

BEFORE THE METRO COUNCIL

IN CONSIDERATION OF RESOLUTION NO. 11-)
4297, FOR THE PURPOSE OF AMENDING THE)
NATURAL AREAS ACQUISITION REFINEMENT)
PLAN IN THE ROCK CREEK HEADWATERS)
AND GREENWAY TARGET AREA,)
AUTHORIZING THE CHIEF OPERATING)
OFFICER TO ACQUIRE LAND SUBJECT TO)
UNUSUAL CIRCUMSTANCES, AND)
APPROVAL OF AN INTERGOVERNMENTAL)
AGREEMENT WITH THE CITY OF HILLSBORO)

RESOLUTION NO. 11-4297

Introduced by Chief Operating Officer Martha
J. Bennett with the concurrence of Council
President Tom Hughes

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved Ballot Measure 26-80, authorizing Metro to issue \$227.4 million of general obligation bonds to fund natural area acquisitions and water quality protection (the “Natural Areas Program”); and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan” (the “Work Plan”), authorizing the Metro Chief Operating Officer to acquire properties identified on a Council-approved target area confidential refinement map so long as the properties meet the “Acquisition Parameters” set forth in the Work Plan; and

WHEREAS, on September 6, 2007, the Council adopted Resolution No. 07-3834, “Approving the Natural Areas Acquisition Refinement Plan for the Rock Creek Headwaters and Greenway Target Area,” which Refinement Plan included acquisition objectives and a confidential tax-lot specific map (the “Map”), which Map was amended on September 22, 2011, by Resolution No. 11-4293; and

WHEREAS, Metro staff identified a 42-acre acquisition opportunity in the City of Hillsboro formerly known as the Orenco Woods golf course property (the “Property”), more specifically identified in Exhibit A, pp. 8-10 (the “IGA”), attached hereto; and

WHEREAS, although the Property meets the Refinement Plan Tier One objective to “Acquire the remaining gaps in public ownership along the Rock Creek Greenway between Highway 26 and the Tualatin River,” the Property was not included on the Map, and therefore Metro Council approval is required in order for Metro to acquire an interest in the Property; and

WHEREAS, Metro and the City of Hillsboro have agreed on a draft Intergovernmental Agreement, attached as Exhibit A to this Resolution, whereby the City will purchase the Property from the Trust for Public Land for \$4,000,000, and Metro will acquire a fifty percent (50%) interest in the Property from the City immediately thereafter for \$2,000,000; and

WHEREAS, Metro and the City of Hillsboro have been provided an MAI appraisal and appraisal review (the “Appraisal”) of only a portion of the Property, specifically a 31-acre portion of the Property located in the NW corner of the Property (the “Park Property”), which Appraisal values the Park Property at \$4,000,000; and

WHEREAS, the Appraisal is subject to an extraordinary assumption that vehicular access would be available to the Park Property, despite the fact that such vehicular access is currently legally

unavailable from the northwest of the Park Property and would be practically infeasible through the remainder of the SE corner of the Property; and

WHEREAS, Metro staff is satisfied that, notwithstanding the lack of an appraisal of the entire Property and the extraordinary assumption in the Appraisal, the \$4,000,000 purchase price of the entire Property, which is equal to the appraised value of only the Park Property, is equal to or below the market value of the Property; and

WHEREAS, there is an historic home on the Property known as the McDonald House, for which, pursuant to the IGA, the City will assume full responsibility, and in which Metro has no interest in long-term ownership under the Natural Areas Program; and

WHEREAS, the McDonald House is the subject of a lawsuit by the Hillsboro Elks Lodge (the "Elks") against the current owner of the Property, in which the Elks assert an ownership interest in the McDonald House, and Metro and the City may be added as defendants to the Elks' lawsuit if Metro and the City acquire the Property; and

WHEREAS, a possible settlement with the Elks could include a partition of the Property and quitclaim of the McDonald House to the Elks, and in any event, the City has agreed to be solely responsible for the litigation and the McDonald House, and to hold Metro harmless for matters related to the McDonald House; and

WHEREAS, Metro staff is satisfied with the results of its due diligence on the Property, but the fact that there is no appraisal of the entire Property as a whole, the Appraisal of the Park Property portion of the Property is subject to an extraordinary assumption, there is no legal access from the NW portion of the Property, and the Property is subject to the Elks' lawsuit, there are unusual circumstances; and

WHEREAS, due to the unusual circumstances, the Property does not meet the Acquisition Parameters in the Work Plan, and Metro Council approval is required for Metro to acquire an interest in the Property; and

WHEREAS, on November 15, 2011 the Hillsboro City Council approved the IGA; and

WHEREAS, the IGA requires Metro and the City to master plan the entire Property to create a future nature park on the Park Property, as such term is used in the Hillsboro Parks Master Plan, and either subdivide or partition the approximate 11-acre portion of the southeast corner of the Property for sale to a third party (the "Remainder Parcel"); and

WHEREAS, the sale of the Remainder Parcel, which property is not needed for public use, will further the public interest because, among other things, the sale will provide revenue to be used by the City of Hillsboro and Metro for development of a future nature park on the Park Property; and

