



## RESOLUTION 2008-054

### A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH METRO FOR THE NATURAL AREAS LOCAL SHARE PROGRAM

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

**WHEREAS**, the measure provided that \$44 million from bond proceeds be expended by local parks providers for specified projects; and

**WHEREAS**, the City of Sherwood is scheduled to receive funding in the amount of \$446,744 for projects as specified in the measure; and

**WHEREAS**, in order for the intergovernmental agreement to be signed the City of Sherwood must identify how they intend to spend the money; and

**WHEREAS**, the City of Sherwood intends to spend the money on improvements to Stella Olsen Park which may include trail and boardwalk construction, off street parking, restrooms and the purchase of plant materials as outlined in the Stella Olsen Park Master Plan.

### NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

**Section 1.** The City Manager is authorized to enter into an Intergovernmental Agreement, attached as Exhibit A, with Metro for the Natural Areas Local Share Program.

**Section 2.** This Resolution shall be effective upon its approval and adoption.

**Duly passed by the City Council this 7th day of October 2008.**

  
Keith S. Mays, Mayor

ATTEST:

  
Sylvia Murphy, City Recorder

Project: Natural Areas Local Share Program

Contract No. 927847

## INTERGOVERNMENTAL AGREEMENT

### Natural Areas Bond Measure Local Share Component

This Intergovernmental Agreement (hereinafter the "Agreement"), entered into under the provisions of ORS chapter 190 and effective on the date the Agreement is fully executed (the "Effective Date"), is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and the City of Sherwood, located at 22560 SW Pine St, Sherwood, Oregon 97140 (hereinafter referred to as the "Local Share Partner"), and shall remain in full force and effect for the period from April 1, 2007, until June 30, 2027.

### RECITALS

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

WHEREAS, the Measure provided that \$44 million from bond proceeds be expended by local parks providers for specified projects; and

WHEREAS, the Local Share Partner is a local government jurisdiction who has received approval for funding for projects as specified in the Measure; and

WHEREAS, Metro and the Local Share Partner desire to enter into this Agreement to provide for funding of the Local Share Partner's projects subject to terms and conditions as provided for in the Measure;

NOW THEREFORE, the parties agree as follows:

1. Declaration of Projects

Metro hereby approves the project proposals described in the "Local Share Project List," attached hereto as Attachment A to this Agreement (each individual proposal on the Local Share Project List is referred to hereinafter as a "Project"), and Metro authorizes the Local Share Partner to proceed with Projects on the Local Share Project List in accordance

with Attachment A. All real property interests acquired pursuant to this Agreement shall be held in the name of the Local Share Partner.

2. Funding

Metro's financial obligation under this Agreement is limited to \$446,744. Payment of funds by Metro to the Local Share Partner is subject to the procedures set forth in the "Procedures for Payment of Funds By Metro," attached hereto as Attachment B to this Agreement.

3. Funding Limitations

A. The sole purpose of this Agreement is to implement the Measure by funding Projects on the Local Share Project List. Except as described in Section 4 with respect to Metro's provision of property acquisition technical services, Metro shall have no obligations under this Agreement other than for the payment of funds pursuant to the procedures described in Attachment B to this Agreement.

B. Except as described in Section 4 with respect to Metro's provision of property acquisition technical services, Metro shall have no supervisory responsibility regarding any aspect of any Project and Metro neither intends nor accepts any direct involvement in any Project that can or could be construed to result in supervisory responsibility during the course of the Project. Upon completion of a Project and payment of funds, as provided for in Attachment B, Metro shall have no further obligations.

C. The Local Share Partner shall comply with this Agreement, the provisions of the Measure, and the Local Share Guidelines attached as Attachment C to this Agreement.

D. Metro shall not be obligated to make any payments or reimbursements pursuant to this Agreement that were incurred by the Local Share Partner prior to the Effective Date of this Agreement.

E. Metro shall not reimburse the Local Share Partner for any administrative costs, including staff, overhead and indirect costs, in excess of ten percent (10%) of the cost of a Project.

4. Land Acquisitions Technical Assistance

Provided that the Local Share Partner agrees to the terms of a separate "Land Acquisition Services" intergovernmental agreement ("IGA") with Metro substantially similar to the IGA attached as Attachment D to this Agreement prior to April 1, 2007, Metro shall provide the Local Share Partner with technical assistance regarding real estate negotiation and

related due diligence services for any Project that calls for real property acquisitions. Metro shall provide such technical assistance as provided in such Land Acquisition Services IGA and subject to the availability of Metro staff and resources as determined by Metro at its sole discretion. Metro's obligation to provide such technical services pursuant to such Land Acquisition Services IGA may be extended beyond the initial term of such IGA with the mutual written consent of Metro and the Local Share Partner.

5. Projects Not on the Local Share Project List

The Local Share Partner may substitute a different Project for a Project described in Attachment A, or may add a new Project, only if the following conditions are met:

- A. The Local Share Partners, through its governing body, finds that one or more of the Projects described in Attachment A have become degraded, are cost prohibitive, or are otherwise unfeasible, or that a Project can be accomplished for less funds than estimated, thereby making such savings available for use in a new Project;
- B. The Local Share Partner, through its governing body, shall conduct a public process, including holding a public meeting in accord with its adopted public meeting procedures, and determine the substitute or new Project consistent with the provisions of the Measure and Attachment C (this provision may be satisfied during the course of the Local Share Partner's capital improvement plan or budgeting process); and
- C. The substitute or new Project is subject to administrative approval by Metro's Regional Parks and Greenspaces Department Director, and such approval shall not be unreasonably withheld.

