

Metro | Agenda

Meeting: Metro Council
Date: Thursday, May 17, 2012
Time: 2 p.m.
Place: Metro, Council Chamber

CALL TO ORDER AND ROLL CALL

1. **INTRODUCTIONS**
2. **CITIZEN COMMUNICATION**
3. **CONSIDERATION OF THE MINUTES FOR MAY 3, 2012**
4. **CONTRACT REVIEW BOARD**
 - 4.1 **Resolution No. 12-4347**, Resolution of Metro Council, Acting as the Metro Contract Review Board, For the Purpose of Approving a Contract Amendment to the Enterprise License Agreement with Environmental Systems Research Institute, Inc. ("ESRI"). **Roberts**
5. **ORDINANCES – FIRST READING**
 - 5.1 **Ordinance No. 12-1275**, For the Purpose of Amending Metro Code Section 2.12 Regarding the Office of Citizen Involvement and Metro Code Section 2.19.100 Regarding the Metro Committee for Citizen Involvement.
 - 5.2 **Ordinance No. 12-1278**, For the Purpose of Amending the Regional Transportation Functional Plan to Remove the Schedule for Updating City and County Transportation System Plans; to Add an Exemption Process; and to Revise Procedures for Extensions and Exceptions.
6. **RESOLUTIONS**
 - 6.1 **Resolution No. 12-4345**, For the Purpose of Updating the Work Program for Corridor Refinement Planning and Designating the Powell-Division High Capacity Transit Corridor as the Next Regional Priority for Completion of Corridor Refinement and Commencement of Alternatives Analysis. **Craddick**
 - 6.2 **Resolution No. 12-4350**, For the Purpose of Authorizing the Chief Operating Officer to Convey Certain Real Property in the Dairy and Mckay Creeks Confluence Target Area Subject to a Conservation Easement. **Harrington**
 - 6.3 **Resolution No. 12-4343**, For the Purpose of Approving Fifth Round Funding for Nature in Neighborhoods Capital Grants. **Hosticka**
7. **CHIEF OPERATING OFFICER COMMUNICATION**
8. **COUNCILOR COMMUNICATION**

ADJOURN

Television schedule for May 17, 2012 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, and Vancouver, WA Channel 30 – Community Access Network <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 <i>Date:</i> Thursday, May 17</p>	<p>Portland Channel 30 – Portland Community Media <i>Web site:</i> www.pcmtv.org <i>Ph:</i> 503-288-1515 <i>Date:</i> Sunday, May 20, 7:30 p.m. <i>Date:</i> Monday, May 21, 9 a.m.</p>
<p>Gresham Channel 30 - MCTV <i>Web site:</i> www.metroeast.org <i>Ph:</i> 503-491-7636 <i>Date:</i> Monday, May 21, 2 p.m.</p>	<p>Washington County Channel 30– TVC TV <i>Web site:</i> www.tvctv.org <i>Ph:</i> 503-629-8534 <i>Date:</i> Saturday, May 19, 11 p.m. <i>Date:</i> Sunday, May 20, 11 p.m. <i>Date:</i> Tuesday, May 22, 6 a.m. <i>Date:</i> Wednesday, May 23, 4 p.m.</p>
<p>Oregon City, Gladstone Channel 28 – Willamette Falls Television <i>Web site:</i> http://www.wftvmedia.org/ <i>Ph:</i> 503-650-0275 Call or visit web site for program times.</p>	<p>West Linn Channel 30 – Willamette Falls Television <i>Web site:</i> http://www.wftvmedia.org/ <i>Ph:</i> 503-650-0275 Call or visit web site 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 at 503-797-1540. Public hearings are held on all ordinances second read. Documents for the record must be submitted to the Regional Engagement Coordinator to be included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Regional Engagement Coordinator. For additional information about testifying before the Metro Council please go to the Metro web site www.oregonmetro.gov and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 503-797-1804 or 503-797-1540 (Council Office).

Agenda Item No. 3.0

Consideration of the Minutes for May 3, 2012

Metro Council Meeting
Thursday, May 17, 2012
Metro, Council Chamber



METRO COUNCIL MEETING

Meeting Summary

May 3, 2012

Metro, Council Chamber

Councilors Present: Council President Tom Hughes and Councilors Rex Burkholder, Barbara Roberts, Carl Hosticka, Kathryn Harrington, Carlotta Collette and Shirley Craddick

Councilors Excused: None

Council President Tom Hughes convened the regular council meeting at 2:03 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Art Lewellan, 3205 SE 8th Ave., Apt. 9, Portland: Mr. Lewellan addressed the Council on the Columbia River Crossing (CRC) project; specifically the Concept #1 design for the Hayden Island interchange. He discussed differences in safety of a bridge designed with one versus two decks as it relates to light rail. He also addressed potential damage should the region experience a large magnitude earthquake.

3. METRO AUDITOR REPORT – “METRO’S NATURAL AREAS: MAINTENANCE STRATEGY NEEDED”

Metro Auditor Suzanne Flynn, with assistance from Mr. Michael Anderson and Mr. Brian Evens, provided a presentation on the Office of the Metro Auditor’s recent report on Metro’s natural areas. The purpose of the audit was to determine the strength of Metro’s program to maintain the land the agency has acquired over the last 15 years. The audit provided an in-depth study of three of Metro’s new nature parks: Cooper Mountain, Graham Oaks, and Mount Talbert, as well as a general overview of the program as a whole.

Ms. Flynn quickly overviewed the audit’s key findings and recommended that Metro complete a set of actions in order to strengthen the agency’s land management program. Highlights presented included:

- Develop an overarching strategy for the program to manage the land (e.g. site specific plans and maintenance standard);
- Strengthen the program’s organization – specifically clarify the program’s roles and responsibilities for internal and external stakeholders;
- Develop systems to better track expenditures and estimate future cost; and
- Improvement management of intergovernmental agreements.

Ms. Flynn indicated that a follow-up audit would be scheduled in one to two years. (The full audit is included as part of the meeting record.)

Mr. Jim Desmond of Metro thanked the Auditor for her report and provided management's response to the audit. Mr. Desmond provided a brief history of Metro as a land owner over the past two decades and emphasized that the strategy for managing the land has evolved as Metro's portfolio has continued to grow. He stated that every property acquired to date is in better condition than when originally acquired. Mr. Desmond stated that while staff has erred on the side of on-the-ground actions rather than programmatic planning, a need for stable long-term funding and a consistent management approach is clear. He briefly highlighted actions the agency has taken over the past few years including creating a framework for restoration and maintenance planning, cost projections and tracking and an adaptive management style that allows for flexibility as information and conditions change. Additionally, staff has developed a tool to track the status, restoration plans and costs of Metro's natural areas, and developed planning templates that will guide future on-the-ground actions and investments. (Full management response included as part of the meeting record.)

Council thanked the Auditor and her staff for their report. Councilors welcomed the report, stating that the audit was pertinent, timely and served as a call to action to begin the next phase of the program. Discussion included:

- The importance of cross-departmental coordination;
- The voters' generosity and vision that led to the approval of the first bond measure;
- How the Auditor's recommendations fit within Metro's current financial status, and the agency's ability to follow through on the recommendations (e.g. bond funding for acquisition not maintenance); and
- The importance of testing and refining the system used to prioritize areas for maintenance, and the need to provide staff with sufficient resources to complete the review.

Additionally, councilors clarified which reports were used in development of the audit. Councilors recommended the Auditor's Office review the Canemah Bluff Plan, Parks Portfolio, Regional Conservation Strategy developed by The Intertwine.

4. CONSIDERATION OF THE MINUTES FOR APRIL 26, 2012

Motion:	Councilor Barbara Roberts moved to approve the minutes for April 26, 2012.
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Vote:	Council President Hughes and Councilors Burkholder, Roberts, Hosticka, Collette, Harrington and Craddick voted in support of the motion. The vote was 7 ayes, the motion <u>passed</u> .
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5. PROCLAMATIONS

5.1 **Resolution No. 12-4348**, For the Purpose of Proclaiming the Week of May 5 through May 13, 2012 as National Travel and Tourism Week.

Motion:	Councilor Shirley Craddick moved to approve Resolution No. 12-4348.
Second:	Councilor Carlotta Collette seconded the motion.

Councilor Craddick introduced Resolution No. 12-4348, which if approved, would proclaim the week of May 5 to May 13th as National Travel and Tourism Week. Councilor Craddick stated that in addition to the 29,000 jobs, the Portland metro region accounted for \$3.8 billion in travel spending, tax receipts, employment and payroll in 2011. Councilor Craddick emphasized that the Metro venues – including the Oregon Zoo, Expo Center, and Portland Center for Performing Arts – provide a diverse range in cultural and educational activities and experiences, and memorable gathering places for celebrations and business events. In 2011, the Metro venues hosted 3.3 million visitors and that the events and activities at the venues generated \$19.1 million in tax revenues.

Councilor Craddick welcomed Mr. Jeff Miller, President and Chief Executive Officer of Travel Portland, and Mr. Steve Jung of General Manager of the Embassy Suites Portland Downtown and Chair of Travel Portland Board of Directors, to share a few words about the importance of tourism in the region. Mr. Jung discussed not only the jobs created by the tourism industry, but the opportunities created that enable the hotel industry to contribute to the overall community. Mr. Miller thanked the Council for their work and continued partnership.

Council discussion included the FY 11-12 third quarter report from the tourism industry, monies generated by tourism dollars that benefit the local communities, and the importance of including tourism as a component of greater Portland area Metro Export Initiative.

Vote:

Council President Hughes and Councilors Burkholder, Roberts, Hosticka, Collette, Harrington and Craddick voted in support of the motion. The vote was 7 ayes, the motion <u>passed</u> .
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6. ORDINANCES – SECOND READING

6.1 **Ordinance No. 12-1274**, For the Purpose of Adopting the Annual Budget for Fiscal Year FY 2012-13, Making Appropriations, Levying Ad Valorem Taxes, and Authorizing an Interfund Loan.

Council President Hughes passed the gavel to Deputy Council President Rex Burkholder to chair the meeting while he carried the legislation.

Motion:	Council President Hughes moved to approve Ordinance No. 12-1274.
Second:	Councilor Carl Hosticka seconded the motion.

Ms. Martha Bennett clarified the budget process and overviewed the three primary steps:

- On April 19th the Budget Officer, Martha Bennett, proposed the FY 12-13 budget to the Metro Council;
- The May 3rd action before the Council – serving as Metro’s Budget Committee – was review and approve the FY 12-13 budget to be transmitted to the Multnomah County Tax Supervising and Conservation Commission; and
- Formal Council consideration and vote to adopt the budget is anticipated for June 14th.

Deputy Council President Burkholder opened a public hearing on Ordinance No. 12-1274. Seeing no citizens who wished to testify, the public hearing was closed.

Action:	Council consideration and vote on Ordinance No. 12-1274 was continued to June 14, 2012.
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7. RESOLUTIONS

7.1 **Resolution No. 12-4338**, For the Purpose of Approving the FY 2012-13 Budget, Setting Property Tax Levies and Transmitting the Approved Budget to the Multnomah County Tax Supervising and Conservation Commission.

Motion:	Council President Hughes moved to approve Resolution No. 12-4338.
Second:	Councilor Hosticka seconded the motion.

Council President Hughes introduced Resolution No. 12-4338 and stated that the resolution served as the interim step between the initial proposal of the budget and final adoption of the budget anticipated for June 14. Council President Hughes asked the full Council for their support to approve the FY 12-13 budget for the purpose of transmitting it to the Multnomah County Tax Supervising and Conservation Commission (TSCC) and to set the maximum tax levies for the FY 12-13. The TSCC will perform a thorough review of Metro’s budget, ensure that the budget complies with the requirements of Oregon Budget Law, and certify Metro’s tax levies for FY 12-13.

He emphasized that setting the tax levy is the most significant action of the approval cycle and that once the maximum rate is set it cannot be increased, only decreased. Metro’s tax levy is comprised of two parts: (1) the operating rate level for funding general operations, and (2) the need to pay debt service on outstanding general obligation issues for the OCC, Zoo and Natural Areas. He indicated that the debt level for the Zoo and Natural Areas are estimates and actual rates will not be certain until the bonds are sold. Staff is hopeful that the rates will be less, and if so, will request that the Council reduce the levy rate to match the actual debt service schedules of the new debt issues when the full budget is adopted. Staff will then complete the cycle, filing the tax levies and all required documentation with the TSCC and three counties within the deadlines required by law.

Highlighted next steps included:

- The TSCC will hold a public hearing on Metro’s budget on June 7, 2012.
- As stated above, the budget ordinance – Ordinance No. 12-1274 – has been continued to June 14th at which time the Council will hold an additional public hearing and consider any amendments to the budget.
- Council is anticipated to formally consider and vote on the budget on June 21st.

AMENDMENT #1:

Motion:	Councilor Kathryn Harrington moved to add a note to the FY 12-13 budget that read, “Before budget adoption Council will review and approve the program and spending plan for the Community Investment Initiative.”
Second:	Councilor Craddick seconded the motion.

Discussion: Councilor Harrington introduced the amendment. She stated that she had two outstanding concerns: the first was within to the Council Office budget related to travel and the second concern was related a program allocation for the Community Investment Initiative. The objective of the amendment was to ensure that as part of the adopted FY 12-13 budget Council would receive and understand the spending and program plans for the

Initiative. Councilor Harrington thanked staff for their information to date but believed there was still work to be completed. She reiterated the need to provide program clarity in the final adopted budget.

Council clarified that the budget note, if approved, would be added to the current approved budget for transmittal to the TSCC but not included in the adopted budget because it would be satisfied in advance of the Council's June action.

Vote: Council President Hughes and Councilors Burkholder, Roberts, Hosticka, Collette, Harrington and Craddick voted in support of the motion. The vote was 7 ayes, the motion passed.

Deputy Council President Burkholder passed the gavel to Council President Hughes while he proposed the following amendments.

AMENDMENT #2:

Motion:	Councilor Rex Burkholder moved to add a note to the FY 12-13 budget that read, "Funds identified in the Council budget for the Council Opportunity account and the one-time future expenditure account may not be committed or spent until a project plan and/or formal spending plan for these funds, or any part thereof, are submitted and approved by Council. The Council will evaluate the project plans and/or formal spending plan based on criteria developed by the Chief Operating Officer in conjunction with the Council, which criteria shall measure the strategic use of the funds and similar factors."
Second:	Councilor Harrington seconded the motion.

Discussion: Councilor Burkholder introduced the amendment. Citing budget constraints and limited flexible funds, Council Burkholder was in favor of establishing a process for the Council to actively engage with the COO to develop criteria and outcomes for the use of funds from the *One Time Future Expenditure* and *Council Opportunity* accounts. He believed that while the proposed projects were all worthy causes, the funding allocations were examined and proposed by management not the Council. He was supportive of having a Council discussion of the resources/funds available and the potential opportunities and/or needs, and then collectively make a judgment on spending.

Some councilors presented concern that the budget note was not presented prior to the meeting and may have unintended consequences; specifically that, if approved, the process may restrict the Council's ability to maintain flexibility with the accounts. Councilors also stated that the process proposed through the budget note was completed as part of the budget retreat earlier in 2012 including a prioritization discussion about which programs to fund. In contrast, Councilor Harrington supported the motion stating that the note helped to memorialize concepts of having criteria and a holistic view without reducing flexibility. While there has been an ad hoc process, Councilor Harrington was supportive of a more formalized process for the Council.

General discussion included the process changes between the FY 12-13 process and previous budget cycles, the budget process and inclusion of budget notes, and the difference in the *One Time Future Expenditure* and *Council Opportunity* accounts.

Council agreed to postpone this discussion in order to refine the language and fully develop the process prior to Council consideration of the FY 12-13 budget in June. Councilor Burkholder withdrew his motion.

AMENDMENT #3:

Motion:	Councilor Rex Burkholder moved to add a note to the FY 12-13 budget that read, "Funds identified in the Council budget as the general travel line item are appropriated but may not be spent without review and approval by the Council. The Council will evaluate the proposed uses of such funds based on criteria developed by the Chief Operating Officer in conjunction with the Council, which criteria shall measure the urgency, value to Metro and/or region, and similar factors."
Second:	Councilor Harrington seconded the motion.

Discussion: Councilor Burkholder introduced the amendment. Similar to the previous amendment, Council Burkholder was in support of developing a review and approval process for travel, as well as having a Council discussion about the return on investment of travel before agreeing to allocate funds. He was specifically interested in a discussion focused on what the Council intends to spend the funds on and what the Council hopes to achieved.

Councilor Harrington supported the motion, stating that the budget note addressed her second area of concern. She agreed that the proposed budget includes a significant allocation for travel during a time of tough budget choices and was supportive of developing a workable process. Council asked clarifying questions of the motion – specifically if the intent of the motion was to adopt a general policy or to review and vote on each travel request. Some councilors expressed that, unlike previous years, the current councilors are respectful and appreciative of each other’s contributions and were in favor of developing general policy objectives versus evaluating individual travel requests. Additional discussion included the tight timeframe of the FY 12-13 budget.

Council agreed to postpone this discussion in order to refine the language and fully develop for consideration of the FY 12-13 budget. Councilor Burkholder withdrew his motion.

Motion:	Councilor Hosticka moved to move the consideration of the Amendment #2 & Amendment #3 to a time certain of June 14, 2012.
Second:	Councilor Harrington seconded the motion.

Vote:	Council President Hughes and Councilors Burkholder, Roberts, Hosticka, Collette, Harrington and Craddick voted in support of the motion. The vote was 7 ayes, the motion <u>passed</u> .
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Council President Hughes passed the gavel back to Deputy Council President Burkholder for the vote on Resolution No. 12-4338.

Vote:

Council President Hughes and Councilors Burkholder, Roberts, Hosticka, Collette, Harrington and Craddick voted in support of the motion. The vote was 7 ayes, the motion passed.

Deputy Council President Burkholder passed the gavel back to Council President Hughes to chair the remainder of the meeting.

8. CHIEF OPERATING OFFICER COMMUNICATION

Ms. Martha Bennett provided the following updates:

- The May 10 Metro Council meeting has been canceled due to a conflict with the Land Conservation and Development Commission's hearing on the Urban Growth Management Decision.
- Ms. Bennett will reconvene the city and county managers meeting the week of May 7th.
- The Community Investment Initiative's Leadership Council will begin briefing local mayors and interest groups about the LC's recommendations.

Ms. Alison Kean Campbell of Metro provided a brief update on the state's ethics policy – specifically in regards an authorization form for a the recent Greater Portland, Inc. *Best Practices* trip to Cleveland, Ohio.

Council President Hughes read the authorization form, which if approved by the Council, states that the *Best Practices* trip was a sanctioned official Metro trip and the listed public officials were officially representing Metro.

Vote:

Council President Hughes and Councilors Burkholder, Roberts, Collette, Harrington and Craddick voted in support of the motion. (Councilor Hosticka was excused.) The vote was 6 ayes, the motion passed.

9. COUNCILOR COMMUNICATION

Councilor communication included an update on nature education and a status update on local outdoor school programs.

10. ADJOURN

There being no further business, Council President Hughes adjourned the regular meeting at 3:45 p.m. The Council will reconvene the next regular council meeting on Thursday, May 17 at 2 p.m. at the Metro Council Chamber.