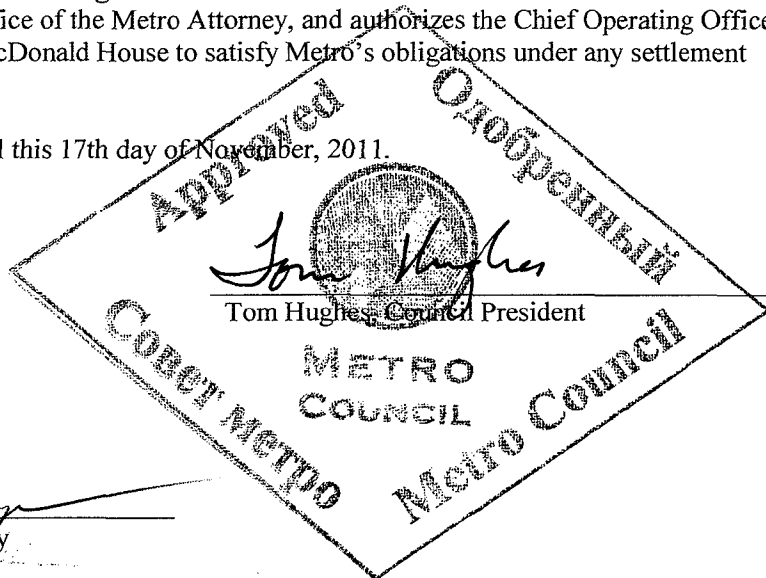
WHEREAS, as set forth in the IGA, each party will hold fifty percent (50%) of the net proceeds from the sale of the Remainder Parcel and will use these proceeds first, in equal shares, for the master planning and construction of the nature park on the Park Property, and second, to reimburse each party for its contribution to the purchase price for the Property; and

WHEREAS, the IGA requires that legal vehicular access to the Property from the northwest neighborhood be restored in the course of any master planning and land division process affecting the Property.


BE IT RESOLVED that Metro Council hereby:

1. Adopts the Rock Creek Headwaters and Greenway Target Area confidential tax-lot specific map signed by Council President Tom Hughes on November ___, 2011, which map includes the Property. This map shall replace the confidential map adopted with the approval of Resolution No. 11-4293 on September 22, 2011;
2. Authorizes the Chief Operating Officer to acquire the Property, as identified in Exhibit A, notwithstanding the unusual circumstances present in the transaction;
3. Authorizes the Chief Operating Officer to enter into the IGA with the City of Hillsboro, substantially in the form attached as Exhibit A to this Resolution, or otherwise as approved by the Office of the Metro Attorney;
4. Authorizes the Chief Operating Officer to obtain the necessary approvals to partition the Remainder Parcel and the McDonald House, if necessary, including the authority to grant easements required to obtain the partition;
5. Authorizes the Chief Operating Officer to sell the Remainder Parcel using an equitable, commercially reasonable, and appropriate process, as determined by the Chief Operating Officer in her sole discretion;
6. Authorizes the Chief Operating Officer to use the net proceeds from the future sale of the Remainder Parcel for the planning and development of a nature park on the Park Property, as set forth in the IGA; and
7. Authorizes a settlement agreement with the Elks on the terms set forth above and otherwise as approved by the Office of the Metro Attorney, and authorizes the Chief Operating Officer to convey Metro's interest in the McDonald House to satisfy Metro's obligations under any settlement agreement with the Elks.

ADOPTED by the Metro Council this 17th day of November, 2011.



Approved as to Form:


Daniel B. Cooper, Metro Attorney

INTERGOVERNMENTAL AGREEMENT

Orenco Woods Crossing Acquisition

This Intergovernmental Agreement (“Agreement”) is entered into this _____ day of _____, 2011 (the “Effective Date”), by and between THE CITY OF HILLSBORO, a municipal corporation (the “City”), and METRO, an Oregon municipal corporation (“Metro”).

RECITALS

A. The Trust for Public Land (“TPL”) intends to purchase from US Bank, doing business as SA Group Properties, Inc. (the “Bank”), the real property commonly referred to as Washington County Assessor’s Tax Map 1N235, Tax Lot 3400 in Washington County, Oregon, more particularly described in Exhibit A-1 and depicted on Exhibit A-2 attached to this Agreement (the “Property”).

B. The approximately 42-acre Property is located within the Rock Creek Headwaters and Greenway Target Area, an area specifically identified in Metro Ballot Measure 26-80 (the “2006 Natural Areas Bond Measure”) as regionally significant due to its wildlife habitat values and its contribution to water quality.

C. The City and Metro have identified a portion of the Property (primarily the northwest portion of the Property) as ideal and suitable for public park purposes, while the southeast portion of the Property at the intersection of NW Cornelius Pass Road and NW Quatama Road has been identified as most suitable for sale and development.

D. The Property is currently approved for development of 249 units, pursuant to City Council Resolution No. 2172 and City Planning Commission Resolution No. 1561-P, which contain approvals for the associated Concept Development Plan, Subdivision Plat, Detailed Development Plan, Significant Natural Resource Overlay Permit and Floodplain Alteration Permit, and pursuant to City of Hillsboro Ordinance No. 5633, approving a rezoning of the Property (collectively the “Land Use Approvals”).

