



Metro | Agenda

MEETING: METRO COUNCIL
DATE: April 22, 2010
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. COMMUNICATION PROJECTS PRESENTATION: RECYCLING INFORMATION CENTER (RIC) MARKETING CAMPAIGN

Shareefah Hoover/Judie Miller

4. CONSENT AGENDA

4.1 Consideration of Minutes for the April 15, 2010 Metro Council Regular Meeting.

5. ORDINANCES - SECOND READING

5.1 **Ordinance No. 10-1240**, For the Purpose of Amending Metro Code Chapter 2.04 In Order to Strengthen the MWESB Program.

6. RESOLUTIONS

6.1 **Resolution No. 10-4138**, For the Purpose of Directing the Chief Operating Officer to Adopt a Program for Temporary Deferral of the Metro Regional System Fee for Manufacturing Businesses using Recyclable Materials.

6.2 **Resolution No. 10-4143**, Authorizing the Chief Operating Officer to Enter into an Intergovernmental Agreement with the North Clackamas Parks and Recreation District for Joint Management of Mt. Talbert Nature Park. Collette

7. CHIEF OPERATING OFFICER COMMUNICATION

8. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for April 22, 2010 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, April 22 (Live)</p>	<p>Portland Channel 30 (CityNet 30) – Portland Community Media www.pcmtv.org – (503) 288-1515 8:30 p.m. Sunday, April 25 2 p.m. Monday, April 26</p>
<p>Gresham Channel 30 – MCTV www.mctv.org – (503) 491-7636 2 p.m. Monday, April 26</p>	<p>Washington County Channel 30 – TVC-TV www.tvctv.org – (503) 629-8534 11 p.m. Saturday, April 24 11 p.m. Sunday, April 25 6 a.m. Tuesday, April 27 4 p.m. Wednesday, April 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. For questions about the agenda, call the Metro Council Office @ (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 Clerk of the Council to be included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website www.oregonmetro.gov and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Agenda Item Number 3.0

**COMMUNICATION PROJECTS PRESENTATION:
RECYCLING INFORMATION CENTER (RIC) MARKETING
CAMPAIGN**

PRESENTED BY
SHAREEFAH HOOVER & JUDIE MILLER

Metro Council Meeting
Thursday, April 22, 2010
Metro Council Chamber

Agenda Item Number 4.1

Consideration of Minutes for the April 15, 2010 Metro Council Regular Meeting.

Consent Agenda

Metro Council Meeting
Thursday, April 22, 2010
Metro Council Chamber

Agenda Item Number 5.1

Ordinance No. 10-1240, For the Purpose of Amending Metro Code Chapter 2.04 In Order to Strengthen the MWESB Program.

ORDINANCES – SECOND READING

Metro Council Meeting
Thursday, April 22, 2010
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 10-1240
CODE CHAPTER 2.04 IN ORDER TO)	
STRENGTHEN THE MWESB PROGRAM.)	Introduced by Michael Jordan, Chief
)	Operating Officer, with the concurrence of
)	Council President David Bragdon.
)	

WHEREAS, Metro Code 2.04.100 through 2.04.190 establishes agency policies for maximizing opportunities for minority-owned, women-owned and emerging small businesses (MWESB) in the contracting process; and

WHEREAS, Metro relies on the State of Oregon’s Business Development Department to certify firms as minority-owned business enterprises (MBE), women-owned business enterprises (WBE), and emerging small businesses (ESB); and

WHEREAS, the Metro Council has determined that participation by MWESB firms in the contracting process is vital to the local economy and is in the best interest of Metro and the community; and

WHEREAS, the Procurement Officer in conjunction with the Office of the Metro Attorney has proposed certain revisions to the Metro Code which will provide additional opportunities to MWESB firms. These revisions are attached as Exhibit A and are hereby incorporated into this resolution; and

WHEREAS, the proposed revisions to the Metro Code to improve the agency’s MWESB program were included as recommendations in the 2007-2008 Annual MWESB Report provided to the Metro Council pursuant to Metro Code 2.04.170; now therefore

The Metro Council ordains that Metro Code 2.04.100 to 2.04.190 are amended in the form attached hereto as Exhibit A.

ADOPTED by the Metro Council this ____ day of _____, 2010.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

METRO ESB, MBE AND WBE PROGRAM

2.04.100 Findings

(a) The Metro Council finds:

- (1) The opportunity for full participation in our free enterprise system by emerging small businesses, minorities and women owned businesses is essential;
- (2) Greater economic opportunity for emerging small businesses, minorities and women owned businesses is essential;
- (3) Historical patterns of exclusion and discrimination against racial or ethnic groups and women resulted in unfortunate effects of social, political and economic inequity that still exist;
- (4) It is in the best interest of Metro and the community to do business with emerging small businesses, minority and women owned businesses resulting in increased competition and a stronger local economy;
- (5) In cooperation with the private sector, the affected populations, interested groups and appropriate governmental entities, a program should be established to recommend remedies.

(b) It is the purpose of this policy to establish and implement a program to encourage the utilization by Metro of emerging small businesses, minority and women owned businesses, to the greatest extent permitted by law, by creating for such businesses the maximum possible opportunity to compete for and participate in locally-funded Metro contracting activities. This program does not apply to federally-funded contracts, which are governed by Metro Code 2.04.300, et seq.

(Ordinance No. 83-165, Sec. 1. Amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 1; replaced by Ordinance No. 97-692A, Sec. 2.)

2.04.105 Policy Statement

(a) Metro expresses its strong commitment to provide maximum opportunity to do business with ESBs, MBEs and WBEs.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the locally-funded projects, programs and services of Metro. Metro and Metro contractors shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(Ordinance No. 83-165, Sec. 2. Amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 3.)

2.04.110 Definitions

For purposes of Metro Code Sections 2.04.100 to 2.04.190, unless the context requires otherwise, the following definitions shall apply:

(aa) "Department" means the State of Oregon's Department of ~~Consumer and Business Affairs Development, Office of Minority, Women and Emerging Small Business~~ or such state agency, department or entity to which has been delegated the responsibility to certify a Emerging Small Business Enterprise, Minority Business Enterprise, Women Business Enterprise, or a Disadvantaged Business Enterprise and to engage in related activities.

