

BEFORE THE METRO COUNCIL

APPROVING THIRD ROUND FUNDING FOR) RESOLUTION NO. 10-4134
NATURE IN NEIGHBORHOODS CAPITAL)
GRANTS) Introduced Chief Operating Officer Michael
) Jordan, with the concurrence of Council
) President David Bragdon

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

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

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

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


WHEREAS, on January 14, 2010 the Grants Review Committee reviewed proposals for grants and is recommending six projects that best meet the criteria for the grant program to the Metro Council for funding; now therefore,

BE IT RESOLVED that the Metro Council hereby:

1. Awards Nature in Neighborhoods Capital Grants to those recipients and projects, and for the funding amounts, listed in Exhibit A to this resolution;
2. Authorizes the Chief Operating Officer to enter into an intergovernmental agreement ("IGA") with each of the recipients substantially in conformance with the form of IGA attached to this resolution as Exhibit B; and


3. For those projects that are for real property acquisitions, conditions Metro's grant award on the recipient granting a conservation easement to Metro, substantially in the form attached to this resolution as Exhibit C, and authorizes the Chief Operating Officer to accept such conservation easement from each such recipient.

ADOPTED by the Metro Council this 18 day of MARCH, 2010.



David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney

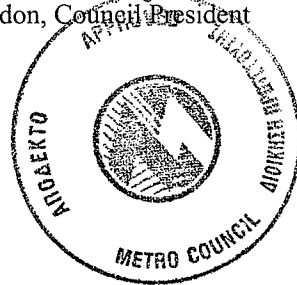


Exhibit A to Resolution No. 10-4134

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

Project: Re-Greening Park Avenue Park & Ride
Recipient: TriMet
Applicant: Urban Green and TriMet
Grant Amount: \$349,305

Metro’s habitat-friendly design guidelines will be used to create the region’s first sustainable light rail station and park-and-ride. When TriMet’s new orange line zips through Oak Grove in 2015, commuters will experience a re-created riparian forest, a natural stormwater treatment system and many other green features at the Park Avenue stop along Southeast McLoughlin Boulevard. This project is a collaboration among multiple agencies and community groups to showcase Metro’s Integrating Habitat design principles that balance design excellence, ecological stewardship and economic enterprise. Project partners hope to promote low-impact development practices throughout the McLoughlin corridor and improve the water quality within the Courtney and Kellogg creek basins.

Project strengths:

- Community-driven effort, with roots in Metro’s Integrating Habitat Design Competition
- Diverse partners, including TriMet, Urban Green, North Clackamas Parks and Recreation District and the Oak Lodge Sanitary District
- Potential to influence future development close to the station, and along the entire McLoughlin Boulevard corridor
- Water quality benefits for Kellogg Creek and Kellogg Lake

Project: Trillium Creek Restoration
Recipient: City of West Linn
Applicant: Mary S. Young Volunteers
Grant Amount: \$55,330

Students, volunteers and other community members will come together to restore a degraded stream system at Mary S. Young State Park, creating a healthy riparian corridor. Severe bank erosion has compromised the 1,045-foot section of Trillium Creek that will be transformed. The project will restore floodplain connectivity and enhance the rich diversity of native trees, shrubs and other plants along the riparian corridor and adjacent wetlands in this West Linn park.

Project strengths:

- Improved ecological function, opportunity to enhance visitors’ nature experience

- Diverse partners, including the Mary S. Young Volunteers, the Willamette Riverkeepers, the Oregon Department of Fish and Wildlife, the City of West Linn and Harris Stream Service
- Significant investment to date, including site preparation and watershed and restoration assessment

Project: Baltimore Woods Connectivity Corridor
 Recipient: City of Portland Bureau of Environmental Services
 Applicant: Three Rivers Land Conservancy
 Grant Amount: \$158,000

Metro funding will help purchase four parcels, totaling one acre, within the Baltimore Woods corridor in North Portland. This acquisition will protect rare native oak trees and enhance the nature experience for bicyclists, walkers and joggers who will someday use this section of the Willamette River Greenway Trail envisioned on the adjacent street. These parcels are part of a larger natural area corridor connecting Cathedral Park and Pier parks. Active participation from city agencies, land trusts, non-profit organizations and the Friends of Baltimore Woods will involve the community in restoration and long-term stewardship.