Kelsey Newell, Regional Engagement Coordinator

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF MAY 3, 2012

Item	Topic	Doc. Date	Document Description	Doc. Number
4.	Minutes	4/26/12	Council minutes for April 26, 2012	50312c-01
6.1	Handout	4/17/12	FY 12-13 Proposed Budget by the Numbers	50312c-02
6.1	Handout	5/3/12	Proposed Budget Note by Councilor Kathryn Harrington	50312c-03
6.1	Handout	5/3/12	Proposed Budget Note by Councilor Rex Burkholder	50312c-04

Agenda Item No. 4.1

Resolution No. 12-4347, Resolution of Metro Council, Acting
as the Metro Contract Review Board, For the Purpose of
Approving a Contract Amendment to the Enterprise License
Agreement with Environmental Systems Research Institute, Inc.
("ESRI").

Contract Review Board

Metro Council Meeting
Thursday, May 17, 2012
Metro, Council Chamber

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF APPROVING A	)	RESOLUTION NO. 12-4347
CONTRACT AMENDMENT TO THE)	
ENTERPRISE LICENSE AGREEMENT WITH	)	Introduced by Metro Chief Operating Officer
ENVIRONMENTAL SYSTEMS RESEARCH	)	Martha Bennett, with the concurrence of
INSTITUTE, INC. ("ESRI")	)	Council President Tom Hughes.

WHEREAS, pursuant to ORS 279A.060 and Metro Code 2.04.010 the Metro Council is designated as the Contract Review Board for the regional government; and

WHEREAS, Metro Code 2.04.058 authorizes the Chief Operating Officer to execute amendments to public contracts provided that either the provisions of Metro Code 2.04.058 (a)(1)-(5) are met or that the Metro Contract Review Board authorizes the contract amendment; and

WHEREAS, on May 12, 2009, Metro entered into an Enterprise License Agreement with Environmental Systems Research Institute, Inc. ("ESRI") permitting Metro's use of certain ESRI geographic information system applications and providing for certain software support services for original contract amount of \$250,000.00; and

WHEREAS, the current agreement with ERSI expires on June 30, 2012, and a contract amendment in the amount of \$240,000.00 has been proposed to extend the Enterprise License Agreement and the provision of related support services from ERSI; and

WHEREAS, the staff of the Metro Data Resource Center and the Metro Procurement Officer recommend extending the Enterprise License Agreement with ERSI for the reasons provided in the attached staff report and because such extension is in the best interests of Metro; therefore

BE IT RESOLVED that the Metro Council, acting as the Metro Contract Review Board, authorizes the Metro Chief Operating Officer to execute a contract amendment with ESRI in a form substantially similar to Attachment 1 to extend the current Enterprise License Agreement.

ADOPTED by the Metro Council this ____ day of May, 2012.

Tom Hughes, Council President

Attest:

Approved as to Form:

Kelsey Newell, Recorder

Alison Kean Campbell, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 12-4347, FOR THE PURPOSE OF APPROVING A CONTRACT AMENDMENT TO THE ENTERPRISE LICENSE AGREEMENT WITH ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. ("ESRI")

Date: April 12, 2012

Prepared by: Tim Collier
Zac Christensen

BACKGROUND

The Metro Data Resource Center (DRC) has provided Geographic Information System (GIS) services and products to the region's cities and counties for the past 30 years, including for the past 21 years, providing the Regional Land Information System (RLIS), resulting in considerable cost savings to Metro and regional partner agencies.

Throughout this time, the DRC has utilized ESRI software products both at the desktop and server levels of RLIS. The software is used for producing maps, performing analysis, developing applications, and is deployed to over ninety users in various departments across the agency. Additionally, RLIS data developed using ESRI software is distributed to over 170 external subscribers and regional partner agencies.

The proposed contract amendment allows Metro more access to ESRI software products while realizing a \$10,000.00 decrease in total cost when compared to the original 2009 Enterprise License Agreement. The contract amendment also provides a stable, fixed cost for GIS software over the next three years and reduces overhead costs associated with a yearly procurement process alternative. Most importantly, the proposed amendment ensures software continuity within RLIS and allows the DRC to continue to provide GIS analysis support and products to internal and external clients.

ANALYSIS/INFORMATION

1. **Known Opposition:** There is no known opposition.
2. **Legal Antecedents:** None known
3. **Anticipated Effects:** Approval of contract amendment will ensure software continuity within RLIS and allow the DRC to continue to provide GIS analysis support and products to internal and external clients.
4. **Budget Impacts:** Base-budget revenue is in place to fund yearly expenses throughout the duration of the contract.

RECOMMENDED ACTION

Research Center and Data Resource Center recommend that the Council approve the contract amendment to our Enterprise License Agreement with ESRI.



Amendment No. 1
Contract No. 2009ELA1875

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

This Amendment No. 1 is entered into by and between **Metro** and **Environmental Systems Research Institute, Inc.** (hereinafter referred to as "**Esri**").

WHEREAS, Esri and Metro entered into an Enterprise License Agreement dated May 12, 2009 ("Agreement"); and

WHEREAS, the parties desire to amend the E512G Enterprise License Terms and Conditions of the Agreement to extend the term for an additional three (3) years from July 1st, 2012 through June 30th, 2015 ("Renewal Term") and update applicable appendices;

NOW THEREFORE, the parties agree to the following:

1. Amend Appendix A Software and Deployment Schedule with the attached (below) 2012 Appendix A Software and Deployment Schedule, which shall supersede and apply during the Renewal Term.
2. Amend Appendix B ELA Fee Schedule with the attached (below) 2012 Appendix B ELA Fee Schedule, which shall supersede and apply during the Renewal Term.
3. Delete and replace Appendix D ELA Points of Contact with the attached (below) 2012 Appendix D ELA Points of Contact.
4. Delete and replace Appendix E Tier 1 Help Desk Authorized Individuals with the attached (below) 2012 Appendix E Tier 1 Help Desk Authorized Individuals.

Except as may be specifically modified by this Amendment No. 1, all other terms and conditions of the Agreement and any Amendment(s) or Addendum(s) constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 as of the date of the last party to sign below.

ACCEPTED AND AGREED:

METRO
(Licensee)

By: _____

Printed Name: _____

Title: _____

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

By:  _____

Printed Name: Chris Johnson

Title: Manager, Domestic Contracts

Date: DEC 06 2011

**2012 APPENDIX A
SOFTWARE AND DEPLOYMENT SCHEDULE**

County may Deploy the Enterprise License Software up to the total quantity of licenses indicated below to Licensees during the Renewal Term of this ELA.

**Table A-1
Enterprise License Software—Unlimited Quantities**

Item	Total Qty./Seats to Be Deployed
Desktop Software (Single Use or Concurrent Use)	
ArcView	<i>unlimited</i>
ArcEditor	<i>unlimited</i>
ArcInfo	<i>unlimited</i>
Desktop Extension Software (Single Use or Concurrent Use)	
3D Analyst	<i>unlimited</i>
Spatial Analyst	<i>unlimited</i>
Network Analyst	<i>unlimited</i>
Geostatistical Analyst	<i>unlimited</i>
ArcScan	<i>unlimited</i>
ArcGIS Publisher	<i>unlimited</i>
Maplex	<i>unlimited</i>
ArcGIS Schematics	<i>unlimited</i>
ArcGIS Workflow Manager	<i>unlimited</i>
Server Software	
ArcGIS Server Enterprise Basic/Standard/Advanced	<i>unlimited</i>
ArcGIS Server Workgroup Basic/Standard/Advanced	<i>unlimited</i>
Server Extensions	
3D Analyst	<i>unlimited</i>
ArcGIS Schematics	<i>unlimited</i>
Geostatistical	<i>unlimited</i>
Network Analyst	<i>unlimited</i>
Image	<i>unlimited</i>
Spatial Analyst	<i>unlimited</i>
Workflow Manager	<i>unlimited</i>
ArcGIS Engine Runtime	<i>unlimited</i>
ArcGIS Engine Runtime Extensions	
Spatial Analyst	<i>unlimited</i>
3D Analyst	<i>unlimited</i>
Network Analyst	<i>unlimited</i>
Geodatabase Update	<i>unlimited</i>

ArcGIS Schematics	<i>unlimited</i>
Maplex	<i>unlimited</i>
ArcIMS	<i>unlimited</i>
Esri Mapping and Charting	<i>unlimited</i>

**Table A-2
Enterprise License Software—Limited Quantities**

Item	Rolled-In Qty. (if applicable)	Qty./Seats to Be Deployed	Total
Esri Developer Network (EDN)	-	1	1
ArcPad	4	2	6
ArcGIS Data Interoperability desktop extension	1	2	3
ArcGIS Image Server	1	0	1
Business Analyst Desktop Premium Concurrent Use with single state dataset	1	0	1

**2012 APPENDIX B
ELA FEE SCHEDULE**

The ELA Fee is \$240,000. The ELA Fee is in consideration of the Enterprise License Software, ELA Maintenance and Esri International User Conference registrations.

	Year 1	Year 2	Year 3	ELA Fee
Payments	\$80,000	\$80,000	\$80,000	\$240,000

Number of Esri International User Conference Registrations per Year	5
Number of Esri Development Conference Registrations per Year	1
Number of Tier 1 Help Desk Individuals	5
Number of Sets of Backup Media, if Requested	2
Renewal Term of ELA	3 years from July 1st, 2012 through June 30th, 2015

**2012 APPENDIX D
ELA POINTS OF CONTACT**

Either party may change its point of contact by written notice to the other party.

1. Esri point of contact for order processing issues:

Name: Customer Service
Esri Redlands
380 New York Street
Redlands, CA 92373-8100
E-mail: service@esri.com
Phone: 888-377-4575
Fax: 909-307-3083

2. Esri contact for Tier 2 Support issues:

E-mail: support@esri.com
Phone: 909-793-3774 (domestic U.S. only)
Fax: 909-792-0960
Web: support@esri.com

3. Metro centralized point of contact for order release and administrative issues:

Name: Zac Christensen _____
E-mail: zac.christensen@oregonmetro.gov _____
Phone: 503-797-1591 _____
Fax: 503-797-1909 _____

4. All deliverables to Metro will be shipped to the address listed below:

Metro Office: Metro Data Resource Center _____
Name: Zac Christensen _____
Address: 600 NE Grand Avenue _____
Portland, OR 97232-2736 _____

5. All notices to Metro will be mailed to the address listed below:

Metro Office: Metro Data Resource Center _____
Name: Zac Christensen _____
Address: 600 NE Grand Avenue _____
Portland, OR 97232-2736 _____

2012 APPENDIX E
TIER 1 HELP DESK AUTHORIZED INDIVIDUALS

Below are named Tier 1 Help Desk individuals authorized to seek Tier 2 Support from Esri. Substitutes/Changes to Tier 1 Help Desk authorized individuals may be made by written notice to Esri.

- | | |
|--|--|
| 1. Name: Zac Christensen _____
Address: 600 NE Grand Avenue _____
Portland, OR 97232-2736 _____
Phone: 503-797-1591 _____
Fax: 503-797-1909 _____
E-mail: zac.christensen@oregonmetro.gov _____ | 4. Name: Mathew Hampton _____
Address: 600 NE Grand Avenue _____
Portland, OR 97232-2736 _____
Phone: 503-797-1748 _____
Fax: 503-797-1909 _____
E-mail: mathew.hampton@oregonmetro.gov _____ |
| 2. Name: Minott Kerr _____
Address: 600 NE Grand Avenue _____
Portland, OR 97232-2736 _____
Phone: 503-797-1679 _____
Fax: 503-797-1909 _____
E-mail: minott.kerr@oregonmetro.gov _____ | 5. Name: Richard Ames _____
Address: 600 NE Grand Avenue _____
Portland, OR 97232-2736 _____
Phone: 503-797-1841 _____
Fax: 503-797-1909 _____
E-mail: richard.ames@oregonmetro.gov _____ |
| 3. Name: Steve Erickson _____
Address: 600 NE Grand Avenue _____
Portland, OR 97232-2736 _____
Phone: 503-797-1595 _____
Fax: 503-797-1909 _____
E-mail: steve.erickson@oregonmetro.gov _____ | |

Agenda Item No. 5.1

Ordinance No. 12-1275, For the Purpose of Amending Metro Code Section 2.12 Regarding the Office of Citizen Involvement and Metro Code Section 2.19.100 Regarding the Metro Committee for Citizen Involvement.

Ordinances – First Reading

Metro Council Meeting
Thursday, May 17, 2012
Metro, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 12-1275
CODE SECTION 2.12 REGARDING THE)	
OFFICE OF CITIZEN INVOLVEMENT AND	)	Introduced by Metro Councilor Kathryn
METRO CODE SECTION 2.19.100 TO	)	Harrington
DISSOLVE THE METRO COMMITTEE FOR)	
CITIZEN INVOLVEMENT (MCCI) AND)	
ESTABLISH THE METRO PUBLIC)	
ENGAGEMENT REVIEW COMMITTEE (PERC))	

WHEREAS, Metro is committed to obtaining meaningful input from residents of the Portland metropolitan region on Metro’s policies and programs, as described in the Metro Principles of Citizen Involvement set forth in Resolution 97-2433, adopted by the Metro Council on January 23, 1997 (the “Principles of Citizen Involvement”); and

WHEREAS, Chapter V, Section 27 of the Metro Charter establishes the Metro Office of Citizen Involvement and requires the Metro Council to establish a “citizens’ committee” in this office to aid communication between residents and the Council; and

WHEREAS, the Metro Office of Citizen Involvement is housed in the Metro Communications Department, which department is charged with, among other things, promoting communication between Metro and residents of the region; and

WHEREAS, as part of Metro’s citizen involvement program, a standing “citizens’ committee” in the Office of Citizen Involvement was established by ordinance and has been known as the Metro Committee for Citizen Involvement (“MCCI”); and

WHEREAS, given the rapidly evolving nature of communications technology and public engagement practices based on these technologies, the Metro Council desires to improve the effectiveness of its approach toward engaging residents in its planning, programs, and policy development activities;

WHEREAS, the current configuration and membership of the MCCI uses significant staff and budget resources and is not as effective as it could be in enabling Metro to take advantage of changes in best practices for public engagement; and

WHEREAS, the Metro Council finds that by replacing the MCCI with a new Public Engagement Review Committee (“PERC”) consisting of members of the public, representatives of community organizations, and public involvement staff, the Office of Citizen Involvement will be better able to recommend state of the art engagement strategies for connecting Metro with its communities and residents; and

WHEREAS, Metro’s public involvement process as modified by this Ordinance must comply with the Metro Charter and federal planning regulations for Metro to receive federal transportation funds; and the Metro Council finds that the changes set forth herein to Metro’s public participation processes are in compliance with the Metro Charter and with federal requirements in Title 23 Code of Federal Regulations, Parts 450 and 500, and Title 49 Code of Federal Regulations, Part 613; now therefore,

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

1. Metro Code Chapter 2.12 regarding the Office of Citizen Involvement is amended to include an additional Chapter 2.12.020, as set forth in the redlined version of Metro Code Chapter 2.12, attached hereto as Exhibit A and incorporated herein.
2. The public engagement report prepared by the Office of Citizen Involvement and described in the revised Metro Code Chapter 2.12.020 shall replace the Public Involvement Planning Guide formerly created and updated by MCCI. Though the Public Involvement Planning Guide included the Principles of Citizen Involvement in its preface, neither the new public engagement report nor any other aspect of this Ordinance shall modify or replace the Principles of Citizen Involvement, which remain in full force and effect.
3. Metro Code Chapter 2.19.020(f) is repealed and replaced with the terms set forth in the redlined version of Metro Code Chapter 2.19.020(f), attached hereto as Exhibit B and incorporated herein.
4. Metro Code Chapter 2.19.070 "Status of All Advisory Committees" is amended as set forth in the redlined version of Metro Code Chapter 2.19.070(a), attached hereto as Exhibit C and incorporated herein.
5. Metro Code Chapter 2.19.100 is repealed in its entirety and replaced with the terms set forth in the redlined version of Metro Code Chapter 2.19.100, attached hereto as Exhibit D and incorporated herein.

ADOPTED by the Metro Council this _____ day of _____, 2012.

Tom Hughes, Council President

Attest:

Approved as to Form:

Kelsey Newell, Recorder

Alison Kean Campbell, Metro Attorney

Exhibit A to Ordinance No. 12-[insert number]

CHAPTER 2.12
OFFICE OF CITIZEN INVOLVEMENT
2.12.020 Public Engagement Report

The Office of Citizen Involvement shall prepare an annual public engagement report evaluating Metro's citizen involvement program and the prior year's public engagement practices, measuring outcomes, and providing recommendations for the upcoming year. The report shall be presented to the Public Engagement Review Committee (PERC) for review, comment and direction, and shall thereafter be presented to the Metro Council in order to share best practices and upcoming plans for public engagement.

Exhibit B to Ordinance No. 12-[insert number]

CHAPTER 2.19
METRO ADVISORY COMMITTEES
2.19.020 Definitions

- (f) ~~“MCCI” means Metro Committee for Citizen Involvement.~~
- (f) “PERC” means the Public Engagement Review Committee.

Exhibit C to Ordinance No. 12-[insert number]

CHAPTER 2.19
METRO ADVISORY COMMITTEES
2.19.070 Status of All Advisory Committees

(a) MPAC, JPACT, and ~~MCCI~~ PERC are Advisory Committees that have permanent and continuing existence. They shall report directly to the Council and the Council President. MPAC and ~~MCCI~~ PERC were created by the Metro Charter. JPACT was created pursuant to federal law and Executive Order of the Governor of Oregon. The Metro Council shall provide for these committees in the annual budget. The Chief Operating Officer shall provide reasonable staff support for these three (3) committees from any legally available and budgeted resources.

Exhibit D to Ordinance No. 12-[insert number]

CHAPTER 2.19
METRO ADVISORY COMMITTEES
2.19.100 Public Engagement Review Committee (PERC)

~~2.19.100 Metro Committee for Citizen Involvement (MCCI)~~

~~_____ (a) Purpose. The purpose of the MCCI is to advise the Metro Council on the development and maintenance of programs and procedures to aid communication between citizens and the Metro Council. MCCI will advise the Office of Citizen Involvement (OCI) and Metro Council and perform the duties assigned to it by the Metro Charter and to perform other related duties that the Metro Council may prescribe.~~

~~_____ (b) Membership. The MCCI consists of twenty (20) members as follows:~~

~~_____ (1) Two (2) representatives from each of the six (6) Metro Council Districts and two _____ (2) at large representatives from the region (for a total of 14).~~

~~_____ (2) One (1) representative from each of the areas outside of the Metro boundaries of _____ Clackamas, Multnomah, and Washington Counties (for a total of 3).~~

~~_____ (3) One (1) representative from each of Clackamas County's Committee for Citizen _____ Involvement (CCI), Multnomah County Citizen Involvement Committee (CIC), _____ and Washington County Committee for Citizen Involvement (CCI) (for a total of _____ 3).~~

~~_____ (c) Terms. Notwithstanding the provisions of Section 2.19.030(c), MCCI members may be appointed to fill up to three (3) consecutive two (2) year terms.~~

~~_____ (d) Current Membership. Current MCCI members may complete their current term. At the completion of their current term, the member may reapply for any open seats in the district or area they represent, unless the current member has reached the term limit for service on the committee.~~

2.19.100 Public Engagement Review Committee (PERC)

(a) Purpose. The purpose of the PERC is to advise the Metro Council on the development and maintenance of programs and procedures to aid communication between the public and the Metro Council. PERC will advise the Office of Citizen Involvement (OCI) and the Metro Council, and perform the duties assigned to it by the Metro Charter and other related duties that the Metro Council may prescribe.

(b) Membership. The PERC consists of nine (9) members as follows:

(1) Three (3) at large representatives from the region.

(2) Three (3) representatives appointed from nominees of community associations, cooperatives, or other nonprofit groups

Exhibit D to Ordinance No. 12-[insert number]

in the region. Notwithstanding Chapter 2.19.030(c)(3)(B), representatives appointed from these groups shall be subject to the limitations on terms provided in Chapter 2.19.030(c)(2).

