

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 95-2107  
THE EXECUTIVE OFFICER TO ENTER )  
INTO AGREEMENT TO OPTION PROPERTY) Introduced by Mike Burton,  
IN THE TRYON CREEK WATERSHED ) Executive Officer

WHEREAS, In July 1992, Metro completed the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, Acquisition of natural areas from willing sellers is a primary strategy for preservation of natural areas; and

WHEREAS, The Option To Purchase Real-Property Agreement is part of Metro's Options Demonstration Project approved by Council Resolution No. 93-1832; and

WHEREAS, Funds to obtain options from willing seller to purchase land are allocated via Council Ordinance No. 93 - 511; and

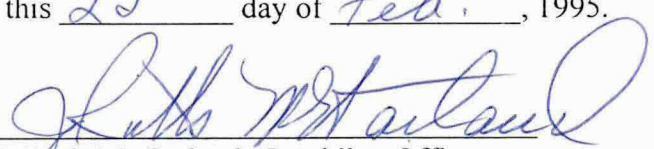
WHEREAS, A Process for Considering and Executing Options to Purchase Lands was adopted by Council Resolution No. 94-1919; and

WHEREAS, The property, as indicated in Exhibit A, is in a target area as set out in Resolution No. 94 - 2011A which referred a 135.6 million dollar bond measure for public consideration in spring 1995; now, therefore,

BE IT RESOLVED,

That Metro Council authorizes the Executive Officer to enter into an agreement as attached in Exhibit A.

ADOPTED by Metro Council this 23 day of Feb., 1995.

  
J. Ruth Mc Farland, Presiding Officer

OPTION TO PURCHASE REAL PROPERTY

THIS OPTION AGREEMENT (the "Agreement") is made and entered into by and between \_\_\_\_\_ and \_\_\_\_\_, husband and wife, (the "Seller") and Metro, a municipal corporation of the State of Oregon organized under Oregon Revised Statutes, Chapter 268, and the 1992 Metro Charter (the "Buyer"), this 30th day of December, 1994.

Agreements:

1. Grant of Option. Seller, in consideration of Metro's promise to pay the sum of \$2,500.00 upon notice from Seller (see Section 2.1 herein), does hereby grant to Buyer the sole and exclusive option to purchase the real property described in Exhibit "A" attached and incorporated by this reference into this Agreement (the "Property") in the manner and for the price stated in this Agreement.

2. Option Terms.

2.1 Previous Agreements. Seller hereby informs the Buyer and the Buyer acknowledges the existing Agreement To Purchase the Property by \_\_\_\_\_ and/or his consignees. This Option Agreement shall not take effect nor any Option Money be paid until and unless the \_\_\_\_\_ agreement becomes null and void. Upon the expiration of the \_\_\_\_\_ agreement the Seller shall notify Buyer, in the appropriate manner and at the herein described notice address, of the expiration. Upon receipt of said notice Metro shall immediately pay the Option Price of \$2,500.00 set forth in Section 1 above. The Seller agrees that upon signing this Option Agreement they will not extend, or delay the expiration of, in any way the foregoing described existing agreement with \_\_\_\_\_

This Option Agreement is intended as a back up instrument junior only to the existing agreement between the Seller and \_\_\_\_\_ and shall take effect upon the date following the failure of the existing agreement but no later than April 16, 1995. Under no circumstances are the existing agreement and this Option Agreement to be in effect at the same time regardless of language which may be construed otherwise elsewhere in this instrument.

2.2 Term. The initial term of the option shall commence on the effective date and shall continue for a period of six calendar months or until October 15, 1995, whichever date shall last occur, but in no event shall the option become effective until the day following the date the existing agreement between Seller and \_\_\_\_\_ shall expire. Buyer shall have the right to extend the term of the option for an additional period of six calendar months, commencing on the date the initial term expires and ending on or about April 15, 1996 but in no case less than the six calendar months described. Buyer's payment of the first Option Money Payment due under Section 3 after the initial term expires shall be deemed to

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constitute an election to extend the option to the extended term date above.