(bb) "Emerging Small Business ~~Enterprise~~" or "ESB" means a small business concern which is certified as such by the Department.

(ce) "Minority Business Enterprise" or "MBE" means a business concern which is certified as such by the Department.

(d) "Public Improvement" has the meaning specified in Metro Code Section 2.04.010 (m).

(ed) "Women Owned Business Enterprise" or "WBE" means a business concern which is certified as such by the Department.

(Ordinance No. 165, Sec. 3. Amended by Ordinance No. 84-181, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 96-635B, Sec. 4.; repealed by Ordinance No. 97-692A, Sec. 4; replaced by Ordinance No. 97-692A, Sec. 5.)

2.04.115 Program Administration

(a) The ~~Chief Operating Procurement~~ Officer shall be responsible for administering this program on behalf of the Chief Operating Officer. ~~The Chief Operating Officer may, by executive order, designate a Program Coordinator and, if necessary, other staff adequate to administer this program on the executive's behalf.~~

(b) In administering this program, the ~~Chief Operating Procurement~~ Officer shall advise potential ESB, MBE and WBE vendors that Metro does not certify ESBs, MBEs and WBEs, and shall direct them to the Department.

(Ordinance No. 83-165, Sec. 4. All previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 6; replaced by Ordinance No. 97-692A, Sec. 8; amended by Ordinance No. 02-966A, Sec. 1.)

2.04.120 Program Activities

The ~~Chief Operating Procurement~~ Officer shall ~~direct staff to~~ develop procedures in the following areas leading to increased business with ESBs, MBEs, and WBEs:

(a) Outreach. Such procedures may include electronic notices, ~~telephone hotlines~~, annual contract lists, newsletters, attending regularly-scheduled contractor orientation programs, and participation in local and regional outreach opportunities.

(b) Technical Assistance. Provide information on feasible options for management assistance, ~~-bonding~~, insurance, certification and financial assistance.

(c) Reduce Contract Size. Examining alternatives for arranging contracts by size and type of work so as to enhance the possibility of participation by ESBs, MBEs and WBEs.

(d) Education. Periodic training for staff to ensure awareness of program objectives and desired activities on their part.

(e) Plan Centers. Ensuring ESB, MBE and WBE plan centers and contractors are receiving requests for bids, proposals and quotes.

(f) Advertising. Advertise formal purchases and contracting opportunities in at a minimum, one newspaper of general circulation and one minority-oriented publication. Additional advertising may be used in order to increase outreach to the MWESB community.

(g) Informal Purchasing Opportunities. Requiring that at least one ESB and one MBE and one WBE vendor or contractor be contacted for all purchases and contracts more than \$2,5005,000 and less than \$2550,000. The program coordinator may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept as supporting documentation.

(h) Informal Construction Opportunities. Requiring all public improvement construction opportunities for contracts more than \$2,5005,000 and less than \$2550,000 to be bid only by qualified ESBs, MBEs and WBEs. The Chief Operating Procurement Officer may waive this requirement if he/she determines that there are no certified ESBs, MBEs and WBEs on the certification list capable of providing the project needed. Any such waivers shall be in writing, and shall be kept as supporting documentation.

(i) Additional Activities. The program coordinator Procurement Officer may establish and implement additional techniques which are consistent with this Program and designed to facilitate participation of ESBs, MBEs and WBEs in Metro purchasing and contracting activities.

(Ordinance No. 83-165, Sec. 5. Amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2;

repealed by Ordinance No. 97-692A, Sec. 7; replaced by Ordinance No. 97-692A, Sec. 9; amended by Ordinance No. 02-966A, Sec. 1.)

2.04.130 Minority-Owned Banks

Metro will seek to identify minority-owned banks and banks utilizing equal opportunity banking practices, including community reinvestment, and, to the greatest extent permitted by law, use their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on such banks.

(Ordinance No. 83-165, Sec. 7. Amended by Ordinance No. 84-181, Sec. 3; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2.)

2.04.150 Good Faith Efforts at Maximizing ESB, MBE and WBE Opportunities

The ~~Chief Operating~~Procurement Officer shall establish procedures relating to good faith opportunities for ~~major-formal~~ construction projects. Procedures shall be consistent in nature and scope with those of other local public bodies for ease in understanding for contractors.

(a) Good faith efforts for maximizing ESB, MBE and WBE subcontracting opportunities shall be required for construction contracts ~~in an amount determined by the Chief Operating Officer over \$100,000.~~

(b) At the discretion of the ~~program~~Procurement Officer, good faith efforts may be required for any other contract, including architects and engineers. This requirement shall be made in writing prior to the solicitation of bids or proposals for such contract.

(c) When construction projects using a proposal process are approved by Council, the staff shall consider past ESB, MBE and WBE utilization as part of the selection criteria. The program coordinator shall provide the awarded contractor with ESB, MBE and WBE targets for subcontracting.

(d) Compliance with good faith efforts during the bidding process is required. Contractors failing to comply will be considered ~~in breach of contract~~non-responsive.

(Ordinance No. 83-165, Sec. 11. Repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; Ordinance No. 88-252, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 12; Ordinance No. 02-966A, Sec. 1.)

2.04.162 Contractor Work Force Efforts at Maximizing Minority and Women Opportunities

(a) Metro contractors shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(b) Assuring that minorities and women have access to employment opportunities in the construction industry is critical. The ~~Chief Operating~~Procurement Officer shall establish procedures relating to work apprenticeships for minorities and women for Metro major construction projects. Procedures may include participation in a workforce clearing house providing opportunities for minorities and women.

(Ordinance No. 97-692A, Sec. 14-15. Amended by Ordinance No. 02-966A, Sec. 1.)

2.04.165 Replacement of ESB, MBE or WBE Subcontractors

Prime contractors shall not replace an ESB, MBE or WBE subcontractor with another subcontractor, either before contract award or during contract performance, without the prior notice written consent of~~to~~ Metro. Prime contractors who replace an ESB, MBE or WBE subcontractor shall make good faith efforts as described in the preceding section in selecting a replacement.

(Ordinance No. 83-165, Sec. 14. Amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; amended by Ordinance No. 97-692A, Sec. 28.)

2.04.170 Council Information Reports

~~The On behalf of the~~ Chief Operating Officer, the Procurement Officer shall provide an annual report to Council showing Metro's utilization of ESBs, MBEs and WBEs ~~doing business within Metro~~the procurement and contracting process.

