

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 05-3528  
CHIEF OPERATING OFFICER TO )  
CONTRIBUTE TOWARDS THE PURCHASE OF ) Introduced by Michael J. Jordan, Chief Operating  
PROPERTY BY THE CITY OF PORTLAND IN ) Officer with the concurrence of David Bragdon,  
THE FOREST PARK TARGET AREA ) Council President

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26), which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements to preserve open space for parks, trails and wildlife; and

WHEREAS, on February 15, 1996, via Metro Council Resolution 96-2274A (“For the Purpose of Approving a Refinement Plan for the Forest Park Target Area as Outlined in the Open Space Implementation Work Plan”) the Metro Council adopted a refinement plan for the Forest Park Target Area, which outlined the land protection strategy for the target area, including a confidential tax-lot specific map identifying “Tier I” priority properties for acquisition; and

WHEREAS, Portland General Electric is the owner of a 2.3-acre parcel located at NW Yeon Avenue and NW St. Helens Road that is contiguous to Forest Park and is identified as a “Tier I” acquisition priority on the confidential tax lot map for the Forest Park Target Area (the “Yeon Property”); and

WHEREAS, Metro does not wish to take fee title to the Yeon Property due to potential environmental liabilities relating to PGE’s 1999 hazardous waste cleanup on the Yeon Property; and

WHEREAS, the City of Portland has negotiated a Prospective Purchaser Agreement with DEQ that proposes to protect the City from environmental liability if the City takes title to the Yeon Property and further investigates the site and performs remediation if necessary; and

WHEREAS, Metro staff negotiated and the Chief Operating Officer executed an Agreement of Purchase and Sale with PGE for the Yeon Property, contingent on the Metro Council’s approval of the following terms: 1) Metro will provide Bond Measure funding for the acquisition in the amount of the purchase price plus closing costs; 2) Metro will assign the Agreement of Purchase and Sale to the City of Portland, and Portland will take fee simple title to the Yeon Property; and 3) In return for title to the Yeon Property, the City of Portland shall grant Metro a restrictive covenant over the Yeon Property, limiting its use to open spaces, parks and trailhead purposes in perpetuity, and 4) The City of Portland shall enter into an intergovernmental agreement (“IGA”) with Metro providing that the Yeon Property will be managed for open space and park and trailhead purposes, and limiting development until a master plan for the Yeon Property may be reviewed and approved by the Metro Council; and

WHEREAS, on September 27, 2001, the Metro Council approved Resolution No. 01-3106 (“For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties that Satisfy Specific Identified Criteria”), modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to require Metro Council approval of all acquisitions

in target areas where minimum acreage goals have been met and to direct future acquisitions of properties that satisfy specific identified criteria; and

WHEREAS, Metro has already exceeded the minimum acreage goal established for the Forest Park Target Area, therefore contributing toward the purchase of the Yeon Property requires formal Metro Council authorization pursuant to Resolution 01-3106; and

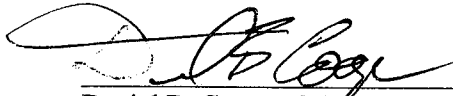
WHEREAS, the acquisition of the Yeon Property would satisfy the Forest Park Target Area Tier I objective to "acquire key trailhead site(s) in the south half of Forest Park to ease pressure at the Thurman Avenue entrance," and would "provide a needed or desired public access point to previously acquired parcels," thus meeting one of the required criteria set forth in Resolution No. 01-3106; now therefore

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to contribute the purchase price and closing costs for the acquisition by the City of Portland Parks and Recreation of the Yeon Property, legally described in Exhibit A attached hereto, subject to a perpetual restrictive covenant for public parks, open spaces and trail use, and to enter into an IGA with the City of Portland Parks and Recreation governing management of the Yeon Property.

ADOPTED by the Metro Council this 13<sup>th</sup> day of January, 2005.

