

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN)	RESOLUTION NO. 04-3415
INTERGOVERNMENTAL AGREEMENT (IGA))	
WITH THE CITY OF PORTLAND FOR)	Introduced by Michael Jordan, Chief
OPERATING AND MAINTAINING THE THREE)	Operating Office with the concurrence of
BRIDGES AND TRAIL LOCATED IN THE)	Council President David Bragdon
SELLWOOD SECTION OF THE SPRINGWATER)	
CORRIDOR)	

WHEREAS, the Springwater Corridor is a trail of regional significance, stretching for 22 approximately 22 miles from OMSI to Boring, passing through southeast Portland, Milwaukie, Gresham, and unincorporated sections of Multnomah and Clackamas counties; and

WHEREAS, the Sellwood Section of the Springwater Corridor is approximately 1.34 miles in length and starts as SE Umatilla (where the recently completed "Springwater on the Willamette Trail" ends) and heads south and southeast to the Three Bridges location, where it ends at the Union Pacific Railroad line; and

WHEREAS, more than 1 million people use the trail each year for recreational and commuter purposes; and

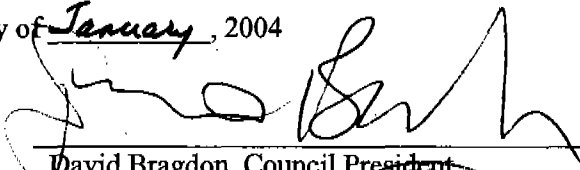
WHEREAS, the trail has been a priority for Metro Regional Parks and Greenspaces, and Metro Planning and Transportation for more than 10 years, and is a key priority in the Greenspaces Master Plan's Regional Trails System, and the Regional Transportation Plan (RTP); and

WHEREAS, Metro and the City of Portland have worked cooperatively for more than 10 years to complete the Springwater Corridor which includes: planning and design; public involvement activities; securing funding; acquisition of land and easement interests; and maintaining and/or land banking sections of the corridor; and

WHEREAS, Metro and the City of Portland have separately entered into an Intergovernmental Agreement ("the Three Bridges Agreement) that provides the terms and conditions for the planning, design, engineering and construction of the Springwater Corridor, including the bridges, within the Sellwood Section; now therefore

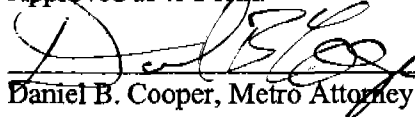
BE IT RESOLVED that the Metro Council approves the attached Intergovernmental Agreement (IGA) (Exhibit "A") and authorizes the Chief Operating Officer to sign the IGA, which designates the City of Portland to maintain the Three Bridges and Trail in the Sellwood Section of the Springwater Corridor.

ADOPTED by the Metro Council this 29 day of January, 2004



David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney

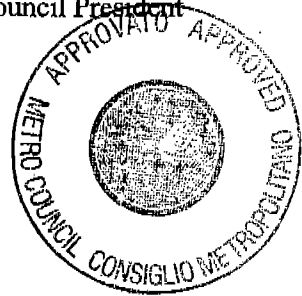


EXHIBIT A
Resolution No. 04-3415

INTERGOVERNMENTAL AGREEMENT
Springwater Corridor
Sellwood Section
Operations and Maintenance

This Intergovernmental Agreement (“Agreement”), dated this _____ day of _____, 2003, 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 NE Grand Avenue, Portland, Oregon, 97232-2736 (“Metro”) and the City of Portland, located at 1120 S.W. Fifth Avenue, Room 1302, Portland, Oregon, 97204 (“the City”).

WITNESSETH:

WHEREAS, through various Intergovernmental Agreements, planning coordination, and joint grant applications, Metro and the City have been working cooperatively to promote the objectives of the Metro Bond Measure 26-26 OMSI to Springwater Corridor Trail Refinement Plan; and

WHEREAS, Metro and the City have acquired fee and easement interests along the Springwater Corridor Trail, portions of which are owned by Metro and are currently being constructed and managed by the City pursuant to several previous Intergovernmental Agreements between Metro and the City; and

WHEREAS, Metro has recently acquired, with the City’s strong encouragement, certain additional parcels (“the Sellwood Section Parcels”) of which the legal descriptions are described and attached hereto as Exhibit A, from the Union Pacific Railroad and Portland General Electric, which parcels helps close the approximately 1.5 mile public ownership gap in the Springwater Corridor Trail between the Sellwood Bridge and current end of the Springwater Corridor Trail at the Union Pacific Railroad tracks, the 1.5 mile section herein referred to as the “Sellwood Section”; and

WHEREAS, Metro and the City have jointly secured federal transportation funding for the design and construction of Sellwood Section, over Johnson Creek, SE McLoughlin Blvd. and the Union Pacific Railroad tracks; and

WHEREAS, Metro and the City are separately entering into an Intergovernmental Agreement (“the Three Bridges Agreement”) that will provide the terms and conditions for design, engineering, and construction of the Springwater Corridor Trail within the Sellwood Section; and

WHEREAS, Metro and the City have agreed that until the trail is constructed, the City will landbank the parcels in the Sellwood Section and that the City will manage, operate and maintain the Sellwood Section in accordance with the terms set forth in this Agreement; and

NOW THEREFORE, the parties hereby agree as follows:

AGREEMENT

A. Acquisition

1. In December 2001, Metro purchased the Sellwood Section Parcels from Union Pacific Railroad with Metro Open Spaces Bond Measure proceeds.

2. A map depicting the Sellwood Section Parcels is attached hereto as Exhibit "B" and incorporated herein by this reference.
3. Metro has purchased additional property from Portland General Electric within the Springwater Corridor generally and within the Sellwood Section specifically. Metro may negotiate in the future with PGE and others to purchase additional rights within the Sellwood Section. The City and Metro hereby agree that if Metro executes agreement(s) to purchase additional property within the Sellwood Section of the Springwater Corridor that Metro would like the City to landbank, manage, maintain, and operate the additional property under the terms of this Agreement, that Metro shall notify the City in writing in the form attached hereto as Exhibit C ("Notice of Acquisition"). The City shall notify Metro in writing if the City does not wish to accept such responsibilities for that property in accordance with this Agreement, using the City's best efforts to make this notification prior to the closing date for the acquisition. If the City has not so notified Metro within thirty (30) days of receiving Metro's Notice of Acquisition, then the City shall accept the additional property for management, maintenance and operation responsibilities in accordance with the terms and conditions of this Agreement.

B. Landbanking

1. Prior to constructing the Sellwood Section of the Springwater Corridor Trail, the City shall landbank the Sellwood Section Parcels as the term "landbank" is used in the Metro Open Spaces Implementation Work Plan, including but not limited to maintaining security of the Sellwood Section; providing additional fencing, gates, signs, and other measures as necessary to preserve or increase safety on the Sellwood Section and to aid in the prevention of illegal dumping; and to preserve and protect the Sellwood Section's natural resources, without unreasonably diminishing the Sellwood Section's potential as a transportation corridor.