Project strengths:

- Friends of Baltimore Woods’ work to raise the visibility of this area and promote the acquisition among agencies, partners and the community
- Scarcity of funding sources for acquisition at a neighborhood scale
- Preservation of Oregon white oak trees
- Threat of development, due to great views of the river and West Hills
- More natural experience for future regional trail users
- Diverse partners, including Three Rivers Land Conservancy, Audubon Society of Portland, Friends of Baltimore Woods, Portland Bureau of Environmental Services, Portland Parks & Recreation, Portland Bureau of Transportation and SOLV

Project: Crystal Springs Partnership
 Recipient: City of Portland Bureau of Environmental Services
 Applicant: City of Portland Bureau of Environmental Services
 Grant Amount: \$311,480

Crystal Springs has all the characteristics of an excellent salmon stream: It’s entirely spring-fed, which eliminates pollutants from urban runoff, and relatively consistent year-round flow and low temperatures attract some of Portland’s most threatened fish species. This project will help realize that potential by removing a culvert that blocks juvenile fish passage and restoring the floodplain and riparian habitat along 350 feet of the creek. Conservation easements or acquisition on three additional properties will allow future floodplain restoration.

Project strengths:

- Part of a larger, basin-wide restoration effort
- Strong partnerships with a track record of past success
- Significant ecological benefits in one of the region’s most important fish-bearing streams

Project: Summer Creek Natural Area Acquisition
Recipient: City of Tigard
Applicant: City of Tigard
Grant Amount: \$1,000,000

Metro will contribute to the acquisition of 43 acres of wetlands and mature forests at the confluences of Summer and Fanno creeks. The property is a natural area and represents the best remaining unprotected land in Tigard. Once acquired by the City it will become Tigard's second largest park. The site has functioned as an outdoor lab for the students at Fowler Middle School. With the help of several community partners, this project will expand environmental education programs to students throughout Washington County.

Project strengths:

- Many engaged partners, including several non-profits and three agencies
- Rare opportunity to protect urban natural area of this size and quality
- City funding committed for long-term maintenance
- Located along Fanno Creek Greenway Trail

Project: Natural Areas Capital Grants Program

Contract No. _____

**INTERGOVERNMENTAL AGREEMENT
Natural Areas Bond Measure
Capital Grant Award**

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

RECITALS

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

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

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

[IF PROJECT IS PROPERTY ACQUISITION THEN INCLUDE THE FOLLOWING PROVISION:

WHEREAS, the Grant Recipient will become the owner of the property that constitutes the Project, which property is more specifically identified in Exhibit A (the “Property”);]

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

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

NOW THEREFORE, the parties agree as follows:

1. Purpose; Scope of Work; Limitations

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

2. Declaration of Capital Project

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

3. Contract Sum and Terms of Payment

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

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

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

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

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

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

If the Work is the acquisition of real property, then Grant Recipient shall satisfy the requirements in this section of the Agreement by granting to Metro a conservation easement substantially comparable to the form of conservation easement approved by the Metro Council at the time the Metro Council approved the grant award to Grant Recipient.

5. Funding Recognition

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

6. Term

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

7. Termination for Cause

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

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

C. Grant Recipient shall be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default. Following such termination, should Metro later determine or a court find that Grant Recipient was not in default or that the default was excusable (e.g. due to a labor strike, fire, flood, or other event that was not the fault of, or was beyond the control of, Grant Recipient) this Agreement shall be reinstated or the parties may agree to treat the termination as a joint termination for convenience whereby the rights of Grant Recipient shall be as set forth below in Section 8.

8. Joint Termination for Convenience

Metro and Grant Recipient may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective only upon the mutual, written termination agreement signed by both Metro and Grant Recipient.

9. Oregon Constitution and Tax Exempt Bond Covenants

Grant Recipient acknowledges that Metro's source of funds for the Nature in Neighborhoods Capital Grants Program is from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11, 11b, 11c, 11d, and 11e of the Oregon Constitution, and that the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. Grant Recipient covenants that it will take no actions that would cause Metro not to be able to maintain the current status of the real property taxes imposed to repay these bonds as exempt from Oregon's constitutional property tax limitations or the income tax exempt status of the bond interest under IRS rules. In the event Grant Recipient breaches this covenant, Grant Recipient shall undertake whatever remedies are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof, including, without limitation, reimbursing Metro for any Projects funded under this Agreement that resulted in Grant Recipient's breach of its covenant described in this Section.

10. Liability and Indemnification

As between Metro and Grant Recipient, Grant Recipient assumes full responsibility for the performance and content of the Work; provided, however, that this provision is not intended

to, and does not, create any rights by third parties. To the extent permitted by Oregon law, and subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30, and the Oregon Constitution, Grant Recipient shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Agreement by Grant Recipient or Grant Recipient's officers, agents, or employees. Grant Recipient is solely responsible for paying Grant Recipient's contractors and subcontractors. Nothing in this Agreement shall create any contractual relationship between Metro and any such contractor or subcontractor.