  
David Bragdon, Council President

Approved as to Form:

  
Daniel B. Cooper, Metro Attorney



**Exhibit A**  
**Yeon Property - Legal Description**

The following described premises situated in Section 19, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon:

Beginning at the point of intersection of the center line of N.W. St. Helens Road (Road #1132) with the center line of N.W. Yeon Avenue; thence South  $51^{\circ}55'20''$  West, 40.0 feet to the Southerly line of said N.W. St. Helens Road; thence South  $38^{\circ}04'40''$  East along said Southerly line, 83.03 feet to the most Easterly corner of that certain tract of land conveyed to Fred Miller, et ux, by deed dated May 22, 1939 and recorded May 23, 1939, in Book 497, Page 464, Deed Records; which point is the true point of beginning; thence South  $51^{\circ}55'40''$  West along the Southeasterly line of the said Miller tract, 300 feet to the most Southerly corner thereof; thence South  $38^{\circ}04'40''$  East parallel with the Southerly line of said N.W. St. Helens Road, 546.7 feet to a point in the Easterly line of the Geo. Kittridge D.L.C.; thence North  $14^{\circ}37'30''$  East along said Easterly line, 377.12 feet to the Southerly line of said N.W. St. Helens Road; thence North  $38^{\circ}04'40''$  West along said Southerly line, 318.18 feet to the true point of beginning.

EXCEPT THEREFROM that portion described in deed to Specialty Truck Parts, Inc., recorded February 3, 1976 in Book 1086, Page 291, Records of Multnomah County.

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 05-3528, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO CONTRIBUTE TOWARDS THE PURCHASE OF PROPERTY BY THE CITY OF PORTLAND IN THE FOREST PARK TARGET AREA

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Date: December 17, 2004

Prepared by: Nancy Chase

## BACKGROUND

Resolution No. 05-3528 (“For the Purpose of Authorizing the Chief Operating Officer to Contribute Towards the Purchase of Property by the City of Portland in the Forest Park Target Area”) requests authorization for Metro to participate with the City of Portland Parks and Recreation in the acquisition of the 2.3 -acre PGE Yeon property (hereafter referred to as “the Yeon Property”), in the Forest Park Target Area.

The Yeon Property was identified as a “Tier I” acquisition priority in the confidential tax lot map approved in connection with the adoption of the refinement plan for the Forest Park Target Area, which outlined the land protection strategy for the target area, pursuant to Metro Council Resolution 96-2274A (“For the Purpose of Approving a Refinement Plan for the Forest Park Target Area as Outlined in the Open Space Implementation Work Plan”), adopted on February 15, 1996.

The 1995 update to the Forest Park Natural Resources Management Plan noted that heavy use of the popular NW Thurman Street entrance to Forest Park was producing traffic and congestion that was negatively affecting the adjacent neighborhoods and the Park’s natural resources near the Leif Erickson Drive trailhead, and recommended that a new trailhead for Forest Park be planned and built. In 1997, a feasibility study was performed that identified the Yeon Property as the most feasible of three possible locations for a new major trailhead for the southern part of Forest Park. Located at the intersection of Yeon Avenue, St. Helens Road, and NW Kittredge Avenue, the Yeon Property is directly adjacent and contiguous to Forest Park, near the 2-mile point of the Leif Erickson Trail.

In 1997, Metro began negotiations with PGE to acquire the Yeon Property, which PGE had been holding in its vacant lands inventory as a potential substation site. Soon after Metro and PGE executed an Agreement of Purchase and Sale, Metro’s due diligence revealed that the site’s soil and groundwater was contaminated with polychlorinated biphenyls (“PCBs”). Anecdotal evidence linked the PCBs to electrical transformers that had been stored and dismantled on the Yeon Property by a third party.

In 1999, PGE removed 2,100 tons of contaminated soil from the Yeon Property under the Oregon Department of Environmental Quality’s (“DEQ”) Voluntary Cleanup Program, which allows owners to clean up contamination with minimal ongoing DEQ supervision or oversight, other than review and approval of the final cleanup report. PGE disputed Metro’s groundwater test results, claiming that improper sampling procedures by Metro’s consultant made the outcome unreliable. As a result, DEQ did not require PGE to further test or cleanup the groundwater, despite the presence of a french drain on the property with broken piping leading to an unknown underground location. DEQ subsequently accepted PGE’s cleanup report and issued PGE a “no further action” letter approving the cleanup. As a result of

PGE's failure to test and address possible groundwater contamination and investigate the subsurface effects of the french drain, the Office of the Metro Attorney advised the Open Spaces Program to discontinue its efforts to acquire the Yeon Property, due to environmental liability concerns.