E. The City has entered into a purchase and sale agreement to acquire the Property from TPL following TPL’s acquisition of the Property from the Bank. Metro has agreed to reimburse the City a portion of the purchase price, on the terms and conditions set forth in this Agreement.

F. On November ____, 2011, the Hillsboro City Council authorized the City’s participation in the acquisition of the Property and execution of this Agreement with Metro.

G. On November ____, 2011, by Metro Council Resolution No. 11-4297 (“For the Purpose of Amending the Natural Areas Acquisition Refinement Plan in the Rock Creek Headwaters and Greenway Target Area, Authorizing the Chief Operating Officer to Acquire Land Subject to Unusual Circumstances, and Approval of an Intergovernmental Agreement with

the City of Hillsboro”), the Metro Council authorized Metro’s participation in the acquisition of the Property upon the terms set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants of the parties set forth in this Agreement, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **Payment by Metro to the City.** Subject to the conditions set forth in Section 3, on the Closing Date, as defined below, Metro shall pay the City the sum of Two Million Dollars (\$2,000,000) (the “Metro Purchase Price”).

2. **Conveyance of Interests in the Property; Closing.**

a. Deed to Metro. At Closing (as described below) and upon receipt of the Metro Purchase Price, the City shall deliver to Metro a bargain and sale deed conveying to Metro an undivided fifty percent (50%) interest in the Property, as a tenant in common in the Property with the City (the “Deed”). The City shall retain an undivided fifty percent (50%) interest in the Property as a tenant in common in the Property with Metro.

b. Closing. The City’s conveyance of the 50% interest in the Property to Metro, and the payment of the Metro Purchase Price to the City (the “Closing”), shall occur immediately following the City’s acquisition of the entire Property from TPL (the “Closing Date”). The Closing shall take place at First American Title Company, 10260 SW Greenburg Rd., Suite 170, Portland, OR 97223 (the “Title Company”). Metro shall pay the cost of recording the Deed, Metro shall pay the cost of its title insurance policy, and otherwise the parties shall equally share in the escrow fees and all other closing costs.

3. **Metro Conditions Precedent to Closing.** The conditions set forth in this Section 3 must be satisfied prior to Metro’s obligation to contribute the amount set forth above and to accept an interest in the Property from the City.

a. Due Diligence. Metro has conducted and completed its due diligence on the Property, and as of the Effective Date, the Property satisfies the Metro Natural Areas Program’s due diligence requirements. At Closing, there shall have been no material adverse changes related to or connected with the Property.

b. Title. At Closing, the Title Company must be committed to issue to Metro a standard ALTA owner’s title insurance policy in the full amount of Metro’s contribution, insuring Metro’s interest in the Property vested in common with the City, subject only to exceptions 1 – 5, 8 – 12, 14 – 15, and 19 – 26 set forth on the Title Company’s 4th Supplemental Preliminary Title Report No. 7034-1710208, dated effective October 10, 2011, and any exception for the Lawsuit, as defined in Section 7, below.

4. **City Conditions Precedent to Closing.** In addition to any other conditions contained in this Agreement, Closing and the City’s obligations with respect to transactions contemplated by this Agreement are subject to Metro’s delivery to the Title Company on or

before the Closing Date: (1) the Metro Purchase Price as set forth under Section 1 above; and (2) other fully executed documents and funds as are required of Metro to close the sale in accordance with this Agreement, including (without limitation) escrow instructions.

5. Interim Property Management.

a. Short-Term Property Stabilization. The parties intend to develop a nature park on the northwest portion of the Property (the “Park”). Promptly following the Closing, representatives of the City and Metro shall meet and work together to identify the short-term management needs of the Property, including, without limitation, safety concerns or invasive weed removal actions that should be addressed in the short-term, prior to development of the Park. The parties’ intent is to take only those actions that are critical for public safety or natural resource protection, recognizing that significant investments in the Property will be made in the course of development of the Park. Any third-party fees, costs, and expenses of these short-term needs will be shared equally by the parties.

b. Interim Site Management. After Closing and until commencement of construction of the Park (the “Interim Period”), the City shall manage, maintain, secure, and operate the Property in accordance and in a manner consistent with the Metro Greenspaces Master Plan, the Hillsboro Municipal Code, the Hillsboro Parks and Recreation Master Plan, and this Agreement (this Agreement and these plans collectively referred to herein as the “Plans”). In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.

i. In the Interim Period, the City shall control security and access to the Property, and shall respond to neighborhood or citizen complaints regarding improper use of the Property. The City may allow informal public access to the Property for habitat enhancement and pedestrian activity. All uses of the Property in the Interim Period shall be consistent with the Plans. No such informal use shall be permitted if to do so would effectively preclude any potential uses of the Property that could later be allowed in the Park.

ii. In the Interim Period, the City shall not allow or permit any alteration of any water, timber, bridge, mineral, or other resource on the Property, without Metro’s prior written consent, and only so long as such alteration is necessary for the control of exotic, non-native, invasive, or pest plant species, to prevent Property degradation, or to address security or public safety concerns.