The Chief Operating Officer shall use MWESB utilization when evaluating the performance of this program and of Department Directors.

(Ordinance No. 83-165, Sec. 15. Amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; all previous Ordinances repealed by Ordinance No. 92-466A, Sec. 2; repealed by Ordinance No. 97-692A, Sec. 16; replaced by Ordinance No. 97-692A, Sec. 17; amended by Ordinance No. 02-966A, Sec. 1.)

2.04.190 Severability and Intent

(a) The provisions of Metro Code Sections 2.04.100 to 2.04.190 shall be effective in all cases unless otherwise provided for by state or federal law. The provisions of Metro Code Sections 2.04.100 to 2.04.190 are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of Metro Code Sections 2.04.100 to 2.04.190 or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of Metro Code Sections 2.04.100 to 2.04.190, or the validity of their application to other persons or circumstances.

(b) Metro Code Sections 2.04.100 to 2.04.190 are intended, and should be construed, as establishing and requiring the maximum efforts at assuring ESB, MBE, and WBE participation in Metro contracting activities that is consistent with the United States and Oregon Constitutions and applicable federal and state law.

(Ordinance No. 92-466A, Sec. 2. Amended by Ordinance No. 97-692A, Sec. 19.)

STAFF REPORT

FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 2.04 IN ORDER TO STRENGTHEN THE MWESB PROGRAM

Date: March 28, 2010

Prepared by: Darin Matthews
Procurement Officer
797-1626

BACKGROUND

Metro Code 2.04.100 to 2.04.190 sets forth the agency's policies on the use of minority-owned, women-owned and emerging small businesses (MWESB) in the procurement and contracting process. These policies were established by the Metro Council as a result of the Regional Disparity Study conducted by state and local agencies in Oregon.

Metro found that the opportunity for MWESB firms to participate in the agency's procurement process was vital to the local economy. It also determined that historical patterns of exclusion and discrimination warranted the need for a program that supported MWESB's.

MWESB Contacts

Currently Metro requires solicitations to purchase goods and services up to \$25,000 include contact with one MBE, one WBE, and one ESB. The Metro Procurement Office is recommending this amount be raised to \$50,000 in order to provide additional contracting opportunities to MWESB's.

Sheltered Market

Construction projects up to \$25,000 currently fall within Metro's sheltered market program. These contracts must be competitively bid solely to qualified MWESB firms. It is recommended that this amount be increased to \$50,000 in order to include more agency projects in the program. This amount is appropriate for our agency based on the types and sizes of projects put out for bid. In comparison, the City of Portland's sheltered market program includes projects up to \$200,000 and Multnomah County's up to \$250,000.

Direct Appointment

The Procurement Office is proposing that personal service contracts up to \$10,000 be directly negotiated with qualified MWESB firms. In addition to providing opportunities to MWESB's, this will also speed up the contracting process for these projects. For the past decade, Multnomah County has successfully used a similar direct appointment process for MWESB personal service providers.

Good Faith Effort

On large construction projects there are often opportunities for MWESB's to earn sub-contracts in their area of expertise. Even when a large non-MWESB general contractor is selected, they can in turn provide opportunities for smaller MWESB firms to earn work. Metro currently requires prime contractors to contact MWESB sub-contractors through our good faith effort program. Procurement Services is proposing that all formal construction projects over \$100,000 include a good faith effort.

Program Responsibilities

Currently the Procurement Officer provides program oversight of the MWESB program on behalf of the Chief Operating Officer. For program duties such as waiving MWESB requirements and requiring good faith efforts, it is suggested that the Procurement Officer be given the necessary authority.

These program enhancements were noted in the Annual MWESB Report submitted to the Metro Council for Fiscal Years 2008 and 2009, and are supported by the Chief Operating Officer and the senior leadership team of Metro. It is believed that these revisions to the Metro Code will help strengthen the agency's MWESB program.

The proposed revisions to this section of the Metro Code are attached to the ordinance as Exhibit A.

ANALYSIS/INFORMATION

1. **Known Opposition** None known.
2. **Legal Antecedents** Metro Code 2.04.100 through 2.04.190, ORS 279A.100
3. **Anticipated Effects** Additional contracting opportunities will be provided to MWESB's; program roles and responsibilities will be clarified.
4. **Budget Impacts** None.

RECOMMENDED ACTION

Metro Council approves the proposed revisions to Metro Code 2.04 in order to strengthen the agency's MWESB procurement program.

Agenda Item Number 6.1

Resolution No. 10-4138, For the Purpose of Directing the Chief Operating Officer to Adopt a Program for Temporary Deferral of the Metro Regional System Fee for Manufacturing Businesses using Recyclable Materials.

RESOLUTIONS
CARRIER TO BE ANNOUNCED

Metro Council Meeting
Thursday, April 22, 2010
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DIRECTING THE)	RESOLUTION NO. 10-4138
CHIEF OPERATING OFFICER TO ADOPT A)	
PROGRAM FOR TEMPORARY DEFERRAL)	Introduced by Chief Operating Officer
OF THE METRO REGIONAL SYSTEM FEE)	Michael J. Jordan, with the concurrence of
FOR MANUFACTURING BUSINESSES)	Council President David Bragdon
USING RECYCLABLE MATERIALS)	

WHEREAS, the recent economic downturn has hampered businesses that manufacture products derived from recyclable materials that have been recovered from the waste stream; and

WHEREAS, Metro considers manufacturers of products from such materials to be an important component of regional efforts to promote sustainability; and

WHEREAS, pursuant to Metro Code Section 5.02.047, Metro imposes a Regional System Fee on the disposal of solid waste generated, originating or collected from within the Metro region; and

WHEREAS, manufacturers of products derived from recyclable materials that have been recovered from the waste stream may be aided by a temporary, targeted deferral of a portion of their obligation to pay the Metro Regional System Fee on the solid wastes they dispose;

WHEREAS, such a temporary deferral of a portion of the Metro Regional System Fee would require businesses that manufacture products derived from recyclable materials recovered from the waste stream to make use of such funds for capital investment, market development, or other uses that result in waste reduction; now, therefore

BE IT RESOLVED that the Metro Council directs the Metro Chief Operating Officer to develop and implement a program for temporary deferral of the imposition of the Metro Regional System Fees in accordance with the provisions set forth on the attached Exhibit A.