11. Contractors' Insurance

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

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

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

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

C. Grant Recipient shall require all contractors performing any of the Work to provide Grant Recipient with a certificate of insurance complying with this section and naming Grant Recipient and Metro as additional insureds within fifteen (15) days of execution of a

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

D. In lieu of the insurance requirements in Sections 11.A through 11.D, above, Grant Recipient may accept evidence of a self-insurance program from any contractor. Such contractor shall name Grant Recipient and Metro as additional insureds within fifteen (15) days of execution of a contract between Grant Recipient and any contractor or twenty-four (24) hours before services such contract commence, whichever date is earlier.

12. Safety

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

13. Metro's Right to Withhold Payments

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

14. Project Records, Audits, and Inspections

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

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

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

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

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

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

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

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

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

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

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

15. Public Records

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

16. Law of Oregon; Public Contracting Provisions

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

17. Notices and Parties' Representatives

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

Grant Recipient's Designated Representatives:

Fax _____

Metro's Designated Representatives:

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

with copy to:

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

18. Assignment

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

19. Severability

If any term or provision in this Agreement shall be adjudged invalid or unenforceable, such adjudication shall not affect the validity or enforceability of the remainder of the

Agreement, which remaining terms and provisions shall be valid and be enforced to the fullest extent permitted by law.

20. No Waiver of Claims; Modifications

Metro’s failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision of this Agreement. This Agreement may be amended only by written instrument signed by both Metro and Grant Recipient and no waiver, consent, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

21. Integration of Agreement Documents

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

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

[Name of City/County/District]

METRO

Signature

Michael Jordan
Metro Chief Operating Officer

Print Name: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM BY:

Signature

Paul A. Garrahan
Senior Assistant Metro Attorney

Print Name: _____

Title: _____

Date: _____

Date: _____

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After recording return to:

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

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (the "Easement") is entered into this _____ day of _____, 200__, by and between _____, _____ ("Grantor") and Metro, an Oregon municipal corporation ("Grantee").

RECITALS

A. Grantor is the fee simple owner of that certain real property approximately _____ acres in size located in the County of [County], State of Oregon, commonly known as [address], and more particularly described on the attached Exhibit A (the "Property").

B. On November 7, 2006, the voters approved Ballot Measure 26-80 (the "2006 Natural Areas Bond Measure"), which provided Grantee with funds for the acquisition of natural areas from willing sellers. The 2006 Natural Areas Bond Measure (the "Bond Measure") was designed to provide Grantee with the ability to protect the region's significant natural areas, fish and wildlife habitat, greenways, water quality, and lands near rivers and streams. The Bond Measure allocated \$15 million from bond proceeds to the Nature in Neighborhoods Capital Grants Program (the "Metro Grants Program") to provide opportunities for the community to actively protect fish and wildlife habitat and water quality in areas where people live and work.

C. Grantor was able to acquire the Property in part by using funds provided by the Metro Grants Program. A condition of Grantor's receipt of such funds from Metro was its agreement to grant this conservation easement.

D. In order to preserve the natural features of the Property that provide significant wildlife habitat values and contribute to water quality, Grantor desires to grant to Grantee, and Grantee desires to accept from Grantor, a conservation easement over the Property.

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

AGREEMENT

1. Grant of Conservation Easement. For and in consideration of the sum of _____ (\$_____) and of the mutual promises, terms, conditions, restrictions and undertakings herein set forth, Grantor hereby voluntarily grants to Grantee a perpetual, non-possessory conservation easement, in gross, on, over, under, and across the Property. This Easement is being created and acquired in accordance with ORS 271.715 to 271.795, and the provisions herein shall be construed and applied accordingly.

2. Purpose.

(a) General Purpose. The general purposes of this Easement are to ensure that the Property will be retained forever predominantly in its natural condition for: [INCLUDE ONLY APPROPRIATE AND RELEVANT BULLETS FROM BELOW—AT LEAST ONE FROM FEDERAL CITATIONS AND RELEVANT PART OF STATE CITATION]

- “The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem” (as that phrase is used in 26 U.S.C. §170(h)(4)(A)(ii));
- “The preservation of land areas for outdoor recreation by, or the education of, the general public” (as that phrase is used in 26 U.S.C. §170(h)(4)(A)(i));
- “The preservation of certain open space (including farmland and forest land) where such preservation is (I) for the scenic enjoyment of the general public, or (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant benefit” (as that phrase is used in 26 U.S.C. §170(h)(4)(A)(iii)); and
- “Protecting natural, scenic, or open space values of real property, ensuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property” (as that phrase is used in ORS 271.715(1)).