- (3) One (1) representative who is a county employee from each of Clackamas, Multnomah, and Washington Counties (for a total of 3). Each county will nominate an employee whose duties with the county are in a public engagement capacity. A county may alternatively nominate an employee of a city within such county whose duties with the city are in a public engagement capacity, with the consent of the city's administrator.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE **NO.12-1275**, FOR THE PURPOSE OF AMENDING METRO CODE SECTION 2.12 REGARDING THE OFFICE OF CITIZEN INVOLVEMENT AND METRO CODE SECTION 2.19.100 TO DISSOLVE THE METRO COMMITTEE FOR CITIZEN INVOLVEMENT (MCCI) AND ESTABLISH THE METRO PUBLIC ENGAGEMENT REVIEW COMMITTEE (PERC).

Date: May 7, 2012

Prepared by: Patty Unfred x1685

BACKGROUND

Metro's Office of Citizen Involvement has developed a new public engagement review process designed to ensure that Metro's public involvement is effective, reaches diverse audiences and harnesses emerging best practices. The Metro Committee for Citizen Involvement (MCCI) was established in 1991 by the Metro charter and was most recently conceived of as a 20 member committee charged with oversight of the agency's public involvement efforts. The MCCI was suspended in 2010 due to declining participation that limited its effectiveness and ability to represent the region.

Since that time, Metro staff has engaged community stakeholders and local public involvement peers to create a new multi-track public engagement review process that includes a semi-annual meeting of professional public involvement peers, an annual stakeholder summit and the establishment of a new standing public committee, the Public Engagement Review Committee (PERC). An annual public survey and subsequent annual report will be used to evaluate Metro's public involvement efforts.

It is important to note that the new process involves public and peer review of and input into Metro's public involvement plans. It does NOT cover or address – or replace - the numerous public involvement activities and engagement efforts conducted by Metro staff throughout the year. All Metro public engagement activity is guided by the principles of citizen involvement adopted by the Metro Council in 1997. The new process is designed to be more effective, increase best practices sharing and development among jurisdictions throughout the region, and more successfully engage communities with Metro's initiatives, helping to prioritize projects for public outreach.

ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents**
3. **Anticipated Effects** The new process is designed to be more effective, increase best practices sharing and development among jurisdictions throughout the region, and more successfully engage communities with Metro's initiatives, helping to prioritize projects for public outreach.

4. **Budget Impacts** No budget impacts. Program needs are addressed through a shifting of existing staff resources and accessing Communications M&S included in the COO proposed budget for FY 2012-13.

RECOMMENDED ACTION

Staff recommends adoption of Ordinance 12-1275.



Metro Public Engagement Review

Draft – May 8, 2012

Introduction and overview

In response to evolving communications and public engagement practices, Metro staff has developed a multi-track public engagement review process. Public engagement review engages the public, community organizations, and local government public involvement staff to actively monitor and contribute to Metro's public engagement efforts. Efficient public engagement at the project and program level requires review at the agency level. The new process is in addition to the public involvement outreach done regularly at the project and program levels. All Metro public engagement activity is guided by the principles of citizen involvement adopted by the Metro Council in 1997.

Mission

Active public engagement is essential to Metro's role as regional convener and makes Metro a more responsive and collaborative agency. Metro believes that good government requires the collaboration of elected officials, staff and representation of diverse residents of the region. Continual cooperation among these parties results in rich and sustainable policy decisions. Therefore, Metro is committed to fostering a robust public engagement environment.

Metro's public engagement review process provides:

1. Constructive feedback on Metro's public engagement practices.
2. More focused and effective public engagement activity.
3. Access to local expert knowledge and best practices.

Purpose

The public engagement review process guides Metro staff in the development and implementation of successful public engagement outreach with residents of the region.

Objectives and outcomes

Build public trust: through transparent and open policy development and planning processes. Respect and consider all community input.

Build sustainable decisions: by convening diverse regional stakeholders and residents in order to identify and realize mutual interests and beneficial outcomes.

Promote equity: by recognizing the rich diversity of the region and ensuring that benefits and burdens of growth and change are distributed equitably.

Understand local aspirations: by engaging local experts and community members in order to access local knowledge and aspirations.

Achieve efficiency: by organizing public engagement activities to make the best use of public participants' time, effort, and interests.

Improve best practices: by coordinating with other public involvement experts and community members.

Broaden outreach: by engaging populations that have been historically underrepresented in regional policy discussions and decisions, such as older people, young adults, the disabled, communities of color, and people of lower income.

Tools and tactics

Metro will convene a standing Public Engagement Review Committee, a stakeholder summit, and Public Engagement Peer Group to monitor Metro's public engagement efforts. The public engagement review process will also include an annual Opt In public engagement review survey and the production of an annual public engagement report. Tools and tactics are outlined below.

Public Engagement Review Committee (PERC)

Chapter V, Section 27 of the Metro Charter requires that a standing "citizens' committee" be established and maintained by the Metro Office of Citizen Involvement. The Public Engagement Review Committee (PERC) meets this requirement. The PERC will convene twice each year, in May or June and again in November.

Duties of the PERC include:

- Assist in developing the stakeholder summit agenda
- Assist with outreach to stakeholder summit participants
- Assist in facilitating the stakeholder summit
- Review the annual public engagement report
- Provide input on content of the annual Opt In public engagement review survey

The Committee will be made up of public involvement staff persons from Clackamas, Multnomah, and Washington county governments; staff persons from community organizations; and at-large community members as follows:

Clackamas County.....	1
Multnomah County.....	1
Washington County.....	1
Community Organizations.....	3
At-large Community Member.....	3

9 total members

Members of the PERC will be appointed as follows:

- Representatives (and alternates if desired) of the counties shall be appointed by the presiding executive of their jurisdiction/agency. Alternatively, a county may nominate an employee of a city or special district within the county, with the consent of the jurisdiction's administrator.
- Community member and community organization representatives and their alternates will be nominated through a public application process, confirmed by the Metro Council, and appointed by the Metro Council President.

Criteria for the selection of community member and community organization representatives include:

- **Community Service:** Demonstrated commitment to community involvement.
- **Experience:** Demonstrated skills, knowledge or experience valuable to support Metro's public engagement principles.
- **Diversity:** Collectively representative of the geographic and demographic diversity of the region.

Stakeholder Summit

Metro will convene an annual summit of community stakeholders representing diverse aspects of the region, members of Metro citizen advisory committees and oversight committees on ongoing projects. Meetings will be advertised and open to the general public.

The function of the stakeholder summit is to:

- Evaluate Metro public engagement practices from the previous year
- Share local community information
- Give advice on priorities and engagement strategies for upcoming Metro policy initiatives

Public Engagement Peer Group

Metro will convene two meetings annually of public engagement staff and professionals from across the Portland metropolitan region.

The function of the public engagement peer group is to:

- Share and learn about best practices and new tools, including international, national and local examples and case studies
- Share information, upcoming policy discussions and events in order to facilitate collaboration and leverage individual jurisdiction outreach efforts
- Provide input on public engagement process for individual projects
- Document best practices for public engagement
- Review and update public engagement principles and planning guide

Public engagement review annual schedule

Winter

Public engagement peer group meeting #1

Spring

Public Engagement Review Committee meeting #1

- Assist with pre-planning stakeholder summit

Public engagement peer group meeting #2

- Assist with pre-planning stakeholder summit

Early fall

Stakeholder summit

Annual Opt In public engagement review survey

Late fall

Annual public engagement report released

Public engagement review committee meeting #2

- Review annual public engagement report

Measurement and evaluation

The success of Metro's public engagement program is defined by consistently effective and efficient communication between Metro and the public. Metro staff will use the following tools to evaluate the success of Metro's public engagement processes:

- An annual Opt In public engagement review survey will measure public perception of Metro's public engagement processes
- Stakeholder summit and public engagement peer group participant interviews, questionnaires, and/or collected comments
- The public engagement report will summarize project evaluations, including:
 - Objectives
 - Context
 - Levels of involvement
 - Methods and techniques used
 - Who was involved (and who was not involved)
 - Inputs (costs)
 - Outputs (products and activities)
 - Outcomes (benefits/impacts)

Ordinance No. 12-1278, For the Purpose of Amending the Regional Transportation Functional Plan to Remove the Schedule for Updating City and County Transportation System Plans; to Add an Exemption Process; and to Revise Procedures for Extensions and Exceptions.

Ordinances – First Reading

Metro Council Meeting
Thursday, May 17, 2012
Metro, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE	)	ORDINANCE NO. 12-1278
REGIONAL TRANSPORTATION FUNCTIONAL)	
PLAN TO REMOVE THE SCHEDULE FOR)	
UPDATING CITY AND COUNTY)	
TRANSPORTATION SYSTEM PLANS; TO ADD	)	Introduced by Chief Operating Officer Martha
AN EXEMPTION PROCESS; AND TO REVISE	)	J. Bennett with the Concurrence of Council
PROCEDURES FOR EXTENSIONS AND	)	President Tom Hughes
EXCEPTIONS)	

WHEREAS, the Metro Council adopted the 2035 Regional Transportation Plan (RTP) by Ordinance No. 10-1241B (For the Purpose of Amending the 2035 RTP (Federal Component) and the 2004 RTP to Comply with State Law; to add the Regional Transportation Systems Management and Operations Action Plan, the Regional Freight Plan and the High Capacity Transit System Plan; to amend the Regional Transportation Functional Plan (RTFP) and add it to the Metro Code; to amend the Regional Framework Plan; and to amend the Urban Growth Management Functional Plan) on June 10, 2010; and

WHEREAS, the RTFP contains a schedule for city and county updates to their transportation systems plans (TSPs) (Table 3.08-4); and

WHEREAS, a number of cities and counties have been unable to meet the schedule for updates due to budgetary and other limitations on their resources; and

WHEREAS, several cities seek exemptions from the requirements of the RTFP, which the RTFP does not authorize; and

WHEREAS, section 660-012-0055(6) of the Transportation Planning Rule (TPR) authorizes the director of the Department of Land Conservation and Development to grant small cities and counties exemptions from the TPR, but such exemptions are not fully effective without exemptions from associated requirements of the RTFP; and

WHEREAS, the RTFP provides procedures for extensions of time for compliance with, and exceptions from requirements of the RTFP, both of which, unlike similar procedures in the Urban Growth Management Functional Plan, require hearings before the Metro Council; and

WHEREAS, the Joint Policy Advisory Committee on Transportation and the Metro Policy Advisory Committee both considered the proposed amendments and recommended that the Metro Council adopt the amendments; and

WHEREAS, the Metro Council held a public hearing on the proposed amendments on May 24, 2012, on the proposed amendments; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The RTFP is hereby amended, as indicated in Exhibit A, attached and incorporated into this ordinance, to repeal the schedule for TSP updates in Table 3.08-4; to add a process for exemptions from the requirements of the RTFP; and to revise the procedures for

extensions of time and exceptions to allow the Chief Operating Officer to grant extensions and exceptions subject to appeal to the Metro Council.

- 2. The Findings of Fact and Conclusions of Law, attached and incorporated into this ordinance as Exhibit B, are adopted as the Council’s explanation how the amendments to the RTFP comply with the Regional Framework Plan and state law.

ADOPTED by the Metro Council this _____ day of _____, 2012.

Tom Hughes, Council President

Attest:

Approved as to Form:

Kelsey Newell, Regional Engagement Coordinator

Alison Kean Campbell, Metro Attorney

Exhibit A to Ordinance No. 12-1278

Amendments to Metro Code Chapter 3.08
Regional Transportation Functional Plan

3.08.620 Extension of Compliance Deadline

- A. A city or county may seek an extension of time for compliance with the RTFP by filing an application on a form provided by the COO. Upon receipt of an application, the ~~Council President shall set the matter for a public hearing before the Metro Council and shall notify the city or county, the Department of Land Conservation and Development (DLCD) and those persons who request notification of applications for extensions~~ COO shall notify the city or county, the Oregon Department of Transportation and those persons who request notification of applications for extensions. Any person may file a written comment in support of or opposition to the extension.
- B. ~~The Council shall hold a public hearing to consider the application. Any person may testify at the hearing. The Council~~ COO may grant an extension if ~~it finds that~~ the city or county is making progress toward compliance ~~with the RTFP;~~ or ~~There~~ there is good cause for failure to meet the compliance deadline. Within 30 days after the filing of a complete application for an Extension, the COO shall issue an order granting or denying the extension. The COO shall not grant more than two extensions of time. The COO shall send the order to the city or county and any person who filed a written comment.
- C. The ~~Council~~ COO may establish terms and conditions for an extension ~~in order~~ to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the RTFP requirement. A term or condition must relate to the requirement of the RTFP for which the Council grants the extension. The COO shall incorporate the terms and conditions into the order on the extension. ~~The Council shall not grant more than two extensions of time, nor grant an extension of time for more than one year.~~
- D. The city or county applicant or any person who filed written comment on the extension may appeal the COO's order to the Metro Council within 15 days after receipt of the order. If an appeal is filed, the Council shall hold a

Exhibit A to Ordinance No. 12-1278

hearing to consider the appeal. TheAfter the hearing, the Council shall issue an order with its conclusion and analysis and send a copy to the city or county, ~~the DLCD~~ and any person who participated in the proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.08.630 Exception from Compliance

- A. A city or county may seek an exception from compliance with a requirement of the RTFP by filing an application on a form provided by the COO. Upon receipt of an application, the ~~Council President shall set the matter for a public hearing before the Metro Council and shall notify the DLCD and those persons who request notification of requests for exceptions~~COO shall notify the city or county, the Oregon Department of Transportation and those persons who request notification of requests for exceptions. Any person may file a written comment in support of or opposition to the exception.

~~Following the public hearing on the application, the Metro Council~~The COO may grant an exception if ~~it finds~~:

B.

1. It is not possible to achieve the requirement due to topographic or other physical constraints or an existing development pattern;
2. This exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide;
3. The exception will not reduce the ability of another city or county to comply with the requirement; and
4. The city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.

- B. Within 30 days after the filing of a complete application for an exception, the COO shall issue an order granting or denying the exception.

- C. The ~~Council~~COO may establish terms and conditions for the exception in order to ensure that it does not undermine the ability of the region to achieve the policies of the RTP.

Exhibit A to Ordinance No. 12-1278

A term or condition must relate to the requirement of the RTFP to which the Council grants the exception. The COO shall incorporate the terms and conditions into the order on the exception.

- D. The city or county applicant or a person who filed a written comment on the exception may appeal the COO's order to the Metro Council within 15 days after receipt of the order. If an appeal is filed, the Council shall hold a hearing to consider the appeal. TheAfter the hearing, the Council shall issue an order with its conclusion and analysis and send a copy to the city or county, the DLCD and those persons who have requested a copy of the order. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10) (a) (A).

3.08.640 Exemptions

- A. A city or county may seek an exemption from the requirements of the RTFP. Upon receipt of a request, the COO shall notify the city or county, the Department of Land Conservation and Development, the Oregon Department of Transportation and those persons who request notification of applications for exemptions. Any person may file a written comment in support of or opposition to the exemption.
- B. The COO may grant an exemption from some or all requirements if:
1. The city or county's transportation system is generally adequate to meet transportation needs;
 2. Little population or employment growth is expected over the period of the exemption;
 3. The exemption would not make it more difficult to accommodate regional or state transportation needs;
and
 4. The exemption would not make it more difficult to achieve the performance objectives set forth in section 3.08.010A.
- C. Within 30 days after the filing the request for an exemption, the COO shall issue an order granting or denying the exemption.
- D. The COO shall prescribe the duration of the exemption and may establish other terms and conditions for the exemption

Exhibit A to Ordinance No. 12-1278

so long as the terms and conditions relate to the requirement of the RTFP to which the Council grants the exemption. The COO shall incorporate the terms and conditions into the order on the exemption.

- E. The city or county applicant or any person who filed written comment on the exemption may appeal the COO's order to the Metro Council within 15 days after receipt of the order. If an appeal is filed, the Council shall hold a hearing to consider the appeal. After the hearing, the Council shall issue an order with its conclusion and analysis and send a copy to the city or county and any person who participated in the proceeding. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10) (a) (A).

Exhibit B to Ordinance No. 12-1278

Findings of Fact and Conclusions of Law

[PLACEHOLDER]

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 12-1278, FOR THE PURPOSE OF AMENDING THE REGIONAL TRANSPORTATION FUNCTIONAL PLAN TO REMOVE THE SCHEDULE FOR UPDATING CITY AND COUNTY TRANSPORTATION SYSTEM PLANS; TO ADD AN EXEMPTION PROCESS; AND TO REVISE PROCEDURES FOR EXTENSIONS AND EXCEPTIONS

Date: April 9, 2012

Prepared by: John Mermin, 503-797-1747

BACKGROUND

The Regional Transportation Functional Plan (RTFP) is part of Metro Code (Chapter 3.08) and implements the policies contained in the Regional Transportation Plan. Cities and Counties local transportation system plans and implementing ordinances must be consistent with the Regional Transportation Functional Plan.

The Metro Council approved the 2035 Regional Transportation Plan and Regional Transportation Functional plan on June 10, 2010. Metro consulted with each city and county to determine a timeline for this local work and adopted a schedule that is part of the RTP Ordinance (No.10-1241B). Since that time four jurisdictions were unable to meet 2011 deadlines due to resource constraints and other limitations. Metro staff expects several local jurisdictions to be unable to meet the existing schedule for 2012.

On December 16, 2010 Metro Council adopted Ordinance 10-1244B which amended several Urban Growth Management Functional Plan titles, including streamlining the local compliance procedures described in Title 8. Formerly the process for receiving extensions and exceptions was time consuming for the Council and local governments since it required a public hearing and decision by the Metro Council. Ordinance 10-1244B amended the procedure to make the granting of extensions & exceptions administrative decisions of Metro's Chief Operating Officer, with possible appeal to the Metro Council.

Since the adoption of the RTFP, the City of Rivergrove contacted Metro staff inquiring about exemption from its requirements. The Regional Transportation Functional Plan does not address the issue of exemptions. Metro staff believes there are other communities in the region that would be interested in an exemption process. The State Transportation Planning Rule (TPR) includes a provision for exemption from its requirements, but Metro had not previously addressed exemption from regional transportation requirements.

Staff Recommendation

Extensions & Exceptions - Metro staff recommends amending the RTFP procedures for extending compliance deadlines (3.08.620) and granting exceptions to specific requirements (3.08.630) to match the procedures within the UGMFP (3.07.830 and 3.07.840). The changes would make requests from local governments for extensions or exceptions administrative functions of Metro's Chief Operating Officer (COO), but still allow for an appeal to the Metro Council.

Exemptions - Staff recommends amending the RTFP to add a section (3.08.640) providing for exemption from all or some RTFP requirements. A jurisdiction would be eligible for an exemption if:

- its existing transportation system is generally adequate to meet its needs,
- little population or employment growth is expected, and

- exempting them would not make it more difficult to accommodate regional or state needs, or to meet regional performance targets.

Staff believes that five jurisdictions, Johnson City, Maywood Park, King City, Durham and Rivergrove, may meet these criteria and may wish to apply for exemption from RTFP requirements. To receive an exemption a jurisdiction would need to send a formal request to Metro's COO.

Schedule of deadlines - Metro staff recommends moving the schedule for RTFP compliance (Table 3.08-4) from the RTFP into the RTP Appendix (Exhibit A to Ordinance No. 10-1241) 2013. This change will ensure that Metro code need not be amended in the future when the COO grants extensions to compliance deadlines.