6. Increasing Spending on a Project on the Local Share Project List

The Local Share Partner may spend more on a Project than the Project cost described in Attachment A only if the following conditions are met:

- A. The Local Share Partner, through its governing body, finds that the Project described in Attachment A will cost more than anticipated, but that it remains a priority Project;
- B. The Local Share Partner, through its governing body, shall conduct a public process, including holding a public meeting in accord with its adopted public

meeting procedures, and determine that increasing the allocated spending on the Project is consistent with the provisions of the Measure and Attachment C (this provision may be satisfied during the course of the Local Share Partner's capital improvement or plan budgeting process); and

- C. The increase in spending on the Project is subject to administrative approval by Metro's Regional Parks and Greenspaces Department Director, and such approval shall not be unreasonably withheld.

7. Term

Metro's obligation to provide funds pursuant to this Agreement shall terminate March 31, 2012, and all other provisions of this Agreement shall terminate on June 30, 2027. It is the intent of the parties for the Local Share Partner to have completed the Project, and for all Metro funding obligated under this Agreement to have been paid, prior to March 31, 2012. Metro's obligation to provide funds may be extended by mutual written consent of Metro and the Local Share Partner. The provisions of Sections 8, 9, 10 and 11 shall continue in effect after the Local Share Partner's completion of any Project pursuant to this Agreement.

8. Limitations on Use of Property

A. Acquired Real Property and Associated Buildings and Improvements.  
All real property acquired by the Local Share Partner with funding provided by Metro pursuant to this Agreement shall be maintained as parks, open space, natural areas, or trails. The Local Share Partner may not sell or otherwise authorize use of such property pursuant to this Agreement in a manner inconsistent with the intended and stated purposes of the Measure, that is, for a use other than as parks, open space, natural areas, trails or other uses associated with use of such property as parks, open space, natural areas or trails (e.g., when a de minimis portion of such property is required to be put to another use, such as for a road dedication, as part of a land use review proceeding initiated to use the overall property consistent with the intended and stated purposes of the Measure), unless the Local Share Partner complies with all of the following conditions:

- (1) The Local Share Partner's decision to sell or use the property in a manner inconsistent with the intended and stated purposes of the Measure is the result of unforeseen circumstances;

- (2) The Local Share Partner's intent, at the time it purchased the property, was to use it in a manner consistent with the intended and stated purposes of the Measure, that is, for a use as a park, open space, natural area, or trail;
- (3) The Local Share Partner provides Metro 180 days advance written notice of its intent to authorize the change in use or the sale of the property to a third party;
- (4) The Local Share Partner holds at least one public hearing regarding the matter, consistent with its adopted public meeting procedures, prior to making a final decision to sell or change the use of the property, and adopts a resolution or ordinance that includes findings that the conditions in subsections 8(A)(1) through (4) of this Agreement have been satisfied and that the Local Share Partner has satisfied or will satisfy its obligations as described in subsections 8(A)(5) and (6) of this Agreement;
- (5) Metro has approved the Local Share Partner's determination of the appraisal value of the property pursuant to the following steps:
  - i. At least 90 days prior to making a final decision to change the use of, or sell, the property, the Local Share Partner shall provide Metro with an independent MAI appraisal of the fair market value of the property assuming that the property was subject to the same use restrictions as were in place at the time the Local Share Partner purchased the property. Such appraisal shall not be subject to any other extraordinary assumptions; and
  - ii. Not later than 60 days after receiving the appraisal obtained by the Local Share Partner, Metro shall inform the Local Share Partner whether Metro has approved the appraisal, which decision shall be made in good faith and based on whether the appraisal is complete and reasonable. Metro's review shall include having the appraisal reviewed by a review appraiser hired by Metro to conduct a review in accordance with USPAP and general appraisal standards. If Metro does not approve the appraisal, then Metro shall inform the Local Share Partner the reasons for not approving the appraisal and the Local Share Partner may resubmit a revised appraisal

- to Metro pursuant to subsection 8(A)(5)(i) of this Agreement; and
- (6) Within 180 days after selling the property or authorizing the change in use of the property, the Local Share Partner shall apply toward completion of a Project listed on Attachment A, or a substitute Project selected consistent with the provisions of Section 5 of this Agreement, an amount equal to the greater of either (a) the appraisal value of the property, as determined pursuant to subsection 8(A)(5) of this Agreement, or (b) the amount of Measure funding that Metro provided to the Local Share Partner to purchase the property.

**B. Construction of Buildings or Other Improvements.**

All buildings and other improvements constructed by the Local Share Partner using funding provided by Metro pursuant to this Agreement shall be maintained for use in conjunction with parks, open space, natural areas, or trails. The Local Share Partner may not sell or otherwise authorize use of such buildings or improvements pursuant to this Agreement in a manner inconsistent with the intended and stated purposes of the Measure, that is, for a use other than in conjunction with parks, open space, natural areas, or trails, unless it complies with all of the following conditions:

- (1) The Local Share Partner's decision to sell or use such buildings or improvements in a manner inconsistent with the intended and stated purposes of the Measure is the result of unforeseen circumstances;
- (2) The Local Share Partner's intent, at the time it constructed such buildings or improvements, was to use them in a manner consistent with the intended and stated purposes of the Measure, that is, for a use in conjunction with a park, open space, natural area, or trail;
- (3) The Local Share Partner provides Metro 180 days advance written notice of its intent to authorize the change in use or the sale of such buildings or improvements to a third party;
- (4) The Local Share Partner holds at least one public hearing regarding the matter, consistent with its adopted public meeting procedures, prior to making a final decision to sell or change the use of such buildings or

improvements, and adopts a resolution or ordinance that includes findings that the conditions in subsections 8(B)(1) through (4) of this Agreement have been satisfied and that the Local Share Partner has satisfied or will satisfy its obligations as described in subsections 8(B)(5) and (6) of this Agreement;

