

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE) RESOLUTION NO. 97-2532
OFFICER TO EXECUTE INTERGOVERNMENTAL)
AGREEMENTS WITH THE CITY OF PORTLAND PARKS)
AND RECREATION TO MANAGE THE POWELL BUTTE)
-FEATHERSTON AND THE KELLY BUTTE- WALTERS)
PROPERTIES PURCHASED BY METRO AND) Introduced by Mike Burton
THE CITY OF PORTLAND.) Executive Officer

WHEREAS, in July, 1992, the Metro Council adopted by Resolution No. 92-1637 the Metropolitan Greenspaces Master Plan which identified a desired system of natural areas interconnected with greenways and trails; and

WHEREAS, Metro has purchased over 2,350 acres pursuant to Ballot Measure 26-26 and the stated goal of acquiring up to 6,000 acres of open space property throughout the region; and

WHEREAS, Measure 26-26 provided that lands acquired by Metro with the regional share of the bond funds would be "land banked" with minimal maintenance, and no bond funds can be legally used for any operating expenses on these lands; and

WHEREAS, Measure 26-26 stated that Metro Regional Parks and Greenspaces Department may operate and maintain these lands or other cooperative arrangements may be made with other jurisdictions or park providers to operate and maintain these lands consistent with the Greenspaces Master Plan; and

WHEREAS, Metro has or will exercise option agreements to purchase the three-acre Featherston property, and the 1.06-acre Walters property, both identified in the East Buttes and Boring Lava Domes Target Area refinement plan as Tier IB properties requiring a minimum 25% non-Metro match; and

WHEREAS, the City of Portland Parks and Recreation (hereafter "the City") is contributing 25% of the purchase price of the Featherston and Walters properties, and Metro is contributing 75% of the purchase price, and Metro and the City will share title as tenants in common proportionate to these contributions; and

WHEREAS, the City has agreed to accept responsibility for operation, maintenance and management of the Featherston and Walters properties, and potentially other properties on Powell Butte and Kelly Butte identified in the East Buttes and Boring Lava Domes Target Area Refinement Plan; and

WHEREAS, an intergovernmental agreement (IGA) with the City would benefit the properties and public in general by providing increased care for the properties and encourage public use; and

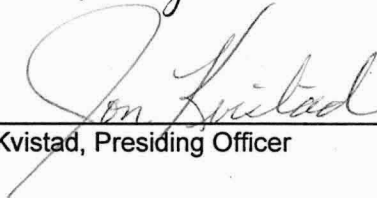
WHEREAS, such an IGA would set forth management, maintenance, and operation guidelines for the City, requiring that the properties be managed for passive recreation, pedestrian/bicycle use, and habitat restoration, with the primary goals being protection of the properties' natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with these goals; and

WHEREAS, the IGAs attached hereto as Exhibits A and B have been approved by the Portland City Council for management of the Featherston and Walters properties, and potentially, additional properties in the East Buttes and Boring Lava Domes Target Area; now, therefore

BE IT RESOLVED,

That the Metro Council authorizes the Metro Executive Officer to execute the Featherston-Powell Butte IGA and the Walters-Kelly Butte IGA with the City of Portland Parks and Recreation, attached hereto as Exhibits A and B, wherein the City will manage the Featherston and Walters properties and potentially other properties within the East Buttes and Boring Lava Domes Target Area.

ADOPTED by the Metro Council this 7th day of August, 1997.



Jon Kvistad, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

Staff Report

CONSIDERATION OF RESOLUTION NO. 97-2532 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE INTERGOVERNMENTAL AGREEMENTS WITH THE CITY OF PORTLAND PARKS AND RECREATION TO MANAGE THE POWELL BUTTE-FEATHERSTON AND THE KELLY BUTTE-WALTERS PROPERTIES PURCHASED BY METRO AND THE CITY OF PORTLAND.

Date: June 26, 1997

**Presented by: Charles Ciecko
Jim Desmond**

PROPOSED ACTION

Resolution No. 97-2532 would provide Metro Council approval for an intergovernmental agreement (IGA) with the City of Portland Parks and Recreation to manage properties jointly purchased by Metro and the City of Portland in the East Buttes and Boring Lava Domes Target Area.

