

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 13-4429
CHIEF OPERATING OFFICER TO GRANT AN)
EASEMENT TO THE AMERICANHELLENIC) Introduced by Dan Moeller
EDUCATIONAL CENTER (CAMP ANGELOS))

WHEREAS, pursuant to the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 (“Metro Open Spaces Bond Measure”) on July 16, 2004, Metro purchased approximately 148.5 acres of real property in Sandy River Gorge Target Area; and

WHEREAS, the property spans the Sandy River for over one-half mile and adds important scenic, water quality protection and habitat values to Metro’s natural areas portfolio; and

WHEREAS, Metro successfully improved and maintained the natural resource values for which the property was purchased and partnered with the American-Hellenic Educational Center (“Camp Angelos”) to construct trails and basic amenities on the property to facilitate access to nature by Camp Angelos and other programs using Camp Angelos’s facilities, such as the Outdoor School; and

WHEREAS, Metro has long desired permanent access to the property, which has no permanent, legal access along its southern boundary; and

WHEREAS, a 2011 survey of the property line revealed historic encroachment by Camp Angelos onto the Metro property; accordingly, in exchange for Camp Angelos’s agreement to grant Metro a perpetual access easement, Metro has agreed to grant Camp Angelos an easement to maintain these historic encroachments which also support the Camp’s operations and programs.


BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to Grant an easement to Camp Angelos in the form attached hereto as Exhibit A, or as otherwise approved by the Office of Metro Attorney.

ADOPTED by the Metro Council this 13 day of June 2013.


Tom Hughes, Council President



Approved as to Form:


Alison Kean Campbell, Metro Attorney

After recording return to:

Metro, Office of Metro Attorney
Attn: Hope S. Whitney
600 NE Grand Ave.
Portland, OR 97232-2736

Grantor:

Metro
600 NE Grand Ave.
Portland, OR 97232-2736

Grantee:

American-Hellenic Educational Center
32149 SE Stevens Rd.
Corbett, OR 97019

RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT ("Agreement") is made and entered into as of the last date of signature indicated below ("Effective Date"), by and between Metro, an Oregon municipal corporation ("Metro"), and American-Hellenic Educational Center ("American-Hellenic").

RECITALS

- A. Metro owns the real property located at 1101 SE Northway Road, County of Multnomah, State of Oregon, and legally described on the attached Exhibit A (the "Metro Property").
- B. American-Hellenic owns the real property located at 32149 SE Stevens Road, County of Multnomah, State of Oregon, and legally described on the attached Exhibit B (the "American-Hellenic Property"). The American-Hellenic Property is located immediately adjacent to the Metro Property to the south of the Metro Property.
- C. American-Hellenic's camp structures, paths, and landscaping existing as of the date of this Agreement (collectively, the "Existing Encroachments") encroach upon the Metro Property, and American-Hellenic desires to keep the Existing Encroachments in place.
- D. Metro has agreed to permit American-Hellenic to maintain the Existing Encroachments, subject to American-Hellenic's agreement to grant Metro an easement to use American-Hellenic's parking facilities and to use the American-Hellenic Property for management access to the Metro Property, each on the terms and conditions set forth in this Agreement.

M:\attorney\confidential\13 Parks\03 OPERATIONS & MAINTENANCE\17 Sandy River Gorge\Camp Angelos Easement Agreement 1-10-13.doc

NOW THEREFORE, in consideration of the recitals set forth herein and for other good and adequate consideration, the parties agree as follows:

TERMS

1. Encroachment Easement for the Benefit of the American-Hellenic Property.

a. Grant. Metro hereby grants and conveys to American-Hellenic a perpetual, non-exclusive easement over and across a portion of the Metro Property (the “Easement Area”) for the use, maintenance, and repair of the Existing Encroachments. The Existing Encroachments are generally described on the attached Exhibit C. The Easement Area is legally described on the attached Exhibit D and depicted on the attached Exhibit E. This easement granted to American-Hellenic does not include any right to use the trail system on the Metro Property, and American-Hellenic understands and agrees that it must continue to obtain a special use permit from Metro for the use of these trails, or otherwise comply with Metro’s rules and regulations regarding the use of the trails, as the same may change from time to time.