6. Park Master Planning; Sale of Development Parcel.

a. Master Plan. Promptly following the Closing, the parties shall commence creation of a master plan for the Park (the “Master Plan”). The Master Plan shall be subject to the approval the Metro Council and the City’s Parks and Recreation Commission, and shall be developed collaboratively, with the City performing the role of project manager. The Master Plan shall identify the future management responsibilities of the Park after it is developed.

b. Development Parcel. In connection with the creation of the Master Plan, the parties shall identify a portion of the Property in the southeast corner (the “Development Parcel”) that can be sold to an unrelated third-party. Once identified, the parties shall seek a

partition of the Property to allow the legal sale of the Development Parcel. Both parties shall cooperatively determine the disposition of the Development Parcel either through direct sale to a third party or listing and marketing the Development Parcel to maximize its potential sale price.

c. Land Use Approval Modification. Prior to any sale of the Development Parcel, the Land Use Approvals shall be modified or terminated, or the Property rezoned, in order to (A) allow vehicular, pedestrian and bicycle access on the northwest side of the Property, which access is not permitted as of the date of this Agreement under City of Hillsboro Ordinance 5633 (the “Zone Change”), (B) eliminate the remaining conditions of approval of the Zone Change, and (C) ensure that the Development Parcel and the Park will receive separate regulatory treatment in the future, such that, among other things, no signatures will be required from the owner of the Development Parcel for any land use modifications affecting the remainder of the Property, and any conditions of approval applicable to the Development Parcel will not affect the remainder of the Property.

d. Revenue; Development Costs.

i. The City and Metro shall each receive one-half of the proceeds from the sale of the Development Parcel and shall, except as otherwise stated herein, use these proceeds in equal shares as follows: first, to pay or reimburse the fees, costs and expenses of the marketing, disposition, and closing of the Development Parcel, and secondly, to pay the fees, costs and expenses of developing the Park on the remainder of the Property (the “Development Costs”). Any remaining proceeds shall be retained by each party to reimburse the parties equally for their contributions to the purchase price of the Property. Development Costs may include, without limitation, the costs of modifying the Land Use Approvals, rezoning the Property to eliminate the existing Land Use Approvals, or adjusting the property lines on the Property to create the Development Parcel. If the Development Costs exceed the revenue from the sale of the Development Parcel, Metro will not be obligated to contribute any additional funds toward the Development Costs.

ii. Development Costs shall not include any costs associated solely with master planning or developing adjacent City property (the “City Property”). Notwithstanding the foregoing, the parties desire to master plan and develop the properties concurrently to ensure a coherent vision for the entire site. Accordingly, the planning costs associated with master planning the properties together (that cannot be easily attributed to either the City Property or the Property) will be allocated equitably based on the area of the City Property relative to the Property, to reflect the fact that no Metro funds can be used to master plan or develop the City Property. Both parties acknowledge and agree that this is a reasonable method to divide the joint planning costs. The City shall pay sixty percent (60%) of such joint planning costs, and Metro shall pay forty percent (40%) of such costs. Though development of the City Property and the Property may proceed concurrently, the City shall pay all of the construction costs associated with the City Property, and the parties shall ensure that the construction costs are specifically allocated toward improvements on either the City Property or the Property.

e. Future Cooperation. Any decisions with respect to the future sale of the Development Parcel or any portion of the Property, any required or desirable land use approvals

affecting the Property, and the division of costs and revenues associated with the Property shall be subject to the approval of each party, subject to and in accordance with the agreements regarding the Property set forth in this Section 6.

7. **McDonald House.** The parties acknowledge and agree that the historic residence located in the northwest portion of the Property (the “McDonald House”) is the subject of a lawsuit by the Hillsboro Elks Lodge (the “Elks”) against the Bank (the “Lawsuit”), in which the Elks claim an ownership interest in the McDonald House. The parties anticipate that Metro and the City will be added as defendants to the Lawsuit following Closing, and Metro and the City have agreed that a possible settlement with the Elks could include a partition of the Property and quitclaim of the McDonald House to the Elks. It is also possible that Metro and the City will own the McDonald House in the long-term. Notwithstanding the uncertainty regarding the disposition of the McDonald House, the City shall have sole responsibility for the management, maintenance, repair, replacement, security, and operation of the McDonald House, and all fees, costs, and expenses associated with the McDonald House, including, without limitation, the costs of repair, short and long-term maintenance, and replacement of the McDonald House and its components, taxes or assessments associated with the McDonald House, any costs associated with leasing, insuring, and managing the McDonald House, and any environmental or other liability associated with the ownership or management of the McDonald House. The City’s indemnification of Metro set forth in Section 11 below shall include any and all Claims (as defined in Section 11) relating to or resulting from the ownership, management, maintenance, security, or operation of the McDonald House, including any Claims related to the Lawsuit. In addition, Development Costs shall not include any fees, costs or expenses associated with the McDonald House, whether owned by the City, the Elks or another party. If the City purchases the McDonald House in connection with any sale of the Development Parcel, the parties shall equitably adjust each party’s obligation to contribute to the payment of the Development Costs, if necessary.

8. **Easements.** Except with respect to any easement needed for the conveyance of the McDonald House, all requests for new easements, rights of way, and leases not already burdening or affecting the Property at Closing shall be submitted to Metro in accordance with the Metro Easement Policy, Resolution No. 97-2539B, passed by the Metro Council on November 6, 1997, attached hereto as Exhibit B.