C. Management, Maintenance and Operation of the Sellwood Section

1. The City or its agent or contractor shall manage, maintain, and operate the Sellwood Section in accordance with and in a manner consistent with this Agreement, Metro's Greenspaces Master Plan and the City's Springwater Corridor Trail Master Plan (collectively, "the Plans"), as well as with any governing easements and encumbrances, including PGE Transmission Line Easements and any other agreements Metro may enter in connection with purchasing additional properties or easement rights or otherwise. The Plans shall constitute the Resource Protection Plans for the Sellwood Section, as described in the Metro Greenspaces Master Plan.
2. Metro shall have the right to review and comment on any changes in the Plans relating to the management, maintenance, or operation of the Sellwood Section. Any changes in the Plans made or proposed by the City that relate to management, maintenance, or operation of the Sellwood Section shall not conflict with the guidelines set forth in this Agreement, in the Greenspaces Master Plan, or with the uses and restrictions described in the Open Spaces Bond Measure. The City shall give Metro written notice as soon as possible, but in any event no less than 90 days in advance of a proposal to amend the City's Plans where such amendment would alter the City's management, maintenance or operation of the Sellwood Section.
3. The City shall manage and maintain the Sellwood Section in perpetuity.

4. Metro grants to the City, and its officers, employees, agents and contractors, the right to enter the Property for the purpose of performing all activities reasonably necessary for the landbanking, management, maintenance and operation of the Sellwood Section Parcels.

D. Permits, Easements, Assessments, Coordination with Other Public Agencies

1. As stated in the Greenspaces Master Plan, by accepting the landbanking, operation, maintenance and management responsibilities for the Sellwood Section as set forth herein, the City agrees to be responsible for funding such activities with the City's own resources or with grants the City may obtain. The City's responsibility shall include responsibility for paying all taxes or assessments for the Sellwood Section, including the Sellwood Section Parcels.
2. The City shall be responsible for obtaining any permits or approvals required in connection with the management maintenance, or operation of the Sellwood Section including the Sellwood Section Parcels, and the City shall be responsible for paying all permit fees.
3. Unless mutually approved by Metro and the City in writing, any permits granted by the City to users of the Sellwood Section shall comply with the terms and limitations set forth in this Agreement and in the Plans. Except as otherwise provided herein or provided within the Three Bridges Agreement, prior to the completion of construction of the trail in the Sellwood Section, the City shall require any person whom the City invites to enter the Sellwood Section to sign a release agreement in a form acceptable to Metro.
4. The City shall be responsible for contacting and coordinating with other local, state or federal agencies or local property owners regarding any management, maintenance or operation issues that may arise with respect to the Sellwood Section.
5. All requests on or affecting the Sellwood Section Parcels (or any property owned by Metro) for property interests such as licenses, short-term leases, etc., having a term of less than one year, shall be evaluated and processed by the City using the City's "Policies and Procedures Governing Non-Park Uses Within Springwater Corridor" as adopted by the City by Ordinance # 166982 on September 22, 1993 and attached hereto as Exhibit D. All fees associated with the granting of these short-term interests shall be retained by the City. All requests on or affecting the Sellwood Section Parcels for property interests such as easements, rights of way, long-term leases, etc., having a term of greater than one year, shall be evaluated and processed by Metro using the Metro Easement Policy, Resolution No. 97-2539B, passed by the Metro Council on November 6, 1997, attached hereto as Exhibit E. All fees associated with the granting of these longer-term interests shall be retained by Metro.
6. Unless waived in writing by Metro, the City shall notify Metro a minimum of 60 days in advance prior to the City granting any rights it has in accordance with this Agreement to others in the Sellwood Section. Within 30 days of receiving such notice, Metro shall notify the City in writing if Metro objects to the City granting of property interests. Unless waived in writing by the City, Metro shall notify the City a minimum of 60 days in advance prior to Metro granting any rights it has in accordance with this Agreement to others in the Sellwood Section. Within 30 days of receiving such notice, the City shall notify Metro in writing if the City objects to Metro granting of property interests. Metro shall retain the right to grant or to deny the grant of any property right to others.

E. Public Involvement, Notification

1. The City shall be responsible for all public involvement and outreach activities, including, but not limited to, notification requirements of adjacent property owners and residents.

F. General Provisions

1. **Indemnification.** To the extent permitted by Oregon law, the City shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, arising from or related to the City's negligence in management, maintenance or operation of the Sellwood Section in accordance with this Agreement. To the extent permitted by Oregon law, Metro shall defend, indemnify and save harmless the City, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions arising from or related to Metro's negligence of its responsibilities for the Sellwood Section in accordance with this Agreement.
2. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for the acquisition of the Sellwood Section Parcels is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City agrees that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the City breaches this Covenant, Metro shall be entitled to whatever remedies are available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.
3. **Funding Declaration and Signage.** The City shall provide on-site signage informing the public that the City is managing the Sellwood Section. Metro will provide on-site signage which shall be installed by the City, stating that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. The City shall also document in any publication, media presentation or other presentations, that funding for the acquisition came from Metro Open Spaces Measure bond proceeds. All signage shall be consistent with Metro guidelines for Open Spaces Projects.
4. **Termination for Convenience.** Metro and the City may, by mutual written agreement, jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Commencing ten (10) years from the effective date of this Agreement, the City may terminate this Agreement unilaterally upon 360 days written notice to Metro for any reason deemed appropriate in the City's sole discretion.
5. **Law of Oregon.** This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon.

6. **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro:

Jim Desmond
Director, Metro Regional Parks and Greenspaces
600 N.E. Grand Avenue
Portland, OR 97232-2736

Copy to:

Office of Metro Attorney
600 N.E. Grand Avenue
Portland, OR 97232-2736

To City:

Zari Santner
Director, Portland Parks and Recreation
1120 S.W. Fifth Ave. #1320
Portland, OR 97204

Copy to:

Office of City Attorney
1220 S.W. Fifth Ave
Portland, OR 97204

7. **Assignment.** Except as otherwise provided for herein, the parties may not assign any right or responsibility under this Agreement without prior written consent from the other party, except the parties may delegate or subcontract for performance of any of its responsibilities under this Agreement without prior written consent of the other party.
8. **Severability.** If any non-material covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, and the parties shall continue to perform within the surviving terms and requirements in accordance with applicable law and the intent of this Agreement.

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9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations regarding the subject matter of this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

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

CITY OF PORTLAND

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form:

By: _____

Title: _____

Date: _____

Exhibits:

- Exhibit A Legal Descriptions of Sellwood Section Parcels
- Exhibit B Map of the Sellwood Section Parcels
- Exhibit C Form of Notice of Acquisition
- Exhibit D City of Portland Ordinance # 166982 “Policies and Procedures Governing Non-Park Uses Within Springwater Corridor”
- Exhibit E Metro Easement Policy and Metro Resolution No. 97-2539B

EXHIBIT A
Legal Descriptions of Sellwood Section Parcels

**Exhibit A-1 of 6
Legal Descriptions of
Sellwood Section Parcels**

PARCEL I:

All of Block 21, SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM the following:

A tract of land situated in Block 21, SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Beginning at the Northeast corner of Lot 1, Block 21, SELLWOOD, in the County of Multnomah and State of Oregon; thence West along the North line of said Block 21, a distance of 103.0 feet to a point; thence South $37^{\circ}51'35''$ East a distance of 167.83 feet to a point on the East line of said Block 21; thence North along said East line a distance of 132.5 feet to the point of beginning.

PARCEL II:

Lots 3, 4, 5, 6, 7, and 8 Block 23, SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon.

