **Covenants and Remedies.** The Parties are responsible for compliance with the terms and conditions of this Easement and will remedy non-compliance matters, if any, in accordance with the terms and conditions of the Agreement.
 7. **Acts Beyond Parties' Control.** Nothing contained in this Easement shall be construed to entitle either Party to bring any action against the other Party for any injury to or change in the Property resulting from causes beyond that Party's control, including, without limitation, fire, flood, storm, and earth movement, or from any reasonable action taken by a Party under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
 8. **Indemnification.** Grantee shall indemnify and hold Grantor and Grantor'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 Easement by the Grantee or the Grantee's officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30. Grantor shall indemnify and hold the Grantee and the Grantee'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 Grantor or Grantor's officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30.
 9. **Hazardous Substances.** It is understood and agreed that this easement shall not act to transfer, grant, assign or convey to the Grantee any liability for any release of hazardous substances onto or from the subject property, and that Grantor is not attempting to transfer, grant, assign or convey any such liability.

10. **Transfer and/or Assignment.** This Easement is not assignable without the written consent of Grantor.
11. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Grantor and Grantee are free to jointly amend this Easement. Any such amendment shall be consistent with the purpose of this Easement and the Agreement and no such amendment shall be effective unless signed by the Grantor and Grantee.
12. **Subsequent Transfers.** Grantor agrees that any future conveyance of any interest in the Property, including without limitation, a leasehold interest, shall remain subject to the terms of this Easement.
13. **Termination of Rights and Obligations.** This Easement may be terminated as provided in the Agreement. In addition, a party's rights and obligations under this Easement terminate upon transfer of such party's interest in the Property, except that liability for acts or omissions occurring prior to a transfer shall survive such transfer. Notwithstanding anything to the contrary herein, capital improvements made by Grantee with Grantor's permission will become the property of the Grantor upon termination of the Easement, with Grantee having no further liability as to said improvements
14. **Miscellaneous.**
 - A. **Controlling Law and Forum.** This Easement shall be governed by and construed in accordance with the laws of the State of Oregon. Any litigation arising under this lease shall occur in the court sitting in Multnomah County having proper jurisdiction.
 - B. **Notices.** Any notice, demand, request, consent, approval, or other communication required or permitted hereunder shall be in writing and either served personally, by overnight courier service or by first class, registered or certified mail, postage prepaid, return receipt requested, addressed as follows:
 - C. **Recording.** The City shall record this Easement in the official records of Multnomah County, Oregon and may re-record it as required to preserve its rights under this Agreement.
 - D. **Severability.** If any provision of this Easement is found to be invalid, the remaining portion thereof and all other provisions of this Easement shall, nevertheless, remain in full force and effect.
 - E. **Entire Agreement.** This Easement is the final and entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings or agreements between the parties.
 - F. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and permitted assigns and shall continue as a servitude running with the Property unless terminated as provided herein.
 - G. **Third Party.** As used in this Agreement, the term "third party" means individuals or entities other than Grantor and the Grantee.
 - H. **Counterparts.** The parties may execute this instrument in two or more counterparts, and when taken together will constitute one in the same instrument.

- I. No Third Party Beneficiaries Created. This Agreement is intended solely for the benefit of Metro and the City and there are no third party beneficiaries hereto, intended or otherwise. This Agreement may be enforced only by Metro and the City.
- J. Exhibits and Recitals. The exhibits and recitals are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this ____ day of _____, 2008.

METRO

By: _____

THE CITY OF PORTLAND

By: _____
Commissioner of Parks and Recreation

APPROVED AS TO FORM

City Attorney

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on this ____ day of _____, 2008, by _____.

NOTARY PUBLIC FOR OREGON
My commission expires _____

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on this _____ day of _____, 2008, by
_____.

NOTARY PUBLIC FOR OREGON
My commission expires _____

After recording, please return to:
Name:
Address:

EXHIBIT E

After recording return to:

TRAIL EASEMENT

This Trail Easement (this "Easement") is made and entered into this _____ day of _____, 2008, by and between _____, an Oregon _____ ("Grantor"), and the City of Portland, located at 1120 SW 5th Avenue, Portland, Oregon 97204 ("Holder").

RECITALS

A. Grantor is the owner of the real property commonly known as Tax Parcel _____, Township _____, Range _____, Section _____ of the Willamette Meridian, in the City of _____, County of _____, State of Oregon, and legally described on Exhibit A attached hereto (the "Property").