b. Restrictions. American-Hellenic shall not make any additional improvements or alterations to the Easement Area or the Metro Property, without Metro’s prior written consent, which may be withheld in Metro’s sole discretion. Without limiting the foregoing, American-Hellenic shall not: (1) remove any trees or vegetation from the Metro Property or the Easement Area, except to mow, maintain plantings or remove invasive weeds on those landscaped areas that exist as of the date of this Agreement, (2) make any topographical or hydrologic changes or alterations to the Metro Property or the Easement Area; or (3) construct or install any additional pathways, permanent outdoor furniture, or lighting or other utilities. Although American-Hellenic may maintain and repair the existing structures within the Easement Area that are generally described on Exhibit C, it shall not replace or make substantial alterations to these structures without Metro’s prior written consent, which may be withheld in Metro’s sole discretion. All activities and use of the Easement Area shall be in compliance with all applicable laws, regulations, and requirements of any government authority, and shall not damage or have any materially detrimental impact on the Metro Property. American-Hellenic’s use of the Easement Area shall not interfere with Metro’s use or management of the Metro Property.

2. Access Easement for the Benefit of the Metro Property.

a. Grant. American-Hellenic hereby grants and conveys to Metro a perpetual, non-exclusive blanket easement over and across the American-Hellenic Property to park up to two (2) vehicles in any parking area located on the American-Hellenic Property, and for pedestrian ingress and egress to the Metro Property along the pathways located on the American-Hellenic Property, as the same may change from time to time.

b. Restrictions. Metro shall give American-Hellenic reasonable prior notice by telephone (or by any other means on which the parties agree) before entering upon the American-Hellenic Property to park its vehicles and/or access the Metro Property. American-Hellenic shall be responsible for maintaining and repairing the parking areas and paths on its property, so that the same are passable, except that Metro shall be responsible for the cost of any damage caused by the negligence or intentional misconduct of Metro or its employees. American-Hellenic shall take no actions that would prevent or impair Metro’s ability to access the Metro Property from the American-Hellenic Property.

3. Liability Insurance. American-Hellenic shall maintain, at its cost, commercial general liability insurance (on the most recently approved ISO form, or its equivalent), written on an occurrence basis, with limits not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. The policy shall include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations by American-Hellenic or on or about the Easement Area. American-Hellenic's coverage will be primary as respects Metro, and American-Hellenic shall provide Metro an insurance certificate that evidences this coverage upon execution of this Agreement and thereafter promptly following all renewals and extensions of the insurance.

4. Default; Termination; Duration of Easement. It shall be an "Event of Default" for American-Hellenic to breach its obligations under this Agreement and fail to cease or cure such breach within ten (10) business days after written notice from Metro to American-Hellenic. Without limiting or affecting the remedies available to Metro, following an Event of Default, Metro may (a) take any action it deems appropriate to eliminate any damage caused to the Metro Property due to such Event of Default (and American-Hellenic shall reimburse Metro for all fees, costs and expenses incurred by Metro or on Metro's behalf to repair such damage), or (b) Metro may terminate the encroachment easement described in Section 1, above (the "Encroachment Easement"), upon written notice to American-Hellenic. If the American-Hellenic Property ceases to be used as a camp or facility with a significant outdoor education and nonprofit use, Metro may terminate the Encroachment Easement upon sixty (60) days written notice to American-Hellenic. Within thirty (30) days of receiving a termination notice from Metro, American-Hellenic shall remove all improvements and personal property in the Easement Area, and shall leave the Easement Area in a generally neat and orderly condition, free of any trash or debris. Failure to remove any improvements or personal property upon termination of the Encroachment Easement shall be deemed an abandonment of such property, and Metro may enter upon the American-Hellenic Property to access and remove such abandoned property on American-Hellenic's account. Metro may record a document evidencing any termination of the Encroachment Easement in the real property records of Multnomah County, Oregon.

5. Waiver; AS-IS. American-Hellenic acknowledges and agrees that American-Hellenic's sole right to use any portion of the Metro Property is pursuant to this Agreement, and American-Hellenic hereby waives, releases, discharges, and relinquishes any and all claims, rights or entitlements related to the Metro Property and American-Hellenic's right to use or possess any portion of such property, except as expressly set forth in this Agreement. American-Hellenic agrees, for the benefit of Metro and the Metro Property, that the boundaries between the Metro Property and the American-Hellenic Property are as set forth on the survey attached hereto as Exhibit D, and American-Hellenic hereby quitclaims to Metro any right, title or interest that American-Hellenic may have in any portion of the Metro Property. American-Hellenic assumes all risks arising out of American-Hellenic's use of the Easement Area, and Metro shall not be liable to American-Hellenic, or any licensee, agent, employee or invitee of American-Hellenic (collectively, the "American-Hellenic Parties") for any condition existing now or in the future upon the Easement Area. American-Hellenic accepts this Agreement with the Easement Area in its "AS IS" condition and "WITH ALL FAULTS."