ALSO that portion of Lot 2, Block 23, SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon described as follows:

Commencing at the Northwest corner of said Lot 2; thence East on the North boundary of said lot, 10 feet to a point; thence in a Southeasterly direction on a curve to the left having a radius of 1860.7 feet a distance of 74 feet more or less to a point in the South boundary of said lot, which is 66 feet from the Southwest corner thereof; thence West 66 feet to the Southwest corner of said lot; thence North 50 feet to the place of beginning.

Exhibit A-2 of 6
Legal Descriptions of
Sellwood Section Parcels
TRACT 1

A portion of Lot 2, Block 23, TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon, lying within the Portland Traction Company right of way, said portion being more particularly described as follows:

Commencing at the Northwest corner of said Lot 2; thence East on the North boundary of said lot, 10 feet to a point which is 50 feet Northerly from, when measured at right angles to, the center line of said railroad right of way; thence Southeasterly on a 3° curve to the left, parallel with and 50 feet from said center line 74 feet, more or less, to the South boundary of said lot; thence West 66 feet to the Southwest corner of said lot; thence North to the place of beginning.

Exhibit A-3 of 6
Legal Descriptions of
Sellwood Section Parcels
TRACT 2

PARCEL 1: Lots 1, 2, 14, 15 and 16, Block "M" TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon.

PARCEL 2: A portion of Lots 3, 4, 5, 12 and 13, Block "N", TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northeast corner of said Block "N"; being 30 feet South of an iron pipe at the intersection of the West line of SE 11th Avenue and the center line of SE Linn Street; running thence West on the South line of SE Linn Street, 200 feet; thence South on the East line of SE 10th Avenue, 100 feet to the Northwest corner of Lot 3 and the true place of beginning of the tract of land herein to be described; thence South $63^{\circ} 26'$ East 111.80 feet to the Southeast corner of Lot 3, which is also the Northwest corner of Lot 13; thence South $70^{\circ} 42' 40''$ East 105.95 feet to the West line of SE 11th Avenue; thence South on the West line of SE 11th Avenue to the North line of that alley established by Resolution No. 25034; thence West along the North line of said alley to the East line of SE 10th Avenue; thence North along the East line of SE 10th Avenue to the point of beginning.

PARCEL 3: All of Lot 6, a portion of Lots 5, 9 and 10, Block "O", and all of Lots 7 and 8, and a portion of Lots 6 and 9, Block "P", TOWN OF SELLWOOD, TOGETHER WITH a portion of East 12th Street, now vacated, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

Beginning at the Northwest corner of said Block "O"; running thence South on the East line of SE 11th Avenue, 200 feet to the Northwest corner of Lot 5; thence South on the same line 9.87 feet to a point being 147.55 feet North of an iron pipe marking the Southwest corner of Block "O", said point also being the true point of beginning of the tract herein to be described; thence Southeasterly across Lots 5, 10 and 9 of Block "O", East 12th Street vacated, and part of Lot 6 of Block "P", on a curve with a radius of 1,879.53 feet, which is approximated by the following chords; South $72^{\circ} 29' 10''$ East 50 feet; South $74^{\circ} 00' 30''$ East 50 feet; South $75^{\circ} 32' 00''$ East 50 feet; South $77^{\circ} 03' 30''$ East 50 feet; South $78^{\circ} 35' 00''$ East 50 feet; South $79^{\circ} 54' 30''$ East 36.95 feet, a distance of 286.95 feet measured on the curve to a point on the Westerly extension of the South wall of the Sellwood Carhouse; thence East on said extension and wall across Lots 6 and 9 of Block "P", 171.73 feet to the West line of SE 13th Avenue; thence South along the West line of SE 13th Avenue to the Southeast corner of Block "P"; thence West along the South lines of Blocks "P" and "O", to a point in the center of vacated East 12th Street; thence North along the center of vacated East 12th Street to the Easterly extension of the North line of Lot 8, Block "O"; thence West along the Easterly extension of the North line of said Lot 8, and along the North line of Lots 8 and 7 of Block "O", to the West line of said Block "O"; thence North along the West line of said Block "O" to the point of beginning.

Exhibit A-4 of 6
Legal Descriptions of
Sellwood Section Parcels
TRACT 3

Lots 2 through 7, 9 and 16, Block "X", TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon.

A portion of Lot 11, Block "X", TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon, described as follows:

BEGINNING at the Northwest corner of said lot; thence South following the West boundary line thereof; 31 feet, more or less, to a point in said West boundary line which is 50 feet from the center line of the main railway track of the Portland Railway Light and Power Company, said point being on a radial line drawn from the center of said track; thence Northeasterly on a curve to the left of 2915 feet radius, parallel with and 50 feet distant from the said center line a distance of 104 feet to the Northeast corner of said Lot 11; thence West, following the North boundary line of said lot, 100 feet to the point of beginning.

Lots 10 and 15, Block "X", TOWN OF SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon; EXCEPTING THEREFROM that portion conveyed to Bob Snair and Don Snair by instrument recorded November 10, 1988 in Book 2154, Page 2369, Multnomah County Deed Records, said portion being more particularly described as follows:

BEGINNING at the Southeast corner of Lot 15, Block "X", TOWN OF SELLWOOD; thence West 111.04 feet along the South line of Lots 15 and 10 to a point on Southerly line of Portland Traction Company's right of way; thence along the arc of a 2914.93 foot radius curve to the left a distance of 117.95 feet (the chord which bears North 70° 17' 35" a distance of 117.95 feet) to a point; thence South 39.77 feet along the East line of Lot 15 to the true point of beginning.

Exhibit A-5 of 6
Legal Descriptions of
Sellwood Section Parcels
TRACT 4

PARCEL I:

Lots 5 through 11, inclusive, Block 103, SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM that portion more particularly described as follows:

That portion of Lot 5, Block 103 lying Southeasterly of a line parallel to the originally located center line of the main track of the Portland Traction Company (Springwater Line) and distant 75 feet Southeasterly measured at right angles from the aforesaid.

PARCEL II:

A portion of Lots 15 through 18, Block 103, SELLWOOD, in the City of Portland, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at a point in the East boundary line of said Block 103, a distance of 5 feet South of the Northeast corner thereof; thence Southerly along said East boundary line a distance of 95 feet, more or less, to a line drawn East and West through the center of said block; thence West along said center line a distance of 255 feet; thence on a straight line to the point of beginning.

EXCEPTING THEREFROM that portion dedicated as highway, as described in Document, recorded May 26, 1902 in Book 293, Page 9, Multnomah County Deed of Records.

Exhibit A-6 of 6
Legal Descriptions of
Sellwood Section Parcels
TRACT 5

A portion of the George Wills Donation Land Claim, in Section 25, Township 1 South, Range 1 East of the Willamette Meridian, in the City of Milwaukie, County of Clackamas and State of Oregon, said portion being particularly described as follows, to-wit:

Commencing at a point 15.25 chains East and 14.43 chains North of the Southwest corner of said George Wills Donation Land Claim; which point is the Northwest corner of the land transferred to grantor herein by L.M. Atchinson by Deed recorded August 30, 1894 in Book "N", Page 559; running thence South along the West boundary of said land transferred by Atchinson 100 feet, to a stake; thence North 69° East parallel with and 75 feet Southerly from the center line of the railroad of The Oregon Water Power and Railway Company, as the same is located and established to the right of way of the Oregon and California Railway Company; thence Northwesterly along said right of way to the North line of said Atchinson Tract; thence West along said North line to place of beginning.