BACKGROUND AND ANALYSIS

Measure 26-26 provided funding for acquiring up to 6000 acres of regionally significant open spaces, but it did not provide any money for operating expenses on those lands. Instead the land purchased with the regional share of the bond funds was to be "land banked." This allowed for initial stabilization of the property and low level maintenance, but would generally not enable the properties to be open to the public until funds for management are later identified and made available. The bond measure also stated that Metro Regional Parks and Greenspaces Department might later operate and maintain these lands or that other cooperative arrangements could be made with other jurisdictions or parks providers consistent with the Greenspaces Master Plan.

Since passage of the bond measure, Metro has acquired over 2300 acres of regionally significant lands. Local jurisdictions and park providers have expressed interest in managing some of those regionally significant properties acquired by Metro, either pursuant to pre-existing management plans or through future management plans.

The Featherston and Walters properties are identified in the East Buttes and Boring Lava Domes refinement plan as Tier IB properties. The Tier IB objective is to "encourage participation of other governments and nonprofit organizations in acquiring strategic properties that enhance and connect existing open space in the Mt. Scott/Clatsop/Powell Butte, Kelly Butte, Rocky Butte and Mt. Talbert areas by establishing a challenge grant program." The City of Portland Parks and Recreation is contributing 25% of the purchase price of the properties, as required in the challenge grant established as part of the Refinement Plan. Metro and the City will share title on the properties as tenants in common, Metro with a 75% undivided interest, and the City with a 25% undivided interest, and with deed restrictions reflecting the challenge grant requirements that the properties must be kept in their natural condition.

The Portland City Council has authorized the City to enter into intergovernmental agreements (IGAs) to operate, manage and maintain the properties as open space. Entering into IGAs with local jurisdictions and park providers would enable those agencies to manage some of Metro's regionally significant lands that would otherwise not have management dollars allocated to them at this time. Since Metro only has funding for the most minimal maintenance on those properties, local agencies operating under IGAs would provide additional funding to increase care for the properties and maintain their natural habitat. Under the IGAs, the properties would also be more likely to become available for public use and benefit at an earlier date than if Metro retains all operations and management responsibilities.

The IGAs set forth management, maintenance, and operation guidelines for properties, requiring that they be managed for passive recreation, pedestrian/bicycle use, and habitat restoration, with the primary goals being protection of the properties' natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with these goals. As required by the Metropolitan Greenspaces Master Plan, formal public use and site development of a property shall not begin until a resource management plan has been adopted by the City and approved by the Metro Council. However, informal public use of the properties will be allowed in the interim period at the discretion of local management. In some cases pre-existing management plans may be in place which are adequate to govern the property, and shall in such cases constitute the resource management plan for the property.

The IGAs specify the particular parcels to be covered by each agreement, and also set forth a mechanism whereby Metro will notify the City of Portland if Metro purchases future properties within the target area that Metro would like the City to manage under the terms of the IGA. The City can then notify Metro if it does not wish to accept management responsibility for that particular property.

Metro has exercised option agreements to purchase the three-acre Featherston property and the 1.06-acre Walters property in the East Buttes and Boring Lava Domes Target Area, and is expected to close on those purchases in July and August of 1997.

FINDINGS

Resolution 97-2532 would authorize Metro to enter into the East Buttes and Boring Lava Domes IGAs with the City of Portland Parks and Recreation for the City to manage the Featherston and Walters properties and potentially other properties within the East Buttes and Boring Lava Domes Target Area. Metro and the City will share title as tenants in common with Metro having a 75% undivided interest and the City of Portland having a 25% undivided interest, with deed restrictions requiring that the properties be kept in their natural condition.

BUDGET IMPACT

The City of Portland Parks and Recreation would become responsible for the management, maintenance and operation of certain Metro-owned properties purchased with the regional share of Measure 26-26 bond funds. This would reduce Metro's land banking costs and future operation and maintenance expenses.

Executive Officer's Recommendation

The Executive Officer recommends adoption of Resolution 97-2532.

INTERGOVERNMENTAL AGREEMENT**Powell Butte-Featherston Property**

This Intergovernmental Agreement ("Agreement") dated this 16th day of June, 1997, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Portland Parks and Recreation, located at 1220 SW Fifth Avenue, Portland, Oregon 97204 ("the City").