2.3 **Exercise of Option.** Buyer may exercise this option by written notice to Seller at any time during the term of this option. Upon exercise of this option, Buyer shall be obligated to purchase the Property from Seller and Seller shall be obligated to sell the Property to Buyer for the price and in the manner herein set forth.

2.4 **Failure to Exercise Option.** If Buyer fails for any reason to exercise this option in the manner set forth herein, Buyer shall have no further claim against or interest in the Property or any of the Option Money Payments, unless Buyer is entitled to a refund of the Option Money Payments under another provision of this Agreement. In the event of the failure to exercise the option, Buyer shall provide Seller with any instruments that Seller reasonably may deem necessary for the purpose of removing from the public record any cloud on title to the Property which is attributable to the grant or existence of this option.

3. **Option Money.** In payment for Seller's grant of this option, Buyer will pay Seller the following "Option Money Payments": (a) After the execution of this Agreement, Buyer will pay Seller the cash sum of \$2,500.00 mentioned in Section 1 and provided in Section 2.1; and (b) if Buyer elects to extend the option term under Section 2.1, Buyer will pay Seller the cash sum of \$1,000.00.

4. **Purchase Price and Terms.** If the Buyer exercises the option, the purchase price shall be the fair market value of the property. Fair market value shall be based on the highest and best use of the property as determined in a full narrative written appraisal prepared by a state certified appraiser selected, retained and paid by Buyer. Payment shall be less any option payments made to Seller pursuant to Sections 1, 2.1 and 3 herein.

The Seller's agreement to the foregoing notwithstanding, the Minimum Sale Price shall be \$ \_\_\_\_\_ plus \_\_\_\_\_ to be allocated toward the payment of outstanding Bancrofted Assessments liened against the Property and \$ \_\_\_\_\_ to be allocated toward payment of any unpaid taxes attributable to the Property, as expressed in Section 11 herein, thereby comprising the total Minimum Sale Price (hereinafter "Minimum Price) of \$ \_\_\_\_\_

In the event the Buyer's appraisal of the fair market value of the Property indicates a value of less than the Minimum Price the buyer has the right to declare this agreement null and void and of no further binding effect on Buyer or Seller. It being the intention of the parties that the Option Money received by the Seller shall be considered liquidated damages in this transaction with no further obligation required on the part of the Buyer.

However, the Buyer may elect to proceed to closing, at its sole discretion, by a written notice to Seller. In the event Buyer's appraisal indicates a value greater than the Minimum Price the purchase price shall be determined by Buyer's appraisal, less option payments.

The entire balance of the purchase price shall be paid at closing.

5. Recording. On the effective date, Seller shall execute, acknowledge and deliver to Buyer a memorandum in the form attached as Exhibit B. Buyer will record the memorandum.
6. Possession. Possession of the Property shall remain with Seller, subject to the Covenants in this Agreement, until closing. Buyer shall be entitled to exclusive possession of the Property on and after the closing date.
7. Access to Property. Seller grants to Buyer and its agents the right to enter on the Property at reasonable times before the closing date for the purpose of conducting tests or studies that Buyer may deem necessary or appropriate in connection with its acquisition of the Property. Seller shall cooperate with Buyer in making such tests and studies. No soil tests or drilling shall be undertaken without first notifying the Seller of Buyer's intent to come onto the property and obtaining Seller's approval of the date of entry. Buyer shall not interfere with or disturb the rights of any tenants of Seller in possession of any portion of the Property. Buyer shall protect, defend, and hold Seller harmless from any loss, liability, or damage to persons or property arising out of or related to Buyer's activities on the Property. If Buyer fails to exercise the option and purchase the Property, Buyer shall fully compensate Seller for any physical damage to the Property or charge on it attributable to Buyer's activities pursuant to this paragraph. In the event Buyer fails to exercise the option, Buyer shall deliver to Seller a legible copy of any reports, studies, and drawings owned by Buyer that relate to the Property.
8. Covenants of Seller. Seller acknowledges that the Covenants of Seller contained in this Agreement, including the Covenants contained in this Section 8 (the "Covenants"), are material inducements to Buyer to enter into this Agreement. The Covenants specifically delineated in this section are the following:
  - 8.1 Information. Seller agrees to deliver to Buyer, within 20 days after the effective date, photocopies of all documents related to the use or ownership of the Property that Seller possesses, including (without limitation) all studies, reports, aerial photographs, and other documents of a similar nature.
  - 8.2 Maintenance. Before the Closing Date, Seller shall maintain the Property in the same condition as it now exists, ordinary wear and tear expected, and shall not cause or permit any waste.
  - 8.3 Seller's Promise to Remove Personal Property. Before the Closing Date, Seller promises to remove or cause to be removed from the Property at Seller's expense any and all personal property and/or trash, rubbish, or any other unsightly or offensive materials, unless otherwise agreed to in writing by Buyer.
  - 8.4 Covenant to Maintain Property in Its Natural State. Seller, its successors and assigns hereby covenants, promises, agrees to maintain the Property to retain all its natural features undamaged, unimproved or unchanged in any way.
  - 8.5 Ownership. During the term, Seller shall not sell, contract to sell, assign, lease