ADOPTED by the Metro Council this ____ day of April, 2010.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Exhibit A

Temporary Regional System Fee Deferral Program

Metro will allow deferral of the payment of Metro Regional System Fees to businesses whose primary purpose is the manufacture of new products using a substantial amount of recyclable materials that have been recovered from the waste stream as the raw material or feedstock for manufacturing, if the manufacturing performed also requires the substantial addition of water as an intrinsic part of the manufacturing process. Such businesses may defer payment of Regional System Fees on the portion of the manufacturing process residual containing water that was added during the manufacturing process.

The deferral of the obligation to pay Metro Regional System Fees shall be permitted for a period no greater than 36 months. The Regional System Fees so deferred shall be repaid to Metro over a period no greater than 60 months, with annual interest at a rate equivalent to Metro's average annual investment yield at the time the deferral of payment commences. The time permitted for repayment of the deferred Regional System Fees may be based on the nature of business purpose proposed for the funds that would otherwise have been paid as Regional System Fees.

Deferral recipients must use the deferred Regional System Fee payments for capital investment, market development, or other uses that result in waste reduction. Recipients of a deferral of Regional System Fees must remain in compliance with all obligations to Metro, including any regulatory obligations and the payment of all other debts and financial obligations to Metro. Any failure by deferral recipients to remain in compliance with Metro regulations or to make any payment due to Metro shall result in termination of the deferral with all deferred fees immediately due and payable.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4138 FOR THE PURPOSE OF DIRECTING THE CHIEF OPERATING OFFICER TO ADOPT A PROGRAM FOR TEMPORARY DEFERRAL OF THE METRO REGIONAL SYSTEM FEE FOR MANUFACTURING BUSINESSES USING RECYCLABLE MATERIALS

Date: April 15, 2010

Prepared by: Scott Robinson,
Deputy Chief Operating Officer

BACKGROUND

As a general policy, waste disposal costs should apply consistently on all solid waste generated within the Metro region. These costs provide a crucial incentive to generators in minimizing land disposal and implementing more sustainable waste management measures, including reducing and preventing solid waste.

The recent economic downturn has hampered business in the Metro region, especially those manufacturers that produce new products that rely on recyclable materials that have been recovered from the waste stream. Some businesses have found it difficult to invest in increased sustainability much less meet ongoing obligations such as utilities, rent and waste disposal. Metro recognizes that some manufacturing businesses that use recyclable material as feedstock may benefit from a temporary deferral from certain costs, such as regional system fees that are contained in waste disposal charges.

Therefore, as a way to provide such manufacturers with temporary relief from payment of regional system fees, the Metro Council, in Resolution No. 10-4138, directs the Chief Operating Officer (COO) to consider requests for deferring payment of a portion of the regional system fee for up to 36 months. In situations where a solid waste generator manufactures new products using recyclable material as a significant source of feedstock, and is willing to invest in tangible waste reduction, then the COO should consider such requests for deferral. Such applications should only be considered in situations where water is intrinsic to producing a new manufactured product and is difficult or expensive to remove but significantly contribute to the weight or volume of waste residual. Such regional system fee deferral should be considered at a percentage that is roughly equivalent to water weight portion of the solid waste residual.

Such requests for deferral must include a proposal to invest the temporary savings in capital investment, market development, or other uses that result in waste reduction. Investments could be made in programs, equipment or technology. Qualified applicants must be in compliance with any Metro regulatory requirements and remain current on all debts and obligations to Metro. The COO shall establish the conditions for repayment of such obligations consistent with Metro's risk and interest policies.

ANALYSIS/INFORMATION

1. **Known Opposition** Unknown.
2. **Legal Antecedents** Metro Code Chapter 5.02 Disposal Charges and User Fees

3. Anticipated Effects

Upon adoption of this resolution, the COO will consider requests from manufacturing businesses meeting the criteria, for deferral of regional system fee payments for a period no greater than 36 months. In cases where designated disposal facilities collect fees on Metro's behalf, Metro will modify the agreements in accordance with requests that are approved by the COO.

It is unclear how many applicants would seek such relief.

4. Budget Impacts

It is not known which companies might seek to apply. Solid waste excise taxes are not subject to deferral. Regional system fees that are deferred would be repaid at a future date and a future fiscal year so the budget impact would be delayed and not permanent. Currently, up to \$16.72 per ton could be available for deferral for qualified applicants.

RECOMMENDED ACTION

Recommend adoption of Resolution No. 10-4138.

Agenda Item Number 6.2

Resolution No. 10-4143, Authorizing the Chief Operating Officer to
Enter into an Intergovernmental Agreement with the North
Clackamas Parks and Recreation District for Joint Management of
Mt. Talbert Nature Park.

RESOLUTIONS
COUNCILOR COLLETTE

Metro Council Meeting
Thursday, April 22, 2010
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 10-4143
TO ENTER INTO AN INTERGOVERNMENTAL)
AGREEMENT WITH THE NORTH CLACKAMAS) Introduced by Chief Operating Officer
PARKS AND RECREATION DISTRICT FOR JOINT) Michael J. Jordan, with the concurrence of
MANAGEMENT OF MT. TALBERT NATURE PARK) Council President David Bragdon

WHEREAS, Metro acquired more than 193 acres of property located in Clackamas County, Oregon, known as the Mt. Talbert Natural Area as part of the 1995 Open Spaces Bond Measure; and

WHEREAS, Metro worked with North Clackamas Parks and Recreation District to develop the Mt. Talbert Master Plan and Management Recommendations (the “Master Plan”);

WHEREAS, on July 13, 2000, the Metro Council adopted Resolution No. 00-2970, “For the Purpose of Approving the Mt. Talbert Master Plan;” and

WHEREAS, the North Clackamas Parks and Recreation District Board approved the Master Plan on June 8, 2000;

WHEREAS, the Master Plan established a mission to “*preserve and enhance the natural features and character of Mt Talbert;*”

WHEREAS, using funding from the 2006 Metro Natural Areas Bond Measure, Metro provided \$1.5 million for the access point construction that included paved parking area, trail construction and restroom and picnic facilities;

WHEREAS, in order to efficiently and cost-effectively deliver high-quality service to the public from a local parks provider and to expand environmental education and natural area access for citizens, Metro and NCPRD have negotiated the intergovernmental agreement attached as Exhibit A (the “IGA”);

WHEREAS, the IGA provides for joint management of the Nature Park consistent with the approved Master Plan, with the primary goal being protection of the Nature Park’s natural resources, enhancement and protection of wildlife habitat, and providing public recreation and education consistent with the foregoing; now therefore;

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to execute an intergovernmental agreement with the North Clackamas Parks and Recreation District, substantially in the form attached hereto as Exhibit A, for joint management of Mt. Talbert Nature Park.