ANALYSIS/INFORMATION

1. Known Opposition

None known at this time.

2. Legal Antecedents

- Metro Ordinance No.10-1241B, which included adoption of the Regional Transportation Plan and Regional Transportation Functional Plan
- Metro Ordinance No.10-1244, which included updates to the Urban Growth Management Functional Plan to streamline the compliance process to make the granting of extensions and exceptions an administrative decision of Metro's Chief Operating Officer

3. Anticipated Effects

Adoption of the legislative would amend Title 6 of the Regional Transportation Functional Plan (Compliance Procedures).

4. Budget Impacts

None

RECOMMENDED ACTION

Metro Staff recommends that the Council adopt Ordinance No.12-1278

Resolution No. 12-4345, For the Purpose of Updating the
Work Program for Corridor Refinement Planning and
Designating the Powell-Division High Capacity Transit Corridor
as the Next Regional Priority for Completion of Corridor
Refinement and Commencement of Alternatives Analysis.

Resolutions

Metro Council Meeting
Thursday, May 17, 2012
Metro, Council Chamber

BEFORE THE METRO COUNCIL

IN CONSIDERATION OF RESOLUTION NO. 12-4345 FOR THE PURPOSE OF UPDATING THE WORK PROGRAM FOR CORRIDOR REFINEMENT PLANNING AND DESIGNATING THE POWELL-DIVISION HIGH CAPACITY TRANSIT CORRIDOR AS THE NEXT REGIONAL PRIORITY FOR COMPLETION OF CORRIDOR REFINEMENT AND COMMENCEMENT OF ALTERNATIVES ANALYSIS	)	RESOLUTION NO. 12-4345
)	
	)	Introduced by Shirley Craddick
)	
)	
)	
)	
)	
)	
)	

WHEREAS, the State of Oregon Transportation Planning Rule (TPR) section 660-012-0020 requires that transportation system plans (TSPs) establish a coordinated network of planned transportation facilities adequate to serve regional transportation needs; and

WHEREAS, the state component of the 2035 Regional Transportation Plan (RTP) is intended to serve as the regional transportation system plan under statewide planning Goal 12 and the State Transportation Planning Rule, and must be consistent with those laws; and

WHEREAS, Metro, as the metropolitan planning agency, has identified areas where refinement planning is necessary to develop needed transportation projects and programs not included in the regional TSP; and

WHEREAS, the Metro Council, the Joint Policy Advisory Committee on Transportation (JPACT), the Metro Policy Advisory Committee (MPAC), the Metro Technical Advisory Committee (MTAC), and the Transportation Policy Alternatives Committee (TPAC) assisted in the development of refinement plan prioritization factors in fall 2009; and

WHEREAS, Resolution 10-4119, adopted by the Metro Council on February 25, 2010, directed staff to work with affected local jurisdictions to conduct the first two corridor refinement plans (known as the East Metro Connections Plan and the Southwest Corridor Plan) based on an approved prioritization framework; and

WHEREAS, the Regional High Capacity Transit (HCT) System Plan summary report (June 2010), a component of the RTP, identified a new HCT corridor (#10) in the vicinity of Powell Boulevard from the Portland central city to Gresham (the "Powell-Division HCT Corridor") as the second highest of the three near-term regional priority corridors; and

WHEREAS, the highest ranked HCT corridor is already in the alternatives analysis phase, as part of the Southwest Corridor refinement planning process; and

WHEREAS, neither the scope of work nor the schedule for the Southwest Corridor Plan will be affected by the more limited scope and anticipated timeline for work in the Powell-Division HCT Corridor; and

WHEREAS, preparatory work in or near the Powell-Division HCT Corridor, including the Phase I Powell-Foster Corridor Refinement Plan, the Inner Powell Streetscape Plan, the East Metro Connections

Plan (currently finalizing its recommendations), the East Portland Action Plan (EPAP) and the recently completed Outer Powell Boulevard Conceptual Design Plan, identified the major safety, roadway, and related bicycle and pedestrian improvements needed in the Powell-Division HCT Corridor; and

WHEREAS, the EPAP was developed by the community of East Portland, generally east of I-205, and identified actions and strategies aimed at improving transit service throughout East Portland, including expanding transit service and connections between East Portland neighborhoods and Columbia Corridor employment areas; and

WHEREAS, the East Portland in Motion project represents a five-year implementation strategy for the EPAP, focused on active transportation and access to transit; and

WHEREAS, the Outer Powell Boulevard Conceptual Design Plan acknowledges the need for a near term analysis of improved transit service including HCT and the effect that HCT would have on vehicular capacity in the corridor; and

WHEREAS, the Outer Powell Boulevard Conceptual Design Plan did not seek to determine the impacts of HCT on Powell Boulevard or the function, mode or general location of HCT in this corridor; and

WHEREAS, the East Metro Connections Plan has identified transit opportunities and potential performance benefits associated with high capacity transit within the eastern segment of the previously identified Powell-Division HCT Corridor; and

WHEREAS, Resolution 10-4119 called for regular review of the proposed sequencing of corridor refinement plan preparation, to ensure that regional priorities continue to be reflected in refinement plan efforts, and directed staff to coordinate corridor refinement planning work with HCT planning efforts; and

WHEREAS, the phasing graphic included as Exhibit C in Resolution No. 10-4119 recognized the likelihood of initiation of an alternatives analysis for the HCT corridor in the vicinity of Powell Blvd to occur in 2012-13; and

WHEREAS, necessary multimodal transportation planning has been completed to identify needs and opportunities for high capacity transit at a system planning level in the Powell-Division HCT Corridor; and

WHEREAS, needs within the Powell-Division HCT Corridor include affordable, equitable transit access and improved service to stimulate community and economic development and serve locally desired land uses; and

WHEREAS, there is now both demonstrated interest in and local and regional support for determining the best community investment strategy and specific projects for the Powell-Division HCT Corridor to address identified needs and fulfill local and regional aspirations; and

WHEREAS, on April 19, 2012, the Metro Council approved Resolution 12-4335, adopting the Fiscal Year 2012-13 Unified Planning Work Program (UPWP), which identifies the Powell-Division HCT Corridor as appropriate for the next corridor refinement plan; and

WHEREAS, on _____, the Joint Policy Advisory Committee on Transportation (JPACT) recommended approval of this resolution to update refinement plan prioritization by the Metro Council and in the UPWP, now therefore

BE IT RESOLVED that the Metro Council:

1. Approves and adopts the revised sequencing and phasing for the next corridor refinement plan, the “Powell-Division High Capacity Transit Corridor Refinement Plan.”
2. Approves commencement of refinement planning efforts as follows, subject to all necessary further approvals, with work scheduled as resources permit, for this next corridor refinement plan, which will:
 - a) Be consistent with the Mobility Corridor Strategies and the HCT System Expansion Policy Framework contained within the adopted 2035 RTP;
 - b) Determine the geographic scope of the refinement plan;
 - c) Identify unresolved issues and needed steps for the refinement plan;
 - d) Identify scope elements and study methods for the corridor refinement process as well as a Transit Alternatives Analysis (AA) (see Exhibit A). The AA will further define the route, service, transit and associated pedestrian, bicycle and roadway improvements needed to provide high quality and high capacity bus service in this corridor. The outcome will be an application for Small or New Starts funding;
 - e) Coordinate proposed planning activities with other project development activities and already defined RTP projects within the corridor; and
 - f) Seek funding to complete required study components, the Alternatives Analysis and eventual implementation of a community investment strategy within the Powell-Division HCT Corridor.
3. Amends the FY 2012-13 UPWP to reflect that the Powell-Division HCT Corridor is the next regional corridor refinement plan priority.

ADOPTED by the Metro Council this [17th] day of [May] 2012.

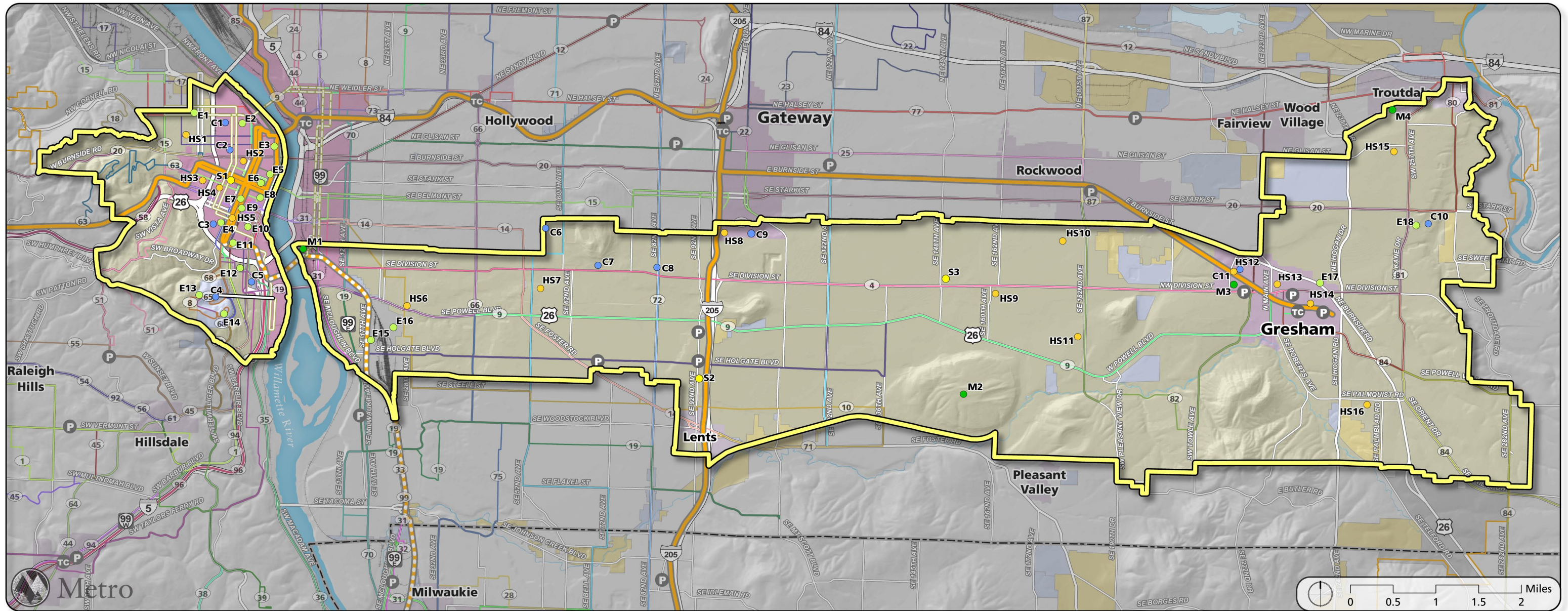
Tom Hughes, Council President

Approved as to Form:

Alison Kean Campbell , Metro Attorney

Exhibit A: Proposed Powell-Division Transit Alternative Analysis Study Area Map

Powell-Division Transit Alternatives Analysis



Powell - Division Study Area

- Title 4 Lands
 - Employment Land
 - Industrial Land
 - Regionally Significant Industrial Area
- 2040 Analysis Centers
 - Central City
 - Regional Center
 - Town Center
- Light Rail Transit
- Light Rail Transit Under Construction
- Street Car
- Street Car Under Construction
- Bus Lines
- Transit Center
- Park and Ride

Colleges and Universities

- C1 Pacific Northwest College of Art
- C2 The Art Institute of Portland
- C3 Portland State University*
- C4 Oregon Health & Science University*
- C5 National College of Natural Medicine
- C6 Western Seminary
- C7 Warner Pacific College
- C8 Portland Community College--Southeast
- C9 Walla Walla University - Portland Campus
- C10 Mt. Hood Community College - Gresham
- C11 Mt. Hood Community College - Bruning Center

Skill Centers

- S1 New Avenues for Youth
- S2 Portland Youth Builders
- S3 Serendipity

*Components of "Innovation Quadrant"

High Schools

- HS1 Metropolitan Learning Center
- HS2 Greenhouse Alternative High School
- HS3 Lincoln High
- HS4 The Northwest Academy
- HS5 St. Mary's Academy
- HS6 Cleveland High
- HS7 Franklin High
- HS8 Portland Adventist Academy
- HS9 SERP Enterprises Inc.
- HS10 Centennial Learning Center
- HS11 Centennial High
- HS12 Center for Advanced Learning
- HS13 Gresham High
- HS14 Alpha High
- HS15 Reynolds High
- HS16 Springwater Trail High

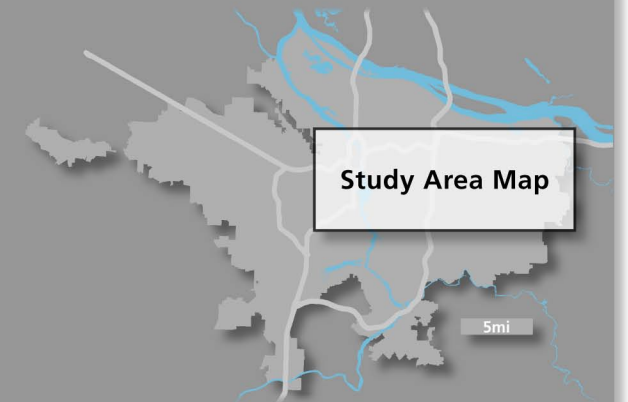
Large Employers

- E1 Legacy Hospital
- E2 US Post Office
- E3 KB Pipeline
- E4 Portland State University
- E5 US Army Corp of Engineers
- E6 Oregon Dental Service
- E7 Standard Insurance
- E8 Portland General Electric
- E9 Weyerhaeuser
- E10 Regence Group
- E11 Ishimoto America
- E12 Automatic Data Processing Services
- E13 Oregon Health & Sciences University
- E14 Veteran Affairs Medical Center
- E15 TriMet Operations
- E16 Fred Meyer Stores Corporate HQ
- E17 Advanced Business Technologies
- E18 Mt. Hood Community College

Other Attractions

- M1 Oregon Museum of Science and Industry*
- M2 Powell Butte
- M3 Civic Station Shopping Center
- M4 McMenamin's Edgefield Concert Venue

Portland Metro Region



Study Area Map

STAFF REPORT (DRAFT)

IN CONSIDERATION OF RESOLUTION NO. 12-4345 FOR THE PURPOSE OF UPDATING THE WORK PROGRAM FOR CORRIDOR REFINEMENT PLANNING AND DESIGNATING THE POWELL-DIVISION HIGH CAPACITY TRANSIT CORRIDOR AS THE NEXT REGIONAL PRIORITY FOR COMPLETION OF CORRIDOR REFINEMENT AND COMMENCEMENT OF ALTERNATIVES ANALYSIS

Date: May 17, 2012

Prepared by: Deborah Redman
503-797-1641

BACKGROUND

1) Description of Proposed Powell-Division High Capacity Transit Corridor Refinement Plan

Building off the findings and local support generated through recent related planning work (described below), the Powell-Division High Capacity Transit Corridor Refinement Plan will coordinate land use and transportation planning efforts to develop an investment strategy that defines a high capacity transit project for a Small or New Starts application, develops supportive land use actions and identifies and prioritizes related projects to stimulate community and economic development. Transit in this corridor would connect several low income areas with major education and workforce training sites including Portland State University, Portland Community College and Mt. Hood Community College as well as with jobs in Portland and Gresham. It would leverage existing transit investments in the Willamette River Transit Bridge, and afford transit vehicles a time advantage in accessing downtown Portland from points east on the eventual alignment.

The Powell-Division Corridor Transit Refinement Plan will include:

- Local land use planning work that will help define the transit route, stop locations and connections and identify land use actions and investments to support livable communities. Outcomes of these efforts will be implemented by local jurisdictions.
- Transit Alternatives Analysis (AA). The AA will further define the route, service type, transit and associated pedestrian, bicycle and roadway improvements needed to provide high quality and high capacity bus service in this corridor. The outcome will be an application for Small Starts/New Starts funding.
- Identification of key community investments (regional, local, public and private) that will create synergy with proposed transit investments and support community economic development and livability.

2) Objectives of Proposed Powell-Division High Capacity Transit Corridor Refinement Plan

- Develop transit solution that efficiently serves high demand corridor in the near term while recognizing physical constraints in the corridor as well as the limited local capital and operational funding for near term implementation.
- Develop a Powell-Division Corridor community investment strategy that identifies and prioritizes needed projects to serve locally desired land uses and stimulate community and economic development centered on high capacity transit service.

- Establish agreements on local, regional and state actions to support implementation of the community investment strategy.
- Develop multi-modal solutions that distribute both benefits and burdens of growth, support active lifestyles and enhance the natural environment.
- Actively engage public in developing the criteria to prioritize transportation investments and land use changes.
- Conduct a transit Alternatives Analysis to determine the best alignment, associated service changes and capital improvements of a high capacity transit route.
- Incorporate refined transportation planning into RTP.

3) **Previous Corridor Refinement Work Program Prioritization**

a) **Background**

The 2000 Regional Transportation Plan (RTP) identified a significant transportation need in 18 corridors but specified that additional work was needed before a specific project could be implemented. In FY 2000-01, the Corridor Initiatives Program prioritized completion of the corridor plans and refinements. Per that recommendation, Metro initiated and led corridor studies including the Powell/Foster and Highway 217 corridors. The phase I Powell/Foster plan was completed and the findings were adopted by JPACT and the Metro Council in FY 2003/04.

In winter 2005, Metro again consulted with regional jurisdictions to identify the next priority corridor(s) for commencement of planning work. Based on the consultation, in winter 2005/06, JPACT and Metro Council approved a corridor planning work plan update, which called for initiation of five new corridor plans in the next five years. In winter 2007/08, Metro commenced work on one of the corridor planning efforts identified in that work program, the Regional High Capacity Transit System Plan.

As part of the Regional Transportation Plan update, in 2009, Metro worked with technical committees and local jurisdictions to identify and prioritize remaining corridor needs. Five corridors were found to need refinements and a phased approach was established to accomplish all remaining refinement plans by 2020. Mobility Corridor #15 (East Multnomah County connecting I-84 and US 26) and Mobility Corridors #2 and # 20 (in the vicinity of I-5/Barbur Blvd, from Portland Central City southward to approximately the “Tigard Triangle”) were designated as the next priorities based on technical factors, as well as local urgency and readiness (Resolution 10-4119, approved by Metro Council on February 25, 2010). The East Metro Connections and Southwest Corridor Plans commenced shortly thereafter and will be completed in June and December 2012 respectively.

4) **2010 Metro Council Prioritization as directed by Resolution No. 10-4119**

- a) Resolution No. 10-4119 listed six remaining multimodal mobility corridors needing refinement planning, along with one HCT Corridor (“Powell Vicinity”), the latter which is the subject of this staff report and related resolution.
- b) Two plans are underway, per that prioritization: East Metro Connections Plan and Southwest Corridor Plan.
- c) The assumption at the time this previous corridor refinement prioritization was completed (i.e., February 2010) was that “Vicinity of Powell Corridor” transit and transportation needs and opportunities would be studied. A draft of the final report of that study, the Outer Powell

Boulevard Conceptual Design Plan, was released in December, 2011, and is discussed briefly below.

d) Resolution No. 10-4119 also anticipated regular review of the proposed, to ensure that regional priorities continue to be reflected in refinement plan efforts and directed staff to coordinate corridor refinement planning work with HCT planning efforts. It also anticipated the initiation of an alternatives analysis for the HCT corridor in the vicinity of Powell Blvd to occur in 2012, as shown in the Exhibit C to the resolution (Attachment 1 to this staff report.) The order presented in the phasing and sequencing shown in Attachment 1 considered not only the accepted technical rankings, but also took into account then-current levels of local support, as listed below:

- Technical rankings
- Demonstrated local support
- Respective levels of effort of the five corridors
- Ability of local jurisdictions to take more responsibility for one or more pieces of work that are likely to be required in a given corridor
- Ability to logically segment work (e.g., to postpone corridor refinement planning)
- Potential for project development to proceed on a separate track
- Ramp-up time needed for more complex corridors (to be included in a preparatory phase described below)—allowing staggered plan initiation points
- A proposed scenario for linking High Capacity Transit (HCT) system expansion process and priorities to the corridor refinement planning process, where appropriate

e) High Capacity Transit (HCT) Corridors

In July 2009, the Metro Council adopted the Regional High Capacity Transit (HCT) System Plan. The HCT plan identifies and prioritizes corridors for implementation based on a set of evaluation criteria consistent with the goals of the RTP and the region's 2040 growth concept. The HCT plan was adopted by the region as part of the Regional Transportation Plan in June 2010. In July 2011, the Joint Policy Advisory Committee on Transportation (JPACT) and Metro Council adopted the High Capacity Transit System Plan Expansion Policy guidelines to further describe the process for moving projects forward.