or otherwise transfer the Property or any part of it, unless it is transferred subject to this option, nor grant an option to any third party to acquire all or any portion of it.

9. Seller's Representations.

9.1 Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller, if Seller is not an individual, have full power and authority to sign for Seller and to bind it to this Agreement) and to sell, transfer and convey all rights, title, and interest in and to the Property in accordance with this Agreement.

9.2 The Property has legal vehicular access to a public road.

9.3 No one other than Seller will be in possession of any portion of the Property at the close of escrow.

9.4 There is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's title to the Property, or any portion thereof, affect the value of the Property or any portion thereof, or subject an owner of the Property, or any portion thereof, to liability.

9.5 There are no:

(a) Intended public improvements or private rights which will result in the creation of any liens upon the Property or any portion thereof, the previously described existing assessments and past due taxes described in Section 11 herein as of the date of this agreement notwithstanding;

(b) Uncured notices which have been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof except for those that may herein be acknowledged and/or accepted by the parties;

(c) Actual or impending mechanic's liens against the Property or any portion thereof; and

(d) Notices or other information giving Seller reason to believe that any conditions existing on the Property or in the vicinity of the Property or in ground or surface waters associated with the Property may have a material effect on the value of the Property or subject the owner of the Property to potential liabilities under environmental laws.

9.6 Other than the herein described agreement with \_\_\_\_\_, there is no

lease, license, permit, option, right of first refusal, or other agreement, written or oral, which affects the Property or any portion thereof.

9.7 Neither the grant nor the exercise of the option will constitute a breach or default under any agreement to which Seller is bound and/or to which the subject Property is subject.

9.8 Hazardous Substances. For purposes of this subsection, the phrase "Hazardous Substances" has the same meaning as is designated in ORS 465.200(9). Seller warrants, represents, and covenants as follows:

(a) To the knowledge of Seller, there are no hazardous substances in, upon, or buried on or beneath the Property and no hazardous substances have been emitted or released from the Property in violation of any environmental laws of the federal or state government;

(b) Seller has not brought onto, stored on, buried, used on, emitted or released from, or allowed to be brought onto, stored on, buried, used on, or emitted or released from, the Property any hazardous substances in violation of any environmental laws of the federal or state government; and

(c) To the knowledge of Seller, no underground storage tanks are located on the Property, including (without limitation) any storage tanks that contain, or previously contained, any hazardous substances, and Seller agrees not to cause or permit any such tanks to be installed in the Property before closing.

9.9 Status of Seller. Seller warrants that Seller is not a foreign person, foreign partnership, foreign corporation, or foreign trust, as those terms are defined in IRC § 1445.