B. Holder is an Oregon municipal government whose purpose, among other things, is to build, operate, and maintain recreational trails and pathways for the benefit of the public. Holder desires to build, operate, and maintain a recreational trail and pathway on the Property along the _____.

C. Grantor desires to grant to Holder, and Holder desires to accept from Grantor, an easement over the Property for the purpose of allowing Holder to establish and maintain a public trail and pathway in accordance with the terms and conditions set forth below.

In consideration of the recitals and the mutual benefits, covenants, and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby dedicates, grants, covenants, and agrees as follows:

AGREEMENT

1. Grant of Easement. Grantor hereby grants to Holder a nonexclusive, perpetual easement in gross, on, over, across, and along a portion of the Property (the "Easement Area"). The Easement Area runs [insert general description] and is more particularly described and depicted on Exhibits B-1 and B-2 attached hereto.

2. Purposes. The purposes of this Easement are to give Holder the right to (a) enter the Easement Area at any time to establish, install, construct, maintain, and repair a trail and

pathway, which trail shall be up to _____ feet in width (the "Trail"), and (b) permit the public to access and use the Trail established, installed, and constructed by Holder. The Trail that Holder has the right to establish hereunder may be either a low-impact soft surface trail or an all-weather paved trail, or any combination or variant thereof, at Holder's discretion.

3. Construction, Repair, Maintenance.

(a) Holder may take all reasonable actions necessary to establish, construct, maintain, and repair the Trail within the Easement Area, including, but not limited to, installing the following related surface and subsurface utilities and improvements (collectively, the "Trail Facilities"): (i) appropriate trail surfaces, foot bridges and associated trail structures and culverts, (ii) trail markers, signs, lights, and other security enhancements along the Easement Area and at all points of access, (iii) any barriers, fences and gates necessary to prevent motorized vehicular access into the Easement Area, and (iv) benches for the convenience and comfort of the public. The Trail Facilities shall be and remain the property of Holder.

(b) *[Holder shall also have the right to establish, construct, maintain, and repair a designated amenity area within the _____ portion of the Easement Area, which area is more specifically identified on the attached Exhibit C (the "Amenity Area"). Holder may take any reasonable actions necessary to accomplish the foregoing, including, but not limited to, installing the following amenities, structures, and improvements: (i) educational and informational kiosks and signage, (ii) picnic areas and shelters, and (iii) water, sanitary, and access facilities.]*

(c) Holder shall be responsible for obtaining all governmental permits for construction of the Trail and Trail Facilities prior to commencing such construction and Grantor shall cooperate in good faith with Holder in obtaining any necessary construction and/or development permits. Holder shall give Grantor thirty (30) days written notice before commencing construction of the Trail and Trail Facilities. **[TEMPORARY CONSTRUCTION EASEMENT – consider revising depending if area is needed for staging or for shoulder buffer: Grantor hereby grants to Holder a temporary, non-exclusive construction easement over, under, in, along, across and upon that certain area immediately adjacent to the Easement Area, which area is further described on the attached Exhibit D (the "Temporary Construction Area"), for the purpose of constructing the Trail Facilities. Holder may use and access the Temporary Construction Area to (i) conduct any studies, tests, examinations, and surveys it deems necessary for trail design and construction purposes, and (ii) engage in any activities reasonably related to construction of the Trail and Trail Facilities. The temporary construction easement granted hereunder shall commence on the Effective Date of this Easement and shall automatically terminate at such time as construction is completed by Holder and Holder has mailed a Notice of Completion to Grantor and recorded such Notice in the real property records of _____ County. Any of the Temporary Construction Area disturbed by Holder during construction shall be restored by Holder, at Holder's sole costs and expense, to its pre-construction condition.]**

(d) Holder shall be solely responsible for all repair and maintenance of the Trail and Trail Facilities; provided, however, that Grantor shall reimburse Holder for all sums

expended by Holder to repair any damage to the Trail and Trail Facilities due to the negligence or abnormal use by Grantor or Grantor's invitees, guests, or licensees.

4. Permitted Trail Uses. Holder may permit the public to access the Trail for recreational and transportation purposes, including, without limitation, walking, running, cycling, skating, skiing, and horseback riding. Except for motorized wheelchairs (or other mobility devices used by individuals with disabilities) or in the case of an emergency, motorized vehicles will not be permitted on the Trail; provided, however, that Holder may use motorized vehicles and equipment for construction, maintenance, repair, and security purposes related to the Trail and Trail Facilities. Holder shall have the right, in its sole discretion, to restrict or limit public use of and access to the Trail.