(b) Specific Purpose; Protection of Conservation Values. The more specific purpose of this Easement is to prevent any use or occupancy of, or activity on, the Property that will impair or interfere with the Conservation Values, as identified in that certain Nature In Neighborhoods Capital Grant Agreement between Grantor and Metro, dated [INSERT DATE] (the “Grant Agreement”), on file at the offices of the Grantee.

3. Prohibited and Permitted Uses. Subject to encumbrances of record on the Property, Grantor shall not engage in any activity on, or use of, the Property that is inconsistent with the terms of this Easement or materially interferes with or impairs the Conservation Values of the Property. Without limiting the generality of the forgoing, the activities and uses described on the attached Exhibit B are expressly prohibited. Grantor reserves all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not inconsistent with the terms of this Easement or expressly prohibited herein. Grantor shall provide Grantee with not less than thirty (30) days written notice prior to (a) applying for any grading, tree removal, building, or construction permit, and (b) undertaking any activity that could materially interfere with or impair the Conservation Values of the Property.

4. Baseline Documentation. The current condition of the Property is documented in the Grant Agreement. an inventory of relevant features of the Property, dated _____, 200__, on file at the offices of Grantee (the “Baseline Documentation”). The parties agree that the Baseline Documentation provides an accurate representation and description of the Property at the time of this grant. The Baseline Documentation is intended to serve as an objective, although not exclusive, information baseline for monitoring compliance with the terms of this Easement.

5. Enforcement and Remedies.

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

(b) Failure to Cure. If Grantor fails to cure a violation within 30 days after Grantor’s receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing the violation within the 30-day period, Grantee may bring an action at law or in

equity to (i) enforce the terms of this Easement, (ii) enjoin the violation by a temporary, preliminary, and/or permanent injunction, (iii) recover any damages to which Grantee may be entitled for such violation of the terms of this Easement, and (iv) require the restoration of the Property to the condition and appearance that existed prior to such violation.

(c) Emergency Enforcement. If Grantee, in its sole discretion, reasonably determines that the circumstances require immediate action to prevent or mitigate significant damage to the Property, Grantee may enter the Property to prevent or mitigate further damage to or alteration of the Property necessary to protect the Conservation Values or otherwise pursue its remedies under this Section 5 without prior notice to Grantor and without waiting for the expiration of the cure period set forth above in subsection 5(b).

(d) Nature of Remedies. Grantee shall have available all legal and equitable remedies to enforce Grantor's obligations hereunder. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate, and that Grantee shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including without limitation specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's rights under this Section 5 shall be cumulative, in addition to all remedies now or hereafter existing at law or in equity, and apply equally in the event of either actual or threatened violations of the terms of this Easement.

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

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

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

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

6. Liability and Indemnification.

(a) Liability. The parties acknowledge and agree that because Grantor is the fee owner of the Property, except as specifically provided for under subsection (b) below, the general liability for risks, damages, injuries, claims, or costs arising by virtue of Grantor's ownership and use of the Property shall remain with Grantor as a normal and customary incident of the right of Property ownership. Nothing in this Easement shall be construed

as giving rise to any right or ability of Grantee to become an “owner” or “operator” of the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

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

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

8. Amendment. Grantor and Grantee may mutually agree in writing to amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including 26 U.S.C. § 170(h), as amended (or any successor provision(s) then applicable), and ORS 271.715-795. In no event shall the "economic hardship" of Grantor constitute a changed circumstance that would allow Grantor to unilaterally amend this Easement.

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

10. Recording. Grantor shall immediately record this instrument, and any amendment agreed to pursuant to Section 8, in the official records of the county within which the Property is located, and in any other appropriate jurisdictions, and Grantee may re-record it at any time as may be required to preserve Grantee’s rights in this Easement.

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 mail, 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 Grantee: Metro
Land Conservation Program Director
600 NE Grand Avenue
Portland, OR 97232

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

12. General Provisions.

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

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

(c) Changed Circumstances. Grantor and Grantee acknowledge that future conditions may change in the areas neighboring the Property and the Property, including without limitation, increased development, land use, and zoning changes. Grantor and Grantee further acknowledge that such future conditions may result in various hardships to Grantor by virtue of the restrictions contained in this Easement, including without limitation, restrictions on the ability to develop the Property and the Property. However, Grantor and Grantee expressly intend that this Easement continue in perpetuity regardless of such changes conditions and circumstances and regardless of hardship, whether such hardship is economic or otherwise. In no event shall the hardship of Grantor constitute a changed circumstance that would allow Grantor to unilaterally terminate this Easement.

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

(e) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 8.