ALSO a portion of the said George Wills Donation Land Claim, described as follows, to-wit:

Commencing at a point in West boundary of said Donation Land Claim, 625.44 feet Northerly from the Southwest corner thereof and which point is 75 feet Northerly from, measured at right angles to, the center line of said O.W.P. & Ry. Co's Railway; thence North 63° 19' East parallel with and 75 feet from said center line, 1398 feet, to and across the right of way of the Oregon & California Ry. and to the West line of the plat of BURLEY; thence South 173.7 feet, more or less, to the North boundary line of said Atchinson Tract; thence West along the North line of said Atchinson Tract 238.92 feet; thence South 34 feet to a point which is 75 feet Southerly from, measured at right angles to, said center line of railroad; thence South 63° 19' West, parallel with and 75 feet from said center line 1127 feet to a point in West boundary of said Donation Land Claim, 156.38 feet South of beginning; thence North to beginning.

EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by and through its Department of transportation, Highway Division, by instrument recorded March 9, 1990 as Recorder's Fee No. 90-10502, Clackamas County Deed Records.

AND FURTHER EXCEPTING THEREFROM that portion lying within the Southern Pacific Railroad right of way.

EXHIBIT B
Map of Sellwood Section Parcels



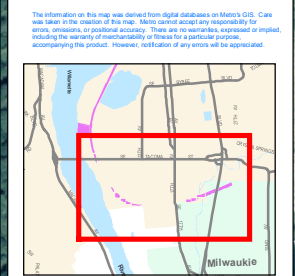
REGIONAL LAND INFORMATION SYSTEM

Metro Open Spaces, Parks and Streams Bond Measure

Sellwood Gap and Vicinity

- Metro Bond Measure Acquisitions *
- Public School
- City boundaries
- County lines

* Bond Acquisitions as of April 7, 2003



Location Map

METRO

METRO DATA RESOURCE CENTER
 600 NORTHEAST GRAND AVENUE PORTLAND, OREGON 97232-2738
 TEL (503) 797-4742 FAX (503) 797-1900
 email metro@metro.org www.metroregion.org

500 Feet

1 inch equals 500 feet

EXHIBIT C
Notice of Acquisition

_____, 2003
City of Portland
Jim Sjulín
Portland Parks and Recreation
1120 S.W. Fifth Ave. #1320
Portland, OR 97204

Re: Acquisition of Property along Springwater Corridor – Sellwood Section

Dear Mr. Sjulín:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro and the City dated _____, 2003, attached hereto (“Intergovernmental Agreement”), this shall serve as notice of acquisition of the following property along the Springwater Corridor:

[Property Address], in the City of _____, County of _____ and State of Oregon,
being more particularly described in Exhibit 1 attached hereto (“the Property”).

Pursuant to the Intergovernmental Agreement, Metro requests that the City manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if the City does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if the City does not so notify Metro within thirty (30) days of receipt of this letter, the City shall be deemed to have accepted the new Property for management, maintenance, and operation in accordance with the terms and conditions of the Intergovernmental Agreement.

If you have any questions, please do not hesitate to contact me at 503/797-1914.

Sincerely,

Jim Desmond
Director, Metro Parks & Greenspaces

cc: Mel Huie

EXHIBIT D
City of Portland Ordinance # 166982
Policies and Procedures Governing Non-Park Uses Within Springwater Corridor

ORDINANCE No. 166982

***Adopt Portland Parks and Recreation Policies and Procedures Governing Non-Park Uses within Springwater Corridor. (Ordinance)**

The City of Portland ordains:

Section 1. The Council finds:

1. On November 12, 1992, Council adopted the Springwater Corridor Master Plan (Ordinance No. 166001) to set the direction for development of the Springwater Corridor into the premier urban recreation and alternative transportation corridor in the State of Oregon with an expected annual user count of over 400,000.

2. The Master Plan calls for a separate set of policies and procedures to outline the details of property management for the Springwater Corridor and their presentation to Council for consideration and adoption.

3. The unique history and linear character of Springwater Corridor requires written policies and procedures for reference by City staff and potential applicants for non-park use of the land.

4. In addition to the public recreation and alternative transportation use, the long term benefit of these policies and procedures will be the preservation and maintenance of the linear integrity of the Corridor for potential future rail service and its continuing use as a utility corridor.

NOW, THEREFORE, the Council directs:

a. Based on the above findings, the Portland Parks and Recreation Policies and Procedures Governing Non-Park Uses within Springwater Corridor be adopted to govern non-park uses and activities within the Springwater Corridor.

b. The Commissioner in Charge of Parks and Recreation is authorized to amend the policies and procedures without further approval of Council.

Section 2. The Council declares that an emergency exists because the regulated use of the Springwater Corridor will preserve its use and enjoyment as a public park and provide the greatest degree of protection to the land and the recreational users of Springwater Corridor. This ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **SEP 22 1993**

BARBARA CLARK
Auditor of the City of Portland

By  Deputy

Commissioner Hales
Susan Hathaway-Marxer
September 14, 1993

9.17.92

CITY OF PORTLAND
PORTLAND PARKS AND RECREATION
POLICIES AND PROCEDURES
GOVERNING NON-PARK USES
WITHIN
SPRINGWATER CORRIDOR

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CITY OF PORTLAND
PORTLAND PARKS AND RECREATION
POLICIES AND PROCEDURES
GOVERNING NON-PARK USES
WITHIN
SPRINGWATER CORRIDOR

SECTION I

PURPOSE STATEMENT

This document establishes policies and procedures governing non-park uses of the Springwater Corridor and includes, as well, construction and maintenance standards for approved facilities.

Portland Parks and Recreation seeks first and foremost to provide the greatest degree of protection to the land and the recreational users of Springwater Corridor. The regulated use of the Corridor will preserve its use and enjoyment as a public park with trails, natural resource areas and picnic and rest areas.

In addition to the public recreation use, the long term benefit of these policies and procedures will be the preservation and maintenance of the linear integrity of the Corridor for potential future rail service and its continuing use as a utility corridor.

The policies herein are aimed at implementing the goals contained in the Springwater Corridor Master Plan adopted by City Council on November 12, 1992, including:

1. Foster a safe and inviting environment for the widest possible array of user groups,
2. Enhance and preserve the natural resources of the Corridor,
3. Preserve the linear integrity of the Corridor and encourage responsible use of the surrounding area,
4. Sustain use of the Corridor for utility purposes, and potential future restoration of rail service.

Some of the specific objectives established to achieve the Master Plan goals include Parks' intention to:

1. Inform prospective non-park users, other City bureaus and government entities and the public, in general, of the general policies of Portland Parks and Recreation with respect to non-park uses of the Springwater Corridor.
2. Minimize inconvenience to park patrons.
3. Minimize damage to park land and facilities.
4. Shift legal liability to non-park users.
5. Establish and define standards for construction and restoration.
6. Discourage unnecessary encroachments.
7. Allow for the fair and uniform administration of the licensing program, and
8. Recover its administrative costs and receive appropriate compensation for non-park use of park property.