ADOPTED by the Metro Council this _____ day of _____, 2010.

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 North Clackamas Parks and Recreation District, a county service district organized under ORS chapter 451, located at 150 Beaver Creek Road, Oregon City, Oregon 97045 (“NCPRD”). This Agreement shall be effective on the last date of signature of a party below (the “Effective Date”).

RECITALS

WHEREAS, pursuant to the 1995 Metro Open Spaces Bond Measure, approved by the voters on May 16, 1995, Metro and NCPRD have jointly acquired more than 190 acres of real property located in Clackamas County, Oregon, commonly known as the Mount Talbert Nature Park (the “Nature Park”), and more specifically identified on the map attached hereto as Exhibit A; and

WHEREAS, on July 13, 2000, Metro approved the Mt. Talbert Master Plan and Management Recommendations by its adoption of Resolution No. 00-2970, and on December 7, 2006, Metro approved amendments to the Mt. Talbert Master Plan by its adoption of Resolution No. 06-3742; and

WHEREAS, NCPRD approved the Mt. Talbert Master Plan and Management Recommendations in 2000 and the amendments to the Mt. Talbert Master Plan in 2006; and

WHEREAS, the 2000 Mt. Talbert Master Plan and Management Recommendations and the 2006 amendments thereto (collectively, the “Master Plan”), established a mission to “preserve and enhance the natural features and character of Mt. Talbert;”

WHEREAS, Metro and NCPRD wish to jointly manage the Nature Park consistent with the approved Master Plan, with one goal being protection of the Nature Park’s natural resources, enhancement and protection of wildlife habitat, and another goal being the provision of public recreation and education consistent with the foregoing;

WHEREAS, Metro and NCPRD therefore desire to enter into this Agreement to set forth the responsibilities and obligations of the parties with respect to the allowable uses, improvements, management, maintenance, restoration, and operation of the Nature Park;

Now, therefore, the parties agree as follows:

AGREEMENT

1. Capital Improvements.

Metro has completed construction of capital improvements in the Nature Park as provided in the Master Plan, including a trailhead restroom, two parking lots, a picnic

shelter with furnishings, a bridge, signage (including interpretive, directional, traffic, regulatory, and trail signs), walking/hiking trails, benches (4) on-site storm water treatment facilities (bioswales), artwork, irrigation facilities, and automated main entry gate (the “Capital Improvements”).

2. NCPRD’s Access, Management, Maintenance and Operation.

- 2.1. Metro grants to NCPRD, and to NCPRD’s agents and contractors, the right to enter Metro property within the Nature Park for the purpose of performing all activities, including enforcement of NCPRD’s code and policies related to parks, reasonably necessary for the management, maintenance, operation, and security of the Nature Park and for the fulfillment of NCPRD’s duties and responsibilities under this Agreement. The public shall be permitted to access and use the Nature Park only as provided in the Master Plan or as specified in a special use permit.
- 2.2. NCPRD shall be responsible for the daily and ongoing management, maintenance and operation of the Nature Park at all times, in accordance with the terms of this Agreement. The Nature Park shall be managed, maintained and operated in accordance with the Master Plan and its intended use as a natural area, with one goal being protection of natural resources, enhancement and protection of wildlife habitat, and another goal being public recreation consistent with the foregoing. NCPRD’s management, maintenance and operations of the Nature Park shall be qualitatively comparable to NCPRD’s management, maintenance and operations provided at other facilities that NCPRD owns or manages. Metro shall periodically visit and inspect the Nature Park to ensure that NCPRD’s management is in accordance with this Agreement. NCPRD’s responsibilities shall include:
 - 2.2.1. Daily management, maintenance and operation of the facilities, projects, and improvements made by Metro pursuant to Section 1 of this Agreement;
 - 2.2.2. Staffing and funding the operation and maintenance of the Nature Park, including, without limitation, payment of taxes and assessments, with NCPRD’s own financial and staffing resources, volunteers, and/or by seeking available grant funding;
 - 2.2.3. Whenever NCPRD staff observe visitors to the Nature Park violating any rules and regulations applicable to use of the Nature Park, including the prohibitions on bicycles, dogs, horses and smoking described in the Master Plan and all other applicable code provisions, laws, and rules applicable to parks managed by NCPRD, such staff shall make an effort to educate such visitors to comply with the Nature Park’s rules and regulations. NCPRD shall not change any park rule, authorize uses that had been prohibited, or prohibit uses that had been authorized without Metro’s written consent prior to implementing any such change, except for temporary changes necessary due to a public safety emergency;