WITNESSETH:

WHEREAS, approximately 3 acres of real property adjacent to Powell Butte Park in the City of Portland, Oregon, known as the Featherston Property at SE Circle Drive, Portland, Oregon, is available for purchase, as more particularly described in Exhibit A attached hereto ("Featherston Property" or "Property");

WHEREAS, the East Buttes-Boring Lava Domes was identified as a regionally significant open space by the Metro Greenspaces Master Plan, and by the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Measure");

WHEREAS, the Refinement Plan for the East Buttes-Boring Lava Domes Target Area, adopted by the Metro Council on July 17, 1996, identified certain areas as Tier 1b, requiring a 75%-25% partnership between Metro and local governments for acquisition of identified properties;

WHEREAS, the Featherston Property is within the East Buttes-Boring Lava Domes Target Area and is identified as a Tier 1B property in the Refinement Plan;

WHEREAS, Metro and the City wish to purchase the property and to preserve it as open space in accordance with the Open Spaces Measure and with the Metro Greenspaces Master Plan; and

WHEREAS, Metro and the City wish to enter into this Agreement to authorize the purchase and to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, maintenance and operation of this Featherston Property;

Now, therefore, the parties agree as follow

A. Acquisition

1. Metro and the City are hereby authorized to enter into a Purchase and Sale Agreement to purchase the Featherston Property for SEVENTY FIVE THOUSAND DOLLARS (\$75,000). At closing Metro will contribute 75% of the purchase price (\$56,250), and the City will contribute 25% of the purchase price (\$18,750).
2. Metro and the City shall take title to the Property as tenants in common, with Metro having a 3/4 undivided interest and the City have a 1/4 undivided interest.

3. Metro shall be responsible for negotiating the Option Agreement and any terms of the transaction with the Property owner and for undertaking the normal due diligence investigations conducted by Metro pursuant to the Open Spaces Measure practices. If the City requires any due diligence investigations not required by Metro, the City shall be solely responsible for those items. Metro shall also be responsible for drafting and coordinating escrow instructions and closing details, and shall pay the Buyer's closing costs.

B. Management, Maintenance, and Operation

1. The City shall be responsible for the ongoing management, maintenance, and operation of the Featherston Property in accordance with the terms of this Agreement.
2. The Featherston Property shall be managed, maintained and operated in accordance and in a manner consistent with this Agreement, Metro's Greenspaces Master Plan, and the Powell Butte Master Plan, adopted by the Portland City Council on December 4, 1996. These Plans shall constitute the Resource Protection Plans for the Property, as described in the Metro Greenspaces Master Plan. In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.
3. If Metro executes agreements to purchase additional properties within the East Buttes-Boring Lava Domes Target Area which Metro would like the City to manage under the terms of this Agreement, Metro shall notify the City in writing in substantially the form attached hereto as Exhibit B ("Notice of Acquisition"). The City shall notify Metro in writing if the City does not wish to accept management responsibility for those additional properties, using the City's best efforts to make this notification prior to the closing date for the acquisition.
4. Metro grants to the City, its agents and contractors, the right to enter the Featherston Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Featherston Property.
5. The term of the City's management, maintenance, and operation responsibilities for the Featherston Property shall be ten (10) years from the date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.

C. Limitations on Use

1. The East Buttes/Boring Lava Domes Target Area shall be managed, maintained and operated in accordance with their intended use as natural area open spaces, with the primary goal being protection of the Property's natural resources.
2. The Featherston Property may be used by the public, in the City's discretion, for passive recreation, pedestrian activity, nonmotorized bicycle use, and/or habitat enhancement. Metro shall have the right to approve of any improvements, trails or alteration of any water or timber resource on the Featherston Property, and the City shall give Metro 90 days

advance written notice of its intent to construct any improvements, trails, or alteration of water or timber resource on the Featherston Property. In any event, no improvements or trails shall be constructed on the Featherston Property and no alteration of water or timber resource shall occur that are inconsistent with this Agreement or with the Plans.