SECTION II

POLICY ON EASEMENTS AND LICENSES

The City of Portland adopts the following general policy statements to guide Portland Parks and Recreation (Parks) in the approval and granting of requests for non-park uses within the Springwater Corridor:

A. General Policy Statements

1. Presumption of Best Use

The Springwater Corridor was acquired for use and benefit as a park and regional trail facility. Park, trail and related recreational uses shall be deemed to be the paramount uses of the Springwater Corridor property.

2. Non-Park Use

Non-park use is defined as any use of the real property under the jurisdiction of Parks for other than park, trail, or recreation purposes. See Section VII Supplemental Documents, A. Examples of Non-Park Uses.

3. Policy Subject to Outstanding Rights

Springwater Corridor is covered by an interim trail use/railbanking designation under Section 8 (d) of the National Trails System Act, 16 U.S.C. §1247 (d). Any non-park uses granted shall be considered subject to pre-existing rights and interests held by others, including but not limited to the federal government as a result of grant assistance. When required, Parks shall obtain federal government approval prior to the granting of non-park uses. To the greatest extent practicable, Parks will give priority for non-park uses to existing licensees and other users, including but not limited to the Cities of Gresham and Milwaukie, Multnomah County, Clackamas County and the State of Oregon.

4. Policy Subject to Prior Commitments

This policy shall not serve to terminate legally existing non-park uses or to invalidate prior commitments to allow non-park uses but shall take effect with respect to any renewals following the expiration of legally existing uses or commitments. Further, Parks reserves the right to apply its policies, procedures and regulations to existing non-park uses at the earliest renewal or negotiation of an agreement.

5. Exceptions for Parks' Needs

While Parks will endeavor to follow these policies in all cases, it shall not be obligated to follow all of the conditions stated herein when easements or other out-conveyances are required in order to obtain utility services or roadways to serve park needs or Springwater Corridor.

6. Minimum Rights

Non-park rights and uses granted shall be the minimum necessary to reasonably accomplish the objectives of each specific request.

7. Minimum Term

The term of licenses, easements and other approvals shall be the minimum necessary to satisfy the needs of each specific request.

8. Granting of Interest in Land

Generally, Parks will not convey title or easement rights to the Springwater Corridor property. In most instances, revocable licenses will be granted for a specified period of time. Parks will conform its grants to any applicable Federal government requirements.

9. Reversionary Clause

Easements or other instruments which convey an interest in the Springwater Corridor shall contain reversionary clauses which provide that rights or interests granted shall revert to Portland Parks and Recreation in the event of abandonment or termination of use by the grantee or in the event that Springwater Corridor property is returned to railroad use.

10. Compensation

The granting of non-park rights and uses in the Springwater Corridor shall not be made without just compensation. Parks may establish procedures and guidelines for determining appropriate compensation. It shall be Parks policy to recover 100% of the costs of administering non-park uses and to preserve the total value of Parks assets. Parks reserves the right to accept alternative consideration in lieu of cash compensation.

11. Liability Requirements

All legal liability resulting from the interest or use granted by Parks shall be assumed by non-park users. When appropriate, Parks may require that the grantee/licensee maintain liability insurance. A Certificate of Insurance certifying coverage shall be maintained on file with the City Auditor. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor and shall name the City of Portland, its officers, agents, and employees as additional insureds. The adequacy of the insurance shall be subject to the approval of the City Attorney.

12. Bonding

Easements, licenses or other instruments granting non-park interests or uses in the Springwater Corridor shall require licensees/grantees to provide assurances satisfactory to Parks and subject to approval of the City Attorney for the timely and proper completion of any work to be performed on park land. Parks, in its sole discretion, shall determine the form of assurance.

13. Roads and Surface Utilities

a. Except as required for park purposes, no highways, streets, roads or overhead utilities, including but not limited to overhead electric transmission lines, except as provided to Portland General Electric from Portland Traction Company by Easement dated April 23, 1953, or its replacement document, shall be approved through the Springwater Corridor unless:

(1) Parks has determined that there is an absolute need for the road or surface utility; and

(2) Parks has determined that there is no feasible and prudent alternative to the use of the Springwater Corridor property for such road or surface utility; and

(3) Parks has determined that all possible planning has been carried out to minimize adverse and harmful effects to the Springwater Corridor which might result from such roads or surface utilities; and

(4) In Parks' sole discretion there are compelling public interests served by permitting the requested use. For public right of way crossings, Parks will consult with the owner of the right of way to insure that any crossing deemed necessary will have minimum impact on Springwater Corridor and its users.

14. Maintenance Requirements

Instruments granting non-park rights and uses in the Springwater Corridor shall require the licensee/grantee to provide adequate maintenance of land or any structures during the life and use of same. In the event Parks determines that it is impracticable for a grantee to maintain a facility or to ensure maintenance over a long period of time, Parks may require and accept from the grantee an appropriate maintenance/replacement fund which Parks shall place in escrow to cover future maintenance or replacement costs. Routine maintenance to public right of ways by the owner is encouraged and shall not require the written approval of Parks.

15. Restriction on Expansion or Reconstruction

Instruments granting non-park rights and uses in the Springwater Corridor shall not allow the expansion, upgrading or reconstruction of structures or improvements of facilities without the written approval of Parks. Such change in use may require separate or additional licenses. Parks reserves the right to determine if a separate or additional license is necessary.

16. Restoration of Surface Conditions

Instruments granting non-park rights and uses in the Springwater Corridor which involve land-disturbing activities shall reserve to Parks the right to prescribe the final grade and/or conditions, including but not limited to trail and planting restoration, to be established following any construction activities.

17. Locations of Utility Crossings

Generally, any utility which crosses the Springwater Corridor shall do so at a location where the most direct route across the Corridor occurs or where the minimum adverse impact is sustained. Parks reserves the right to require crossings at locations determined by Parks to preserve maximum benefit for recreational users of the Corridor. Generally, Parks prefers that utilities be placed within or adjacent to road rights-of-way or adjacent to other utility crossings. Linear runs shall be permitted in extraordinary cases only; such facilities are deemed to have a substantial and negative effect on the value and usefulness of the Corridor.

18. Application

Persons desiring non-park uses shall apply to Parks for permission to use Springwater Corridor for non-park purposes. An application for non-park uses in the Springwater Corridor shall be considered only after the applicant has submitted satisfactory information which will allow Parks to determine the extent and impact of the use requested. Parks shall establish standards, criteria, guidelines, procedures and forms for receiving, reviewing and acting on applications for particular non-park uses of the Springwater Corridor. Parks shall deny non-park uses which, in its sole discretion, will adversely impact Park users.

19. Administration of Easements and License Program

The Property Manager for Parks shall have the day to day responsibility and authority to administer this policy and is authorized to enter into negotiations on behalf of Parks regarding the general administration of non-park use of the Springwater Corridor. Parks' Chief Planner and the Superintendent of Park Operations shall be consulted and will approve or deny the request for non-park use. Licenses, easements or other instruments for a term of more than one year may be granted by the City Council at the request of the Director of Portland Parks and Recreation and the Commissioner in Charge of Parks and Recreation.

20. Recordation of Documents

When considered appropriate by Parks, easements, licenses, and/or other instruments granting non-park uses shall be recorded in appropriate county land records.