Both the HCT plan and the system expansion policy identify the Portland Central City to Gresham (in general, Powell-Division Corridor) as a Near-Term regional priority corridor. The rigorous HCT process included the application of 25 evaluation criteria approved by the Metro Council and Joint Policy Advisory Committee on Transportation. System Expansion policy targets were applied to both the SW and Powell-Division corridors. While on many measures such as transit supportive land use and community support, regional network connectivity and integrated transportation system development the corridors scored equally. In terms of Housing needs supportiveness, Powell actually measured higher. In the areas of financial capacity and partnership, political leadership and ridership (particularly in projected increase) the SW corridor scored higher.

The SW corridor is currently in an AA process. Given the strong land use needs and opportunities, community support, current ridership, and housing needs, the Powell-Division corridor should move forward at this time.

In addition to a decade of corridor refinement plan prioritization and regional-scale planning work, there has been significant and relevant preparatory studies in or near the Powell-Division HCT Corridor, including the Phase I Powell/Foster Corridor Refinement Plan, the Inner Powell Streetscape Plan, the East Metro Connections Plan (currently finalizing its recommendations), the East Portland Action Plan and the recently completed Outer Powell Boulevard Conceptual Design Plan. These studies and planning work, summarized below, identify the major safety, roadway, and related bicycle and pedestrian improvements in this corridor, and have identifies needs and opportunities for high capacity transit at a system planning level.

5) Previous Multimodal and Corridor Refinement Planning Work

a) East Metro Connections Plan

The East Metro Connections Plan (EMCP) has identified transit opportunities and potential performance benefits associated with high capacity transit within the eastern segment of the previously identified Powell-Division HCT Corridor. The EMCP Enhanced Transit Scenario is a modeled collection of transit improvements identified through the EMCP planning process for potential further study. The modeling effort forecasts the effects of these improvements in the year 2035, as compared to the Regional Transportation Plan (RTP) Financially Constrained (FC) network. The 2035 RTP FC includes all transit assumed to be in place in the region by the year 2035, and as such includes improvements over existing transit.

The 2035 RTP Financially Constrained transit network includes the following improvements compared to current day service:

- Interlining of lines 82 and 87. Combining these two lines eliminates the need to transfer at Rockwood for trips traveling between north and south on 181st Avenue.
- Improved frequency to service on 181st Avenue to provide frequent service between Sandy Boulevard and Powell Boulevard. Line 82 is maintained as a separate, additional line to the 82/87 interline, operating only between Sandy Boulevard and Powell Boulevard.
- Improved frequency of line 20 to provide frequent service on Stark Street.
- Improved frequency of line 77 to provide frequent service on Halsey Street.
- Improved frequency of line 9 to provide frequent service on Powell Boulevard.

The 2035 EMCP Enhanced Transit Scenario network includes the following improvements to the RTP Financially Constrained network:

- Addition of Bus Rapid Transit (BRT) in the Powell-Division corridor, extending from Portland Central City to Mt. Hood Community College via Gresham Transit Center. The Powell Corridor HCT is designated as a “Near Term Regional Priority Corridor” in the Metro High Capacity Transit System Plan and in the High Capacity Transit System Expansion Policy; the extension to Mt. Hood Community College is not part of the identified corridor but has been included in this study. The BRT would run on Powell Boulevard west of I-205, and on Division Street east of I-205. Frequency of line 4-Division local service would be reduced to hourly service in the plan area where the route is duplicated by BRT.

- Shortening of line 20, moving the terminus to Mt Hood Community College instead of Gresham Transit Center. The removed routing is duplicated by the extension of the proposed BRT from Gresham Transit Center to Mt. Hood Community College.
- Improved frequency of line 12 to provide frequent service on Sandy Boulevard / Halsey Street / 223rd Avenue between Parkrose and Gresham Transit Center.
- Routing change of 12-Sandy from Halsey Street to Arata Road between NE 223rd Ave and NE 238th Drive to provide accessibility to more households.
- Improved frequency of lines 80 and 81 from hourly service to twice-hourly service.
- Routing change of portions of line 80 off of Kane Drive and onto 242nd Avenue between Powell Boulevard and Stark Street. This provides new service to 242nd Avenue.
- Routing change of portions of line 84 off of US 26 and onto Hogan Road and Palmquist Road, resulting in new service in those currently unserved areas.
- Addition of new hourly service between Gresham Transit Center and Damascus, traveling on Roberts Road and Hogan Road in the Plan Area.

The analysis compares forecasts for the 2035 EMCP Enhanced Transit Scenario to the 2035 Regional Transportation Plan (RTP) Financially Constrained network. The RTP Financially Constrained network includes all transit assumed to be in place in the region by the year 2035, and as such includes improvements over existing transit.

The Enhanced Transit Scenario features a combination of new service, frequency improvements, and routing changes compared to the RTP Financially Constrained network. The scenario examines introduction of a BRT extending from downtown Portland to Mt. Hood Community College, travelling on Division Street within the Plan Area. Frequency decreases to the 4-Division and shortening of the 20-Burnside/Stark would occur to accommodate the BRT service. For north-south routes, frequencies of line 12-Sandy, line 80-Kane/Troutdale, and line 81-Kane/257th would be improved, and line 80 would be shifted from Kane Drive to 242nd Avenue. Finally, routing of the 84-Kelso/Boring would be adjusted, and a new route would be introduced to serve between Gresham Regional Center and Damascus.

The analysis examines individual transit lines in terms of changes in boardings and productivity, and assesses the geographic locations within the Plan Area in terms of changes in ridership caused by the transit modifications.

Transit Line Findings

- The introduction of the BRT would result in increased boardings and productivity in both the Plan Area and the region. Including the effects to lines with service adjustments in conjunction with the BRT, and productivity effects to lines competing with BRT, average weekday boardings would increase by over 1,400 in the Plan area and by over 9,700 in the region, and boardings per transit revenue hour would increase by 33 in the Plan Area and by 101 in the region.
- Frequency improvements to line 12-Sandy would result in 1,100 additional boardings in the corridor, and over 3,000 additional boardings in the region, with minimal change to boardings per revenue hour.
- Frequency improvements to lines 80-Kane/Troutdale and 81-Kane/257th, along with a routing change to line 80, would result in an increase in boardings but a decrease in productivity. Together, average weekday boardings would increase by 660, and boardings per revenue hour would decrease by 55.

- Lines 82-Eastman/182nd and 87-Airport Way/181st are assumed to be interlined in the RTP Financially Constrained network, with improved frequencies between Sandy Boulevard and Powell Boulevard, eliminating the need to transfer for trips between north and south in the Plan Area. This improvement over current conditions is carried into the Enhanced Transit Scenario; since coding is identical between the two networks the effects cannot be assessed in this analysis. Similarly, frequency improvements to lines 9-Powell, 20-Burnside/Stark, and 77-Halsey are assumed in both networks.

Although the EMCP Steering Committee will develop more detailed recommendations this spring, high capacity transit within the Powell-Division corridor has strong regional and jurisdictional support. The proposed Powell-Division High Capacity Transit Corridor Refinement Plan will advance the transit-related recommendations toward implementation by analyzing feasible transit alternatives that will recommend a best mode, service type and alignment.

b) Outer Powell Boulevard Conceptual Design Plan ((December 2011)

“The Outer Powell Boulevard Conceptual Design Plan acknowledges the status of a new high capacity transit (HCT) corridor in the vicinity of Powell Blvd connecting downtown Portland to Gresham as one of the three near-term regional priority corridors. There is a need for a refinement plan on this near-term regional priority corridor to analyze the potential opportunities for improved transit service and to resolve concerns over the effect HCT would have on vehicular mobility and freight on Powell Boulevard if high capacity transit were to be located there. The Outer Powell Boulevard Conceptual Design Plan will not seek to determine the impacts of HCT on Powell Boulevard or the function, mode or general location of HCT in this corridor. Any HCT on Powell should attempt to stay within the 104 feet of right-of-way as would be required for a five-lane enhanced roadway section.”

c) East Portland Action Plan (EPAP) (2009)

The East Portland Action Plan (EPAP) was developed by the community of East Portland, generally east of I-205. It identified actions and strategies aimed at improving transit service throughout East Portland; including expanding transit service and connections between East Portland neighborhoods and Columbia Corridor employment areas. The East Portland in Motion (EPIM) represents a five-year implementation strategy for EPAP, focused on active transportation and access to transit and presents an opportunity for close coordination between the Powell-Division HCT Corridor refinement work, and projects or needs identified in the EPIM.

6) Powell-Division HCT Corridor is ripe for transit-focused refinement planning

Based upon previous work, past prioritization and findings of related plans (described above), the time is right for re-sequencing the refinement planning work within the Metro region. Recently identified needs within the Powell-Division HCT Corridor include affordable, equitable transit access and improved service to stimulate community and economic development and serve locally desired land uses. There is now both demonstrated interest in and local and regional support for determining the best community investment strategy and specific projects for the Powell-Division HCT Corridor to address identified needs and fulfill local and regional aspirations.

The East Metro Connections Plan has conducted preliminary analysis of a transit scenario in East Multnomah County that includes a bus rapid transit (BRT) route from central Portland to Mt. Hood

Community College. This would be one scenario analyzed as part of the proposed refinement plan and associated Alternatives Analysis. . In addition, there is a time-critical opportunity to secure necessary funding to conduct an alternatives analysis that could lead to New/Small Starts funding for implementation.

7) Regional and jurisdictional support for Powell-Division HCT

Supporting project partners include TriMet, cities of Portland and Gresham, Multnomah County, and the Oregon Department of Transportation. In addition, the Unified Planning Work Program (UPWP) which, describes all Federally-funded transportation planning activities for the Portland-Vancouver metropolitan area to be conducted in FY 2012-13 identifies an expectation of work to finalize scope, schedule and budget and execute funding agreements and commence analysis for proposed next corridor transit implementation project on Division/Powell. Approval of Resolution 12-4345 would confirm that direction, and amend the UPWP accordingly.

8) Remaining corridor refinement plan candidates are not ready

Other multimodal corridor plans (I-5 South, TV Highway, I-205, and I-405 Loop) remain lower priorities, for the same reasons they were previously scheduled for refinement planning in later years

Table 1: Review and Update of 2010 Corridor Plan Work Program

Mobility Corridor	Status of Modal Planning (Corridor Level)				Key changes from 2010
	Roadway	Transit	Bicycle	Pedestrian	
#15 (East Metro)	Complete	Need specific alignment and design	Complete	Complete	<ul style="list-style-type: none"> East Metro Connections Plan will be complete June 2012; HCT service along identified near-term regional HCT corridor in vicinity of Division/Powell evaluated and performs well. Further refinement needed to define and implement HCT.
#2 & 20 (Southwest)	In process	In process	In process	In process	<ul style="list-style-type: none"> Southwest Corridor Plan is underway
#3 (I-5 South)	Future	Future	Future	Future	<ul style="list-style-type: none"> Still dependent upon agreement between local jurisdictions, and, to some extent, upon findings from Southwest Corridor
#24 (Beaverton-Forest Grove, via TV Highway)	In process	In process	In process	In process	<ul style="list-style-type: none"> Planning in this corridor is being conducted through ODOT TGM grant
#7, #8, #9 (Clark County to I-5 via I-205)	Future	Future	Future	Future	<ul style="list-style-type: none"> No change;
Corridor in Vicinity of Powell Blvd. (Includes #4, 5, 6 & 15)	Complete 3-lane alternative for Outer Powell segment (to 2025); projects identified in EMCP	Future Need & benefits, performance identified by EMCP; further evaluation of specific HCT mode, alignment and design needed	Complete	Complete	<ul style="list-style-type: none"> Time-critical opportunity to secure New/Small Starts funding . This corridor is ready for study: EMCP and Outer Powell Blvd. Conceptual Design Plan treat different segments of corridor and require integration. Both plans point to need for refinement plan for this near-term regional HCT priority corridor. Transit-focused refinement plan will determine precise mode, function, alignment of transit in this corridor; refinement of multimodal connections identified in recent plans also to be considered Opportunity to leverage time transit trip time advantages from Willamette River Transit Bridge into downtown Portland. Key equity benefits to serve disadvantaged populations in a corridor with important educational and employment centers.
#4 (I-405 Loop)	Future	Future	Future	Future	<ul style="list-style-type: none"> No change, although ODOT has continued to develop practical solutions, absent large funding pot for more complex and costly systemic fixes

ANALYSIS/INFORMATION

1. **Known Opposition** – None. However there is concern that affected jurisdictions, including the City of Portland, may not be able to support a planning effort with sufficient technical and policy staff engagement and oversight, due to budget shortfalls.

2. **Legal Antecedents** –

Resolution No. 01-3089, *For the Purpose of Endorsing the Findings and recommendations of the Corridor Initiatives Project*, (July 26, 2001)

Resolution No. 05-3616A, *For the Purpose of Updating the Work Program for Corridor Refinement Planning through 2020* (October 27, 2005)

Resolution No. 09-4099, *For the Purpose of Accepting the Draft 2035 Regional Transportation Plan, With the Following Elements, For Final Review and Analysis For Air Quality Conformance: the Transportation Systems Management and Operations Action Plan; the Regional Freight Plan; the High Capacity Transit System Plan; and the Regional Transportation Functional Plan* (December 17, 2009)

Resolution No. 10-4119, *For the Purpose of Approving Corridor Refinement Plan Prioritization through the Next Regional Transportation Plan Cycle (2010-2013) and initiate corridor refinement plan work in Mobility Corridor #15 (the segment in the East Metro area from I-84 southward to US 26 and the Springwater area) and Mobility Corridors #2 and # 20 (in the vicinity of I-5/Barbur Blvd, from Portland Central City southward to approximately the “Tigard Triangle”)* (February 25, 2010).

Resolution No. 12-4335, *For the Purpose of Certifying that the Portland Metropolitan Area is in Compliance with the Federal Transportation Planning Requirements and Adopting the Fiscal Year 2012-13 Unified Planning Work Program*. (April 19, 2012)

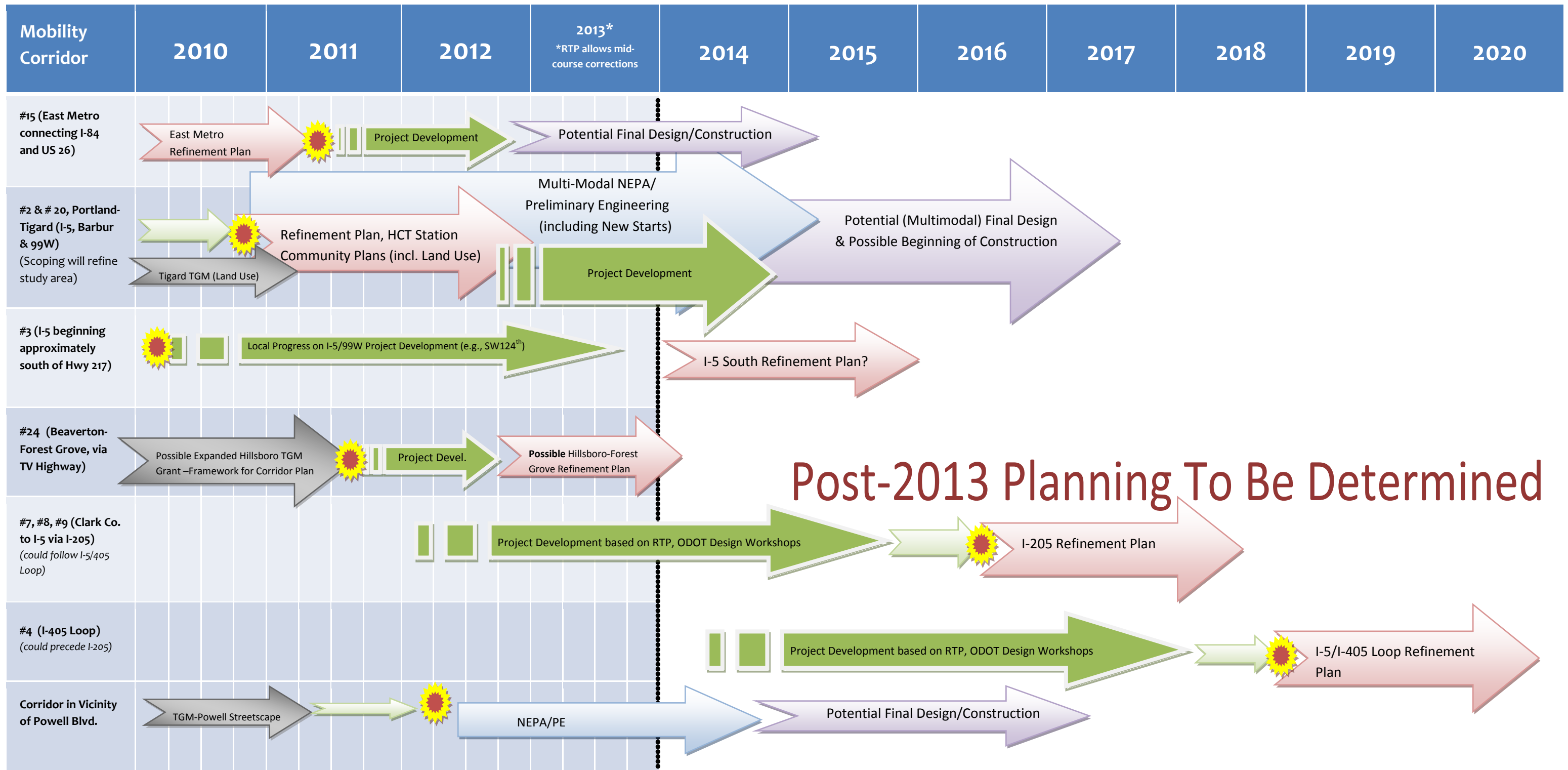
3. **Anticipated Effects** Adoption of this resolution identifies new corridor planning priorities for the 2010-2013 and 2013-2016 planning period and would enable the prioritized corridors to receive funding and staff resources needed to complete the required corridor refinement planning work by updating the work program for corridor refinement planning through 2016, and provide general guidance through 2020.
4. **Budget Impacts** Cost of performing the identified corridor refinement plan is to be determined, based upon scope.

RECOMMENDED ACTION

Approve this resolution.