9. **Term.** This Agreement shall continue in effect for a period of ten (10) years and shall thereafter be automatically extended for additional ten (10) year periods, unless modified or terminated as provided herein. Following Closing, the parties may, by written agreement signed by each party, terminate all or a part of this Agreement based upon a determination that such action is in the public interest. Termination under this section shall be effective as provided in such termination agreement.

10. **Termination for Cause.** Any 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.

11. **Indemnification.** The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify, and save harmless Metro and Metro's officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal (collectively, "Claims"), relating to or resulting from the management, maintenance, security, or operation of the Property, including but not limited to construction of trails or in relation to any other improvements on the Property. Metro, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify, and save harmless the City and the City's officers, employees, elected officials, and agents from and against any and all Claims relating to or resulting from Metro's performance of this Agreement or actions taken by Metro pursuant to this Agreement on the Property including but not limited to those actions taken under Section 5 above.

12. **Insurance.** Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

13. **Oregon Constitution and Tax Exempt Bond Covenants.** A source of funds for the acquisition of the Property is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the City breaches this covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.

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

15. **Assignment.** No party may assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except that a party may delegate or subcontract for performance of any of its responsibilities under this Agreement.

16. **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by both (1) electronic mail or fax, and (2) regular mail. Notices shall be deemed delivered on the date personally delivered or the date of such electronic or fax correspondence, unless such delivery is on a weekend day, on a holiday, or after 5:00 p.m.

on a Friday, in which case such notice shall be deemed delivered on the next following weekday that is not a holiday.

To Metro: Director, Sustainability Center
Metro
600 N.E. Grand Avenue
Portland, OR 97232-2736
Fax: (503) 797-1849

To City: Director Parks and Recreation Department
City of Hillsboro
Parks and Recreation Department
4400 NW 229th Avenue
Hillsboro, OR 97124
Fax: (503) 681-6124

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

18. **Entire Agreement; Modifications.** This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the Property. 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 have executed this Agreement as of the Effective Date.

CITY OF HILLSBORO

METRO

By: _____
Print Name: _____
Title: _____

Martha J. Bennett, Chief Operating Officer

Date: _____

Date: _____

Exhibits:

- Exhibit A-1 – Legal Description
- Exhibit A-2 – Depiction of the Property
- Exhibit B – Metro Easement Policy and Metro Resolution No. 97-2539B Easement