6. Indemnity. American-Hellenic shall defend, indemnify, protect, and hold harmless Metro and its respective officers, employees and agents, for, from, and against any and all liabilities,

damages, claims, demands, judgments, losses, costs, expenses, fines, suits and actions, whether arising in tort, contract or by operation of any statute or common law, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of the use or occupation of the Metro Property by any American-Hellenic Parties (including any construction liens, personal injury, death or property damage) or arising out of any violation by American-Hellenic of this Agreement. This indemnification obligation shall survive any termination of this Agreement.

7. Notice. Any notice which a party desires to give to the other shall be in writing and shall be effective when actually delivered in person or three (3) business days after placement in the U.S. mail, addressed to the other party's address on file with the Multnomah County tax assessor for the receipt of tax statements.

8. Covenants and Easements to Run with Land. Each covenant and easement granted pursuant to this Agreement shall be permanent and shall run with the land as to all property benefited and burdened by such covenant and easement, including any partition or division of such property. The rights, covenants, and obligations contained in this Agreement shall bind, burden, and benefit Metro and American-Hellenic, and their respective successors, assigns, heirs, personal representatives, lessees, mortgagees, and beneficiaries under any deed of trust.

9. Counterparts. This Agreement may be executed in two counterparts, each of which shall constitute an original and which together shall constitute one and the same instrument.

10. Amendment; Entire Agreement. This Agreement may not be amended except by written agreement signed by all of the parties hereto. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

11. Severability. Invalidation of any one of the terms or provisions contained herein by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below.

METRO,
an Oregon municipal corporation

AMERICAN-HELLENIC EDUCATIONAL
CENTER, an Oregon non-profit corporation

Martha J. Bennett, Chief Operating Officer
Date: _____

Name: _____
Title: _____
Date: _____

State of _____
County of _____

This instrument was acknowledged before me on _____ (date)
by _____.

(Signature of notarial officer)
My commission expires: _____

State of _____
County of _____

This instrument was acknowledged before me on _____ (date)
by _____.

(Signature of notarial officer)
My commission expires: _____

CONSENT AND SUBORDINATION

The undersigned, U.S. Bank N.A. ("Beneficiary"), is the Beneficiary under a Deed of Trust (the "Deed of Trust") given by American-Hellenic Educational Center ("Grantor"), dated August 6, 2003 and recorded in the real property records of Multnomah County, Oregon, on August 19, 2003, under Recorder's Fee No. 2003-193235, as amended most recently by instrument recorded January 10, 2010, recorded under Recorder's Fee No. 2010-006514.

The undersigned consents to the foregoing Reciprocal Easement Agreement (the "Easement") by Grantor in favor of Metro, and agrees that the Deed of Trust is hereby subordinated to the Easement. Upon any sale under foreclosure of the Deed of Trust, any deed-in-lieu of foreclosure, or other acquisition of fee title pursuant to the Deed of Trust, the Beneficiary or the party acquiring title, and its successors and assigns, shall hold any and all property interest so acquired subject to the terms and provisions of the Easement. This Consent and Subordination shall not be construed in any manner as a release of any of the collateral secured by the Deed of Trust or a subordination of the lien and charge of the Deed of Trust as to any other recorded or unrecorded interest in Grantor's property other than the Easement.

U.S. Bank N.A.

By: _____
Title: _____
Date: _____

State of _____
County of _____

This Consent and Subordination was acknowledged before me on _____, 201__, by _____, as _____, of U.S. Bank N.A., on behalf of the bank.

(Signature of notarial officer)
My commission expires: _____

EXHIBIT A

The Metro Property

A tract of land in Section 5, Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

The South half of the Northeast quarter and the North half of the Southeast quarter of Section 5, Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, EXCEPTING THEREFROM the following described tract of land to-wit:

Beginning at the Northeast corner of the South half of the Northeast quarter of Section 5, Township 1 South, Range 4 East of the Willamette Meridian; thence West 220 feet; thence South 220 feet; thence East 220 feet; thence North 220 feet to the place of beginning, EXCEPTING a portion thereof in public highways or roads.

EXHIBIT B

The American-Hellenic Property

A parcel of land lying in Section 5 and Section 8, Township 1 South, 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, said parcel being more particularly described as follows:

That portion of the Southwest quarter of the Southeast quarter of said Section 5 lying Easterly of the centerline of the Sandy River, AND the West half of the Southeast quarter of the Southeast quarter of said Section 5, AND all that part of the East half of the Southeast quarter of the Southeast quarter of said section 5 lying West of the line described as follows:

Beginning at the Southwest corner of said subdivision (East half of the Southeast quarter of the Southeast quarter of said Section 5), thence North 05°56'25" East 231.41 feet; thence North 22°56'25" East 216.32 feet; thence North 27°56'25" East 201.23 feet; thence North 22°03'35" West 80.49 feet; thence North 62°03'35" West 130.80 feet; thence South 82°38'03" West 60.53 feet to a point on the West line of said subdivision, said point being North 00°27'15" West 735.28 feet from the point of beginning as measured along said West line.