ATTACHMENTS: Attachment 1 (2010 Corridor Refinement Plan Sequencing, Exhibit C from Resolution No. 10-4119)

Corridor Refinement Plan Sequencing, including Top Near-Term High-Capacity Transit Plans, through 2020 (2/8/10)



Post-2013 Planning To Be Determined

Critical Plan Elements or Goals:

- #15: Refine problem statement; identify urgent actions and solutions leading to system project development. **Moderate Effort from Metro Staff**
- #2 & #20: Phase A: Scoping and chartering to support long-term commitments. **Moderate Effort**; Phase B: **Portland Central City to Tigard Triangle: I-5, Barbur & 99W Refinement Plan, HCT Station Communities Plan, Major Effort**; Phase C: Multimodal NEPA, PE. **Major Effort**
- #24: Phase A: Beaverton-Hillsboro (TV Highway) TGM grant, plus possible expansion. **Moderate Effort**; Phase B could require refinement planning from Hillsboro to Forest Grove. **Moderate Effort**
- #3: I-5/South to Boone Bridge Refinement Plan (unresolved elements). (Potentially) **Major Effort**
- #7, 8, 9: Multimodal refinement plan. Could be phased. **Major Effort**
- #4: I-405 Loop multimodal refinement plan. Could be phased. **Major Effort**
- Powell Vicinity:** (High Capacity Transit Corridor, Alternatives Analysis, NEPA, PE). **Moderate Effort**

Starburst denotes **KEY points of required stakeholder agreement.**

Color Key: (Arrow thickness indicates relative level of effort across the region. Local agency efforts would differ.)

Planning Tasks:

- Preparatory Scoping/Chartering
- Corridor Refinement Plan
- Other Planning Work (e.g., TGM, Land Use Planning)

Project Development Tasks:

- Near-Term Road/Bike/Ped Project Development
- NEPA/Preliminary Engineering (All Modes)
- Final Design/Construction (All Modes)

Agenda Item No. 6.2

Resolution No. 12-4350, For the Purpose of Authorizing the Chief Operating Officer to Convey Certain Real Property in the Dairy and Mckay Creeks Confluence Target Area Subject to a Conservation Easement.

Resolutions

Metro Council Meeting
Thursday, May 17, 2012
Metro, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE	)	RESOLUTION NO. 12-4350
CHIEF OPERATING OFFICER TO CONVEY)	
CERTAIN REAL PROPERTY IN THE DAIRY	)	Introduced by Chief Operating Officer Martha
AND MCKAY CREEKS CONFLUENCE	)	Bennett, with the concurrence of Council
TARGET AREA SUBJECT TO A	)	President Tom Hughes
CONSERVATION EASEMENT)	

WHEREAS, on May 16, 1995, the Metro area voters approved Ballot Measure 26-26, authorizing Metro to issue \$135.6 million of bonds for Open Spaces, Parks and Streams (the “1995 Metro Open Spaces Bond Measure”); and

WHEREAS, on June 27, 1996, via Resolution No. 96-2342 (“For the Purpose of Approving a Refinement Plan for the Jackson Bottom – Dairy/McKay Creeks Target Area as Outlined in the Open Space Implementation Work Plan”), the Metro Council adopted a refinement plan which identified over 335 acres for acquisition in this target area, in order to protect the fish, wildlife and water quality values in this portion of the Tualatin River Watershed; and

WHEREAS, between November 2000 and May 2003, Metro Parks and Greenspaces acquired nine parcels totaling 493 acres in the Jackson Bottom – Dairy/McKay Creeks Target Area, including a 62-acre parcel located on Minter Bridge Road, purchased on November 11, 2000, and legally described on Attachment 1 to Exhibit A attached hereto (the “Property”); and

WHEREAS, Metro purchased the Property specifically at the request of Jackson Bottom Wetland Preserve (“JBWP”), a non-profit organization, since the Property is within the boundaries of the Jackson Bottom Concept Master Plan; and

WHEREAS, JBWP has managed the Property for Metro since its acquisition pursuant to Metro Council Resolution 00-3004, dated November 16, 2000, which included a Natural Area Management Agreement that authorized JBWP to manage the Property “for the primary purpose of natural area, open space and floodplain, and wildlife habitat”; and

WHEREAS, JBWP also manages, in partnership with the City of Hillsboro, the nearby 725-acre Jackson Bottom Wetlands Preserve for the purpose of water quality enhancement, education programs, and habitat restoration; and

WHEREAS, Metro remains responsible for capital expenses and repair and maintenance of the Property, despite day to day management by JBWP; and

WHEREAS, Clean Water Services (“CWS”), a public water resources management utility in the Tualatin River watershed, wishes to acquire the Property from Metro to use a portion of it to cultivate native plants for use in its watershed restoration work and to otherwise use the Property for public purposes (as the term is used in ORS 271.330); and

WHEREAS, in consideration for the conveyance of the Property to CWS, subject to the requirement that CWS use the Property for public purposes, Metro would obtain a conservation easement over the Property, in the form attached hereto as Exhibit A, which ensures the Property will be used in a

manner that will help achieve the wildlife and water quality goals set forth in the Open Spaces Bond Measure and the Refinement Plan for the Jackson Bottom – Dairy/McKay Creeks Target Area; and

WHEREAS, Resolution No. 06-3672B (“For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection”) adopted by the Council in March of 2006 (the “2006 Natural Areas Bond Measure”), recommended submission to the voters of a general obligation bond to preserve natural areas and clean water and protect fish and wildlife; and

WHEREAS, at the general election held on November 7, 2006 the voters approved the 2006 Natural Areas Bond Measure, which identified the Dairy and McKay Creeks Confluence Target Area goal of protecting the riparian areas and associated wetlands in the confluence area of Dairy and McKay Creeks to improve water quality; and

WHEREAS, the Metro Council approved the Dairy and McKay Creeks Confluence Target Area refinement plan for the 2006 Natural Areas Bond Measure in September of 2007 via Resolution No. 07-3855 (“Approving the Natural Areas Acquisition Refinement Plan for the Dairy and McKay Creeks Confluence Target Area”) with Tier One objectives to “Protect important riparian and lowland areas around the confluence of Dairy and Council Creeks and Dairy and McKay Creeks including linkages to existing public lands” and to “Acquire lands along Council Creek to extend protection of the riparian area and to create a linkage between existing public lands,” and a Tier Two objective to “Protect riparian and wetland areas along portions of Council, Dairy and McKay Creeks”; and

WHEREAS, the Property does not meet the objectives outlined in the 2006 Natural Areas Bond Measure’s updated Dairy and McKay Creeks Confluence Target Area refinement plan, and it is not adjacent to or near any other Metro owned property; and

WHEREAS, conveyance of the Property to CWS with Metro holding a conservation easement will protect the Property in the future while allowing Metro to focus resources on actively managing other natural area properties in furtherance of the purposes of the 2006 Natural Areas Bond Measure; and therefore,

BE IT RESOLVED that the Metro Council finds that, for the reasons stated and as provided herein, the Property is no longer needed for public use by Metro and it is in the public interest to complete the above described conveyance of the Property to CWS, and therefore the Metro Council authorizes the Chief Operating Officer to:

1. Convey the Property to CWS by deed substantially in the form attached as Exhibit B to this Resolution, or as otherwise approved by the Office of Metro Attorney, including the requirement that the Property be used for public purposes for at least twenty years following the transfer;

2. In exchange for the conveyance to CWS, obtain a conservation easement over the Property in substantially the form as Exhibit A, or as otherwise approved by the Office of Metro Attorney; and

3. Execute any other documents necessary to complete the proposed conveyance and acceptance of the conservation easement, as acceptable to the Office of Metro Attorney.

ADOPTED by the Metro Council this _____ day of May, 2012.

Tom Hughes, Council President

Approved as to Form:

Alison Kean Campbell, Metro Attorney

AFTER RECORDING RETURN TO:
Office of Metro Attorney
600 NE Grand Avenue
Portland, OR 97232-2736

GRANTOR:
Clean Water Services
2550 SW Hillsboro Highway
Hillsboro, OR 97123

GRANTEE:
Metro
600 NE Grand Avenue
Portland, Oregon 97232-2736

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (the "Easement") is entered into this _____ day of _____, 2012, by and between Clean Water Services, a county service district organized under ORS Chapter 451 ("Grantor") and Metro, an Oregon municipal corporation ("Metro").

RECITALS

A. On May 16, 1995, the Metro area voters approved Ballot Measure 26-26 (the "Bond Measure"), which provided Metro with funds for the acquisition of natural areas from willing sellers. The Bond Measure was designed to provide Metro with the ability to protect the region's significant open spaces, fish and wildlife habitat, greenways, water quality, and lands near rivers and streams.

B. With funds from the Bond Measure, Metro acquired real property approximately 62 acres in size located in the City of Hillsboro, County of Washington, State of Oregon, commonly known as 4490 SE Minter Bridge Road, and more particularly described on the attached Attachment 1 (the "Property").

C. Due to the Property's isolation from natural areas that are the focus of Metro's acquisitions under the 2006 Natural Areas Bond Measure and also due to those factors set forth in Metro Council Resolution No. 12-4350, Metro conveyed the Property to Grantor, subject to Grantor's agreement to grant to Metro this Easement.

D. In order to preserve the natural features of the Property that provide significant wildlife habitat values, to protect the Property as open space, and to enhance water quality, Grantor desires to grant to Metro, and Metro desires to accept from Grantor, a conservation easement over the Property.

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

AGREEMENT

1. Grant of Conservation Easement. Grantor hereby grants to Metro a perpetual, non-possessory conservation easement, in gross, on, over, under, and across the Property. This Easement is being created and acquired in accordance with ORS 271.715 to 271.795, and the provisions herein shall be construed and applied accordingly.

2. Purpose. The purpose of this Easement is to allow certain uses as specified in Section 4 and to ensure that the Property will be retained forever predominantly in its natural condition for protecting natural, scenic, or open space values of real property, ensuring its availability for agricultural, forest, recreational, educational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property (as that phrase is used in ORS 271.715(1)) (collectively, the "Conservation Values").

3. Prohibited Uses; Grantor Obligations.

(a) In order to protect and further the Conservation Values, Grantor shall be expressly prohibited from engaging in the following activities on the Property except as expressly permitted under Section 4 of this Easement:

- i. Water Rights. Selling, exchanging, or otherwise transferring the water rights associated with the Property off the Property, except as permitted in Section 4.
- ii. Construction. Except as permitted in Section 4, expanding the square footage of impermeable surfaces located on the Property as set forth in the Baseline Documentation (defined in Section 5, below), including any expansion of structures or parking areas, without Metro's prior written consent, which consent may be withheld in Metro's sole discretion unless the expansion is de minimus, in which event Metro's consent shall not be unreasonably withheld.
- iii. Moving Impervious Surfaces. Move or relocate any impervious surfaces in a manner that may have an adverse impact on habitat on the Property.
- iv. Mitigation Bank. Establishing a wetland or eco-system services mitigation bank on the Property whereby mitigation credits could be sold to third-parties except as permitted in Section 4.
- v. Dividing Property. The partition, division, subdivision, or *de facto* division of the Property.
- vi. Use. No undeveloped land on the Property may be converted to residential, commercial, timber, agricultural, or industrial use, except as permitted in Section 4.
- vii. Minerals. Excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, oil, gas, coal, and other hydrocarbons, soils, sands, gravel, rocks or any other materials on or below the surface of the Property.
- viii. Altering Wetlands, Water. The manipulation or alteration, diminution, or drainage of any natural water course, wetland, stream bank, riparian area, shoreline, or

body of water on the Property, any activity that causes or is likely to cause significant pollution of any surface or subsurface waters, or any use or activity that causes or is likely to cause significant soil degradation or erosion, except as permitted in Section 4.

- ix. Hazardous Wastes. Placing, filling, storing, processing, disposing, dumping, depositing, abandoning, discharging, or releasing any gaseous, liquid, solid, or hazardous wastes, substances, materials, trash, or debris of whatever nature on, in, over, or under the ground or into the surface or ground water of the Property.
- x. Invasive Species. Introducing invasive species or planting any non-native plants except as permitted in Section 4 or except with Metro's prior written consent.
- xi. Hunting. The hunting or trapping of any birds or other game for sport.

(b) In the Federal Emergency Management Agency (FEMA) 100-year flood plain portion of the Property, as set forth in the Baseline Documentation (defined in Section 5, below) (the "Lower Bench"), the long term goal is to maximize ecological benefits where practical and ensure farming practices are consistent with a Natural Resource Conservation Service (NRCS) approved conservation and farm plan (the "Conservation and Farm Plan"). Grantor shall prepare the Conservation and Farm Plan within six months of the date of this Easement. Grantor and NRCS may periodically modify the Conservation and Farm Plan with the prior written consent of Metro, not to be unreasonably withheld. All agricultural activities occurring on the Lower Bench shall use the Best Management Practices identified by the Conservation and Farm Plan. These include but are not limited to annual soil testing for nutrients, and establishing cover crops or maintenance of remnant cover crops from November 1 to April 1. By January 1, 2019, Grantor shall have completed riparian and floodplain restoration on the Lower Bench to convert a portion of the existing agricultural lands to native riparian forest for the benefit of water quality and wildlife habitat, to create a buffer of at least 135 feet and not more than 180 feet in depth, as measured from the edge of the Tualatin River, of approximately 8 acres in total. Grantor may perform additional restoration in the Lower Bench.

(c) Grantor shall provide Metro with not less than thirty (30) days written notice prior to (i) applying for any grading, tree removal (except for any trees located in the existing Christmas tree farm), building, or construction permit, and (ii) undertaking any activity that could materially interfere with or impair the Conservation Values of the Property.

4. Grantor's Affirmative Rights.

4.1 General. Grantor reserves for itself and its successors and assigns, all rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in any use of, or activity on, the Property that is not inconsistent with the terms of the Easement or otherwise prohibited by the Easement.

4.2 Pesticides. Pesticides may be used on the Property as deemed reasonably necessary by Grantor to preserve, protect or enhance the Conservation Values and must be handled in a manner consistent with Grantor's Integrated Pest Management Plan, as updated from time to time.

4.3 Construction. Grantor may construct an additional 3,200 square feet of wet propagation beds for nursery plant cultivation and an additional 3,002 square feet of

building footprint for its nursery operations, adjacent to the propagation beds or the buildings existing on the Property as set forth in the Baseline Documentation. The use of existing structures may change, consistent with laws, without contradicting the terms of this Easement.

4.4 Agricultural Use. Grantor may continue to use those portions of the Property identified as agricultural or forest lands in the Baseline Documentation for agricultural or forestry use and developed portions of the Property may be changed to agricultural or forestry use.

4.5 In-Stream Water Rights. Grantor may permanently or temporarily convert the water rights to “in-stream water rights” (as that phrase is used in ORS 537.332 to 537.360). Any proceeds in the sale or lease of water rights for in-stream uses shall be reinvested into wildlife or habitat restoration on the Property.

4.6 Ecosystem Services. Grantor may enter into and make use of in lieu fee and ecosystem services or arrangements that are managed by and for Grantor’s benefit.

4.7 Trail Construction. Grantor may maintain, renovate, or replace existing trails as identified in the Baseline Documentation, and may expand or add trails with Grantee’s prior written consent, provided that all such trails: (a) either serve the existing use of the Property, provide recreation to the public, or assist with fire protection, and (b) are located, designed, and constructed in a manner and with materials that prevent soil erosion and prevent damage to fragile plant communities and wildlife habitat.

4.8 Dam. Grantor may repair and retrofit the existing small earthen dam and reservoir as described in the Oregon Water Resources Department Water Right Application No. S-30496 and Permit No. S-24018 and perform any wetland and stream channel restoration to improve fish and wildlife habitat, and ecological functions as permitted by federal, state, and local regulations.

5. Baseline Documentation. The current condition of the Property is documented in an inventory of relevant features of the Property, dated _____, 2012, on file at the offices of Grantor (the “Baseline Documentation”). The parties agree that the Baseline Documentation provides an accurate representation and description of the Property at the time of this grant. The Baseline Documentation is intended to serve as an objective, although not exclusive, information baseline for monitoring compliance with the terms of this Easement. Metro shall have the right to access the Property at reasonable times for the purpose of monitoring compliance with the terms of this Easement. **[METRO TO CREATE A BASELINE DOCUMENTATION]**

6. Enforcement and Remedies.

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

approved by Metro except for modifications or improvements allowed to be made by Grantor per Section 4.

(b) Failure to Cure. If Grantor fails to cure a violation within 30 days after Grantor's receipt of notice thereof from Metro, or under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing the violation within the 30-day period, Metro may bring an action at law or in equity to (i) enforce the terms of this Easement, (ii) enjoin the violation by a temporary, preliminary, and/or permanent injunction, (iii) recover any damages to which Metro may be entitled for such violation of the terms of this Easement, and (iv) require the restoration of the Property to the condition and appearance that existed prior to such violation.

(c) Emergency Enforcement. If Metro reasonably determines that the circumstances require immediate action to prevent or mitigate significant damage to the Property, Metro may enter the Property to prevent or mitigate further damage to or alteration of the Property necessary to protect the Conservation Values or otherwise pursue its remedies under this Section 6 without prior notice to Grantor. Metro shall provide notice to Grantor of any actions taken pursuant to this Section within 24 hours of taking the action.

(d) Nature of Remedies. Metro shall have available all legal and equitable remedies to enforce Grantor's obligations hereunder. Grantor agrees that Metro's remedies at law for any violation of the terms of this Easement are inadequate, and that Metro shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which Metro may be entitled, including without limitation specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies when seeking specific performance. Metro's rights under this Section 6 shall be cumulative, in addition to all remedies now or hereafter existing at law or in equity, and apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor specifically acknowledges and agrees that the remedies set forth in this Section do not preclude exercise of the remedies set forth in the Bargain and Sale Deed for the Property, from Metro to Grantor, recorded in the official records of Washington County on _____, 2012, as recording number _____ (the "Bargain and Sale Deed").

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

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

(g) Waiver of Certain Defenses. Grantor acknowledges that it has carefully reviewed this Easement and has had the opportunity to consult with and been advised by legal counsel

of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Metro or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, adverse possession, or prescription.

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

(i) Dispute Resolution. If any dispute arising out of this Easement cannot be resolved by the Grantor and Grantee staff representatives, the matter will be referred to the staff representatives' respective supervisors for resolution. If the supervisors are unable to resolve the dispute within 30 days of referral, the matter will be referred to Grantor's General Manager and Grantee's Chief Operating Officer, who will attempt to resolve the issue. The parties agree to make a good faith effort to settle the dispute before resorting to arbitration, litigation, or some other dispute resolution procedure.

7. Liability and Indemnification.

(a) Liability. The parties acknowledge and agree that because Grantor is the fee owner of the Property, except as specifically provided for under the Bargain and Sale Deed and subsection (b) below, the general liability for risks, damages, injuries, claims, or costs arising by virtue of Grantor's ownership and use of the Property shall remain with Grantor as a normal and customary incident of the right of Property ownership. Nothing in this Easement shall be construed as giving rise to any right or ability of Metro to exercise physical or manual control over the day-to-day operations of the Property, or to otherwise become an "owner" or "operator" of the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or ORS Chapters 465 and 466, as amended.

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

8. Public Access. Nothing in this Easement gives the general public a right to enter upon or use the Property where no right existed prior to the conveyance of the Easement.

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

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

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

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

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

To Grantor: Clean Water Services
 Watershed Management Director
 2550 SW Hillsboro Highway
 Hillsboro, OR 97123

To Metro: Metro
 Natural Areas Program Director
 600 NE Grand Avenue
 Portland, OR 97232

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

14. General Provisions.

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

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

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

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

(e) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 10.

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

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

METRO, an Oregon municipal corporation

CLEAN WATER SERVICES

By: _____
Martha J. Bennett, Chief Operating Officer

By: _____
Bill Gaffi, General Manager

APPROVED AS TO FORM

District Counsel

State of OREGON
County of MULTNOMAH

This instrument was acknowledged before me on _____, 2012 by Martha J. Bennett, as Chief Operating Officer of Metro.