Exhibit A-1
Legal Description

A PORTION OF THAT LAND DESCRIBED AS TRACT 1 (RESULTANT PARCEL OF ORENCO WOODS) IN DEED DOCUMENT NUMBER 2006-131962, WASHINGTON COUNTY DEED RECORDS, LOCATED IN THE EAST HALF OF SECTION 35, TOWNSHIP 1 NORTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, IN THE CITY OF HILLSBORO, WASHINGTON COUNTY, STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A 2 INCH BRASS DISK AT THE SOUTHWEST CORNER OF THE ISAAC BUTLER DONATION LAND CLAIM NO. 48 ON THE CENTERLINE OF NW QUATAMA ROAD (COUNTY ROAD NUMBER 462); THENCE ALONG SAID CENTERLINE SOUTH 88° 28' 14" EAST, 1958.14 FEET TO THE INTERSECTION OF SAID CENTERLINE WITH A SOUTHERLY EXTENSION OF THE EASTERLY LINE OF THAT LAND DESCRIBED AS TRACT 2 (RESULTANT PARCEL OF ELKS LODGE NUMBER 1862) OF SAID DEED DOCUMENT NUMBER 2006-131962; THENCE ALONG SAID SOUTHERLY EXTENSION NORTH 02° 08' 47" EAST, 25.00 FEET TO THE SOUTHEAST CORNER OF SAID TRACT 2 BEING THE POINT OF BEGINNING; THENCE ALONG SAID EASTERLY LINE OF SAID TRACT 2 NORTH 02° 08' 47" EAST, 329.22 FEET TO AN ANGLE POINT IN SAID LINE: THENCE ALONG THE NORTHEASTERLY LINE OF SAID TRACT 2 NORTH 54°21'35" WEST, 161.77 FEET TO AN ANGLE POINT IN SAID LINE; THENCE ALONG NORTHERLY LINE OF SAID TRACT 2 NORTH 88°29'41" WEST, 266.67 FEET TO A POINT; THENCE LEAVING SAID NORTHERLY LINE NORTH 08° 55' 59" EAST, 29.06 FEET; THENCE NORTH 88° 30' 23" WEST, 68.55 FEET; THENCE NORTH 01° 29' 37" EAST, 18.68 FEET; THENCE SOUTH 88° 30' 23" EAST, 21.92 FEET; THENCE NORTH 43° 43' 09" EAST, 27.51 FEET; THENCE NORTH 09° 09' 48" EAST, 71.16 FEET; THENCE NORTH 09° 09' 48" EAST, 63.25 FEET, TO A POINT OF 318.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID CURVE TO THE RIGHT (THE CENTER OF WHICH BEARS NORTH 20° 55' 15" EAST, 318.00 FEET) THROUGH A CENTRAL ANGLE OF 02° 54' 32" AN ARC DISTANCE OF 16.15 FEET (THE CHORD OF WHICH BEARS NORTH 67° 37' 29" WEST, 16.14 FEET); THENCE SOUTH 23° 49' 47" WEST, 4.34 FEET; THENCE NORTH 63° 32' 49" WEST, 271.68 FEET; THENCE NORTH 33° 27' 25" EAST, 5.57 FEET, TO A POINT OF 205.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID CURVE TO THE RIGHT (THE CENTER OF WHICH BEARS NORTH 33° 27' 25" EAST, 205.00 FEET) THROUGH A CENTRAL ANGLE OF 12° 41' 51" AN ARC DISTANCE OF 45.43 FEET (THE CHORD OF WHICH BEARS NORTH 50° 11' 39" WEST, 45.34 FEET); THENCE NORTH 46° 09' 16" EAST, 4.50 FEET, TO A POINT OF 200.50 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID CURVE TO THE RIGHT (THE CENTER OF WHICH BEARS NORTH 46° 09' 16" EAST, 200.50 FEET) THROUGH A CENTRAL ANGLE OF 50° 53' 33" AN ARC DISTANCE OF 178.09 FEET (THE CHORD OF WHICH BEARS NORTH 18° 23' 57" WEST, 172.30 FEET), TO A POINT OF 409.50 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG SAID CURVE TO THE LEFT (THE CENTER OF WHICH BEARS NORTH 82° 57' 11" WEST, 409.50 FEET) THROUGH A CENTRAL ANGLE OF 27° 47' 51" AN ARC DISTANCE OF 198.67 FEET (THE CHORD OF WHICH BEARS NORTH 06° 51' 06" WEST 196.73 FEET), TO A POINT OF 115.50 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID CURVE TO THE RIGHT (THE CENTER OF WHICH BEARS NORTH 69° 14' 58" EAST, 115.50 FEET) THROUGH A CENTRAL ANGLE OF 25° 48' 05" AN ARC DISTANCE OF 52.01 FEET (THE CHORD OF WHICH BEARS NORTH 07° 50' 59" WEST, 51.57 FEET); THENCE NORTH 05° 03' 03" EAST, 13.14 FEET, TO A POINT OF 23.50 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG SAID CURVE TO THE LEFT (THE CENTER OF WHICH BEARS NORTH 84° 56' 57" WEST, 23.50 FEET) THROUGH A CENTRAL ANGLE OF 33° 53' 08" AN ARC DISTANCE OF 13.90 FEET (THE CHORD OF WHICH BEARS NORTH 11° 53' 31" WEST, 13.70 FEET); THENCE NORTH 82° 16' 08" WEST, 25.55 FEET; THENCE SOUTH 10° 01' 25" WEST, 262.24 FEET; THENCE NORTH 82° 16' 08" WEST, 151.13 FEET; THENCE NORTH 07° 43' 52" EAST, 76.86 FEET, TO A POINT OF 68.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID CURVE TO THE RIGHT (THE CENTER OF WHICH BEARS NORTH 36° 26' 58" EAST, 68.00 FEET) THROUGH A CENTRAL ANGLE OF 18° 28' 58" AN ARC DISTANCE OF 21.94 FEET (THE CHORD OF WHICH BEARS NORTH 44°18' 33" WEST, 21.84 FEET), TO A POINT OF 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID CURVE TO THE RIGHT (THE CENTER OF WHICH BEARS NORTH 05° 50' 02" WEST, 25.00 FEET) THROUGH A CENTRAL ANGLE OF 114° 38' 20" AN ARC DISTANCE OF 50.02 FEET (THE CHORD OF WHICH BEARS NORTH 38° 30' 52" WEST, 42.08 FEET); THENCE NORTH 79° 58' 35" WEST, 118.64 FEET, TO A POINT OF 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID CURVE TO THE RIGHT (THE CENTER OF WHICH BEARS SOUTH 65° 37' 46" WEST, 25.00 FEET) THROUGH A CENTRAL ANGLE OF 115° 21' 02" AN ARC DISTANCE OF 50.33 FEET (THE CHORD OF WHICH BEARS SOUTH 33° 18' 17" WEST, 42.25 FEET); THENCE SOUTH 30° 55' 46" WEST, 34.92 FEET; THENCE SOUTH 01° 31' 19" WEST, 26.39 FEET; THENCE NORTH 88° 28' 41" WEST, 106.18 FEET TO A POINT ON THE WEST LINE OF SAID TRACT 1; THENCE ALONG SAID

WEST LINE NORTH 01° 31' 46" EAST, 1060.83 FEET TO THE NORTHWEST CORNER OF SAID TRACT 1; THENCE ALONG THE NORTHERLY LINE OF SAID TRACT 1 SOUTH 63° 41' 50" EAST, 1905.75 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF NW CORNELIUS PASS ROAD (COUNTY ROAD 1014), TO A POINT OF 848.51 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY AND SAID CURVE TO THE LEFT (THE CENTER OF WHICH BEARS SOUTH 70° 18' 33" EAST, 848.51 FEET) THROUGH A CENTRAL ANGLE OF 20° 10' 58" AN ARC DISTANCE OF 298.89 FEET (THE CHORD OF WHICH BEARS SOUTH 09° 35' 58" WEST, 297.35 FEET); THENCE CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY SOUTH 00° 29' 31" EAST, 983.86 FEET TO THE INTERSECTION WITH THE NORTHERLY RIGHT-OF-WAY LINE OF SAID NW QUATAMA ROAD; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE NORTH 88° 28' 14" WEST, 417.22 FEET TO SAID POINT OF BEGINNING.