TOGETHER WITH that portion of of the East half of the Northwest quarter of the Northeast quarter of said Section 8, Township 1 South, Range 4 East lying Northerly and Easterly of the centerline of the Sandy River, AND that portion of the West half of the Northeast quarter of the Northeast quarter lying Northerly and Easterly of the centerline of the Sandy River.

TOGETHER WITH an easement and perpetual right of way with the right to construct, operate and maintain a road upon a 30 foot wide strip of land extending in the Easterly and Westerly direction across the East half of the Southeast quarter of the Southeast quarter of Section 5 and the East half of the Northeast quarter of the Northeast quarter of Section 8, all in Township 1 South, Range 4 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, and following the course of a presently existing surfaced roadway, the center line of which roadway runs Westerly from the Westerly end of the heretofore established County Road now known as Stevens Road to the Westerly line of said East half of the Southeast quarter of the Southeast quarter of Section 5, where it crosses said Westerly line at a point approximately 30 feet North of the Southwest corner of said easterly half of the Southeast quarter of the Southwest quarter in Section 5.

EXCEPTING THEREFROM the ownership of the State of Oregon in that portion lying below the line of mean high water.

EXHIBIT C

Existing Encroachments – General Description

The Existing Encroachments consist of:

- A concrete sidewalk, 141 ft long and 4 ft wide on the west side of the Easement Area
- A 900 square foot picnic shelter
- A 70 ft long by 13 ft wide arbor
- A 2,486 sq. ft. planting bed
- A 200 ft. long by 4 ft. wide natural surface trail bordered by intermittent shrubs on the turf side of the trail along the east side of the Easement Area

The remainder of the Easement Area is mowed turf.