Each of the above representations is material and is relied upon by Buyer. Each of the above representations shall be deemed to have been made as of the close of escrow and shall survive the close of escrow. Seller shall indemnify, defend and hold Buyer harmless from all expense, loss, liability, damages and claims, including Buyer's attorney fees, if necessary, arising out of the breach of any of Seller's warranties, representations, and covenants. Upon close of escrow, if Buyer so requests, Seller shall deliver to Buyer a certificate in a form satisfactory to Buyer's counsel stating that each of the above representations is true and current as of the close of escrow.

If, before the close of escrow, Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information. If any of the foregoing warranties and representations cease to be true before the close of escrow, Seller shall be obligated to use its best efforts to remedy the problem before the close of escrow. If the problem is not remedied before close of escrow, Buyer may elect to either (a) terminate this

Agreement in which case Buyer shall have no obligation to purchase the Property, or (b) defer the closing date until such problem has been remedied. Buyer's election in this regard shall not constitute a waiver of Buyer's rights in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor shall it constitute a waiver of any other remedies provided in this agreement or by law or equity.

10. Remedies Upon Default. In the event Seller defaults in the performance of any of Seller's obligations under this Agreement, Buyer shall, in addition to any and all other remedies provided in this Agreement or by law or equity, have the right of specific performance against Seller. In the event Buyer defaults in the performance of any of its obligations under this Agreement, Seller shall have the right to retain the option consideration without thereby waiving Seller's right to recover damages for breach of contract or any other remedy provided in this Agreement or by law or equity.

11. Property Taxes and Expenses. During the term of this option, Seller shall protect the property from foreclosure for taxes and/or assessments up to the closing date. Property taxes shall be prorated for the current year of the sale as of the closing date. Except for the share of the unpaid assessments and past due taxes agreed to be paid by the Buyer described in Section 4 herein, the balance of any assessments and past due taxes attributable to the Property shall be paid by the Seller from the proceeds of this sale or other funds caused to be deposited into escrow by the Seller at closing for that purpose.

12. Closing.

12.1 Time and Place. Closing of the sale and purchase of the Property (the "Closing") shall occur on a date (the "Closing Date") selected by Buyer, but in all events the Closing shall occur within 120 days after the date that the exercise notice is given. The escrow for the Closing shall be established at the office of Transamerica Title Insurance Co. (the "Title Company"), at 111 SW 5th Ave., Portland, OR 97204.

12.2 Closing Obligations. On or before the Closing Date, Seller and Buyer shall deposit the following documents and funds in escrow, and the Title Company shall close escrow in accordance with the instructions of Seller and Buyer.

12.2.1 Seller shall deposit the following:

- (a) Any conveyance documents required by law, and/or described in this agreement, duly executed and acknowledged;
- (b) A duly executed affidavit certifying that Seller is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC § 1445;
- (c) Original counterparts of legible photocopies of all documents, feasibility studies, surveys, engineering reports, and other items of a similar nature in the possession of Seller that relate to the

Property;

- (d) Such documents as Buyer or the Title Company may require to evidence the authority of Seller to consummate this transaction; and
- (e) Such other documents and funds, including (without limitation) escrow instructions, as are required of Seller to close the sale in accordance with this Agreement.

12.2.2 Buyer shall deposit the following:

- (a) The cash payment specified in Section 4, minus any credits available to Buyer under the terms of this Agreement;
- (b) Such documents as Seller or the Title Company may require to evidence the authority of Buyer to consummate the transaction contemplated; and
- (c) Such other documents and funds, including (without limitation) escrow instructions, as are required of Buyer to close the sale and purchase of the Property in accordance with this Agreement.

12.3 **Costs.** Buyer and Seller each shall pay one-half of the escrow fee of the Title Company with respect to the Closing. Seller shall pay the premium for the title insurance policy that Seller is obligated to provide to Buyer, and for all conveyance or excise taxes payable by reason of the purchase and sale of the Property. Buyer shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.

12.4 **Prorations.** All items of expense incurred by Seller with respect to the Property shall be paid by Seller at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs shall be prorated between Seller and Buyer as of the Closing Date except for the provisions in Section 11 herein.