NOTE: This legal description was created prior to January 01, 2008.

Tax Parcel Number: R727271

Exhibit A-2
Depiction



Orenco properties - boundaries
approximate and to be determined



Taxlots

November, 2011

1 inch = 320 feet



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 11-4297, FOR THE PURPOSE OF AMENDING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN IN THE ROCK CREEK HEADWATERS AND GREENWAY TARGET AREA, AUTHORIZING THE CHIEF OPERATING OFFICER TO ACQUIRE LAND SUBJECT TO UNUSUAL CIRCUMSTANCES, AND APPROVAL OF AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF HILLSBORO

Date: November 17, 2011

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

BACKGROUND / TRANSACTION OVERVIEW

An opportunity has been identified for Metro, together with the City of Hillsboro (the “City”), to acquire a 42-acre parcel in Hillsboro known as the former Orenco Woods Golf Course (the “Property”, see Exhibit A attached to Resolution No. 11-4297). According to the Trust for Public Land (“TPL”), TPL has an agreement to acquire the Property from the current owner (a subsidiary of US Bank) for \$4,000,000. TPL and the City have entered into an agreement whereby once TPL acquires the Property, TPL will immediately re-sell the Property to the City for \$4,000,000. Metro staff negotiated a proposed agreement with the City (the “IGA,” see Exhibit A attached to Resolution No. 11-4297) to acquire a fifty percent (50%) interest in the Property from the City for \$2,000,000, immediately after the City acquires the Property from TPL. Certain elements of the proposed transaction between the City and Metro require Metro Council approval.

The Property is located within the City and is bisected by Rock Creek and an unnamed tributary to Rock Creek. The Property received preliminary plat approvals in 2006 for a residential development called Orenco Woods, therefore it was not included in the Confidential Refinement Map (the “Map”) when the Metro Council adopted the Rock Creek Headwaters and Greenway Target Area Refinement Plan (Resolution No. 07-3834 - the “Plan”). The Orenco Woods developer conveyed the Property to its lender, SA Group Properties Inc. (the “Bank”) via a deed in lieu of foreclosure in 2009, and the Property was thereafter listed for sale.

MAP AMENDMENT

According to the Natural Areas Implementation Work Plan (Resolution No. 07-3766A), the Chief Operating Officer is not authorized to close real estate transactions related to the 2006 Natural Areas Bond Measure if the property is not identified on the Map. Metro staff requests that Council amend the Map to allow Metro to participate in the purchase of the 42-acre Property. Acquisition of the Property would be in accordance with the following Tier 1 Objective of the Refinement Plan:

“Acquire the remaining gaps in public ownership along the Rock Creek Greenway between Highway 26 and the Tualatin River.”

The Partnership Objective of the Refinement Plan states:

“Pursue partnership opportunities with Washington County, the City of Hillsboro . . . to meet protection goals in the Rock Creek Headwaters and Greenway Target Area.”

UNUSUAL CIRCUMSTANCES

Approval by the Metro Council is required under the Work Plan when the Chief Operating Officer encounters unusual circumstances in the course of a transaction. In this transaction, there are four unusual circumstances.

Unusual Circumstance No. 1. There is no appraisal of the entire 42-acre Property to be purchased. This is because TPL had originally offered only a portion of the Property to the City and to Metro for purchase, intending to sell an 11-acre remainder parcel in the SE corner (the “Remainder Parcel”) separately to a private developer. Given the scope of this original transaction, the appraisal examined only the 31-acre NW portion of the Property and valued only 31 of the 42 total acres of the Property. It valued these 31 acres of the NW portion of the Property at \$4,000,000, and no appraisal of the entire 42 acres has been completed.

Discussion. A new appraisal of the entire Property to be acquired was not obtained because staff believes the value of the 42-acre Property is above the negotiated purchase price of \$4,000,000. In other words, the appraisal of solely the NW portion of the Property valued that smaller acreage at \$4,000,000. The City and Metro are now able to acquire the entire property for \$4,000,000. The purchase price for the entire Property is now equal to the appraised value of only the approximate 31-acre NW portion of the Property.

Unusual Circumstance No. 2. The second unusual circumstance is that the appraisal of the NW portion of the Property contains an extraordinary assumption. The original proposal to sell the NW portion of the Property separately from the Remainder Parcel created a problem concerning legal access to the NW portion of the Property. The problem is reflected in the extraordinary assumption in the appraisal, which assumes that legal access to the 31-acre NW portion of the Property could be obtained from a source other than the current sole access point originating from S. Cornelius Pass Road through the Remainder Parcel. There are several streets that lead to the NW corner of the Property but vehicular access is prohibited as a result of the rezoning approved in connection with prior preliminary plat approval.