The City of Portland Parks and Recreation has continued to pursue the acquisition of the Yeon Property, which it has determined to be the only practical site for a new Forest Park trailhead. The City of Portland has negotiated a Prospective Purchaser Agreement with DEQ that proposes to protect the City from liability if the City buys the Yeon Property and further investigates the groundwater contamination and the location of the french drain outfall and cleans up any contamination revealed. At the City of Portland's request, Metro staff negotiated and the Chief Operating Officer executed an Agreement of Purchase and Sale with PGE for the Yeon Property, contingent on Metro Council approval of the following terms:

- 1) Metro will provide Open Spaces Bond Measure funding for the acquisition in the amount of the purchase price plus closing costs.
- 2) Metro will assign the Agreement of Purchase and Sale to the City of Portland, and Portland will take fee simple title to the Yeon Property at closing.
- 3) At closing, the City of Portland shall grant Metro a parks and open spaces restrictive covenant encumbering the Yeon Property, providing that the City of Portland's use of the Yeon Property shall be restricted to open spaces, parks and trailhead use in perpetuity.
- 4) At closing, Metro and the City of Portland shall enter into the attached IGA, attached hereto as to form as Attachment 1, requiring that the City of Portland agree to manage the Yeon Property for open spaces and park purposes, and that the City of Portland submit a master plan to the Metro Council for review and approval prior to developing the trailhead or otherwise improving the Yeon Property.

The purchase of the Yeon Property requires Metro Council authorization pursuant to Resolution No. 01-3106 ("For the Purpose of Modifying the Open Spaces Implementation Work Plan and Open Spaces Acquisition Regional Target Area Refinement Plans to Direct Future Acquisitions of Properties That Satisfy Specific Identified Criteria"), adopted on September 27, 2001, because Metro has previously exceeded the minimum acreage goal established for the Forest Park Target Area.

Acquisition of the Yeon Property is recommended because it would meet the following criteria set forth in Resolution No. 01-3106:

"Provide needed or desired public access points to previously acquired parcels."

The Forest Park Target Area Refinement Plan states that one of the specific objectives of the acquisition plan was to "Acquire key trailhead site(s) in the south half of the park to ease pressure at the Thurman Avenue entrance to the Leif Erickson Trail." The Yeon Property was determined to be the most feasible site for such a trailhead in the City of Portland's 1997 feasibility study. The Leif Erickson Trail passes relatively close to St. Helens Road in this location, making the connecting trail construction shorter and less of a burden on the park's natural resources and the Yeon Property would provide trail access and parking at a location that is safer and less burdened by high-speed automobile traffic than other parts of St. Helens Road.

The City of Portland and the Friends of Forest Park strongly support this acquisition, and have committed funds for the development of a trailhead at this location, thus leveraging the regional acquisition funds.

## ANALYSIS/INFORMATION

1. **Known Opposition:** None.
2. **Legal Antecedents:** In May 1995, Metro area voters approved the Open Spaces, Parks and Streams Bond Measure that authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and certain park-related capital improvements. Metro Code 2.04.026 (a) (3) requires that the Chief Operating Officer obtain the authorization of the Metro Council prior to executing any contract for the purchase of real property. The Open Spaces Implementation Work Plan, adopted by the Metro Council via Resolution 96-2424 (“For The Purpose of Authorizing the Executive Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Amended Open Spaces Implementation Work Plan”), adopted on January 9, 1997, established acquisition parameters that authorize the Executive Officer to purchase property within the Council-approved target area refinement plan maps but requires further Metro Council approval of acquisition subject to “unusual circumstances.”

Via Metro Council Resolution 96-2274A (“For the Purpose of Approving a Refinement Plan for the Forest Park Target Area as Outlined in the Open Space Implementation Work Plan”), adopted on February 15, 1996, the Metro Council adopted a refinement plan, which outlined a land acquisition/protection strategy for Forest Park expansion also approving the target area refinement plan tax-lot specific map, which includes the subject Yeon Property as a Tier I priority.

On September 27, 2001, the Metro Council adopted Resolution 01-3106, which modifies the Open Spaces Implementation Work Plan. Section B of Resolution 01-3106 requires Metro Council approval of new acquisitions in target areas where minimum acreage goals (as established in the bond measure) have been met.

3. **Anticipated Effects:** Metro will pay the purchase price and closing costs for the acquisition of the Yeon Property. The City of Portland Parks and Recreation will receive title to the Yeon Property, and will bear any environmental investigation and remediation costs relating to the Yeon Property. Metro will receive the benefit of a perpetual restrictive covenant guaranteeing that the Yeon Property will be used for public park, open spaces and trailhead purposes in perpetuity, but will not bear any environmental risk or liability. Acquisition of the Yeon Property will provide a feasible location for a new Forest Park trailhead, fulfilling one of the stated objectives of the Forest Park Expansion Target Area and concluding a seven-year Metro Open Spaces land acquisition odyssey.
4. **Budget Impacts:** Metro is being asked to contribute the purchase price of which there are sufficient unrestricted regional bond funds available.