- (5) Metro has approved the Local Share Partner's determination of the appraisal value of such buildings or improvements pursuant to the following steps:
  - i. At least 90 days prior to making a final decision to sell or change the use of such buildings or improvements, the Local Share Partner shall provide Metro with an independent MAI appraisal of the fair market value of such buildings or improvements. Such appraisal shall not be subject to any extraordinary assumptions; and
  - ii. Not later than 60 days after receiving the appraisal obtained by the Local Share Partner, Metro shall inform the Local Share Partner whether Metro has approved the appraisal, which decision shall be made in good faith and based on whether the appraisal is complete and reasonable. Metro's review shall include having the appraisal reviewed by a review appraiser hired by Metro to conduct a review in accordance with USPAP and general appraisal standards. If Metro does not approve the appraisal, then Metro shall inform the Local Share Partner the reasons for not approving the appraisal and the Local Share Partner may resubmit a revised appraisal to Metro pursuant to subsection 8(B)(5)(i) of this Agreement; and
- (6) Within 180 days after selling such buildings or improvements or authorizing the change in use of such buildings or improvements, the Local Share Partner shall apply toward completion of a Project listed on Attachment A, or a substitute Project selected consistent with the provisions of Section 5 of this Agreement, an amount equal to the greater of either (a) the appraisal value of such buildings or improvements, as determined pursuant to subsection 8(B)(5) of this Agreement, or (b) the amount of Measure funding that Metro provided to the Local Share Partner to construct such buildings or improvements.

9. Oregon Constitution and Tax Exempt Bond Covenants

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

10. Funding Recognition

The Local Share Partner shall recognize and document on-site, for each Project whether an acquisition or a capital improvement, and in any publications, media presentations, or other presentations referencing such Project that are produced by or at the direction of the Local Share Partner, that funding for the Project came from the Metro Natural Areas Bond Measure. Such recognition shall comply with the recognition guidelines detailed in Attachment E to this Agreement.

11. Mutual Indemnification

The Local Share Partner shall indemnify and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Agreement by the Local Share Partner or the Local Share Partner's officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30. Metro shall indemnify and hold the Local Share Partner and the Local Share Partner's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the

performance of this Agreement by Metro or Metro's officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30.

12. Termination for Cause

A. Metro may terminate this Agreement, in full or in part, at any time during the term of the Agreement if Metro reasonably determines, in its sole discretion, that the Local Share Partner has failed to comply with any provision of this Agreement and is therefore in default. Metro shall promptly document such default and notify the Local Share Partner in writing of Metro's determination as required in Section 12 of this Agreement, below. Notwithstanding any termination for cause, the Local Share Partner shall be entitled to receive payments for any work completed or for which the Local Share Partner was contractually obligated on the date that Metro provided written notice of default, except that Metro shall not be obligated to make any payment other than for work specifically provided for in this Agreement.

B. Prior to termination under this Section 12 of this Agreement, Metro shall provide the Local Share Partner with written notice of default that describes the reason(s) that Metro has concluded that the Local Share Partner is in default and includes a description of the steps that the Local Share Partner shall take to cure the default. The Local Share Partner shall have 90 days from the date of the notice of default to cure the default. In the event the Local Share Partner does not cure the default within 90 days, Metro may terminate all or any part of this Agreement. Metro shall notify the Local Share Partner in writing of the reasons for the termination and the effective date of the termination, which shall not be earlier than 90 days from the date of the notice of default. The Local Share Partner shall be entitled to receive payments for any work completed, including any contractual obligations entered, after the date of the notice of default and before the date that Metro provided written notice of termination, provided that such work or contractual obligations were undertaken by the Local Share Partner in a good faith effort to comply with one of the steps to cure the default described by Metro in the notice of default, except that Metro shall not be obligated to make any payment other than for work specifically provided for in this Agreement.

C. The Local Share Partner shall be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default.

D. If, after notice of termination, Metro agrees or a court finds that the Local Share Partner was not in default or that the default was excusable, such as due to a labor strike, fire, flood, or other event that was not the fault of, or was beyond the control of the Local Share Partner, Metro shall allow the Local Share Partner to continue work, or both parties may treat the termination as a joint termination for convenience whereby the rights of the Local Share Partner shall be as outlined as provided in Section 13 of this Agreement.

13. Joint Termination for Convenience

Metro and the Local Share Partner may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective upon ten (10) days written notice of termination issued by Metro subject to that mutual agreement. Within 30 days after termination pursuant to this provision, the Local Share Partner shall submit an itemized invoice for all unreimbursed Project work completed before the effective date of termination. Metro shall not be liable for any costs invoiced later than 30 days after termination; provided, however, that Metro may reimburse additional costs, at Metro's sole discretion, if Metro reasonably determines that the delay was due to factors beyond the Local Share Partner's control.

14. Project Records, Audits, and Inspections

A. The Local Share Partner shall maintain comprehensive records and documentation relating to any Project for which it seeks payment from Metro pursuant to this Agreement, including, without limitation, the establishment and maintenance of books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of any nature that the Local Share Partner incurred or anticipated to be incurred for the performance of this Agreement (hereinafter "Project Records"). Project Records shall include all records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models, that are prepared or developed in connection with any Project, including any substitute Project selected consistent with Section 5 of this Agreement.