5. Grantor's Use of Easement Area: Grantor shall retain the right to access, use, and enjoy the Easement Area for its purposes consistent with the rights granted herein. Grantor is prohibited, however, from engaging in any activity on, or use of, the Easement Area that (i) is inconsistent with the terms of this Easement, (ii) materially interferes with or impairs the use of the Trail by Holder or the public, or (iii) hinders or interferes with future Trail construction or repair by Holder. Without limiting the generality of the forgoing, the following activities and uses by Grantor within the Easement Area are expressly prohibited without the express written consent of the Holder:

- (a) Constructing any improvements or structures, parking any vehicles, installing any paving or gravel, or storing any personal property;
- (b) Blocking, obstructing, or interfering with Holder's access through the Easement Area;
- (c) Excluding any persons from using the Trail, provided that such use is in accordance with the terms of this Easement, or taking any other action that unreasonably prevents or interferes with public entry onto the Trail and Trail Facilities, including without limitation imposing a fee or charge of any kind;
- (d) Cutting, trimming, pruning, destroying, mowing, spraying with biocides, or removing any vegetation trees, plants, or shrubs;
- (e) Planting any vegetation, including, without limitation, any trees, shrubs, grasses, or seeds of any kind;
- (f) Placing or erecting any signs, billboards, or other advertising material, temporary or permanent;
- (g) Dumping or storing ashes, trash, rubbish, garbage, sawdust, lawn cuttings, leaves, compost, or other material or substances;
- (h) Filling, excavating, digging, dredging, mining, quarrying, removing, or disturbing the topsoil, sand, gravel, rock, minerals, or other materials;

(i) Damming, dredging, or undertaking any other activities that may be detrimental to water quality; and

(j) Taking any action that damages fish or wildlife, or their habitats; alters existing vegetation or drainage patterns, flood plains, wetlands, or the natural condition of the Easement Area; or results in erosion, siltation, or other forms of pollution.

6. Enforcement. In addition to any other remedies available at law or in equity, Holder may compel Grantor to make the Easement Area available for the purposes set forth above in Section 2 by exercising any one or more of the following remedies:

(a) Holder may seek injunctive relief to specifically enforce the terms of this Easement, to restrain present or future violations of this Easement, or to compel restoration of the Trail or any Trail Facilities destroyed or altered as a result of Grantor's violation of this Easement; and

(b) Holder may enter the Property to remove any barrier obstructing Holder's ability to access the Easement Area or the Trail, and may take other self-help measures or actions reasonably necessary to protect and preserve the rights of Holder under this Easement.

7. Hazardous Substances. Grantor represents and warrants to the best of its knowledge that it has disclosed to Holder the results of any and all Phase I Environmental Assessments, Phase II Environmental Investigations, surveys, sampling, and testing regarding the Property, and any information contained therein. It is understood and agreed that Holder, by accepting this grant of easement, is not accepting any liability for any release of Hazardous Substances, as that term is defined in ORS Chapter 465, on, to, or from the Property, unless resulting directly from an intentional or negligent act of Holder or Holder's employees, agents, or contractors, and that Grantor is not attempting to convey, transfer, or assign any such liability herein.

8. Taxes. Grantor shall pay when due all real property taxes, assessments, and other charges against the Property, including the Easement Area. There shall be no right to contribution from Holder for such items.

9. *[As-is Condition. Except as otherwise set forth herein, Grantor makes no representation as to the physical condition or safety of the Easement Area. The usage of Easement Area is at the public's risk and in its "as-is" condition, including, but not limited to all existing or subsequent natural hazards--i.e., slippery areas, loose rocks, tree limbs, water currents, sink holes, etc.]*