12.5 **Title Insurance Policies.** As soon as practicable after Closing, and in any event no later than 30 days after the Closing Date, Seller shall cause the Title Company to issue at Seller's expense its standard form Owner's ALTA Title Insurance Policy, with extended coverage, in the amount of the purchase price, insuring fee simple title to the Property vested in Buyer, subject only to the permitted exceptions.

13. **Conveyance.** At the Closing, Seller shall execute, acknowledge, and deliver to Buyer a Statutory Warranty Deed conveying the Property to Buyer, subject only to the permitted exceptions.



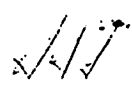
14. Waiver. Failure by Seller or Buyer to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.
15. Successors and Assigns. Subject to the limitations on Seller's right to convey the Property set forth elsewhere herein, the terms, covenants, and conditions herein contained shall be binding on and inure to the benefit of the heirs, successors, and assigns of Seller and Buyer. Buyer may assign its interest in this Option Agreement and the Property to any person or entity, without the consent of Seller. In the event that an assignee assumes the obligations of Buyer hereunder, then Buyer shall have no further liability with respect to this Agreement.
16. Notices. All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Seller: \_\_\_\_\_  
 \_\_\_\_\_

To Buyer: Metro  
Attention: Nancy Chase  
600 NE Grand Ave.  
Portland, OR 97232-2736

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above shall be effective when received by the party for whom it is intended.

17. Attorney Fees. If litigation is instituted with respect to this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, such amount to be set by the court before which the matter is heard.
18. No Commission. Each party represents to the other that it has not used a real estate broker under contract to sell the property for a commission in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party against whom the claim is asserted will hold the other party harmless from said claim.
19. Risk of Loss. Seller shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, and regardless of whether the exercise notice has yet been given or is subsequently given, all or part of the Property is damaged by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened,



Seller shall give Buyer written notice of such event. Buyer may terminate this Agreement by giving written notice to Seller within 15 days following receipt by Buyer of written notice from Seller of such casualty or condemnation and Seller will return to Buyer the Option Money Payments previously paid.

20. Integration, Modification, or Amendments. This Agreement contains the entire agreement of the parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the Property. Any modifications, changes, additions, or deletions to this Agreement must be approved by Seller and Buyer, in writing.
21. Representation. Seller and Buyer have each been represented by separate legal counsel of choice with respect to this transaction. Except as otherwise provided in Section 17, each party shall be responsible for all attorney fees incurred by it with respect to this Agreement.
22. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.
23. No Merger. The obligations contained in this Agreement, except for those specifically discharged in escrow (such as conveyance title to the Property and delivery of money and documents in the escrow), shall not merge with transfer of title but shall remain in effect until fulfilled.
24. Governing Law; Interpretation. This Agreement shall be governed by the laws of Oregon. In the event a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Seller and Buyer intend that (a) that portion of this Agreement be enforced to the extent permitted by law, and (b) the balance of this Agreement remain in full force and effect.
25. Time is of the Essence. Time is of the essence of this Agreement.
26. STATUTORY DISCLAIMER. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

To be executed on the day and year above described.

SELLER:

BUYER:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

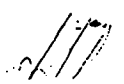
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attachments:

Exhibit A - Property

Exhibit B - Form of Memorandum



When recorded, mail to:  
Right Of Way Associates  
10186 SW Laurel Street  
Beaverton, OR 97005  
Attn: Nathan R. Pool, Agent

Exhibit B

MEMORANDUM OF OPTION

This is a memorandum of a certain Option Agreement dated December 30, 1994 between \_\_\_\_\_ and \_\_\_\_\_ ("Seller"), and Metro, an Oregon municipal corporation ("Buyer"). By said Option Agreement, Seller has granted to Buyer an exclusive option to purchase that certain real property in Multnomah County, Oregon, described in Exhibit A attached herein and incorporated herein by this reference.

Said option extends from the date of the Option Agreement through and including April 15, 1996 or one calendar year from the date of the Option Agreement, whichever is later, at which time it shall automatically expire.

SELLER:

State of Oregon )

County of Multnomah )ss

On this 30 day of Dec, 1994, 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: Aug 1, 97