B. The Local Share Partner shall maintain all fiscal Project Records in accordance with generally accepted accounting principles. In addition, the Local Share Partner shall maintain any other records necessary to clearly document:

- (1) The Local Share Partner's performance of this Agreement, including but

not limited to the Local Share Partner's compliance with the Agreement, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions;

- (2) Any claims arising from or relating to the performance of the Local Share Partner under this Agreement or any public contract entered into by the Local Share Partner that is related to this Agreement;
- (3) Any cost and pricing data relating to this Agreement; and
- (4) Payments made to all suppliers and subcontractors engaged in any work for the Local Share Partner related to this Agreement.

C. The Local Share Partner shall maintain Project Records for the longer period of either (a) six years from the date of termination of Metro's obligation to provide funds pursuant to this Agreement, which date is provided in Section 7 of this Agreement, or (b) until the conclusion of any audit, controversy, or litigation that arises out of or is related to this Agreement and that commences within six years from the date of termination of Metro's obligation to provide funds pursuant to this Agreement.

D. The Local Share Partner shall make Project Records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Local Share Partner agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. Such costs paid by the Local Share Partner to Metro for inspection, auditing, examining and copying such records shall not be recoverable costs in any legal proceeding.

E. The Local Share Partner authorizes and permits Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and Project Records of the Local Share Partner, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any requirements of this Agreement.

Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of Section 14(F) of this Agreement.

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

G. The Local Share Partner agrees that in the event such Project Records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Local Share Partner shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due to the Local Share Partner from Metro.

15. Public Records

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

16. Law of Oregon, Public Contracting Provisions

The laws of the state of Oregon shall govern this Agreement and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187, 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement. Specifically, it is a condition of this Agreement that the Local Share Partner and all employers working under this Agreement are subject employers that will comply with ORS 656.017.

17. Notices and Parties' Representatives

Any notices permitted or required by this Agreement, other than reimbursement requests required pursuant to Attachment B, shall be addressed to the other party's representative(s) designated in this Section of this Agreement and shall be deemed provided (a) on the date they are personally delivered, (b) on the date they are sent via facsimile, or

(c) on the third day after they are deposited in the United States mail, postage fully prepaid, by certified mail return receipt requested. Either party may change its representative(s) and the contact information for its representative(s) by providing notice in compliance with this Section of this Agreement.

Local Share Partner's Designated Representative(s):

Kristin Switzer  
Community Services Director  
City of Sherwood  
22560 SW Pine Street  
Sherwood, OR 97140  
Tel: (503) 625-4210  
[switzerk@ci.sherwood.or.us](mailto:switzerk@ci.sherwood.or.us)

Metro's Designated Representatives:

Natural Areas Bond Program Manager  
Metro Regional Center  
600 N.E. Grand Ave.  
Portland, OR 97232  
Fax (503)-797-1849

with copy to:

Office of Metro Attorney  
600 N.E. Grand Ave.  
Portland, OR 97232  
Fax (503) 797-1792

18. Assignment

The Local Share Partner shall not assign any of its responsibilities under this Agreement without prior written consent from Metro, which shall not be unreasonably withheld, except that the Local Share Partner may delegate or subcontract for performance of any of its responsibilities under this Agreement.

19. Severability

If any 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, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.

20. Entire Agreement; Modifications

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The Parties, by the signatures below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

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

**CITY OF SHERWOOD**

**METRO**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Michael Jordan

Metro Chief Operating Officer

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Paul A. Garrahan  
Senior Assistant Metro Attorney

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Local Share Project List for  
**City of Sherwood**

***Project Name:***

Stella Olsen Park Improvements

***Project Description:***

Construct public use facilities in accordance with the recently approved Stella Olsen Park Master Plan. The scope of work could include:

- Trail and boardwalk construction
- Off street parking
- Restrooms
- Purchase of plant materials

***Project Funds Required (including other funding sources, if any):***

\$ 446,744 Local Share Funding

Metro local share funding may be combined with Parks System Development Charge funds, state or federal grants, or other appropriate funding sources.