10. Liability and Indemnity. The parties to this Easement acknowledge that, to the extent so provided in ORS 105.672 to ORS 105.696, both Grantor and Holder are immune from liability for injuries incurred on the property by members of the public who access the Easement Area under authority of this Easement. Holder shall indemnify, defend, and hold harmless Grantor against all losses and litigation expenses resulting from property damage and/or personal injuries that occur or are alleged to occur as a result of Holder's installation or maintenance of the Trail or the Trail Facilities, except to the extent caused by the negligent or wrongful acts or

omissions of Grantor. Grantor agrees to indemnify, defend, and hold harmless Holder from any loss or litigation expense arising from, related to, or associated with (a) personal injury or property damage occurring prior to the Effective Date of this Easement, (b) activities or uses engaged in by Grantor, or Grantor's contractors, agents, employees, tenants, guests, invitees, or anyone else entering the Property by, through, or under the express or implied invitation of Grantor, or (c) structures, facilities, or improvements within the Easement Area, other than the Trail Facilities installed by Holder. As used in this Section, the word "losses" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, and penalties or other charge other than a litigation expense. As used in this Section, the term "litigation expenses" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Agreement including in each case, attorneys' fees, other professionals' fees, and disbursements.

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

To Grantor: _____

To Holder: _____

With a copy to: _____

12. Title Warranty.

(a) Grantor represents and warrants that Grantor owns the entire fee simple interest in the Property, and has the full power and lawful authority to grant this Easement. Any and all financial liens or financial encumbrances existing as of the date of the execution of this Easement have been subordinated. Grantor further represents and warrants that the Property is not subject to any other liens and encumbrances except as otherwise set forth on the attached Exhibit E.

(b) **[DRAINAGE DISTRICT LANGUAGE:** *As referenced on Exhibit E, the _____ Drainage District No. ____, a special district of the State of Oregon (the "Drainage District"), holds a public drainage easement over certain portions of the Easement Area. Such easement was recorded in the real property records of _____ County on _____, as Recorder's Fee No. _____ (the "Drainage Easement"). This*

Easement is subject to the terms of the Drainage Easement, which provides, among other things, that (1) the Drainage District is authorized to build and operate drainage improvements, such as levees and other flood control structures, on certain portions of the Property for the purpose of preventing and mitigating flood damage and (b) before constructing any improvements within the Drainage District's easement area, Grantor, and therefore Holder, must first obtain the Drainage District's written consent.]

13. [Relocation. **IF TRAIL LOCATED ON LEVEE** – May want to include language providing Holder the option to relocate the Trail and Trail Facilities in the event the levee is moved.]

14. Entire Agreement. This Easement is the final and complete agreement between the parties concerning the rights granted herein, and supersedes all prior understandings with respect to it. This Easement may not be modified or terminated, nor may any obligations under it be waived, except by written instrument signed by all parties to the Easement.

15. Further Cooperation. Each of the parties agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intent purpose of this Easement.

16. Covenants Running With the Land. The parties acknowledge and agree that the grant conferred by this Easement is intended to, and does, constitute an encumbrance that runs with the Property and inures to the benefit of and is binding upon the parties and their respective grantees, heirs, successors, and assigns. Without limiting the forgoing, Grantor acknowledges that Holder's rights under this Easement are assignable and that Grantor hereby consents to Holder's assignment of all of its right, title, and interest and its delegation of all of its obligations created under this Easement. Upon any such assignment, Holder shall be forever released and discharged from any and all claims, demands, and damages which Grantor may have, make, or suffer as a result of any thing done or occurring after the date of such assignment. Nothing contained in this Section, however, shall in any way be construed as releasing Holder's successors and assigns from any obligations to Grantor created by this Easement.

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

[INSERT HOLDER NAME]

GRANTOR

By: _____
Name: _____
Title: _____

[INSERT NAME]

Exhibits:

- Exhibit A – Property Legal Description
- Exhibit B-1 – Easement Area Legal Description
- Exhibit B-2 – Depiction of Easement Area

Exhibit C – Description of Amenity Area

Exhibit D – Description of Temporary Construction Easement Area

Exhibit E – Permitted Liens and Encumbrances

State of OREGON

County of _____

This instrument was acknowledged before me on _____, 2008, by _____
_____ as the _____ of _____, an Oregon
_____.

Notary Public - State of Oregon

State of OREGON

County of _____

This instrument was acknowledged before me on _____, 2008, by _____
_____ as the _____ of _____, an Oregon
_____.

EXHIBIT F

After recording return to:

TRAIL AND GREENWAY EASEMENT

This Trail and Greenway Easement (this "Easement") is made and entered into this _____ day of _____, 2008, by and between _____, an Oregon _____ ("Grantor"), and the City of Portland, located at 1120 SW 5th Avenue, Portland, Oregon 97204 ("Holder").