Notary Public - State of Oregon

State of OREGON
County of _____

This instrument was acknowledged before me on _____, 2012 by Bill Gaffi, as General Manager of Clean Water Services.

Notary Public - State of Oregon

Attachment 1

Property Description

PARCEL 1: A tract of land in Section 18, Township 1 South, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at the Northwest corner of that tract of land conveyed to Victor and Cora Madsen, husband and wife, in Washington County Deed Records Book 344 page 239; thence South 0° 06' West 740 feet on the West line of said Madsen Tract, to the point of beginning; thence continuing South 0° 06' West on said West line, 250 feet to a point; thence South 89° 54' East, 115 feet to a point; thence parallel to the West line of said Madsen Tract, North 0° 06' East, 250 feet to a point; thence North 89° 54' West, 115 feet to the point of beginning.

PARCEL 2: A tract of land in Section 18, Township 1 South, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at the Northwest corner of that tract of land conveyed to Roger Madsen, et ux, by deed recorded November 21, 1978 as Recorder's Fee No. 78051115, said beginning point lies in the center of Minter Bridge Road and bears South 65° 12' West 582.8 feet from the Southeast corner of the George Sigler Donation Land Claim No. 42; thence South 0° 06' East 1433.0 feet along the West line of said Madsen tract to the Southwesterly corner thereof; thence South 61° 34' East 583.2 feet along the Southerly line of said Madsen tract to an iron rod; thence South 73° 34' East 246.0 feet along said Southerly line of Madsen tract to a point lying in the center of the Tualatin River, said point also being the Southeast corner of that tract of land conveyed to Anton Nussbaumer, et ux, by Deed recorded in Book 286 page 814; thence following up the center of said Tualatin River with all the meanderings thereof 2500 feet, more or less, to a point in the center of said river and the East line of a tract conveyed to W.G. Hare on March 15, 1939 in Book 179 page 157, Deed Records; thence North 1268.0 feet, more or less, along the Hare East line to a point in the center of the Minter Bridge Road (County Road No. 1174); thence along the center of said Minter Bridge Road North 88° 12' East 197.0 feet to an iron at angle in said road; thence along center of said road North 62° 12' East 400.3 feet, more or less, to the point of beginning.

PARCEL 3: A tract of land in Section 18, Township 1 South, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at the Southeast corner of the George Sigler Donation Land Claim No. 42, in said Section 18, and running thence South 89° 48' East, 220.5 feet to a steel shaft at the Northeast corner of Tract No. 2 of the lands conveyed to Anton and Bertha Nussbaumer, by Deed recorded on page 814 of Book 286, Washington County,

Oregon, Deed Records; thence along the East line of the Nussbaumer Tract, South 0° 06' West, 2024.0 feet to the Southeast corner thereof in the center of the Tuálatin River, from which point an iron rod bears North 0° 06' East, 94.7 feet; thence North 73° 34' West 246.0 feet to an iron rod; thence following a line of fence, North 61° 34' West, 583.2 feet to an iron rod; thence North 0° 06' East, 1433.0 feet to a point in the center of the Minter Bridge Road, from which point an iron rod bears South 0° 06' West, 27.6 feet; thence in the center of the Minter Bridge Road, North 65° 12' East 582.8 feet to the place of beginning.

EXCEPTING HOWEVER, that certain property heretofore conveyed to Roger Madsen and Gail Madsen, by deed, recorded in Book 716 page 446, September 23, 1968, described more particularly as follows:

A tract of land in Section 18, Township 1 South, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at the Northwest corner of that tract of land conveyed to Victor and Cora Madsen, husband and wife, in Washington County Deed Records Book 344 page 239; thence South 0° 06' West 740 feet on the West line of said Madsen Tract, to the point of beginning; thence continuing South 0° 06' West on said West line, 250 feet to a point; thence South 89° 54' East, 115 feet to a point; thence parallel to the West line of said Madsen Tract, North 0° 06' East, 250 feet to a point; thence North 89° 54' West, 115 feet to the point of beginning.

ALSO EXCEPTING the following described tract, to-wit:

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Beginning at the Southeast corner of George Sigler Donation Land Claim No. 42; thence South 89° 48' East, 220.5 feet to a point; thence North 0° 06' East 102.74 feet to the center of Minter Bridge Road; thence South 65° 12' West, along said center line, 243.1 feet to the place of beginning, and the following described tract:

Beginning at the Southeast corner of George Sigler Donation Land Claim No. 42; thence South 89° 48' East, 220.5 feet to a point; thence South 0° 06' West, 250 feet; thence North 89° 58' West, 220.5 feet; thence North 0° 06' East, 250 feet to the point of beginning.

AFTER RECORDING RETURN
TO AND SEND ALL TAX
STATEMENTS TO:
Clean Water Services
2550 SW Hillsboro Highway
Hillsboro, OR 97123

BARGAIN AND SALE DEED

Metro, a municipal corporation (“Grantor”), under the authority granted by ORS 271.330(1), hereby conveys to Clean Water Services, a county service district of the State of Oregon (“Grantee”), the real property described on the attached Addendum 1 (the “Property”) but if Grantee fails to use the Property for a public purpose within the first twenty (20) years following the date of this deed, then Grantor, or its successors or assigns, may enter and terminate this estate as provided below.

Grantor may send a notice of default to Grantee on or prior to the expiration of the twenty (20) year period following the date of this deed, and if use of the Property for a public purpose does not resume within thirty (30) days following such notice, then Grantor may reenter and terminate this estate. If the condition subsequent and right of reentry set forth herein is declared invalid or unenforceable, then the restriction shall be construed as a covenant running with the land, enforceable by Grantor and its successors and assigns through specific performance and any other available remedy.

Grantee specifically acknowledges and agrees, as evidenced by acceptance and recordation of this deed, that the Property is being conveyed in an “AS IS” condition and “WITH ALL FAULTS” as of the date hereof. No statements, representations or warranties have been made or are made and no responsibility has been or is assumed by Grantor, or any representative acting or purporting to act on behalf of Grantor, as to any matters concerning, or that might in any manner affect, the Property, including but not limited to the condition or repair of the Property. Grantee further acknowledges and agrees that Grantee is solely responsible for ensuring that its use of the Property complies with all applicable laws and regulations, and that Grantor has made no representation or warranty that the use of the Property as of the date of this deed complies with current zoning or other applicable law.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007,

SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

The true and actual consideration for this conveyance is other consideration or value received.

Dated: _____, 2012.

METRO, a municipal corporation

By: _____
Martha J. Bennett, Chief Operating Officer

State of Oregon
County of Multnomah

This instrument was acknowledged before me on _____, 2012 by Martha J. Bennett, as Chief Executive Officer of Metro, a municipal corporation.

Notary Public - State of Oregon

This conveyance is approved as to form and content and accepted by Clean Water Services, a special county district of the State of Oregon, as of the date of the conveyance.

Clean Water Services

By: _____

Name: _____

Title: _____

State of Oregon
County of Washington

This instrument was acknowledged before me on _____, 2012 by _____, as _____ of Clean Water Services.

Notary Public - State of Oregon

Addendum 1

The Property

PARCEL 1: A tract of land in Section 18, Township 1 South, Range 2 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 12-4350 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO CONVEY CERTAIN REAL PROPERTY IN THE DAIRY AND MCKAY CREEKS CONFLUENCE TARGET AREA SUBJECT TO A CONSERVATION EASEMENT

Date: May 17, 2012

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

BACKGROUND

Resolution No. 12-4350 requests authorization for the Chief Operating Officer to convey to Clean Water Services (“CWS”) certain real property, described in Attachment 1 to Exhibit A to the resolution (the “Property”), purchased by Metro with 1995 Open Spaces Bond Measure (the “1995 Bond Measure”) proceeds.

In November 2000, Metro purchased the Property specifically at the request of Jackson Bottom Wetland Preserve (“JBWP”) as it was included in the boundaries of the Jackson Bottom Concept Master Plan. JBWP has managed the Property since that time. This arrangement was approved by Metro Council in Resolution 00-3004, dated November 16, 2000, which included a Natural Area Management Agreement that authorized JBWP to manage the Property “for the primary purpose of natural area, open space and floodplain, and wildlife habitat.” JBWP also manages, in conjunction with the City of Hillsboro, the nearby 725-acre Jackson Bottom Wetlands Preserve for the purpose of water quality enhancement, education programs, and habitat restoration. JBWP is an Oregon registered nonprofit corporation that is located adjacent to the CWS administrative offices at 2600 SW Hillsboro Highway. CWS is an agency partner with JBWP.

The Property contains 62-acres of farmland, including approximately 2,500 feet of Tualatin River frontage, a residence, and two outbuildings. It is located one mile south of Hillsboro at 4490 SE Minter Bridge Road. While JBWP is responsible for the day to day management of the Property, Metro is still obligated to pay for capital expenses, such as major repairs to the buildings, pumps, and pond irrigation.

CWS is a water resources management utility in the Tualatin River Watershed that operates a unified public sanitary sewer and surface water management system in urban Washington County. CWS’s overarching goal is to keep the Tualatin River and its tributaries clean and safe for people, fish and wildlife. In addition to operating its sewer and surface water management systems, CWS improves the health to the Tualatin River through watershed restoration such as stream enhancement with native plants, fish habitat protection, and flood management projects to name a few. CWS intends to use the Property in part for its Stream Operation center to cultivate native plants for its watershed restoration work. It will also continue to manage the property in conjunction with JBWP.

Title will be conveyed to the CWS, and Metro will retain a conservation easement (the “Easement”) over the entire property. In general terms, a conservation easement is a legal agreement between a landowner and a qualified conservation agency (e.g. Metro) that protects the property to promote conservation goals. Conservation easements are authorized by state law under ORS 271.715 et seq. The proposed Easement ensures the Property will be maintained forever predominantly in its natural condition and includes specific prohibitions and allowable uses that are consistent with uses allowed under the 1995 bond measure. For example, the Easement specifically prohibits subdivision, mineral extraction, increasing impervious surfaces, and additional construction except for the limited right of CWS to moderately expand its native plant nursery operations and to retrofit an existing earthen irrigation pond. The Easement allows agriculture to continue in the upland fields outside the 100-year floodplain. Within the

100-year floodplain, the long term goal is to maximize ecological benefits where practical and ensure that any continued farming practices are consistent with a federal agency approved conservation farm plan. CWS is also required to restore up to eight acres of riparian forest and floodplain.

Oregon Revised Statute 271.330(1) authorizes any political subdivision to convey real property not needed for public use to any governmental body, provided such property issued for not less than 20 years for a public purpose by the governmental body in the State of Oregon. This requirement will be memorialized in a deed restriction that runs with the land and remains on title. Moreover, title to the Property would revert back to Metro if the Property is used not used in conformance with the deed restriction. Metro Code section 2.04.026(a)(2) requires that the Chief Operating Officer obtain approval from the Metro Council prior to transferring any real property owned by Metro.

Transfer of the Property allows Metro to deploy land management and operations staff more efficiently while ensuring the habitat values protected with 1995 bond proceeds stay intact.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

ORS 271.330(1) states in relevant part:

Any political subdivision is granted express power to relinquish the title to any of its property not needed for public use to any governmental body, providing such property shall be used for not less than 20 years for a public purpose by the governmental body in the State of Oregon.

Metro Code section 2.04.026(a)(2) requires that the Chief Operating Office obtain the authorization of the Metro Council prior to transferring title of real property owned by Metro.

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

ORS 271.715(1), State of Oregon authorization for creation of conservation easements.

3. Anticipated Effects

Title to the Property will transfer to CWS with the legally required deed restriction that protects the Property. Metro will hold a conservation easement on the Property.

4. Budget Impacts

The transfer of the Property will relieve Metro of capital expenses for the residence, well pumps, and irrigation system. Other than recording costs and baseline documentation of the Property for the Conservation Easement, Metro will not bear any out-of-pocket costs for this transfer.

RECOMMENDED ACTION

The Chief Operating Officer recommends passage of Resolution No. 12-4350.

Agenda Item No. 6.3

Resolution No. 12-4343, For the Purpose of Approving Fifth Round Funding for Nature in Neighborhoods Capital Grants.

Resolutions

Metro Council Meeting
Thursday, May 17, 2012
Metro, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING FIFTH) RESOLUTION NO. 12-4343
ROUND FUNDING FOR NATURE IN)
NEIGHBORHOODS CAPITAL GRANTS) Introduced by Carl Hosticka, with the
) concurrence of Council President Tom
) Hughes

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

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

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

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

WHEREAS, on March 20, 2012 the Grants Review Committee reviewed proposals for grants and is recommending six projects that best meet the criteria for the Program to the Metro Council for funding; now therefore.

BE IT RESOLVED that the Metro Council hereby:

1. Awards Nature in Neighborhoods Capital Grants to those recipients and projects, and for the funding amounts, listed in Exhibit A to this resolution; and
2. Authorizes the Chief Operating Officer to enter into an intergovernmental agreement ("IGA") with each of the recipients substantially in conformance with the form of IGA attached to this resolution as Exhibit B; and
3. For those projects that are for real property acquisitions, conditions Metro's grant award on the recipient granting a conservation easement to Metro, substantially in the form attached to this resolution as Exhibit C, and authorizes the Chief Operating Officer to accept such conservation easement from each such recipient.

ADOPTED by the Metro Council this _____ day of May, 2012.

Tom Hughes, Council President

Approved as to Form:

Alison Kean Campbell, Metro Attorney

Nature in Neighborhoods Capital Grants Program
Fifth Round Grant Awards
Grant Review Committee Recommendations to the Metro Council

Project: Hall Creek Water Quality and Pathway (114th-117th) Enhancement Project
Grant amount: \$354,304
Recipient: City of Beaverton
Partners: Arts and Communications Magnet Academy, Beaverton Police Department, Clean Water Services, Tualatin Hills Park & Recreation District, Friends of Trees, Kiwanis Club, SOLVe, Friends of Beaverton Creek, property owners providing easements (Assistance League of Portland, Carr Subaru, Realvest Lynn Marie Apartments, TriMet, and Robert Zukin/Louis Busch)

This project will enhance water quality by reconnecting the floodplain and stabilizing the banks of a 650 foot section of Hall Creek in Beaverton. By working with six adjacent property owners to enhance habitat and increase flood storage capacity for surrounding businesses, Beaverton hopes to demonstrate how the creek can be turned into an asset for redevelopment. To accomplish these goals the City will realign the creek and adjacent trail, excavate sections of the floodplain, remove invasive species, stabilize the banks with native plants, remove existing impervious surfaces and install a rain garden.

Project: Lily K. Johnson Woods Natural Area Expansion
Grant amount: \$344,681
Recipient: Tualatin Hills Park & Recreation District
Partners: Washington County and Friends of Beaverton's Johnson Creek

Five parcels totaling 5.56 acres will be acquired by this grant in order to expand the Lilly K. Johnson natural area and preserve the natural features of these sites. The expansion includes scenic forested areas and a wetland, serving as a magnet for migratory birds. It also helps store floodwater from surrounding neighborhoods, providing water quality benefits to Beaverton's Johnson Creek

Project: Baltimore Woods Connectivity Corridor Phase 2
Grant amount: \$381,000
Recipient: Columbia Land Trust and Friends of Baltimore Woods
Partners: Portland Bureau of Environmental Services, Portland Parks & Recreation, SOLVe, Port of Portland, Cathedral Park Place LLC

Baltimore Woods connectivity corridor is a 30-acre strip of undeveloped land in the Cathedral Park Neighborhood that separates the residential area from the industrial land along the riverbank. This project will acquire four parcels totaling 1.94 acres in order to preserve connectivity in a corridor of woodlands and oak habitat stretching along the east bank of the Willamette River from Kelly Point Park to Oaks Bottom. The acquisition of the proposed parcels complements previously acquired sites funded by both the Capital Grants program and the Natural Areas program. These acquisitions will also protect several native oak trees and allow for restoration including the removal of invasive blackberry and replanting of natives. Community involvement in the preservation and restoration of these sites will enrich people's experience and appreciation of the oak habitat. North Decatur Street is identified as a future link in the 40-Mile Loop Trail system and future users will appreciate walking along the natural corridor.

Project: Let Us Build Cully Park!
Grant amount: \$577,000
Recipient: Verde
Partners: Native American Youth & Family Center, Hacienda CDC, Portland Community Reinvestment Initiatives, Columbia Slough Watershed Council, Coalition for a Livable Future, Portland Youth & Elders Council, City of Portland (parks, environmental services, transportation), Oregon Department of Environmental Quality, Oregon Office of Environmental Public Health, Harvey Scott School, Vigil-Agrimis, Terrafluxus, GeoDesign, National Association of Minority Contractors-OR, Metropolitan Contractor Improvement Partnership, Jordan-Ramis, Probitry Builders, Emma’s Garden

The project carries out the first phase of the Portland Parks and Recreation’s master plan to transform a 25-acre landfill into a to Community Park in the low- income and park-deficient Cully neighborhood. Park improvements will include walking trails, a small soccer field and basketball court, play and picnic areas, and community gardens. Funds will also be used to provide visitor access improvements including a parking area and a sidewalk along 72nd Avenue from Northeast Killingsworth Avenue to the park entrance. The development will also bring jobs, skills training and community involvement opportunities to diverse community groups and neighbors.

Project: Nadaka Nature Park
Grant amount: \$238,806
Recipient: Columbia Slough Watershed Council
Partners: Audubon Society of Portland, Wilkes East Neighborhood Association, Rockwood Neighborhood Association, City of Gresham, East Multnomah Soil & Water Conservation District, St. Aidan’s Episcopal Church, Verde, H.B. Lee Community School, Snowcap Charities, Police Activities League, Pacific Gardens Alzheimer’s Special Care Center, Metropolitan Family Services, Human Solutions, Grow Portland, El Programa Hispano, Eastrose Fellowship, Coalition for a Livable Future

The Nadaka Nature Park & Garden project will implement the Nelson Property Neighborhood Park Master Plan. Sustainable site development practices will be used to provide places for community gathering, nature-based play, a community garden and a seamless transition into the 10-acre Nadaka Nature Park. This community-driven project is guided by a project team made up of 17 different agencies and organizations. The team will also develop and implement a 5-year operation and maintenance plan, making this unique in terms of the process for park development as well as increasing the community’s responsibility to actively take care of their park

Project: Stone Bridge Fish Passage on Nettle Creek
Grant amount: \$47,090
Recipient: Tryon Creek Watershed Council
Partners: Tryon Creek State Park, Henderson Land Services, Friends of Tryon Creek, Oregon Department of Fish and Wildlife

Nettle Creek is a tributary of Tryon Creek that flows through Tryon Creek State park. This project will replace a stone bridge that is constructed on top of an undersized culvert with a free spanning bridge or open bottom culvert. In addition to removing a fish passage barrier, the project will also regrade the stream, stabilize the banks and enhance stream habitat. Improvements will also help protect a regional trail corridor being threatened by the erosion.