***Project Timeline:***

Design work Summer 2008; construction fall 2009

***Project Location:***

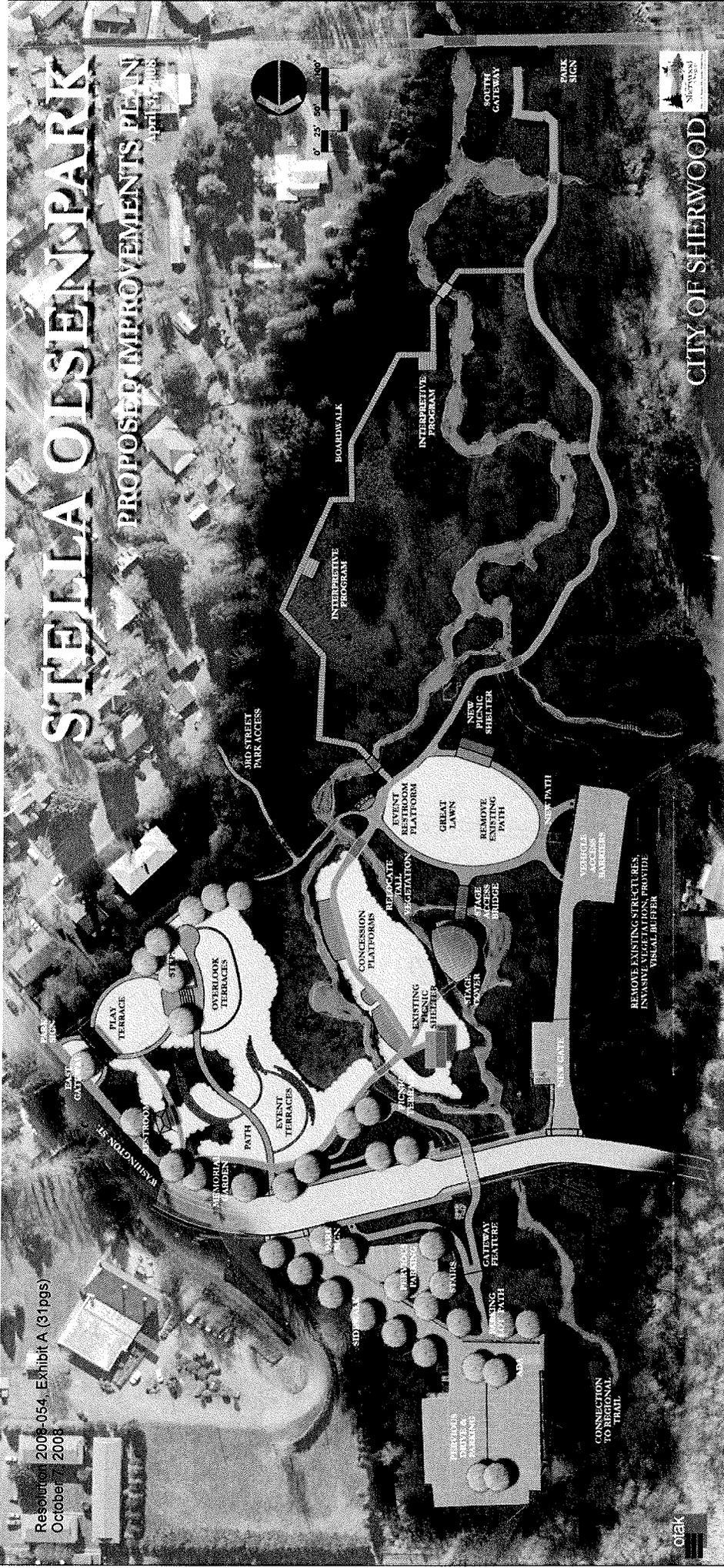
***Project Contact Information:***

Kristen Switzer  
Community Services Director  
City of Sherwood  
22560 SW Pine St  
Sherwood OR 97140  
Tel: (503) 625-4210  
[switzerk@ci.sherwood.or.us](mailto:switzerk@ci.sherwood.or.us)

# STELLA OLSEN PARK

PROPOSED IMPROVEMENTS PLAN  
April 13, 2006

Resolution 2006-054, Exhibit A (31pgs)  
October 2006



CITY OF SHERWOOD



## **Attachment B**

### **PROCEDURES FOR PAYMENT OF FUNDS BY METRO NATURAL AREAS BOND PROGRAM LOCAL SHARE**

Metro has committed to pay to local jurisdictions (Local Share Partners) amounts specified for approved projects under the local share component of the 2006 Natural Areas Bond Measure. Under the Measure, funds must be expended on projects for acquisition and capital construction and improvements that result in the creation or acquisition of a capital asset, consistent with generally accepted accounting principles. For purposes of reimbursement, all of the following also apply:

- Capital cost may include not only the purchase price or cost of construction, but also any other costs incurred to place the asset in its intended location and condition for use;
- Each project shall be an improvement to non-federal, publicly owned property, or, in the case of acquisition, the ownership of the property shall be by a non-federal public agency or jurisdiction;
- Each project shall be real property (including buildings on such real property) or a building or other tangible improvement to real property, not intellectual or other intangible property; and
- The Local Share Partner shall properly record the acquisition or improvement as an asset in the jurisdiction's audited financial statements, and the accounting treatment for this project shall be consistent with the Local Share Partner's treatment of other similar transactions.

Examples of potentially eligible costs include the following, provided that they are costs that can be capitalized under generally accepted accounting principles:

- Legal and title fees
- Closing costs (including escrow fees and recording fees)
- Negotiation costs
- Due diligence costs (including costs of appraisals, land surveys and environmental investigations)
- Land preparation costs
- Demolition cost (associated with new construction)
- Architect and engineering fees
- Insurance premiums during the construction phase
- Transportation and freight charges
- Staff overhead costs, meeting federal guidelines under the Single Audit Act of 1984, which are directly related to the acquisition of a natural area asset.

Payments to Local Share Partners will be processed as reimbursement for costs incurred and paid by the Local Share Partner. Only in the case of land acquisition will transfers be made prior to expenditure, with said transfer into escrow accounts for land acquisition transactions.

Prior to any reimbursement or transfer of funds to escrow the Local Share Partner must sign a designation of signature authority form.

### ***REIMBURSEMENT PROCEDURES***

**For each request for reimbursement, the Local Share Partner shall provide to Metro:**

- A completed Request for Release of Funds, signed by an authorized representative of the Local Share Partner certifying appropriateness of the charges,
- A schedule of charges being submitted for reimbursement including the name of the vendor or person who was paid, description of charge and amount, and
- Applicable documentation to support the schedule of charges, including copies of invoices, statements, receipts, payroll reports, and/or other evidence of expenditures incurred.

Such documents shall be submitted to:

Local Share Coordinator  
Metro Regional Parks and Greenspaces  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

**Upon Metro's receipt of a request for reimbursement:**

- Metro's Local Share Coordinator shall review the submitted documents and recommend approval for payment to the Program Director, or request additional information from Local Share Partner as needed.
- Metro Accounts Payable will process a reimbursement check to the Local Share Partner within thirty (30) days of the date of receipt of completed reimbursement documents by Metro. All reimbursements will be made payable to the Local Share Partner jurisdiction. Reimbursement may be by electronic funds transfer, warrant or check.