RECITALS

A. Grantor is the owner of the real property commonly known as Tax Parcel _____, Township _____, Range _____, Section _____ of the Willamette Meridian, in the City of _____, County of _____, State of Oregon, and legally described on Exhibit A attached hereto (the "Property").

B. Holder is an Oregon municipal government whose purpose, among other things, is to build, operate, and maintain recreational trails and pathways for the benefit of the public. Holder desires to build, operate, and maintain a recreational trail, pathway and greenway on the Property along the _____.

C. Grantor desires to grant to Holder, and Holder desires to accept from Grantor, an easement over the Property for the purpose of allowing Holder to establish and maintain a public trail and pathway, with an adjoining greenway, in accordance with the terms and conditions set forth below.

In consideration of the recitals and the mutual benefits, covenants, and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby dedicates, grants, covenants, and agrees as follows:

AGREEMENT

1. Grant of Easement. Grantor hereby grants to Holder a nonexclusive, perpetual easement in gross, on, over, across, and along a portion of the Property (the "Easement Area").

The Easement Area runs [____insert general description____] and is more particularly described and depicted on Exhibits B-1 and B-2 attached hereto.

2. Purposes. The two general purposes of this Easement are to authorize a portion of the Easement Area to be used as a public bicycle and pedestrian trail for public recreation and for the remainder of the Easement Area to be protected and restored as a natural area to protect water quality and provide and improve fish and wildlife habitat. Holder shall have the right to enter the Easement Area at any time to establish, install, construct, maintain, and repair (a) a trail and pathway, which trail shall be approximately ____ feet in width (the "Trail"), and (b) a vegetated buffer of native plants and natural habitat on all other portions of the Easement Area not used for the Trail (the "Greenway"). The Trail may be either a low-impact soft surface trail or an all-weather paved trail, or any combination or variant thereof. Holder shall also have the right to permit the public to access and use the Trail established, installed, and constructed by Holder.

3. Construction, Repair, Maintenance.

(a) Holder may take all reasonable actions necessary to establish, construct, maintain, and repair the Trail within the Easement Area, including, but not limited to, installing the following related surface and subsurface utilities and improvements (collectively, the "Trail Facilities"): (i) appropriate trail surfaces, foot bridges and associated trail structures and culverts, (ii) trail markers, signs, lights, and other security enhancements along the Easement Area and at all points of access, (iii) any barriers, fences and gates necessary to prevent motorized vehicular access into the Easement Area, and (iv) benches for the convenience and comfort of the public. The Trail Facilities shall be and remain the property of Holder.

(b) Holder may take all reasonable actions necessary to establish, construct, maintain, and repair the Greenway within the Easement Area, including, but not limited to: (i) removing non-native and invasive plant species, and (ii) installing ecological, habitat, and water quality restoration improvements such as, without limitation, planting native plants, creek channel and bank stabilization projects, culvert removal, and wetlands restoration.

(c) [Holder shall also have the right to establish, construct, maintain, and repair a designated amenity area within the _____ portion of the Easement Area, which area is more specifically identified on the attached Exhibit C (the "Amenity Area"). Holder may take any reasonable actions necessary to accomplish the forgoing, including, but not limited to, installing the following amenities, structures, and improvements: (i) educational and informational kiosks and signage, (ii) picnic areas and shelters, and (iii) water, sanitary, and access facilities.]

(d) Holder shall be responsible for obtaining all governmental permits for construction of the Trail and Trail Facilities prior to commencing such construction and Grantor shall cooperate in good faith with Holder in obtaining any necessary construction and/or development permits. Holder shall give Grantor thirty (30) days written notice before commencing construction of the Trail and Trail Facilities. **[TEMPORARY CONSTRUCTION EASEMENT – consider revising depending if area is needed for staging or for shoulder**

buffer: *Grantor hereby grants to Holder a temporary, non-exclusive construction easement over, under, in, along, across and upon that certain area immediately adjacent to the Easement Area, which area is further described on the attached Exhibit D (the "Temporary Construction Area"), for the purpose of constructing the Trail Facilities. Holder may use and access the Temporary Construction Area to (i) conduct any studies, tests, examinations, and surveys it deems necessary for trail design and construction purposes, and (ii) engage in any activities reasonably related to construction of the Trail and Trail Facilities. The temporary construction easement granted hereunder shall commence on the Effective Date of this Easement and shall automatically terminate at such time as construction is completed by Holder and Holder has mailed a Notice of Completion to Grantor and recorded such Notice in the real property records of _____ County. Any of the Temporary Construction Area disturbed by Holder during construction shall be restored by Holder, at Holder's sole costs and expense, to its pre-construction condition.]*

(e) Holder shall be solely responsible for all repair and maintenance of the Trail, Trail Facilities, and Greenway; provided, however, that Grantor shall reimburse Holder for all sums expended by Holder to repair any damage to the Trail, Trail Facilities, and Greenway due to the negligence or abnormal use by Grantor or Grantor's invitees, guests, or licensees.