Stabilization, land banking and restoration costs will not be borne by Metro, as the Yeon Property will be owned and managed by the City of Portland pursuant to an IGA with Metro.

## RECOMMENDED ACTION

Chief Operating Officer Michael J. Jordan recommends the adoption of Resolution No. 05-3528.

**Attachment 1**  
**INTERGOVERNMENTAL AGREEMENT**

**Yeon Property**

## INTERGOVERNMENTAL AGREEMENT

### Yeon Property

This Intergovernmental Agreement (“IGA”) dated this \_\_\_ day of \_\_\_\_\_, 2005, 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 Northeast Grand Avenue, Portland, Oregon, 97232-2736 (“Metro”), and the City of Portland Parks and Recreation, located at 1120 SW Fifth Avenue, Portland, Oregon 97204 (“the City”).

### RECITALS:

WHEREAS, pursuant to the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 (“Metro Open Spaces Bond Measure”) and Metro Council Resolution 96-2274A (“For the Purpose of Approving a Refinement Plan for the Forest Park Target Area as Outlined in the Open Space Implementation Work Plan”) the Metro Council adopted a refinement plan for the Forest Park Target Area, which outlined the land protection strategy for the target area, including a confidential tax-lot specific map identifying “Tier I” priority properties for acquisition;

WHEREAS, on \_\_\_\_\_, 2005, via Resolution No. 05-3528 (“For the Purpose of Authorizing the Chief Operating Officer to Contribute Towards the Purchase of Property by the City of Portland in the Forest Park Target Area”), the Metro Council authorized Metro to enter into this IGA to provide funding, in accordance with the terms and conditions set forth herein, for the acquisition by the City from Portland General Electric (“PGE”) of a 2.3-acre parcel located at NW Yeon Avenue and NW St. Helens Road, in Portland, Oregon, that is contiguous to Forest Park and more particularly described in Exhibit A attached hereto and incorporated herein (the “Yeon Property”);

WHEREAS, Metro and the City wish to provide for the public acquisition, ownership, management, and preservation of the Yeon Property as open space natural area in accordance with the Metro Open Spaces Bond Measure and the Metro Greenspaces Master Plan;

WHEREAS, on \_\_\_\_\_, 2005, the City Council authorized the City to enter into this Agreement and to purchase, manage, operate and maintain the Yeon Property in accordance with the terms set forth in this IGA;

WHEREAS, Metro and the City wish to enter into this IGA to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, management, maintenance, and operation of the Yeon Property; and



Now, therefore, the parties agree as follows:

**A. Acquisition**

1. On November 4, 2004, Metro entered into an Agreement of Purchase and Sale to purchase the Yeon Property for THREE HUNDRED SEVENTY SEVEN THOUSAND DOLLARS (\$377,000) (the "Agreement"). On or before the closing of said purchase, Metro shall assign the Agreement to the City. On said Closing Date, Metro shall tender into escrow \$377,000, representing the Purchase Price, plus an amount sufficient to satisfy taxes, assessments and Closing Costs allocated to buyer under the Agreement.
2. The City shall accept fee simple title to the Yeon Property at closing, subject to the restrictive covenant attached as Exhibit B.
3. If the City requires any due diligence investigations, the City shall be solely responsible for those items. Metro shall draft joint escrow instructions, coordinate all closing details, and pay all pro-rated taxes and assessments customarily allocated to buyer.

**B. Management, Maintenance, and Operation**

1. The City agrees to develop a Resource Management Plan ("Master Plan") for the Yeon Property, prior to development of the Yeon Property for public use. The Master Plan shall set forth the acceptable management, operation, maintenance, types and levels of programmed and public use, and trail and improvement standards for the Yeon Property. The City shall manage the Yeon Property in accordance with the standards and guidelines developed in the Master Plan.
2. The Master Plan shall ensure that the Yeon Property is managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this IGA, and that all trails and improvements on the Yeon Property comply with the Greenspaces Master Plan and with this IGA. The Master Plan shall also ensure that the Yeon Property is maintained as a natural area open space, with the primary goals being protection of the Yeon Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing. As part of the process of developing the Master Plan, the City shall take an inventory of the resources on the Yeon Property.
3. Metro shall designate at least one staff member to participate in the Master Plan process for the Yeon Property, and the Master Plan shall be subject to approval by the Metro Council prior to its implementation, which approval shall not be unreasonably withheld and shall be based on consistency with this IGA and with the Metro Greenspaces Master Plan.