### ***ESCROW TRANSFER PROCEDURES***

If the Local Share Partner requires a wire transfer of funds to escrow to complete land acquisition transactions, a wire transfer information request form must be completed. A preliminary closing statement that details the price of the property and all related closing costs should be included to document each request submitted.

Funds will be transferred as required within five business days of written or faxed notice submitted to the attention of:

Local Share Coordinator  
Metro Regional Parks and Greenspaces  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

Fax number: 503-797-1849

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## Attachment C

### Local Share Guidelines

The Metro Council established these Local Share Guidelines with its adoption of Metro Resolution No. 06-3672B, which resolution submitted the Measure to the voters of the Metro region. As provided in Exhibit B to that resolution, only agencies that were public park providers as November 6, 2006 are eligible to receive funds. Funds from the bond measure shall not be used to replace local funds on any project and funds from the bond measure should be used to leverage other sources of revenue when possible. Local share funds should be used to the greatest extent possible to fund new projects and not pay agency overhead or indirect costs. In no event shall the staff, overhead and indirect costs on local share projects exceed 10% of the cost of any project. In addition, such funds may be expended only on projects related to natural areas or acquisition of land for natural areas, open space, parks or trails, including:

#### Real Property Acquisition:

- Fee Simple (or easement) purchase of real property for use as parks, open space, natural areas, or trails, including natural areas, wildlife and trail corridors identified in the Metropolitan Greenspaces Master Plan, the Regional Greenspaces System Concept Map (adopted 2002), the Regional Trails Plan Map (adopted 2002), the Nature in Neighborhood Map (Fish & Wildlife Habitat Protection Program, Resource Classification Map), and locally determined significant natural areas, neighborhood and pocket parks, wildlife habitat and trail corridors.

#### Capital Improvement Projects:

- Restoration or enhancement of fish and wildlife habitat.
- Improvements to existing parks to enhance the integrity of habitat and increase natural plantings.
- Improvements to existing natural area amenities to provide universal access to the public (meets Americans with Disabilities Act requirements).
- Public use facilities such as trailheads, rest rooms, picnic tables and shelters, children's play areas, viewing blinds, water systems, camp sites and barbeque pits, fishing piers, associated accessories such as information signs, fences, security lighting, and circulation facilities (i.e., entry, egress and circulation roads, parking areas).
- Environmental education structures or accessories (e.g., nature centers and/or interpretive displays).
- Trail design, engineering, construction and landscaping.

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**Attachment D**

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE LOCAL SHARE PARTNER and METRO  
FOR LAND ACQUISITION SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”), entered into under the provisions of ORS chapter 190 and effective on the date the IGA is fully executed (the “Effective Date”), is entered into by and between the \_\_\_\_\_, located at \_\_\_\_\_ (“Local Share Partner”) and 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”).

**RECITALS**

WHEREAS, the goal of this IGA is for Metro to provide land acquisition services for the Local Share Partner for acquisitions pertaining to the 2006 Natural Areas Bond Measure (the “Measure”);

WHEREAS, the Local Share Partner has executed an intergovernmental agreement with Metro pertaining to the Local Share Component of the Measure;

WHEREAS, the Local Share Partner is involved in various projects that require land acquisition and due diligence services in relation to parcel and easement purchases;

WHEREAS, the Local Share Partner does not have the in-house staff to perform these land acquisition and due diligence services;

WHEREAS, Metro has determined that there is available Metro staff capacity within the existing Natural Areas Work Plan to provide limited technical assistance to the Local Share Partner for land acquisition and due diligence services; and

WHEREAS, the purpose of this IGA is to identify the responsibilities and compensation for land acquisition and due diligence services to be provided by Metro to Local Share Partner;

NOW THEREFORE, the parties agree as follows:

1. SCOPE OF METRO’S SERVICES

Metro shall provide to Local Share Partner services as shown in the attached Scope of Work (Exhibit A). In addition, each project shall require a project specific scope of work (consistent with this IGA) and a written notice to proceed from Local Share Partner prior to Metro commencing work. Local Share Partner shall be entitled to copies of all products prepared by Metro hereunder, upon request, including but not limited to due

iligence process reports and legal documents and instruments (agreements of purchase and sale, appraisals, environmental assessments, preliminary title reports, negotiated conditions, deeds, easements, and leases).

2. SCOPE OF LOCAL SHARE PARTNER'S SERVICES

Local Share Partner shall provide written direction to Metro regarding the services to be performed by Metro under this IGA. Local Share Partner shall also provide the input and review as described in Exhibit A.

3. PAYMENTS FOR SERVICES

A. Costs that Metro incurs to obtain any services from third parties under this IGA shall be deducted from the total amount of funds available to the Local Share Partner under the terms of the Measure. Such deduction shall occur at the time that Metro makes payment for such services. Such costs may include, without limitation, the costs for Metro to obtain appraisals, appraisal reviews, preliminary title reports, environmental site assessments (e.g. "Phase I" and "Phase II" investigations), and land surveys. Metro shall provide Local Share Partner with written notice of all such deductions related to each project within 30 days of either (a) closing, if the project is a successful real property acquisition, or (b) the date that Metro determines, at its sole discretion, that a proposed acquisition is infeasible, at least in the short term.

B. Metro shall provide all other land acquisition and due diligence services described herein, other than those services described in Section 3A of this IGA, at no cost to the Local Share Partner.

4. TERM AND RENEWALS

The Term of this IGA shall be for five (5) years following the Effective Date. However, this IGA shall automatically renew for successive one-year terms unless terminated by either party by written notice at least 30 days prior to expiration of the initial term or any renewal term.