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

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

GRANTEE:
METRO, an Oregon municipal corporation

GRANTOR:

By: _____
Michael Jordan, Chief Operating Officer

[name]

[name]

State of OREGON
County of MULTNOMAH

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

Notary Public - State of Oregon

State of OREGON
County of _____

This instrument was acknowledged before me on _____, 20____ by [name].

Notary Public - State of Oregon

State of OREGON
County of _____

This instrument was acknowledged before me on _____, 20____ by [name].

Notary Public - State of Oregon

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Exhibit A

Property Description

Exhibit B

Grantor's Prohibited Uses and Activities

1. The partition, division, subdivision, or *de facto* division of the Property.
2. Residential, commercial, or industrial use, activities, improvements, or development of any kind.
3. The excavating, draining, dredging, mining, drilling, removing or exploring for or extracting of minerals, oil, gas, coal, and other hydrocarbons, soils, sands, gravel, rocks or any other materials on or below the surface of the Property.
4. The manipulation or alteration, diminution, or drainage of any natural water course, wetland, stream bank, riparian area, shoreline, or body of water on the Property, any activity that causes or is likely to cause significant pollution of any surface of subsurface waters, or any use or activity that causes or is likely to cause significant soil degradation or erosion.
5. Agricultural activities of any kind, including, without limitation, the establishment and maintenance of a livestock corral, personal gardens, row crops, haying, grazing, livestock watering, or other pasture uses.
6. The placing, filling, storing, processing, disposing, dumping, depositing, abandonment, discharging, or release of any gaseous, liquid, solid, or hazardous wastes, substances, materials, trash, or debris of whatever nature on, in, over, or under the ground or into the surface or ground water of the Property.
7. The introduction or planting of any non-native, noxious, or invasive species.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4134, APPROVING THIRD ROUND FUNDING FOR NATURE IN NEIGHBORHOODS CAPITAL GRANTS

Date: March 18, 2010

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

BACKGROUND

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

1. Regional natural area and trail corridor acquisition in the amount of \$168.4 million.
2. Local share program providing \$44 million to cities, counties and park districts to acquire natural areas, restore habitat, enhance public access to nature, and design and construct trails.
3. Nature in Neighborhoods capital grants program in the amount of \$15 million. Up to \$2.25 million is available annually through the life of the program.

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

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

Eligibility Requirements

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

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

Evaluation Criteria

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

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

- Restore and/or improve habitats of concern.
- Provide universal access to the public.

Review Process

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

Program Funding to Date

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

In August 2009, the Metro Council approved the second round of funding, with awards to four projects totaling \$1,003,000. These projects provide access to nature in a nature-deficient neighborhood, protect rare habitat, model nature-friendly landscaping practices along highways, and promote conservation education.

Since then ten letters of interest have been reviewed. Of these letters, eight were invited to submit full applications on November 2, 2009. On January 14, 2010, the Grant Review Committee met to review the final slate of applications and to make a recommendation to the Metro Council.

The Recommendation

The Grant Review Committee recommends the following six projects for funding totaling \$1,874,115 from the Nature in Neighborhoods Capital Grants Program.

- A \$349,305 grant for the Re-Greening Park Avenue park & ride
- A \$55,330 grant for the Trillium Creek restoration project
- A \$158,000 grant for Baltimore Woods Connectivity Corridor
- A \$311,480 grant for the Crystal Springs Partnership
- A \$1,000,000 grant for Summer Creek Natural Areas Acquisition

These projects address the goals of the Natural Areas bond measure and meet the intent of the Nature in Neighborhoods Capital Grants Program because they:

- Engage diverse partnerships;
- Were initiated and driven by the community;
- Benefit water quality;
- Have the ability to influence other projects that will improve habitat and water quality; and
- Enhance experiences of nature in places where people live and work.

Conservation Easement

Government agencies taking fee title ownership of property being acquired with grant funds will be required to grant a conservation easement to Metro in order to preserve the natural features of the property that provide significant wildlife habitat values and contribute to water quality. Projects that include this requirement are the Perrin, Thorpe, and Bridgeview properties associated with the Baltimore Woods project and the Summer Creek acquisition. Portland's Bureau of Environmental Services is currently negotiating to acquire three conservation easements from private property owners as part of the Crystal Springs Partnership project. If these negotiations result in a fee simple acquisition using grant

funds, then the City of Portland will also grant a conservation easement to Metro.

ANAYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

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

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

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

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

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

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

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

Resolution No. 09-4050, "Approving Second Round Funding for Nature in Neighborhoods Capital Grants" was adopted on August 13, 2009.

3. Anticipated Effects

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

4. Budget Impacts

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

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Resolution No. 10-4134