21. Alignment and Surface Prerequisites

It shall be the policy of Parks that the primary (paved) trail shall generally follow the grade and alignment of the original railroad right-of-way. In accordance with the Master Plan, utilities shall follow the shortest feasible route (cross Springwater Corridor at right angles), be placed within public

roadways, be placed underground and installed by boring or tunneling unless determined by Parks to be unfeasible. Generally, surface structures are prohibited.

22. Conversion

Requests for non-park use involving the granting of permanent interests in or substantial impacts on land within Springwater Corridor which were developed or are planned to be developed with financing from state or federal grant funds are considered "conversions" and are subject to review and approval by the grant agencies. In addition, such projects are subject to "replacement land" requirements whereby the non-park user will be required to provide Parks with fee interest in suitable land of at least equivalent size, value and usefulness within the same governmental jurisdiction.

SECTION III

APPLICATION AND LICENSING PROCEDURE

1. Application for Non-Park Use

- * Submit written application form (with construction plans, methods & schedule)
- * Submit map and photographs of area
- * Submit \$100.00 processing fee

2. Parks Review and Analysis

- * Review request/application and supporting materials
- * Check existing agreements, adjacent land uses and zoning for potential conflicts
- * Develop recommendation for compensation
- * Staff approval, conditional approval or denial

3. Prerequisites to Agreement

- * Parks management approval
- * Federal, state and local government review, where appropriate
- * PGE approval, where appropriate.
- * Parks approval of construction plans, methods & schedule.

4. Agreement

- * City prepares document
- * User prepares and submits exhibits (maps, drawings, etc.)
- * User signature and submission of insurance certificate
- * City Attorney approval
- * City Council approval, if appropriate
- * User acceptance of City's conditions
- * User payment of fees

5. Property Management

- * Site inspections
- * Submission and review of as-built plans
- * Monitor on-going activity for compliance
- * Contract enforcement

SECTION IV

ADMINISTRATION FEES

A. Purpose

1. The purpose of administration fees is to recover 100% of Parks' costs and expenses incurred in connection with administering non-park activities and uses, including staff costs, overhead and out-of-pocket expenses.

2. For purposes of imposing administration fees, a license project generally will be deemed to have been completed when active use of the Springwater Corridor property has ceased and all restoration and outstanding implementation actions are completed. For a project involving construction on the Springwater Corridor, this generally would occur simultaneously with the final inspection and approval by the City of Portland.

B. Determination of Fees

1. It is the policy and intention of Parks that each non-park user pay the costs and expenses directly attributable to its project. Administration costs and expenses will be accounted for in two principal categories:

- a. Staff costs and overhead; and
- b. Out-of-pocket expenses.

c. The Springwater Corridor Property Manager is authorized to negotiate and approve lump sum, one-time administration fees for projects of a routine or low-risk (in terms of predictability of Parks' expenses) nature, provided the fees so established reflect the best estimate, based on experience, of the administration costs and expenses Parks will incur. The Springwater Corridor Property Manager will document such determinations. Such pre-determined fees shall no longer prevail if the nature or scope of the project changes materially or if Parks is required to assume or perform activities, work or services (such as contract enforcement or problem solving) not contemplated when the negotiated fees were established.

2. After completion of a license project, administration fees will not usually be imposed for ordinary, routine and ongoing activities (such as maintaining utility location records, mowing around drainage structures, maintaining use fee records and supervising minor maintenance activities of the licensee) required of Parks in connection with the licensee's passive use and occupancy of the Springwater Corridor property. However, Parks reserves the right to impose additional administration fees at any time when significant unplanned actions by Parks become necessary by virtue of Licensee's use.

SECTION V

USE FEES

A. Principal Factors

Use fees shall be based on factors which impact the Springwater Corridor property, park use, park patrons and land values and land rights. Principal factors include:

1. Real Estate Value of Springwater Corridor property or value of adjoining lands.
2. Duration (term) of use and impacts.
3. Area (size) of park property affected.
4. Nature of non-park use and its relationship to fee ownership.
5. Nature of impact on property, park users and operations.
6. Severity of disturbance.

Generally, use fees shall be based on the highest supportable value as determined by sound, uniformly applied valuation methods and principles.

Use fees for such qualifying public and quasi-public projects may be discounted when the project occupies certain areas of limited park usability, for example, a road right-of-way.

Use fees shall be in the form of annual or other periodic payments when park property is occupied for private, profit-motivated purposes generating ongoing revenues; except Parks reserves the right to enter into contracts requiring one-time use fee payments, which reflect the present value of the long-term use, when deemed by Parks to be in its best interest.

At its sole discretion, Parks may make downward adjustments in computing use fees when it determines that substantial enhancements to the Springwater Corridor or other benefits will be derived by Parks as a result of licensee's project.

Use fees may include an additional assessment when a non-park use results in substantial impacts adversely affecting the Springwater Corridor property value, the quality of the recreation/park experience of users, maintenance and operational activities of Parks and other elements relating to the usability and function of the Springwater Corridor.

Parks reserves the right to negotiate lump-sum or other special use fee arrangements when projects involve multiple uses or other complex circumstances.

B. Calculation of Fees

1. Application of Real Estate Values

The land value to be considered in any given instance shall be the value of the affected Springwater Corridor property or the value of equivalent nearby property, whichever is greater.

2. Long-Term Use Fee Considerations

a. Parks first will establish a present value for a given long-term use. If payments will apply to that use, Parks will convert the long-term value to an annual or periodic fee.

b. Long-term non-park use values (expressed in terms of percent of real estate value) to be used to guide Parks in making license fee determinations are:

(1)	Overhead use	75%
(2)	Surface	100%
(3)	Sub-surface	50%

c. Long-term uses may be viewed as easement interests, and corresponding long-term use values may be determined much the same as values for easement rights. In cases where licenses are under consideration, a slight downward adjustment from an easement value may be made, reflecting the right of cancellation of licenses. Frequently the long-term-use value will be expressed as a function of the real estate value (example -- 75% of fair market value), or reduced to a square-foot value.

d. Among the criteria to be considered in establishing long-term values are (these are not necessarily mutually exclusive):

- (1) Size of area permanently occupied.
- (2) Size of land area disturbed.
- (3) Degree of land disturbance (intensity).
- (4) Degree of ongoing user disturbance.
- (5) Permanent physical damage to Springwater Corridor lands and facilities.
- (6) Planned duration of the use/activity.
- (7) Perceived duration of the use/activity.
- (8) Volatility of the non-park facility (e.g. natural gas pipeline, etc.).

- (9) Ease of relocation of the non-park facility.
- (10) Level of facility operator's ongoing activity (maintenance).
- (11) Visual/aesthetic impact.
- (12) Impact on existing or future recreational use or opportunity.
- (13) Location in an area of limited park usability.
- (14) Necessity versus convenience.
- (15) Depth of underground facilities.
- (16) Parks assumption of new maintenance/operation liabilities.
- (17) Parks assumption of new legal liabilities.

3. Short-Term Considerations

a. The calculation of non-park use fees shall include consideration of any short-term impacts which may be greater than the ongoing impact of the use once it is in place. Such short-term impacts may arise when there is a high degree of disturbance to the land or where the project disturbs or otherwise inconveniences Springwater Corridor users. This is most likely to occur when the project involves construction.

b. Parks will establish a value for the short-term use/occupancy/disturbance of any additional property, using the same principles and methods used to value long-term occupancy. When short-term use areas overlap long-term use areas, appropriate adjustments will be made in computing the use fees.