- 2.2.4. Responding to and resolving public inquiries and nuisance complaints and mitigating threats to the resources of the Nature Park in a timely manner. NCPRD shall notify Metro of any such inquiry or complaint regarding a significant natural resource-related issue, including, without limitation, landslides, dying trees and fires. NCPRD and Metro shall coordinate to respond in a timely manner to resolve nuisance complaints. If Metro is issued a nuisance notice for the Properties by a governmental body with authority to issue a notice that is not also issued to NCPRD as co-owner of the Property, Metro shall forward such notice to NCPRD. To the extent a governmental body with authority requires the expenditure of significant funds with respect to the Property, NCPRD and Metro agree to meet and discuss the nature of the requirement and appropriate cost-sharing;
 - 2.2.5. Obtaining any authorizations or permits necessary for management, maintenance and operation of the Nature Park. Any permits granted by NCPRD to users of the Nature Park shall comply with the terms and limitations set forth in this Agreement and in the applicable Master Plan. NCPRD shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance and operational issues that may arise with respect to the Nature Park. NCPRD shall consult with Metro not fewer than twenty (20) days prior to NCPRD applying for any development permit applicable to the Nature Park. Metro's acceptance of such permitting activity will be implied unless otherwise communicated in writing by Metro within twenty (20) days of such consultation;
 - 2.2.6. Coordinating with the Regional Arts & Culture Council ("RACC") before undertaking any maintenance or cleaning of the artwork installed in the Nature Park as part of the capital improvements; and
 - 2.2.7. Performing all other responsibilities described in Sections 3 through 5 of this Agreement.
- 2.3. NCPRD shall not make any major modifications or additions to the facilities, projects, and improvements made by Metro pursuant to Section 1 of this Agreement without Metro's written consent. "Major modifications or additions" as referred to in this paragraph include, without limitation, any new structures or parking areas, enlarging a parking area or any structure, and trail additions and realignments other than routine repairs.
- 2.4. All requests for easements, rights of way, and leases on or affecting the Nature Park shall be submitted to Metro and Metro shall process them in accordance with the Metro Easement Policy, Resolution No. 97-2539B, passed by the Metro Council on November 6, 1997, attached hereto as Exhibit B. For all properties jointly owned by both Metro and NCPRD, such requests shall also be submitted to NCPRD for review and approval by the NCPRD Board of Directors, and no easement or other real property interest in the Nature Park, including a security interest, may be granted for such jointly-owned

properties without the express written consent of both the Metro Council and the NCPRD Board of Directors.

3. Natural Area Restoration.

- 3.1. Metro has completed significant natural area restoration projects in the Nature Park, consistent with the Master Plan, that have involved the removal of non-native and invasive species and the planting of native species, including an Oak upland restoration and enhancement project. Metro will continue to monitor and maintain such plantings for not less than five years, with the goal of having a sufficient number of plants to reach the “free to grow” stage within that period for the restoration projects to be considered successful. Metro shall be responsible for coordinating all volunteer activities regarding the Oak upland restoration project, in coordination with NCPRD, as provided below in Section 4.4 of this Agreement. Metro also shall be responsible for responding to all public inquiries, comments or complaints, regarding the Oak upland restoration project.
- 3.2. All natural area restoration at the Nature Park shall be consistent with the Master Plan. Metro and NCPRD shall cooperate regarding all natural area restoration activities on the Nature Park, including regarding monitoring and maintenance activities and regarding all plans for new natural area restoration activities in the Nature Park. For a period of five years from the Effective Date, Metro shall take the lead to coordinate restoration activities on the site, with NCPRD’s full and active participation and consultation. Over the course of the first term of this Agreement, the parties shall work together to transition the responsibility for leading such activities from Metro to NCPRD, with a goal of NCPRD taking the lead role in years six through ten, with Metro’s full and active participation and consultation. If this Agreement is renewed as provided in Section 7 for a second ten-year period, NCPRD shall thereafter take the lead to coordinate all restoration activities on the site, with Metro’s full and active participation and consultation.

4. Education and Volunteer Programs.

- 4.1. Metro and NCPRD shall coordinate all volunteer and education programs at the Nature Park, as described in this Section 4 of this Agreement, so as to avoid conflicts and maximize citizen participation.
- 4.2. Metro shall provide, schedule and coordinate environmental education programs at the Nature Park led by Metro naturalists or Metro-trained volunteer naturalists. Metro will coordinate scheduling of such programs with NCPRD, and NCPRD shall promote and register participants for such programs. Metro shall also promote such programs and shall direct interested citizens to register for them with NCPRD. Registration fees for public interpretive programs will be agreed upon in advance by both a parties with the party taking the reservation and collecting the fees entitled to such fees.
- 4.3. Except as provided below in Section 4.4 of this Agreement, NCPRD shall provide, schedule, advertise and coordinate volunteer projects at the Nature Park as often as

NCPRD determines appropriate. Such projects may include, without limitation, trail maintenance and repair projects and natural area restoration projects, such as the removal of non-native and invasive plants and the planting of native plants. NCPRD shall inform and consult with Metro regarding such projects. Metro shall also promote such programs and shall direct interested citizens to register for them with NCPRD.

- 4.4. Metro shall coordinate and schedule volunteer restoration projects to support the Oak upland restoration and enhancement project. Metro shall coordinate all such projects with NCPRD, and NCPRD shall also advertise such programs and shall direct interested citizens to register for them with Metro.

5. Signage and Acknowledgement.

- 5.1. NCPRD shall maintain and repair all signage in the Nature Park, including interpretive, directional, traffic, regulatory and trail signs, substantially to the professional level of appearance, and in the locations, as when installed. All replacement and repair shall be consistent with the original sign design, style, installation and materials, unless Metro consents to any changes thereto in writing. NCPRD shall not relocate any signs without Metro's written consent.
- 5.2. NCPRD shall not install any new permanent signage without Metro's consent regarding content, format, construction and location.
- 5.3. NCPRD shall recognize and document in any publications, media presentations, or other presentations referencing the Nature Park that are produced by or at the direction of NCPRD, that funding for acquisition and construction of facilities at the Nature Park came from the Metro Opens Spaces Bond Measure and the Metro Natural Areas Bond Measure. NCPRD's recognition of Metro in written materials shall include Metro's logo and script of a size equal and comparable to the size of NCPRD's logo and script as used in such publications and Metro shall make its graphics available to NCPRD upon request for such publications. If NCPRD plans and holds any community/media events to publicize the Nature Park, NCPRD agrees to provide Metro 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 and construction of the Nature Park.

6. Acquisition of Contiguous Properties.

If Metro acquires any other property or properties contiguous to the Nature Park at any time, such property or properties shall be considered part of the Nature Park and shall be subject to the terms of this Agreement from the date that Metro closes in escrow on any such acquisition(s). For the purpose of interpreting this subsection, property that is separated by a public road shall not be considered contiguous.

7. Term; Automatic Renewal.

This Agreement shall continue for a term of ten years, unless modified or terminated as provided herein. This Agreement shall automatically renew for one additional ten-year term unless, not later than ninety (90) days prior to the expiration of the initial term of this Agreement, one of the parties provides the other party with notice that it does not wish to renew this Agreement.

8. Termination.

- 8.1. Joint Termination for Convenience. Metro and NCPRD 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.