4. Permitted Trail Uses. Holder may permit the public to access the Trail for bicycle and pedestrian recreational and transportation purposes, including, without limitation, walking, running, cycling, skating, skiing, and horseback riding. Except for motorized wheelchairs (or other mobility devices used by individuals with disabilities) or in the case of an emergency, motorized vehicles will not be permitted on the Trail; provided, however, that Holder may use motorized vehicles and equipment for construction, maintenance, repair, and security purposes related to the Trail and Trail Facilities. Holder shall have the right, in its sole discretion, to restrict or limit public use of and access to the Trail.

5. Grantor's Use of Easement Area: Grantor shall retain the right to access, use, and enjoy the Easement Area for its purposes consistent with the rights granted herein. Grantor is prohibited, however, from engaging in any activity on, or use of, the Easement Area that (i) is inconsistent with the terms of this Easement, (ii) materially interferes with or impairs the use of the Trail by Holder or the public, (iii) hinders or interferes with future Trail construction or repair by Holder, or (iv) materially interferes with or impairs the ecological functioning of the Greenway. Without limiting the generality of the forgoing, the following activities and uses by Grantor within the Easement Area are expressly **prohibited** without the express written consent of the Holder:

(a) Constructing any improvements or structures, parking any vehicles, installing any paving or gravel, or storing any property;

(b) Blocking, obstructing, or interfering with Holder's access through the Easement Area;

(c) Excluding any persons from using the Trail, provided that such use is in accordance with the terms of this Easement, or taking any other action that unreasonably

prevents or interferes with public entry onto the Trail and Trail Facilities, including without limitation imposing a fee or charge of any kind;

(d) Cutting, trimming, pruning, destroying, mowing, spraying with biocides, or removing any vegetation trees, plants, or shrubs;

(e) Planting any vegetation, including, without limitation, any trees, shrubs, grasses, or seeds of any kind;

(f) Placing or erecting any signs, billboards, or other advertising material, temporary or permanent, upon any portion of the Easement Area;

(g) Dumping or storing ashes, trash, rubbish, garbage, sawdust, lawn cuttings, leaves, compost, or other material or substances;

(h) Filling, excavating, digging, dredging, mining, quarrying, removing, or disturbing the topsoil, sand, gravel, rock, minerals, or other materials;

(i) Damming, dredging, or undertaking any other activities that may be detrimental to water quality; and

(j) Taking any action that damages fish or wildlife, or their habitats; alters existing vegetation or drainage patterns, flood plains, wetlands, or the natural condition of the Easement Area; or results in erosion, siltation, or other forms of pollution.

6. Enforcement. In addition to any other remedies available at law or in equity, Holder may compel Grantor to make the Easement Area available for the purposes set forth above in Section 2 by exercising any one or more of the following remedies:

(a) Holder may seek injunctive relief to specifically enforce the terms of this Easement, to restrain present or future violations of this Easement, or to compel restoration of the Trail, Trail Facilities, and Greenway destroyed or altered as a result of Grantor's violation of this Easement; and

(b) Holder may enter the Property to remove any barrier obstructing Holder's ability to access the Easement Area or the Trail, and may take other self-help measures or actions reasonably necessary to protect and preserve the rights of Holder under this Easement.

7. Hazardous Substances. Grantor represents and warrants to the best of its knowledge that it has disclosed to Holder the results of any and all Phase I Environmental Assessments, Phase II Environmental Investigations, surveys, sampling, and testing regarding the Property, and any information contained therein. It is understood and agreed that Holder, by accepting this grant of easement, is not accepting any liability for any release of Hazardous Substances, as that term is defined in ORS Chapter 465, on, to, or from the Property, unless resulting directly from an intentional or negligent act of Holder or Holder's employees, agents, or contractors, and that Grantor is not attempting to convey, transfer, or assign any such liability herein.