4. Annual or Periodic and Short-Term Use Fees

Annual or periodic and short-term use fees will be calculated as a fraction or percentage of the corresponding long-term use fee for that type of use. Annual fees will be ten percent (10%) per year of the long-term use fee. Monthly fees will be one and one-half percent (1.5%) per month of the long-term use fee. Parks may engage real estate or financial advisors to assist in establishing real estate values and long-term use fees.

5. Severity

The factor of severity can occur when a non-park use or activity is so overwhelming and extensive that it permanently disrupts or destroys the value and usefulness of the Springwater Corridor property, or severely affects the quality of the recreation experience for the Springwater Corridor users, or creates severe new burdens on Parks. When Springwater Corridor property is severed or the aesthetic qualities of the property are destroyed, Springwater Corridor users are permanently

inconvenienced, and new legal or operating liabilities are imposed upon Parks. Parks may require applicant to provide the cost of designed alternative locations.

6. Determination of Areas Affected

By definition, the space occupied shall encompass the area occupied by or reserved for the non-park use and/or the construction limit line. In the case of utilities, the area to be used in computing use fees shall reflect the usual easement width reserved by the utility operator in similar conditions over private land including area to be used for maintenance access. Where utilities are required to be installed and maintained by means of boring or tunneling, Parks may define a license area width narrower than the usual width required for open cut installations. In no event shall the width of a utility facility be deemed less than ten feet.

7. Adjustment for Project Occupying Area of Limited Park Usability

Parks may make a downward adjustment in the level of the use fee for any qualifying facility installed within an area or space of substantially limited usefulness to Parks. Examples would be the placement of facilities within an existing highway right-of-way.

SECTION VI

PROVISION FOR SINGLE LICENSE FOR MULTIPLE FACILITIES

1. Provisions: Subject to the Discretion of Parks:

a. License shall cancel, supersede and replace all existing licenses, leases and other agreements and instruments granting rights and privileges to a single user for use of the Springwater Corridor property.

b. License shall identify, describe and authorize all existing facilities and specify applicable annual or periodic payments or one-time use fees for each facility.

c. License shall provide for inclusion of future facilities, subject to specific approval of Parks. Approval of future facilities shall be made according to policies, criteria, standards and use fees in effect at the time request for approval is made.

d. License shall contain an agreement by Licensee to promptly reimburse Parks for all administrative costs incurred by it in connection with the administration and oversight of the license and corresponding covered projects by Licensee.

e. License shall contain general criteria for Licensee's application for future uses (intended to streamline the process).

f. License shall contain minimum standards for construction, installation, maintenance and operational activities (including use of vehicles and equipment) covering approved (existing uses).

g. License shall contain minimum standards for restoration of the Springwater Corridor property and improvements but subject to change at the discretion of Parks with respect to future projects.

h. License shall contain provisions for periodic adjustment of fees and payments.

i. License shall provide for removal of any facility at the discretion of the Licensee, with the cancellation of the license with respect to that facility, and a corresponding prorating of any payment (but with no adjustment in any one-time use charge).

j. License shall contain a series of facility inventory sheets with corresponding plats, one for each licensee facility, with new (future) facilities being incorporated by added sheets/plats signed by both the Licensee and Parks and representing amendments to the master license. In addition, a master schedule, listing each project by a code number (corresponding to the inventory sheet and plat), and its respective annual rental amount, and with vacant columns for future fee adjustments, would serve as a summary page.

k. License shall be effective for no more than 20 years.

SECTION VII

SUPPLEMENTAL DOCUMENTS

A. Examples of Non-Park Uses (Applies to Both Public and Private Uses)

- * Agricultural use
- * Sanitary sewer facilities
- * Water service facilities
- * Gas line service facilities
- * Telephone/Communication service facilities
- * Electric service facilities
- * Cable TV service facilities
- * Roadway and street improvements
- * Installation of fencing
- * Installation of landscaping improvements
- * Connector trails
- * Driveways
- * Parking Areas
- * Storage
- * Ingress/Egress
- * Curb/gutter improvements
- * Sidewalk crossings and connections
- * Storm sewer facilities and drainage improvements
- * Grading and other earth disturbing activities
- * Surveying
- * Soil/Geotechnical studies and testing
- * Locating utilities
- * Replacing, upgrading and relocating existing utilities and improvements

B. Instructions for Submitting Application for Non-Park Use

1. Licenses are required for both temporary and permanent uses. Applications for licenses shall be in a form designated by Parks and shall contain such information as Parks may require to enable it to fully evaluate the nature of the proposed use and its impact on the Springwater Corridor and its users. Supplemental information required as part of a non-park use application includes:

a. Plat of Springwater Corridor property showing land contours, park boundaries and all existing park improvements and land features (Park plats may be obtained from the Springwater Corridor Property Manager).

b. Profile drawings (at equal horizontal and vertical scales) showing relationships between existing grades and improvements and proposed grades and new facilities.

- c. Typical section (at equal horizontal and vertical scales) showing relationships of existing roads and trails to proposed new grades and facilities.
- d. Certification that applicant's property boundaries conform to Parks' boundary data.
- e. Size and type of vehicles that will require permanent or temporary access to Springwater Corridor.
- f. Application review fees as determined by Parks.
- g. Photographs of the affected and surrounding area.
- h. Written permission from Portland General Electric Company to encroach upon its easement which encompasses the entire Springwater Corridor.

2. Applications are administered by Parks' staff pursuant to adopted policies and procedures. Routine requests which have a use term for periods of one year or less may be approved or denied by staff and shall not have to be granted by City Council.

3. Applications involving road crossings, the transfer of permanent interests in the Springwater Corridor, proposals not covered by established policies and certain other complex projects are subject to consideration by and require approval from the Director of Portland Parks and Recreation and City Council.

C. General Conditions and Standards for Work and Construction

1. For work where encroachment into the Springwater Corridor is restricted or limited, approved users, which shall include Licensees, shall survey and stake-out the Springwater Corridor property boundary or other confines of limited access.

2. Licensee shall then install (and shall maintain for the duration of Licensee's work) a temporary fence or other barrier suitable to Parks to prevent Licensee and Licensee's employees and contractors from encroaching beyond the restricted or limited area.

3. For work by or on behalf of an adjoining landowner, Licensee shall take such steps as necessary (including boundary survey research and achieving adjustments in the adjoining landowner's deed description) to satisfactorily demonstrate to Parks that her/his common boundary with the Springwater Corridor property conforms to the Springwater Corridor property description.

4. For grading, excavating, trenching or other earth disturbing work by Licensee or for any other work activity affecting the Springwater Corridor boundary markers or identifying features (such as fences, tree lines, etc.), Licensee, upon completion of her/his work, shall engage a surveyor registered in the State of Oregon to reestablish the boundary as defined by Parks' data with identifying plastic or aluminum caps on iron rods placed on the line at all corners along the full distance of the affected area in accordance with the provisions of ORS Chapter 92.

5. All sanitary sewers, storm sewers, water lines, gas pipelines, electric lines, telephone communication lines, cable TV lines, and like facilities installed across any paved or other hard-surfaced road, walkway or trail which is heavily-used and not readily relocatable, shall be installed using boring or tunneling methods approved by Parks, except when demonstrated to the satisfaction of Parks that no feasible alternatives exist.