- 8.2. 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. Mutual Indemnification.

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

10. Oregon Constitution and Tax Exempt Bond Covenants.

The source of funds for the acquisition and construction of the Nature Park 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. NCPRD 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 NCPRD breaches this covenant, NCPRD shall undertake whatever remedies are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof. In such an event, Metro shall work cooperatively with NCPRD to address such breach.

11. 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.

12. 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.

13. 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 Parks and Environmental Services
600 N.E. Grand Avenue
Portland, OR 97232-2736
Phone: 503-797-1790
Fax: 503-797-1849
Email: teri.dresler@oregonmetro.gov

With Copy To: Office of Metro Attorney
600 N.E. Grand Avenue
Portland, OR 97232-2736
Phone: 503-797-1661
Fax: 503-797-1792
Email: paul.garrahan@oregonmetro.gov

To NCPDR: North Clackamas Parks and Recreation District
Director
150 Beavercreek Road
Oregon City, OR 97045
Phone: 503-742-4348
Fax: 503-742-4349

With Copy To: Clackamas County Counsel
2051 Kaen Road
Oregon City, OR 97045
Telephone: 503-655-8362
Fax: 503-742-5397

14. 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.

15. Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties and, except as provided in the Master Plan, supersedes any prior oral or written agreements or representations relating to the Nature Park. 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.

NORTH CLACKAMAS PARKS AND RECREATION DISTRICT

METRO

By: _____

Michael Jordan, Chief Operating Officer

Print Name: _____

Title: _____

Date: _____

Date: _____

Exhibits:

- Exhibit A – Identification of Properties within the Nature Park
- Exhibit B - Metro Easement Policy and Metro Resolution No. 97-2539B

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Exhibit A to Management IGA
 Identification of Properties within the Nature Park

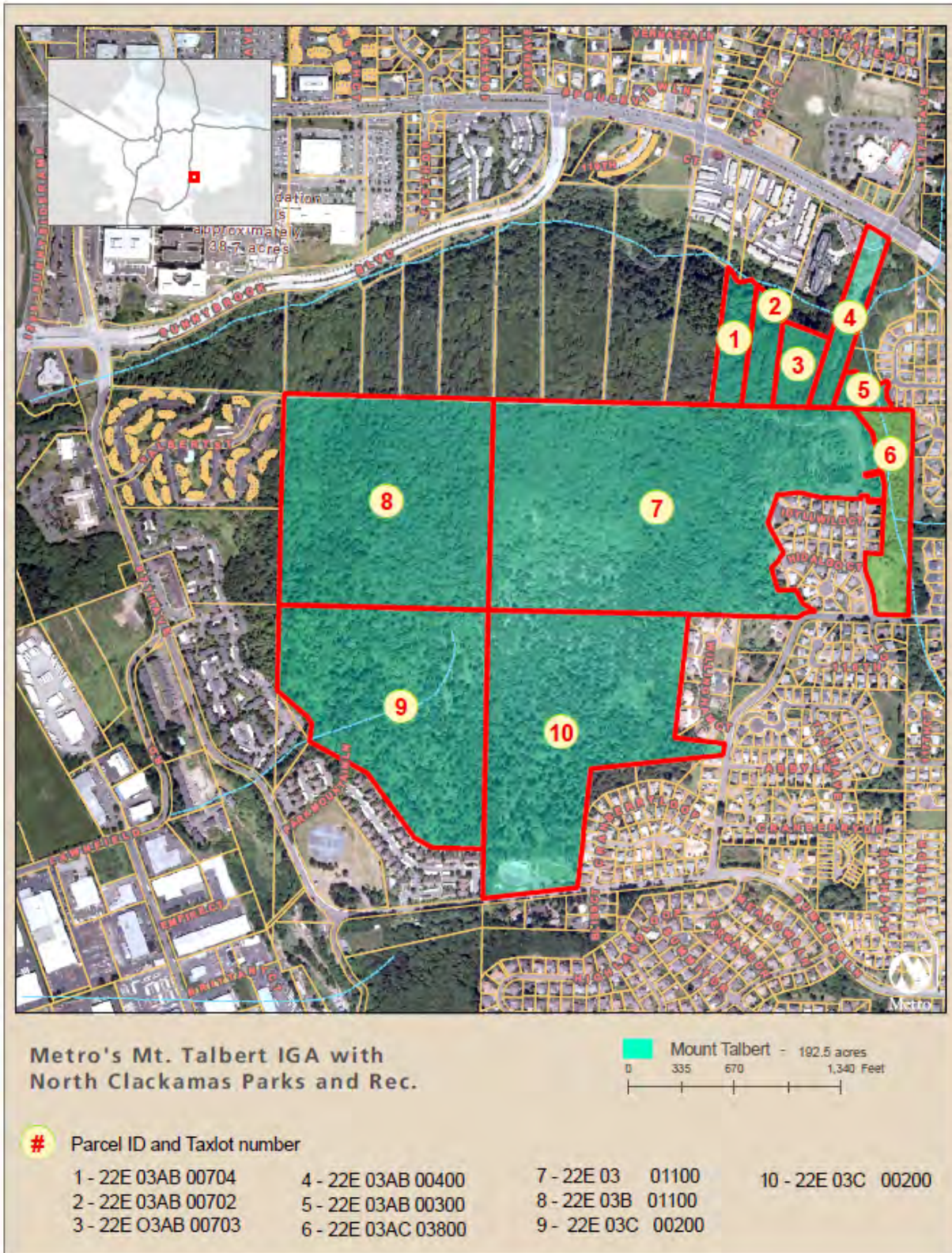


Exhibit B to Management IGA
Metro Easement Policy and Metro Resolution No. 97-2539B

BEFORE THE METRO COUNCIL

IS A COMPLETE AND EXACT COPY OF THE ORIGINAL THEREOF.

Rebecca V. Shoemaker, Clerk
Clerk of the Metro Council

RESOLUTION NO. 97-2539B

FOR THE PURPOSE OF APPROVING GENERAL)
POLICIES RELATED TO THE REVIEW OF)
EASEMENTS, RIGHT OF WAYS, AND LEASES)
FOR NON-PARK USES THROUGH PROPERTIES)
MANAGED BY THE REGIONAL PARKS AND)
GREENSPACES DEPARTMENT.)