**C. Interim Protection Guidelines**

1. Prior to the adoption of the Master Plan, the Yeon Property shall be managed by the City and maintained, operated, and protected in accordance with its intended use as a natural

area open space, with the primary goals being protection of the Yeon Property's natural resources.

2. Prior to adoption of the Master Plan and thereafter, the City shall maintain security of the Yeon Property, and shall provide additional fencing, gates, signage, and other measures as the City may deem necessary to increase safety on the Yeon Property, and to deter improper public use of the Yeon Property prior to adoption of the Master Plan. During the interim period, the City shall control access to the Yeon Property, and shall respond to neighborhood or citizen complaints regarding improper use or noise on the Yeon Property.

***D. General Provisions***

1. Indemnification. The City shall defend, indemnify and hold harmless Metro and its officers, agents and employees, against all loss, damage, expenses, judgments, claims and liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to the wrongful acts of the City's officers, agents and employees acting within the scope of employment or duties in performance of this IGA, subject to the limitations and conditions of the Oregon Tort Claims Act ORS Chapter 30.

Metro shall defend, indemnify and hold harmless the City and its officers, agents and employees, against all loss, damage, expenses, judgments, claims and liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to the wrongful acts of the Metro's officers, agents and employees acting within the scope of employment or duties in performance of this IGA, subject to the limitations and conditions of the Oregon Tort Claims Act ORS Chapter 30.

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

4. Joint Termination for Convenience. Metro and the City may jointly terminate all or part of this IGA based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon ten (10) days written notice of termination issued by Metro, subject to the mutual written agreement of the parties.
5. Termination for Cause. Either party may terminate this IGA in full, or in part, at any time before the date of completion, whenever that party determines, in its sole discretion, that the party has failed to comply with the conditions of this IGA and is therefore in default. The terminating party shall promptly notify the other party in writing of that determination and document such default as outlined herein. The other party shall have thirty (30) days to cure the problem. Notwithstanding any termination for cause, both parties shall be entitled to receive payments for any work completed or for which that party is contractually obligated for, which completion or contractual obligation occurred prior to the effective date of the termination, provided that no party shall be obligated to make any payment except for work specifically provided for in this IGA.
6. Laws of Oregon. This IGA 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. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this IGA including but not limited to ORS 279.015 to 279.320.
7. Assignment. The parties may not assign any of its rights or responsibilities under this IGA without prior written consent from the other party, except the parties may delegate or subcontract for performance of any of its responsibilities under this IGA.
8. Notices. All notices or other communications required or permitted under this IGA 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: Metro  
Jim Desmond  
Director, Metro Regional Parks and Greenspaces  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

To City: City of Portland  
James Sjulín  
Natural Resources Supervisor  
Portland Parks and Recreation  
1120 S.W. Fifth Ave. #1302  
Portland, OR 97204

8. Severability. If any covenant or provision in this IGA shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this IGA.
9. Entire Agreement. This IGA constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to this Yeon Property. No waiver, consent, modification or change of terms of this IGA 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: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: Chief Operating Officer

**Exhibits:**

Exhibit A – Legal Description

Exhibit B – Declaration of Open Space Restrictive Covenant and Agreement

**EXHIBIT A**  
**Legal Description**

## EXHIBIT A

### Legal Description

The following described premises situated in Section 19, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon:

Beginning at the point of intersection of the center line of N.W. St. Helens Road (Road #1132) with the center line of N.W. Yeon Avenue; thence South  $51^{\circ}55'20''$  West, 40.0 feet to the Southerly line of said N.W. St. Helens Road; thence South  $38^{\circ}04'40''$  East along said Southerly line, 83.03 feet to the most Easterly corner of that certain tract of land conveyed to Fred Miller, et ux, by deed dated May 22, 1939 and recorded May 23, 1939, in Book 497, Page 464, Deed Records; which point is the true point of beginning; thence South  $51^{\circ}55'40''$  West along the Southeasterly line of the said Miller tract, 300 feet to the most Southerly corner thereof; thence South  $38^{\circ}04'40''$  East parallel with the Southerly line of said N.W. St. Helens Road, 546.7 feet to a point in the Easterly line of the Geo. Kittridge D.L.C.; thence North  $14^{\circ}37'30''$  East along said Easterly line, 377.12 feet to the Southerly line of said N.W. St. Helens Road; thence North  $38^{\circ}04'40''$  West along said Southerly line, 318.18 feet to the true point of beginning.