Project: Natural Areas Capital Grants Program

Contract No. _____

INTERGOVERNMENTAL AGREEMENT
Natural Areas Bond Measure
Capital Grant Award

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

RECITALS

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

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

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

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

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

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

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

NOW THEREFORE, the parties agree as follows:

1. Purpose; Scope of Work; Limitations

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

2. Declaration of Capital Project

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

3. Contract Sum and Terms of Payment

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

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

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

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

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

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

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

5. Funding Recognition

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

6. Term

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

7. Termination for Cause

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

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

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

8. Joint Termination for Convenience

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

9. Oregon Constitution and Tax Exempt Bond Covenants

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

10. Liability and Indemnification

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

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

11. Contractors' Insurance

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

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

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

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

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

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

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

12. Safety

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

13. Metro's Right to Withhold Payments

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

14. Project Records, Audits, and Inspections

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

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

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

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

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

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

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

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

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

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

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

15. Public Records

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

16. Law of Oregon; Public Contracting Provisions

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

17. Notices and Parties' Representatives

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

Grant Recipient's Designated Representatives:

Fax _____

Metro's Designated Representatives:

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

with copy to:

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

18. Assignment

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

19. Severability

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

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

20. No Waiver of Claims; Modifications

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

21. Integration of Agreement Documents

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

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

[Name of City/County/District]

METRO

Signature

Martha Bennett
Metro Chief Operating Officer

Print Name: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM BY:

Signature

[Name]
Senior Assistant Metro Attorney

Print Name: _____

Title: _____

Date: _____

Date: _____

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After recording return to:

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

CONSERVATION EASEMENT

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

RECITALS

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

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

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

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

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

AGREEMENT

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

2. Purpose.

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

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

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

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

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

5. Enforcement and Remedies.

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

(b) Failure to Cure. If Grantor fails to cure a violation within 30 days after Grantor’s receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 30-day

period, fails to begin curing the violation within the 30-day period, Grantee may bring an action at law or in equity to (i) enforce the terms of this Easement, (ii) enjoin the violation by a temporary, preliminary, and/or permanent injunction, (iii) recover any damages to which Grantee may be entitled for such violation of the terms of this Easement, and (iv) require the restoration of the Property to the condition and appearance that existed prior to such violation.

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

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

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

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

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

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

6. Liability and Indemnification.

(a) Liability. The parties acknowledge and agree that because Grantor is the fee owner of the Property, except as specifically provided for under subsection (b) below, the general liability for risks, damages, injuries, claims, or costs arising by virtue of Grantor's ownership and use of the Property shall remain with Grantor as a

normal and customary incident of the right of Property ownership. Nothing in this Easement shall be construed as giving rise to any right or ability of Grantee to become an "owner" or "operator" of the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or ORS Chapters 465 and 466, as amended.

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

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

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

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

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

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

To Grantor: _____

To Grantee: Metro
Natural Areas Program Director
600 NE Grand Avenue
Portland, OR 97232

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

12. General Provisions.

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

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

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

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

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

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

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

GRANTEE:
METRO, an Oregon municipal corporation

GRANTOR:

By: _____
Martha Bennett, Chief Operating Officer

[name]

[name]

State of OREGON
County of MULTNOMAH

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

Notary Public - State of Oregon

State of OREGON
County of _____

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

Notary Public - State of Oregon

State of OREGON
County of _____

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

Notary Public - State of Oregon

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Exhibit A

Property Description

Exhibit B

Grantor's Prohibited Uses and Activities

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

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 12-4343, APPROVING FIFTH ROUND FUNDING FOR NATURE IN NEIGHBORHOODS CAPITAL GRANTS

Date: May 17, 2012

Prepared by: Heather Nelson Kent, 503-797-1739
Mary Rose Navarro, 503-797-1781

BACKGROUND

Funded by the voter-approved 2006 Natural Areas bond measure, Metro's Nature in Neighborhoods capital grants program started with the 2006 Natural Areas bond measure. The grant program complements the bond program's regional and local elements by protecting and enhancing natural resources on public lands at a neighborhood scale. Grants are awarded based on their ability to meet the program criteria and deliver strong community benefits.

Program history and development

Program staff and management, the Capital Grants Review and Natural Areas Program Oversight committees have worked together to establish a transparent process with strong administrative systems for accountability, evaluation and performance measurement.

These include:

- development of administrative procedures, documentation and accounting systems;
- an outreach strategy; updated each year in an effort to engage a wide variety of constituencies;
- benchmarks for performance including a performance measurement system for grant projects reviewed by the Natural Areas Program Oversight Committee.

Program status

With the recommendation before the Metro Council today, \$6,633,436 of the \$15 million has been awarded to projects.

Currently there is \$8,437,712 available to future projects, including unused funds from previously awarded projects.

Grant Evaluation Criteria

The Metro Council defined seven key criteria for evaluating capital grants in the 2006 Natural Areas bond:

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

Application/Review Process

Potential applicants begin the process by submitting a Letter of Interest. Letters are reviewed by staff to evaluate how strongly a potential project meets the grant criteria. Staff provides applicants with technical support, feedback and suggestions of ways to strengthen a project before inviting full applications. The Grant Review Committee, appointed by Council, reviews all full applications based on the above evaluation criteria. The Grant Review Committee engages in a thoughtful review of each application that

includes staff assessments, site visits and a minimum of two committee meetings to arrive at recommendations for funding. The committee works with staff to develop performance measures and conditions of approval in order to reduce project risks and strengthen project outcomes. The Metro Council decides all final grant awards.

Grant Awards to Date

The Capital Grants program was first announced in September of 2007. The Metro Council has previously approved four rounds of grants, awarding \$4,690,555 to the following projects:

Land Acquisition

Nadaka Nature Park acquisition
White oak savanna acquisition
Baltimore Woods connectivity corridor
Summer Creek natural area acquisition

Urban Transformation

Greening the Interstate 205 corridor
Re-greening Park Avenue park and ride
Green Alley at Virginia Garcia Memorial Health Clinic

Restoration

Trillium Creek restoration
Crystal Springs partnership
Boardman Creek fish habitat restoration project
Klein Point overlook and habitat enhancement project
Mount Scott Creek restoration at North Clackamas Park
Wapato Marsh wetland restoration project

Neighborhood Livability

Crystal Springs Creek restoration and nature play at Westmorland Park
Conservation Corner: North Portland nature and discovery garden
Hawthorne Grove Park acquisition and development
Humboldt learning garden
Wildside Boardwalk at Pleasant Valley School

2012 Awards

The Grant Review Committee recommends the following six projects for funding totaling \$1,942,881 from the Nature in Neighborhoods Capital Grants Program. On March 20, 2012 the Grant Review Committee met to review the final slate of applications and to make a funding recommendation to the Metro Council.

- \$354,304 grant for Hall Creek in Beaverton
- \$381,000 grant for Baltimore Woods acquisition phase II
- \$47,090 grant for the Tryon Creek Stone Bridge replacement
- \$238,800 for Nadaka Nature Park and Garden
- \$577,000 for Let Us Build Cully Park!
- \$344,681 for Lily K. Johnson Woods expansion

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

- engage diverse partnerships,
- were initiated and driven by the community,
- benefit water quality,
- have the ability to influence other projects that will improve habitat and water quality,
- improve people's access to nature in low-income communities, and
- address racial disparities by providing jobs and increasing opportunities for active living within low-income, diverse communities.

Eight projects were invited to submit full applications on January 9, 2012 in this review cycle from the ten letters of interest received by Metro.

Grant review committee recommendations include decisions that set a precedent for future grant applications. These include guidelines regarding second time funding for projects previously awarded Capital Grants, green streets, and acquisitions based on purchase and sale agreements (rather than appraised value).

ANAYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

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

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

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

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

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

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

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

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

Resolution No. 10-4134, "Approving Third Round Funding for Nature in Neighborhoods Capital Grants" was adopted on March 18, 2010.

Resolution No. 11-4256, "Approving Fourth Round Funding for Nature in Neighborhoods Capital Grants" was adopted on May 19, 2011.

Resolution No. 12-4318, "Confirming the Appointment of Members of the Nature in Neighborhoods Capital Grants Review Committee" was adopted on January 12, 2012.

3. Anticipated Effects

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

4. Budget Impacts

The resolution referring the 2006 Natural Areas bond measure to voters, approved by the Metro Council, authorized spending up to \$15 million toward this program, with no more than \$2.25 million spent in any given year. This is the fifth round of grants recommended for funding. The adopted FY 2011-12 budget includes the necessary appropriation authority for reimbursement of these grants.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of Resolution No. 12-4343.

Materials following this page were distributed at the meeting.

Metro Counsel Powell HCT Proposal

Hello my name is Tom Barnes and I was the Co-chair of the East Portland Action Plan Powell Blvd sub committee and I am a member of the Powell Blvd Citizens Working Group. The Powell Blvd CWG worked with Oregon Department of Transportation, and Portland Bureau of transportation to help create the current plan for Powell Blvd that will be going to Portland City Council on June 7th for adoption. I would like to clarify some of the possible misunderstandings regarding the plan for Powell Blvd that is supported by ODOT, PBOT, The effected neighborhoods along Powell Blvd, The overwhelming majority of city residence that came to the open houses held by PBOT, and hopefully City Council.

The Powell Blvd plan is broken into 4 segments. Segments 1-2 and 3 go from I205 to se 162nd Ave. These 3 segments are designated to be three lanes, with 1 lane traveling in each direction and a center turn lane. Segment 4 is from se 162nd Ave to the east city boarder. This segment is designated to be 4 lanes for the near term, with the possibility of becoming 5 lanes in the future, but only if certain criteria are met. All segments will have enhanced bike lanes and sidewalks, they will also have improved street crossings and bio swales to capture rainwater runoff.

It has been stated that “ There is a need for a refinement plan on this near-term regional priority corridor to analyze the potential opportunities for improved transit service and to resolve concerns over the effect HCT would have on vehicular mobility and freight on Powell Blvd if High Capacity Transit were to be located there. Any HCT on Powell should attempt to stay within the 104 feet of right-of-way as would be required for a five lane enhanced roadway section.”

By Metro's own standards HCT cannot be placed on Powell Blvd do to the fact that Powell Blvd will only be 3 lanes for the majority of the planned improvement, and only a small section is planned to be 4 lanes, with no plans to be increased to 5 lanes at this time

I fully support High Capacity Transit and the council's efforts to advance this project. I look forward to working with Metro as this project moves forward

Thank you,



Nature in Neighborhoods



2012 Capital Grant Awards

May 17, 2012



Capital Grant program awards

Awards to date:

\$4,690,433



2012 recommendation:

\$1,942,881



Program total:

\$6,633,436



Qualities of Successful Projects

- **Community engagement**
- **Diverse partnerships**
- **Multiple benefits**
- **Innovative**
- **Frame in larger context**



Capital Grant awards to date

Acquisition

Nadaka Nature park
Summer Creek
White Oak Savanna
Baltimore Woods

Restoration

Crystal Springs
Klein Point
Mt. Scott Creek
Boardman Creek
Wapato Marsh

Urban

Transformation

Park Avenue Transit Station
Regreening I-205
Virginia Garcia Health Clinic

Neighborhood Projects

Hawthorn Park
Humboldt Learning Garden
Westmoreland Park
East Multnomah Soil & Water
Pleasant Valley School
Boardwalk

Acquisition Projects

Access to Nature

- Nadaka Nature Park (\$220,000)

Preserving Unique Habitat

- White Oak Savanna (\$334,000)
- Summer Creek (\$1,000,000)
- Baltimore Woods (\$158,000)

Characteristics

- Opportunities identified by community
- Not included in target area goals
- Land trust involvement

Acquisition Projects

Access to Nature

- Nadaka Nature park (\$220,000)

Preserving Unique Habitat

- White Oak Savanna (\$334,000)
- Summer Creek (\$1,000,000)
- Baltimore Woods (\$158,000)

Characteristics

- Opportunities
- Not included in
- Land trust invo

- ✓ **Community engagement**
- × **Diverse partnerships**
- × **Multiple benefits**
- × **Innovative**
- ✓ **Frame in larger context**

Restoration Projects

- Crystal Springs (\$311,480)
- Klein Point Overlook (\$255,000)
- Mt. Scott Creek (\$150,034)
- Boardman Creek (\$485,000)
- Wapato Marsh (\$129,200)

Characteristics

- Focus on fish habitat to date
- Heavily based in scientist and agency input
- Forwards restoration priorities within a watershed basin or floodplain

Restoration Projects

- Crystal Springs (\$311,480)
- Klein Point Overlook (\$255,000)
- Mt Scott Creek (\$150,034)
- Boardman Creek (\$485,000)
- Wapato Marsh (\$129,200)

Characteristics

- Focus on fish
- Heavily based
- Forwards rest
watershed ba

- × Community engagement
- ✓ Diverse partnerships
- ✓ Multiple benefits
- × Innovative
- ✓ Frame in larger context

Urban Transformation Projects

- Park Avenue Transit Station (\$349,305)
- ReGreening I-205 (\$415,436)
- Virginia Garcia Memorial Health Clinic (\$322,234)

Characteristics

- Community engaged in unique ways
- Convenes organizations that don't normally work together
- Innovative site development approaches
- Benefits that go beyond the project scope

Urban Transformation Projects

- Park Avenue Transit Station (\$349,305)
- ReGreening I-205 (\$415,436)
- Virginia Garcia Memorial Health Clinic (\$322,234)

Characteristics

- Community engaged in unique
- Convenes organizations to work together
- Innovative sites
- Benefits that go beyond

- ✓ **Community engagement**
- ✓ **Diverse partnerships**
- ✓ **Multiple benefits**
- ✓ **Innovative**
- ✓ **Frame in larger context**

Neighborhood Projects

- Hawthorn Park (\$140,000)
- Humboldt Learning Garden (\$33,686)
- Westmoreland Park (\$150,000)
- Conservation Corner (\$99,500)
- Pleasant Valley School Boardwalk (\$112,350)

Characteristics

- Smaller impacts to ecological function
- Provides access to underserved communities
- Compelling to a wide variety of partners

Neighborhood Projects

- Hawthorn Park (\$140,000)
- Humboldt Learning Garden (\$33,686)
- Westmoreland Park (\$150,000)
- Conservation Corner (\$99,500)
- Pleasant Valley School Boardwalk (\$112,350)

Characteristics

- Smaller impact
- Provides access
- Compelling to a

- × Community engagement
- ✓ Diverse partnerships
- ✓ Multiple benefits
- × Innovative
- ✓ Frame in larger context

2012 Grant Review Committee recommendations



Hall Creek Water Quality & Pathway (114th – 117th) Enhancement Project



City of Beaverton

Grant award: \$354,304

Total project costs: \$1,072,789

Hall Creek Water Quality & Pathway (114th-117th) Enhancement Project

Partners

Assistance League of Portland

Carr Subaru

Realvest Lynn Marie Apartments

TriMet

Robert Zukin

Louis Busch

Beaverton School District - ACMA

Beaverton Police Department

Clean Water Services

Friends of Trees

THPRD

Kiwanis Club

SOLVE

Beaverton Optimist Club

Beaverton Central NAC

Friends of Beaverton Creek



Lilly K. Johnson Woods Expansion



Tualatin Hills Parks and Recreation District

Grant award: \$344,681

Total project costs: \$1,004,044

Lilly K. Johnson Woods Expansion

Partners:

Washington County

Friends of Beaverton's Johnson Creek



¡Let Us Build Cully Park!



Verde

Grant award: \$577,000

Total project costs: \$1,861,900

¡Let Us Build Cully Park!

Partners:

Native American Youth & Family Center

Hacienda CDC

Portland Community Reinvestment Initiatives

Columbia Slough Watershed Council

Coalition for a Livable Future

Portland Youth & Elders Council

Portland Parks & Recreation

Portland Bureau of Environmental Services

Portland Bureau of Transportation

Oregon Department of Environmental Quality

Oregon Office of Environmental Public Health

National Association of Minority Contractors

Metropolitan Contractor Improvement

Partnership

Rigler School

Harvey Scott School

Helensview School

Vigil-Agrimis

Terrafluxus

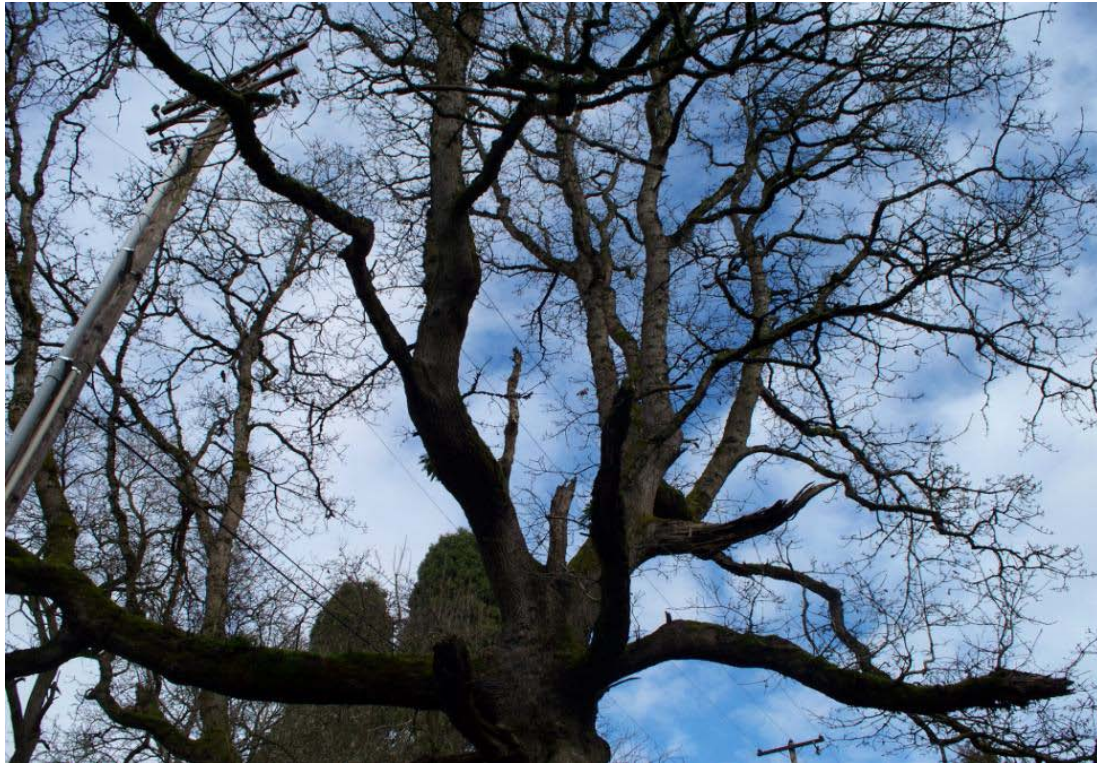
GeoDesign

Jordan-Ramis

Probity Builders

Emma's Garden

Baltimore Woods Connectivity Corridor Phase 2



Columbia Land Trust and Friends of Baltimore Woods

Grant award: \$381,000

Total project cost: \$1,150,250

Baltimore Woods Connectivity Corridor Phase 2

Partners

Portland Bureau of Environmental
Services

Portland Parks & Recreation

SOLVE

Port of Portland

Cathedral Park Place LLC



Nadaka Nature Park and Garden



Columbia Slough Watershed Council

Grant award: \$238,806

Total project costs: \$1,038,832

Nadaka Nature Park and Garden

Partners

Audubon Society of Portland

City of Gresham

East Multnomah Soil & Water Conservation District

Coalition for a Livable Future

El Programa Hispano

St. Aidan's Episcopal Church

Eastrose Fellowship UU

Grow Portland

H.B. Community SUN School

Human Solutions

Rockwood Neighborhood Association

Wilkes East Neighborhood Association

Verde

Pacific Gardens Alzheimer's Special Care Center

Police Activities League

SnowCap Community Charities



Stone Bridge Fish Passage on Nettle Creek



Tryon Creek Watershed Council

Grant award: \$47,090

Total project cost: \$141,393

Stone Bridge Fish Passage on Nettle Creek

Partners

Friends of Tryon Creek

Henderson Land Services

Tryon Creek State Park

Helping a Youth Leap Onward

US Fish & Wildlife Service

Oregon Department of Fish & Wildlife