8. Taxes. Grantor shall pay when due all real property taxes, assessments, and other charges against the Property, including the Easement Area. There shall be no right to contribution from Holder for such items. Holder shall not object to a designation of the Easement Area as open space or a habitat area for tax purposes, in order for Grantor to take advantage of any tax benefits that such designation may provide; provided, however, that any such designation would not adversely affect Holder's rights to use the Easement Area as provided in this Easement.

9. [As-is Condition. Except as otherwise set forth herein, Grantor makes no representation as to the physical condition or safety of the Easement Area. The usage of Easement Area is at the public's risk and in its "as-is" condition, including, but not limited to all existing or subsequent natural hazards--i.e., slippery areas, loose rocks, tree limbs, water currents, sink holes, etc.]

10. [Liability and Indemnity. The parties to this Easement acknowledge that, to the extent so provided in ORS 105.672 to ORS 105.696, both Grantor and Holder are immune from liability for injuries incurred on the property by members of the public who access the Easement Area under authority of this Easement. Holder shall indemnify, defend, and hold harmless Grantor against all losses and litigation expenses resulting from property damage and/or personal injuries that occur or are alleged to occur as a result of Holder's installation or maintenance of the Trail, Trail Facilities, or Greenway, except to the extent caused by the negligent or wrongful acts or omissions of Grantor. Grantor agrees to indemnify, defend, and hold harmless Holder from any loss or litigation expense arising from, related to, or associated with (a) personal injury or property damage occurring prior to the Effective Date of this Easement, (b) activities or uses engaged in by Grantor, or Grantor's contractors, agents, employees, tenants, guests, invitees, or anyone else entering the Property by, through, or under the express or implied invitation of Grantor, or (c) structures, facilities, or improvements within the Easement Area, other than the Trail Facilities installed by Holder. As used in this Section, the word "losses" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, and penalties or other charge other than a litigation expense. As used in this Section, the term "litigation expenses" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Agreement including in each case, attorneys' fees, other professionals' fees, and disbursements.]

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

To Grantor:

To Holder: _____

With a copy to: _____

12. Title Warranty.

(a) Grantor represents and warrants that Grantor owns the entire fee simple interest in the Property, and has the full power and lawful authority to grant this Easement. Any and all financial liens or financial encumbrances existing as of the date of the execution of this Easement have been subordinated. Grantor further represents and warrants that the Property is not subject to any other liens and encumbrances except as otherwise set forth on the attached Exhibit E.

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that Holder's rights under this Easement are assignable and that Grantor hereby consents to Holder's assignment of all of its right, title, and interest and its delegation of all of its obligations created under this Easement. Upon any such assignment, Holder shall be forever released and discharged from any and all claims, demands, and damages which Grantor may have, make, or suffer as a result of any thing done or occurring after the date of such assignment. Nothing contained in this Section, however, shall in any way be construed as releasing Holder's successors and assigns from any obligations to Grantor created by this Easement.

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

[INSERT HOLDER NAME]

GRANTOR

By: _____
Name: _____
Title: _____

[INSERT NAME]

Exhibits:

- Exhibit A – Property Legal Description
- Exhibit B-1 – Easement Area Legal Description
- Exhibit B-2 – Depiction of Easement Area
- Exhibit C – Description of Amenity Area*
- Exhibit D – Description of Temporary Construction Easement Area*
- Exhibit E – Permitted Liens and Encumbrances

State of OREGON

County of _____

This instrument was acknowledged before me on _____, 200__, by _____ as the _____ of _____, an Oregon _____.

Notary Public - State of Oregon

State of OREGON

County of _____

This instrument was acknowledged before me on _____, 200____, by _____
_____ as the _____ of _____, an Oregon
_____.

Notary Public - State of Oregon

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4082, AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR THE LONG TERM MANAGEMENT OF CERTAIN PROPERTIES LOCATED WITHIN THE CITY OF PORTLAND AND PURCHASED BY THE 1995 AND 2006 NATURAL AREAS BOND MEASURES.