6. Utilities and roadways (when permitted) shall cross the Springwater Corridor in the shortest and most direct manner (normally at right angles to the Springwater Corridor property boundaries), unless otherwise directed by Parks. The exception to this policy is in the case when utilities are placed in or adjacent to existing roadways. In that case, the utilities may parallel the roadways.

7. To the greatest extent possible, utilities through or across the Springwater Corridor shall be placed within existing road rights-of-way or similar areas of limited usefulness as determined by Parks.

8. Utilities shall be placed underground, and no surface structures shall be permitted except when it is demonstrated to the satisfaction of Parks that no feasible alternatives exist. Pipelines must be buried at least 24 inches deep to protect them from surface disturbance. Utilities must be buried to a sufficient depth to protect them from surface disturbances arising from use of the Corridor by maintenance vehicles.

9. When exceptions to the General Conditions and Standards are granted, use and administration fees shall be adjusted upward to reflect the added effects and impacts of the non-standard work on the Springwater Corridor and on Parks' administration activities.

10. Unless a license specifically provides for and allows soil testing, utility line locating and surveying, all such work shall be covered by a separate license to be obtained by the contractor performing the work.

11. A proposed construction schedule, complete plans and a list of the names of all contractors and subcontractors working on the project shall be submitted to Parks.

12. All excavation or other subsurface activity shall be safeguarded for the prevention of accidents. All excavated or tunneled areas shall be filled in or adequately secured at the end of each work day.

(This document contains copyrighted material excerpted from the *Northern Virginia Regional Park Authority Manual on Policies and Procedures Governing Easements and Licenses and Non-Regional Park Uses of Northern Virginia Regional Park Authority Property* and is used with the permission of the Northern Virginia Regional Park Authority).

EXHIBIT E
Metro Easement Policy and
Metro Resolution No. 97-2539B

Rebecca V. Shoemaker, Archivist
Clerk of the Metro Council

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

RESOLUTION NO. 97-2539B

Introduced by
Mike Burton, Executive Officer

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

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

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

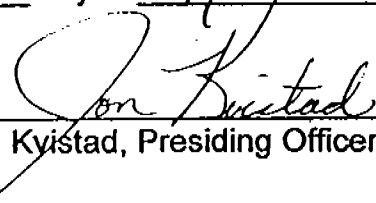
WHEREAS, Metro will be approached with proposals to utilize regional parks, open spaces, natural areas, and recreational facilities property for utility, transportation, and other non-park purposes; and

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

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

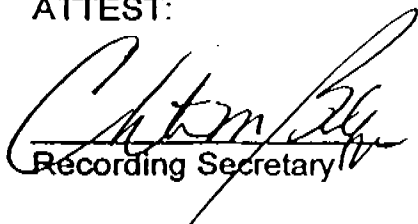
BE IT RESOLVED, that the Metro Council hereby adopts the policy attached as Exhibit "A" for any and all requests related to formal proposals for the use of Metro Regional Parks and Greenspaces properties for the purposes noted therein.

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


Jon Kyistad, Presiding Officer

ATTEST:

Approved as to Form:


Recording Secretary

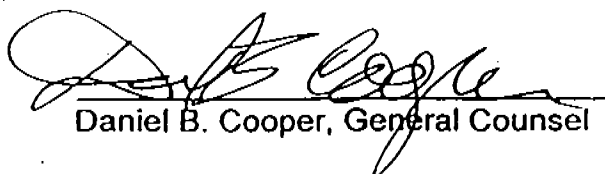

Daniel B. Cooper, General Counsel

Exhibit "A"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3415 FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE CITY OF PORTLAND FOR OPERATING AND MAINTAINING THE THREE BRIDGES AND TRAIL LOCATED IN THE SELLWOOD SECTION OF THE SPRINGWATER CORRIDOR

Date: January 14, 2004

Prepared by: Jim Desmond / Mel Huie

BACKGROUND

- The Springwater Corridor is a trail of regional significance. It stretches approximately 22 miles from OMSI to Boring, passing through southeast Portland, Milwaukie, Gresham, unincorporated Multnomah County and finally into Clackamas County. It is the region's most popular recreational and commuter trail with more than 1 million users annually.
- The Sellwood Section of the Springwater Corridor starts at SE Umatilla St. (where the recently completed "Springwater on the Willamette" trail ends) and heads south and southeast to the Three Bridges location, where it ends at the Union Pacific Railroad. The Sellwood Section is approximately 1.34 miles in length.
- The trail has been a priority of Metro Regional Parks and Greenspaces, and Metro Planning and Transportation for more than ten years. The trail is a key priority in both the Greenspaces Master Plan's Regional Trails System, and the Regional Transportation Plan (RTP).
- Funding for the purchase of the former railroad right-of-way where the future bridges and trail will be built was provided by funds (\$200,000) from Metro's Open Spaces Bond.
- Funding for the planning, design, engineering, and construction of the three bridges comes from federal transportation funds (\$4.3 million) via Metro's MTIP (Metropolitan Transportation Improvement Program). The cities of Portland and Milwaukie provided the required local match of 10.27 %.
- Metro is working in partnership with the cities of Portland and Milwaukie and the Oregon Department of Transportation to design and build the bridges and trail.
- The bridges are being planned to accommodate a future MAX Light rail line corridor as well.
- Portland General Electric (PGE) will maintain an easement to access its utility poles and transmission towers, but with the qualification that the access will not damage the bridges and trail.
- The City of Portland Parks and Recreation Department will own and maintain the bridges and trail improvements.

ANALYSIS/INFORMATION

1. **Known Opposition:** None
2. **Legal Antecedents:** Funding to purchase the property where the Three Bridges will be built and property where the future trail will be built came from Metro's 1995 Open Spaces, Parks and Streams Bond Measure.

Res. 96-2362: For the Purpose of Approving a Refinement Plan for the OMSI to Springwater Corridor Target Area as Outlined in the Open Spaces Implementation Work Plan.

Res. 01-3134: For the Purpose of Authorizing the Executive Officer to Purchase the Union Pacific Properties in the OMSI to Springwater Corridor Target Area.

Metro and the city of Portland have entered into previous IGAs giving Portland Parks the responsibility of maintaining the OMSI to Springwater Corridor Trail (a.k.a. Springwater on the Willamette Trail) and the Palmblad to Rugg Rd. trail section of the Springwater Corridor in east Multnomah County.

3. Anticipated Effects:

- Portland Parks and Recreation will own and maintain the three bike and pedestrian bridges, and the trail improvements. The bridges are anticipated to be completed by the end of 2006.
- Properties purchased by Metro for the future trail between SE Umatilla and the three bridges location will be land banked by Portland Parks. Metro and Portland Parks are working together to acquire the necessary rights and easements to build the trail in this section. When the trail is completed sometime in the future, Portland Parks will own the trail improvements and maintain them.

4. Budget Impacts:

- No cost to Metro. The city of Portland will cover costs of maintaining the bridges and trail.

RECOMMENDED ACTION

- Approve the IGA, which will give the City of Portland maintenance responsibility for the three bridges and trail in the Sellwood Section.
- Authorize Metro's Chief Operating Officer (COO) to sign the IGA.