EXHIBIT D

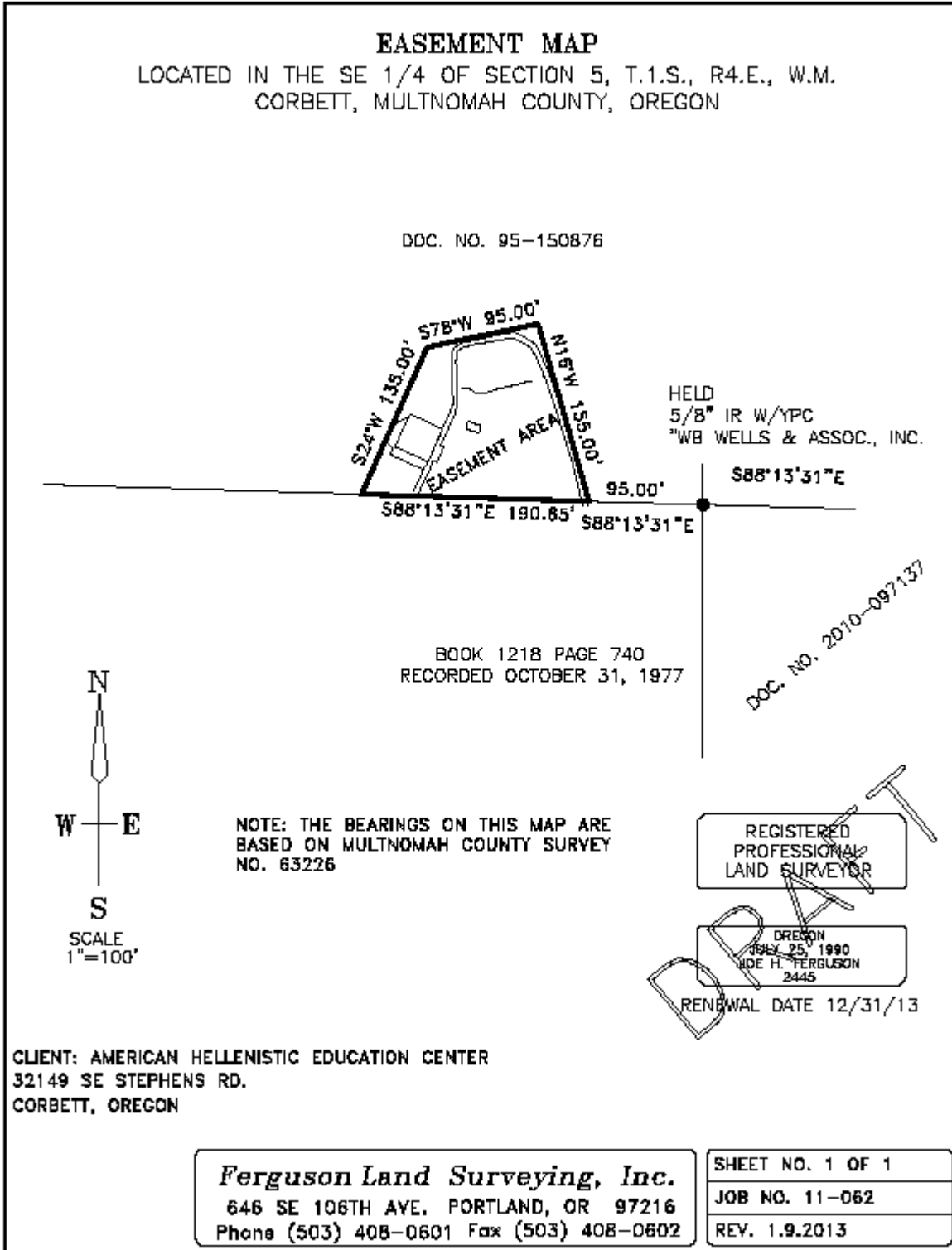
Easement Area – Legal Description

BEGINNING AT A 5/8" IRON ROD AT THE NORTHEAST CORNER OF THAT TRACT OF LAND DESCRIBED IN BOOK 1218, PAGE 740, RECORDED OCTOBER 31, 1977, MULTNOMAH COUNTY DEED RECORDS (CAMP ANGELOS TRACT), THENCE N88°13'31"E, ALONG THE NORTH LINE OF SAID CAMP ANGELOS TRACT, A DISTANCE OF 95.00' TO THE TRUE PLACE OF BEGINNING, THENCE N16°W, A DISTANCE OF 155', THENCE S78°W, A DISTANCE OF 95', THENCE S24°W, A DISTANCE OF 135.00', TO THE NORTH LINE OF SAID CAMP ANGELOS TRACT, THENCE S88°13'31"E, A DISTANCE OF 190.65' TO THE PLACE OF BEGINNING.

THE BEARINGS FOR THIS DESCRIPTION ARE BASED ON MULTNOMAH COUNTY SURVEY NO. 63226.

EXHIBIT E

Easement Area – Depiction



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 13-4429, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO GRANT AN EASEMENT TO THE AMERICAN-HELLENIC EDUCATIONAL CENTER (CAMP ANGELOS)

Date: May 30, 2013

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

BACKGROUND

Metro acquired 148.5 acres of property in the Sandy River Gorge with funds from the 1995 Open Spaces, Parks and Streams bond measure. The site, consisting primarily of steep timbered slopes, spans both sides of the river for more than one-half mile and adds scenic, water quality protection and habitat values to Metro's portfolio of natural areas.

At the time of acquisition, a formal boundary survey of the property was not conducted. In 2011, a professional survey of the southern boundary revealed an historic encroachment by the neighboring property owner, the American-Hellenic Educational Center ("Camp Angelos"). Aerial photographs show that the encroachment dates back several decades, prior to Metro ownership. Metro purchased the property without access to the southern section of the property, where trails and access for the Camp and other programs like Outdoor School have been developed on the property. Access to establish and maintain those amenities has been granted in the past by and through Camp Angelos, at the Camp's will, and Metro has long desired to obtain permanent access rights. Accordingly, in exchange for Metro granting an easement to Camp Angelos for the historic encroachments on Metro property (which the Camp has agreed not to expand), Camp Angelos has agreed to grant to Metro an access easement to the Metro property in perpetuity.

This easement grant is exempt from Metro's easement policy because this project specifically benefits a Metro natural area by providing necessary, permanent access required to manage and maintain the property.

ANALYSIS/INFORMATION

1. Known Opposition

None

2. Legal Antecedents

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

Metro Code Section 2.04.026(a)(2), which requires Metro Council authorization for the Chief Operating Officer to transfer interests in real property.

3. Anticipated Effects

Adoption of the easement will allow Camp Angelos to maintain the existing encroachments to serve the Camp and other programs that the Camp hosts. Adoption of the easement will also allow Metro to secure permanent access to the southern portion of the Springdale Natural Area in perpetuity.

4. Budget Impacts

None

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution 13-4429.