Date: September 16, 2009

Prepared by: Kathleen Brennan-Hunter
503-797-1948

Katy Weil
503-797-1688

BACKGROUND

Metro has acquired 68 properties totaling 693.03 acres located within the City of Portland, Multnomah County, Oregon as part of the 1995 Open Spaces Bond Measure and the 2006 Natural Areas Bond Measure. Metro and the City wish to manage these properties to protect water quality, fish and wildlife habitat, and to restore native species. The purpose of this resolution is to approve a comprehensive intergovernmental agreement (IGA) with the City of Portland for the day to day management of these properties and provide for the responsibilities and obligations of the parties with respect to the allowable uses, management, maintenance, and operation of the properties. This agreement will also apply to future Natural Area Bond Measure acquisitions and other properties owned by Metro within the City where Metro and the City mutually agree to have the City manage such properties.

In the past, Metro and the City have entered into more than ten separate IGA's for management of individual properties or groups of properties. Several of these agreements have expired and others are about to expire. This agreement seeks to provide an umbrella framework for a more comprehensive management effort for all of these properties.

In Portland Park and Recreation's Natural Areas Acquisition Strategy (2006. City of Portland), it states, "PP&R manages most of the protected natural areas within the City of Portland (7,000 acres)." Also, when referring to the benefits of its property management of urban natural areas, the City stated, "PP&R's ability to manage property acquired by Metro allowed regional acquisition of small, but significant parcels, especially those offering buffers or connections to already protected habitat land."

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

In return for the City accepting management responsibility for the Properties, the IGA provides for Metro to grant to the City a management and restoration easement over the Properties, in the form attached as

Exhibit D to the IGA. The City has expressed concern that it is not able to secure sufficient budgeted funds to manage the Properties without obtaining some type of ownership interest in the Properties. This easement will provide such to the City. In addition, the Agreement provides for the easement to be terminated in the event that the IGA is terminated.

As required by Metro's Metropolitan Greenspaces Master Plan, the long-term management guidelines for each Property must be set forth in a Resource Management/Master Plan ("Management Plan") applicable to the Property. Formal public use of a Property and site development on the Property shall not begin until a Management Plan for the Property has been adopted. The City shall make its good faith best effort to develop and adopt an area-specific park or natural resources management plan for Properties not being managed in accordance with an existing area-specific management plan (the "Management Plan"). Any such Management Plan will be subject to approval by the Metro Council, provided that "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 Measures."

The IGA clearly outlines the responsibilities and obligations of the parties with respect to the allowable uses, improvements, management, maintenance, restoration, and operation of the Properties. The City of Portland signed the IGA August 26th, 2009.

In addition, this IGA also pre-approves of the parties using two additional property acquisition mechanisms that will allow for more efficient property and trail acquisitions. The first of these is to authorize Metro and the City to jointly acquire new properties, with each party's ownership interest in such new property being proportional to the amount of its financial contribution toward the purchase price, without either party needing to get separate approval of such joint acquisition from its respective Council, provided that the acquisition is otherwise consistent with the acquisition authority that each respective Council has delegated to its staff.

The second new mechanism is related to the acquisition of properties for trails, and the acquisition of trail easements. Several of the 2006 Bond Measure target areas within the City include goals for the acquisition of properties for trails, but such trails will be planned and constructed by the City. In order to facilitate future trail construction, this IGA authorizes Metro to pay for such properties or easements, but for the City to own title to such properties or be named as the holder of such easements.

ANALYSIS/INFORMATION

1. Known Opposition

None

2. Legal Antecedents

1995 Metro Open Spaces Bond Measure approved by voters on May 16, 1995.

2006 Metro Natural Areas Bond Measure approved by voters on November 8, 2006.

3. Anticipated Effects

For new and recent acquisitions eligible for Metro Natural Area Bond stabilization funding, Metro staff has worked and will continue to work collaboratively with staff from Portland Parks and Recreation's City Nature Program to develop an initial stabilization work plan. Upon approval of the agreement and at the end of the stabilization period, the City will take responsibility for the management of the properties, and ensure that stabilization activities will be maintained, as described

in the agreement. Metro staff will continue to be available for consultation as needed with the City of Portland for the management of the properties.

Metro staff has already begun the process of transitioning information about the properties, the improvements, and Metro standards and policies. Furthermore, Metro staff will be consulted on an ongoing basis as natural resource management planning continues for previously- managed and future non-bond funded properties which will be accepted by the City for management.

4. Budget Impacts

Stabilization costs for new acquisitions will come from Natural Area Bond Funds. General fund resources for natural area maintenance and property management staff time will be reduced.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution 09-4082.