5. MODIFICATION, AMENDMENT OR TERMINATION OF AGREEMENT

Metro and Local Share Partner, by mutual written agreement signed by both parties, may modify, amend, or terminate this IGA at any time. Either party also may unilaterally terminate this IGA by providing the other party with written notice of termination. Such notice shall comply with the provisions of Section 13 of this IGA, and such termination shall be effective 30 days after providing such notice. Metro shall be entitled to deduct from the total amount of funds available to the Local Share Partner under the terms of the Measure any costs, as described in Section 3 of this IGA, that Metro had incurred or for which Metro was contractually obligated on the date that Metro provided or received written notice of default.

6. MUTUAL INDEMNIFICATION

The Local Share Partner shall indemnify and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Agreement by the Local Share Partner or the Local Share Partner's officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30. Metro shall indemnify and hold the Local Share Partner and the Local Share Partner's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Agreement by Metro or Metro's officers, agents, or employees, subject to the limitations and conditions of the Oregon Tort Claims Act, ORS chapter 30.

7. FUNDS

Local Share Partner shall be responsible for insuring that sufficient funds are available for each Project.

8. PROJECT MANAGER

Each party designates the following as its representative for purposes of administering this IGA:

Local Share Partner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Metro: Natural Areas Bond Manager  
Metro Regional Center  
600 NE Grand Avenue  
Portland, OR 97232

Either party may change its designated representative by giving written notice to the other as provided in Section 13.

9. The laws of the state of Oregon shall govern this IGA and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. All applicable provisions of ORS chapters 187, 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this IGA. Specifically, it is a condition of this Agreement that

the Local Share Partner and all employers working under this Agreement are subject to employers that will comply with ORS 656.017.

10. 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.

11. ENTIRE AGREEMENT

This IGA constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to this IGA. No waiver, consent, modification or change of terms of this IGA shall bind either party unless in writing and signed by both parties.

12. NOTICES

Except as specifically otherwise provided in this IGA, any notices permitted or required by this contract shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested and addressed to the representative designated in Section 9. Either party may change its address by notice given to the other in accordance with this paragraph.

13. ARBITRATION

Any controversy regarding the terms and conditions of this IGA shall be submitted to arbitration. Any party may request arbitration by written notice to the other. If the parties cannot agree on a single arbitrator within 15 days from the giving of notice, each party shall within five days select a person to represent that party and the two arbitrators shall immediately select a third impartial person to complete a three member arbitration panel. If the two arbitrators cannot agree within 15 days on the third arbitrator, then either party may petition the Presiding Judge of the Multnomah County Circuit Court to select the third arbitrator. The panel shall conduct the arbitration in accordance with the provisions of ORS Chapter 33, or the corresponding provisions of any such future law. The arbitrator(s) shall assess all or part of the cost of the arbitration, including attorney fees, to any or all parties.

LOCAL SHARE PARTNER:

METRO:

By: \_\_\_\_\_  
Print Name:

By: \_\_\_\_\_  
Michael Jordan, Chief Operating Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
Jim Desmond, Parks Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

Approved as to Form:

By: \_\_\_\_\_  
for the Local Share Partner, Oregon

By: \_\_\_\_\_  
Paul A. Garrahan  
Senior Assistant Metro Attorney

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**Exhibit A**  
**Land Acquisition Services IGA**

**SCOPE OF WORK**

**TASK 1      Local Share Partner Preliminary and General Services**

**Objective:**    Initiate project and facilitate mutual understanding of the project scope.

**Description:** Meet with Metro real estate negotiator on a project-by-project basis, to confirm roles, responsibilities and expectations for each specific project in relation to the IGA. Establish clear lines of communication. Discuss project goals and identify specific concerns. Review the project and the land acquisition schedule.

**Local Share Partner Products:**

Provide project-specific goals, target properties, budget and desired schedule, including key project deadlines and milestones. Schedule and host initial project meeting. Provide the names and addresses of the owners of targeted properties, and tax identification information for such properties. Provide direction as appropriate. Information to be provided includes:

- Written description of the target property, property contact information (including history of communication), specific approval schedule, deadlines, authorization procedures, and required communication procedures.
- Whether review by the Local Share Partner's attorney is required, and, if so, the points during the project timeline when such review must occur.
- Whether and when approval(s) by the Local Share Partner's governing body is required. Describe the process and estimated time lines for such approval(s).
- A completed Signature Authority form provided by Metro.
- Identification of any other approval(s) or review periods that the Local Share Partner will require.

**TASK 2      Metro Negotiation and Related Services**

**Objective:**    Conduct "willing seller" land acquisition negotiations with the purpose of acquiring properties targeted by the Local Share Partner for land acquisition services. When directed in writing by Local Share Partner, conduct such land acquisition negotiations in accord with federal acquisition guidelines.

**Description:** Metro will perform land acquisition negotiations. Steps to be taken include the following activities:

- 2.1    Setup negotiation files to preserve documents and a record of the negotiations.

- 2.2 Setup and maintain diaries documenting property owner(s) contacts.
- 2.3 Prepare the appropriate documents for review by the Local Share Partner's Project Manager and attorney, including, but not limited to, Metro's standard form Agreement of Purchase and Sale, modified or supplemented with property specific detail, deeds, easements, legal descriptions and other documents and instruments, as needed.
- 2.4 Prepare offer letters and other communications required to establish contact with property owner(s).
- 2.5 Explain the offer to the property owner(s) or a representative and provide an understanding of the land acquisition process.
- 2.6 Comply with federal and state acquisition and relocation guidelines and requirements, when directed in writing to do so by the Local Share Partner.
- 2.7 Advise and coordinate with the Local Share Partner's Project Manager.