Introduced by
Mike Burton, Executive Officer

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

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

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

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

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

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

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

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

Jon Kvistad
Jon Kvistad, Presiding Officer

ATTEST:

Cheryl
Recording Secretary

Approved as to Form:

Daniel B. Cooper
Daniel B. Cooper, General Counsel

**Exhibit B to Management IGA
Metro Easement Policy and Metro Resolution No. 97-2539B**

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

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

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

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

**Exhibit B to Management IGA
Metro Easement Policy and Metro Resolution No. 97-2539B**

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

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

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

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

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

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

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

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

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

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

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

**Exhibit B to Management IGA
Metro Easement Policy and Metro Resolution No. 97-2539B**

b) Upon receipt of the detailed proposal, the Department shall determine if additional information or a Master Plan is required prior to further review and analysis of the proposal. For those facilities which have master plans, require that all proposed uses are consistent with the master plan. Where no master plan exists all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.

c) Upon determination that the necessary information is complete, the Department shall review and analyze all available and relevant material and determine if alternative alignments or sites located outside of the Metro owned or managed regional park, natural area, or recreational facility are feasible.

d) If outside alternatives are not feasible, the Department shall determine if the proposal can be accommodated without significant impact to park resources, facilities or their operation and management. Proposals which cannot be accommodated without significant impacts shall be rejected. If the Department determines that a proposal could be accommodated without significant impacts, staff shall initiate negotiations with the applicant to resolve all issues related to exact location, legal requirements, terms of the agreement, mitigation requirements, fair market value, site restoration, cultural resources, and any other issue relevant to a specific proposal or park, natural area or recreational facility. The Department shall endeavor to complete negotiations in a timely and business-like fashion.

e) Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval as noted in item "1" above. In no event shall construction of a project commence prior to formal approval of a proposal.

f) Upon completion of all Metro tasks and responsibilities or at intervals determined by the Department, and regardless of Metro Council action related to a proposed easement, right of way or lease for a non-park use, the applicant shall be invoiced for all expenses or the outstanding balance on expenses incurred by Metro.

g) Permission from Metro for an easement or right of way shall not preclude review under applicable federal, state or local jurisdiction requirement.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 10-4143, AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT FOR JOINT MANAGEMENT OF MT. TALBERT NATURE PARK.

Date: April 22, 2010

Prepared by: Mike Brown, 503-797-1509

BACKGROUND

Metro and North Clackamas Parks and Recreation District (NCPRD) jointly purchased the 193 acres of property that includes the Butte top, west and north facing slopes referred to as Mt Talbert Nature Park, located in Clackamas County as part of the 1995 Open Spaces Bond Measure. Metro was the primary purchasing partner (75%). After the first successful acquisitions, Metro and NCPRD entered into an intergovernmental agreement (IGA) in November 1997 which provided for continued cooperation in the acquisition of additional properties on Mt. Talbert and for NCPRD to manage the properties. Metro staff worked with NCPRD staff to establish a master plan, which was prepared by Mayer/Reed and approved by Metro Council and NCPRD in the year 2000.

The Master Plan established a mission to “*preserve and enhance the natural features and character of Mt Talbert.*” The 2006 Metro Natural Areas Bond Measure provided \$1.5 million for the access point construction that included paved parking area, trail construction and restroom and picnic facilities. Metro completed construction of Mt. Talbert Nature Park in October 2007.

The original IGA between Metro and NCPRD expired in November 2007, at which point Metro staff and NCPRD staff agreed to a Memorandum of Understanding (MOU) that outlined the roles and responsibilities of both parties, and their willingness to enter into a new IGA and provide a summary of roles and responsibilities each agency will exercise in the future management and operation of Mt. Talbert Nature Park.

The roles and responsibilities outlined in this IGA are as follows. NCPRD shall be responsible for the daily management, maintenance and operations of the facilities, projects, and improvements. NCPRD will staff and fund the operation and maintenance of the nature park including without limitation payment of taxes and assessments, with NCPRD’S own financial and staffing resources. Any major modifications or additions to the facilities must have Metro’s written consent. Metro and NCPRD shall coordinate all volunteer and educational programs at the Nature Park to avoid any conflicts and to maximize citizen participation. All natural area restoration at the Nature Park shall be consistent with the Master Plan. Metro and NCPRD will cooperate regarding all natural area restoration activities including but not limited to early intervention weed control, Fire Management plans, the development of a natural resource management plan and the completion of the North loop trail in the Nature Park.

Metro and NCPRD believe there are numerous benefits to NCPRD managing the Mt Talbert Nature Park consistent with the approved master plan. The primary goal is to preserve and enhance the natural features and character of Mt Talbert, as well as offering the public a natural park in an urban area. This joint partnership will provide natural area access for new hiking areas, wildlife viewing, and expanded environmental education opportunities.

The IGA clearly outlines the responsibilities and obligations of the parties with respect to allowable uses, improvements, management, maintenance short and long-term, as well as operation of the Nature Park.

ANALYSIS/INFORMATION

1. Known Opposition

None

2. Legal Antecedents

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

Resolution No. 97-2563, "For the Purpose of Authorizing the Executive Officer to Execute an Intergovernmental Agreement with North Clackamas Parks and Recreation District to Manage Properties on Mt. Talbert Purchased by Metro," approved on November 6, 1997.

Resolution No. 00-2970, "For the Purpose of Council Approval of the Mt Talbert Master Plan and Management Recommendations, Pursuant to an Existing IGA between Metro and North Clackamas Parks and Recreation District," approved on July 13, 2000.

Resolution No. 05-3526, "For the Purpose of Approving a Release of the Request for Proposals and Award of Contract for Design and Engineering Services for Public Access Facilities at the Mt. Talbert Natural Area," approved on January 13, 2005.

Resolution No. 06-3742, "For the Purpose of Approving an Amendment to the Mt. Talbert Master Plan Pursuant to an Existing Intergovernmental Agreement between Metro and North Clackamas Parks and Recreation District," approved on December 7, 2006.

3. Anticipated Effects

Metro staff has already transitioned the daily operations and management of this site over to NCPRD with the Memorandum of Understanding approved in November 2007. Metro staff continues to partner with NCPRD staff in the areas of invasive weed control, etc.

4. Budget Impacts

None.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 10-4143.