EXCEPT THEREFROM that portion described in deed to Specialty Truck Parts, Inc., recorded February 3, 1976 in Book 1086, Page 291, Records of Multnomah County.

**EXHIBIT B**

**Declaration of Open Space Restrictive Covenant and Agreement**

**AFTER RECORDING, RETURN TO:**

Joel E. Morton  
Office of the Metro Attorney  
600 NE Grand Avenue  
Portland, OR 97232-2736

**This document shall not affect the  
address to which tax statements are sent**

**DECLARATION OF OPEN SPACE  
RESTRICTIVE COVENANT  
AND AGREEMENT**

THIS DECLARATION OF OPEN SPACE RESTRICTIVE COVENANT AND AGREEMENT (“Declaration”) is made this \_\_\_\_\_, 2005, by the City of Portland Parks and Recreation Department (“Parks”).

RECITALS

Parks has purchased that certain parcel of real property located at the intersection of NW Yeon Avenue and NW St. Helens Road and described by deed recorded in the Multnomah County deed records at fee # \_\_\_\_\_ (the “Yeon Property”).

In consideration for \$377,000.00, paid by Metro, a municipal corporation and political subdivision of the state of Oregon, to fund the acquisition by Parks of the Yeon Property, Parks agrees to execute this Declaration, forever restricting the use of the Yeon Property to public open space natural area use as set forth below.

RESTRICTIONS

1. Restrictive Covenant. Parks covenants to manage and maintain the Yeon Property in its natural vegetated state in perpetuity, including, at Park’s sole discretion, restoration and enhancement of native vegetation and natural systems. Parks hereby restricts the use of the Yeon Property to public parks and open spaces purposes, consisting of preservation, restoration and enhancement of native vegetation, water quality and wildlife habitat, and natural resource dependent education and recreation such as hiking and bird watching, but not including sports-related recreation.
2. Forest Park Trailhead Use. This restrictive covenant shall specifically allow for and not preclude the development by Parks of a public trail and trailhead related improvements, including a paved parking lot, restrooms, and kiosks, to accommodate natural resource dependent education and recreation.



3. Enforceability. This Restrictive Covenant shall run with the land, shall burden the Yeon Property, and shall be an equitable servitude, enforceable against Parks, its successors and assigns by Metro for the benefit of the public.

4. Violations. If Metro determines that Parks has breached this Restrictive Covenant, Metro shall provide Parks with written notice of this determination addressed to Natural Resources Supervisor, Portland Parks and Recreation, 1120 S.W. Fifth Ave. #1302, Portland, OR 97204, Parks shall thereafter have 90 days to cure, or to commence a cure if the violation is of such a nature that it cannot reasonably be cured in 90 days.

4. Remedies. Upon breach by Parks and failure to cure or commence a cure as set forth above, in addition to all other remedies provided by law and equity, Metro may bring an action to recover a money judgment in the amount of the fair market value of the Yeon Property at the time of the suit. If legal proceedings of any type are begun so as to enforce these restrictions or to seek damages for violations of these covenants and restrictions, the prevailing party shall recover reasonable attorney's fees, including attorney fees on appeal, as determined by the trial or appellate courts.

**IN WITNESS WHEREOF**, the City of Portland Parks and Recreation Department, a municipal corporation and political subdivision of the State of Oregon, and Metro, a municipal corporation and political subdivision of the State of Oregon, have executed this Declaration of Open Space Restrictive Covenant and Agreement on \_\_\_\_\_, 2005.

**Declarant**

City of Portland Parks and Recreation Department

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Metro**

By: \_\_\_\_\_

Michael J. Jordan  
Chief Operating Officer

State of Oregon )  
   ) ss.  
 County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me \_\_\_\_\_,  
 the undersigned Notary Public, personally appeared \_\_\_\_\_  
 and \_\_\_\_\_ personally known to me (or proved to  
 be on the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to  
 this instrument, and acknowledged that he (she or they) executed it.

My commission expires: \_\_\_\_\_

State of Oregon )  
   ) ss.  
 County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me \_\_\_\_\_,  
 the undersigned Notary Public, personally appeared \_\_\_\_\_ ,  
 in his capacity as Chief Operating Officer of Metro, personally known to me (or proved to be on  
 the basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this  
 instrument, and acknowledged that he (she or they) executed it.

My commission expires: \_\_\_\_\_