**Metro Products:**

Maintain property specific negotiation files including diaries, offer letters, and documentation of other communications. Transaction specific preparation of the Purchase and Sale Agreement, and other documents, as requested. Provide negotiation files to Local Share Partner upon request.

**TASK 3 Metro Due Diligence Services**

**Objective:** Perform due diligence substantially satisfying the standards set forth in Metro's Natural Areas Implementation Workplan.

**Description:** Metro will conduct due diligence in good faith and as Metro determines necessary at its sole discretion. Steps to be taken may include the following activities:

- 3.1 Obtain an independent MAI appraisal of the proposed acquisition property subject to no extraordinary assumptions and confirmed by an appraisal review conducted in accordance with USPAP and general appraisal standards. Alternatively, if the Seller obtains an independent MAI appraisal, then Metro shall obtain an appraisal review of Seller's appraisal, conducted in accordance with USPAP and general appraisal standards, and such appraisal review must verify the accuracy of Seller's appraisal, including confirming that it is subject to no extraordinary assumptions.

- 3.2 Paralegal review of title reports, title exception documents, vesting deed, existing surveys, plats, legal description and other documents.
- 3.3 Perform a site visit and visual inspection of boundaries and access; identify possible hazards, unrecorded easements, and trespassers.
- 3.4 Obtain a Phase I Environmental Assessment and conduct further environmental investigation only if necessary to conduct "All Appropriate Inquiry" into the environmental condition of the Property, in accord with the Standards and Practices for All Appropriate Inquiry set forth in the Code of Federal Regulations, Chapter 40, Part 312.
- 3.5 Obtain survey services for a land use application or to resolve uncertainties as to property lines or easement location.
- 3.6 Obtain land use approvals if required under the Purchase and Sale Agreement.
- 3.7 Provide Metro Attorney review of documents. The Metro Attorney shall advise Metro negotiators regarding their work under this Agreement and shall oversee Metro's due diligence work, but shall not provide legal advice directly to the Local Share Partner. If the Local Share Partner feels it needs legal advice regarding any matter it shall seek such advice from its own attorney.

**Metro Products:**

Due diligence conforming substantially to Metro Natural Areas Implementation Workplan standards. Copies of all pertinent legal documents will be provided as appropriate.

**Local Share Partner Products:**

Local Share Partner's Project Manager and attorney review, direction of the due diligence process, review and approval of the closing checklist.

**TASK 4 Metro Purchase and Closing Services/Escrow Liaison**

**Objective:** Conduct escrow and closing services.

**Description:** Metro shall perform the following services in good faith and as Metro determines necessary at its sole discretion:

- 4.1 Communicate with property owners, or their representatives, in a timely and professional manner.
- 4.2 Open escrow.

- 4.3 Prepare escrow instructions.
- 4.4 Place documents in escrow.
- 4.5 Coordinate payments to Title/Escrow Company related to closing.
- 4.6 Assist in obtaining releases, if necessary.
- 4.7 Review closing statements, escrow instructions, title insurance policies, and vesting documents, and make recommendations to Local Share Partner or work with the title company to correct errors.
- 4.8 Deliver documents for recording and track the recording process to ensure that recording has occurred.

**Metro Products:**

Escrow instructions, Escrow account setup, documents placed in escrow, payment coordination, closing statements, recorded documents. Provide recorded documents to Local Share Partner with recording numbers.

**Local Share Partner Products:**

Local Share Partner's Program Manager and attorney review of closing documents and instruments. Provide documentation to authenticate that the individual signing all closing documents has authority to sign on behalf of the Local Share Partner.

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**Attachment E**  
**Funding Recognition**

As provided in this document, the Local Share Partner shall recognize that funding to complete the project was provided from the Metro 2006 Natural Areas Bond Measure. Such project recognition shall be included in and on on-site documentation, any published final products and visual presentations, web site information, collateral materials, newsletters, and press releases.

At or before project completion of a project, signage shall be installed at the project site in prominent and highly visible locations near each primary public access point or viewing access area (but not located in a manner that would have a detrimental impact on any natural area viewshed) to acknowledge Metro's funding of the project and any other project partners (as necessary) that have provided project funding. Signage shall be either:

- a. A standard, free-standing sign provided by Metro, which Metro shall make available to Local Share Partners upon request; or
- b. Inclusion of Metro's logo and script in other signage, with Metro's logo and script of a size in comparable proportion to the relative amount of funding provided by the Metro Bond Measure for the project being recognized, in relation to other agencies recognized on such signage. In no event, however, must Metro's logo and script be larger than the logo and script of the Local Share Provider. Metro shall make its graphics available upon request.

When the project is opened to the public, the Local Share Partner shall plan and hold at least one community/media event to publicize the project and its relationship to the Metro 2006 Natural Areas Bond Measure. The Local Share Partner agrees to provide the Metro Natural Areas Program Manager with written notice of such event at least three weeks prior to the scheduled event in order to coordinate with and allow for participation by Metro staff and elected officials.

At least once during the term of the Agreement, the Local Share Partner shall hold a public meeting with members of the Local Share Partner's governing body, at which the Local Share Partner shall recognize the Local Share Partner's partnership with Metro to complete the Local Share Partner's Bond Measure-funded projects. The Local Share Partners shall provide the Metro Natural Areas Program Manager with written notice of such public meeting at least three weeks prior to the scheduled event in order to coordinate with and allow for participation by Metro staff and elected officials.

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