Discussion. Because the transaction is now structured such that the City and Metro will acquire all of the 42-acre Property (not just the NW corner), there is legal access and it does not have to be assumed. The Property to be acquired has legal access from the south.

Unusual Circumstance No. 3. The third unusual circumstance is that vehicular access is legally prohibited from the NW corner of the Property, as a condition of the rezoning completed by a former owner. While vehicular access is not required for legal access to the Property, given the intended future park use, vehicular access to the NW portion of the Property will be important.

Discussion. The proposed IGA between the City and Metro concerning this Property requires that the parties re-establish legal access to the Property through the NW corner after the Property is acquired, and in connection with the approvals to be obtained for the future nature park discussed further below.

Unusual Circumstance No. 4. The fourth unusual circumstance concerns an historic home on the Property known as the McDonald House that is currently leased to a non-profit organization. The original owner of the Property, the Hillsboro Elks Lodge, has filed a lawsuit against the current owner asserting ownership of the McDonald House, and it is anticipated that Metro and the City may be added as parties to the lawsuit following acquisition of the Property. A possible settlement could entail the City and Metro transferring the McDonald House to the Elks.

Discussion. Metro has no interest in ownership of the McDonald House through its the Natural Areas Program. Accordingly, the IGA states that all responsibility for management, maintenance and repair, as well as any legal or environmental liability for the McDonald House, rests with the City. Pursuant to the IGA, the City would be responsible for all fees and costs associated with the litigation regarding the McDonald House.

ADDITIONAL TRANSACTION TERMS

It should be noted that one of the terms of Metro's proposed transaction with the City is to master plan a future nature park on the Property, which will not include the Remainder Parcel. The Remainder Parcel will be partitioned from the park property and offered for sale on commercially reasonable terms.

Metro and the City have agreed that each party will hold 50% of the net proceeds from the sale of the Remainder Parcel. Each party will be obligated to use its share of the proceeds in proportional shares for planning and development of a nature park (as defined in design guidelines of the 2010 City of Hillsboro Parks and Trails Master Plan and Natural Resource Analysis) on the portion of the Property that will be left after the sale of the Remainder Parcel. If any of Metro's 50% share of the proceeds are leftover, they will be returned to the bond program. Significant work is ahead as the current development approvals that are linked to the Property do not serve the proposed future use as a nature park. By virtue of its ownership interest in the Property, Metro will be a co-applicant on future land use applications.

If the Metro Council approves Resolution No. 11-4297, it will:

1. Amend the Rock Creek Headwaters and Greenway Confidential Refinement Plan Map to include the Property.
2. Authorize the acquisition by Metro of a 50% fee interest in the Property, notwithstanding the unusual circumstances present in the transaction, namely: (a) the lack of an appraisal for the entire Property, (b) the extraordinary assumption in the Appraisal, (c) the current lack of vehicular access to the NW portion of the Property, and (d) the Elks' lawsuit asserting ownership of the McDonald House.
3. Approve the IGA between the City of Hillsboro and Metro, substantially in the form attached, or otherwise as approved by the Office of the Metro Attorney.
4. Authorize the partition of the approximate 11-acre SE corner Remainder Parcel and the McDonald House, if necessary, including the authority to grant easements required to obtain the partition.
5. Authorize the future sale of Metro's interest in the Remainder Parcel using an equitable, commercially reasonable, and appropriate process, as determined by the Chief Operating Officer in her sole discretion.
6. Authorize net proceeds from the sale of the Remainder Parcel to be used for the planning and development of a nature park on the approximate 31-acre NW portion of the former Orenco Woods site, as set forth in the IGA.
7. Authorize a settlement agreement with the Elks on the terms outlined above, and otherwise as approved by the Office of the Metro Attorney, and authorize the Chief Operating Officer to convey Metro's interest in the McDonald House to satisfy Metro's obligations under any settlement agreement with the Elks.

ANALYSIS/INFORMATION

1. Known Opposition

None

2. **Legal Antecedents**

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

The voters approved Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” was adopted by the Metro Council on March 1, 2007, and established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 07-38-34, “Approving the Natural Areas Acquisition Refinement Plan for the Rock Creek Headwaters and Greenway Target Area,” was adopted on September 6, 2007, and its confidential tax map was amended on September 22, 2011, by Resolution No. 11-4293.

3. **Anticipated Effects.** Metro will purchase a 50% ownership interest from the City of Hillsboro in the 42-acre former golf course property as identified on the map and legal description under the terms of the Intergovernmental Agreement attached as Exhibit A to Resolution No. 11-4297. The ownership interest will be 50% for each party. An approximate 11-acre portion in the SE corner of the Property shall be partitioned from the rest and sold to a third party under the most favorable terms to Metro and the City. Any remaining proceeds after the costs related to planning and development of a nature park on the Property shall be returned to Metro. The City will have all responsibility, financial and otherwise, for the McDonald House on the Property, which house may be conveyed to the Elks.
4. **Budget Impacts.** The Metro portion of the acquisition opportunity identified herein will be funded entirely with funds from the 2006 Natural Areas Bond Measure.

RECOMMENDED ACTION

The Chief Operating Officer recommends passage of Resolution No. 11-4297.