3. Metro shall have the right to review and comment on any changes in the Plans relating to the management, maintenance, or operation of the Featherston Property. Any changes in the Plans made or proposed by the City that relate to management, maintenance, or operation of the Property shall not conflict with the guidelines set forth in this Agreement, in the Greenspaces Master Plan, or with the uses and restrictions described in the Open Spaces Measure. The City shall give Metro written notice as soon as possible, but in any event no less than 90 days in advance of a proposal to amend the City's Plans where such amendment would alter the City's management, maintenance or operation of the Featherston Property.
4. The Featherston Property shall not be subdivided or partitioned, nor shall any development rights, timber rights, mineral rights, or other rights related to the Featherston Property be sold or otherwise granted, nor shall there be any alteration of any water or timber resource, except as necessary for construction of trail or other improvements, for the purpose of improving resource values, or as necessary to protect public safety.

D. Permits and Assessments

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Featherston Property the City agrees to be responsible for funding the operation and maintenance of the Featherston Property with the City's own resources. The City's management responsibility shall include responsibility for all taxes or assessments for the Featherston Property.
2. The City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Featherston Property.
3. Any permits granted by the City to users of the Featherston Property shall comply with the terms and limitations set forth in this Agreement and in the Plans.

E. General Provisions

1. **Indemnification.** The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from any claim based on any act or occurrence arising from the management, maintenance or operation of the Featherston Property, including but not limited to construction of trails or in relation to any other improvement on the Featherston Property.

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2. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for the acquisition of the Featherston Property is in part from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City 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. **Funding Declaration and Signage.** The City shall provide on-site signage informing the public that the City is managing the Featherston Property and that funding for the acquisition came from Metro Open Spaces Measure bond proceeds and City funds. The City shall also document in any publication, media presentation or other presentations, that funding for acquisition of the Featherston Property came in part from Metro Open Spaces Measure bond proceeds. On-site signage shall be subject to prior review and approval by Metro. All signage shall be consistent with Metro guidelines for Open Spaces Projects.
4. **Joint Termination for Convenience.** Metro and the City may, by mutual agreement, terminate all or part of this Agreement based upon a determination that such action is in the public interest.
5. **Documents are Public Property.** All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the acquisition, management, maintenance or operation of the Featherston Property shall become public property. Nothing in this section or in any other part of this Agreement shall be construed as limiting Metro's or the City'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).
6. **Law of Oregon.** This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. 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 Agreement including but not limited to ORS 279.015 to 279.320.
7. **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro
 Charles Ciecko
 Director, Metro Regional Parks and Greenspaces
 600 NE Grand Avenue
 Portland, OR 97232-2736

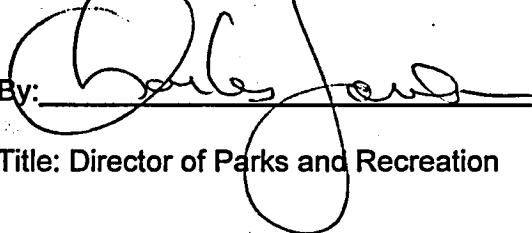
To City: City of Portland
 James Sjulín
 Natural Resources Supervisor
 Portland Parks and Recreation
 1220 SW Fifth Ave.
 Portland, OR 97204

- 8. Assignment. The City may not assign any of its rights or responsibilities under this Agreement without prior written consent from Metro, except the City may delegate or subcontract for performance of any of its responsibilities under this Agreement.
- 9. 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.
- 10. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the Property. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

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

CITY OF PORTLAND PARKS AND RECREATION

METRO

By: 
 Title: Director of Parks and Recreation

By: _____
 Title: _____

EXHIBIT A
Resolution No. 97-2532

11497

EXHIBIT A
PROPERTY DESCRIPTION

Lot 10, Jennelynd Acres,
In the City of Portland, Multnomah County, State of Oregon

Tax Account #R428501500

EXHIBIT B

Notice of Acquisition

_____, 199__

City of Portland
James Sjulín
Natural Resources Supervisor
Portland Parks and Recreation
1220 SW Fifth Ave.
Portland, OR 97204

Re: Acquisition of Property at Powell Butte

Dear _____:

Pursuant to the Intergovernmental Agreement between Metro and The City of Portland dated _____, 1997, this shall serve as notice of acquisition of the following property at Powell Butte:

[Property Address], in the City of Portland, County of Multnomah and State of Oregon, being more particularly described in Exhibit I attached hereto.

Pursuant to Paragraph B of the Powell Butte-Featherston Property Intergovernmental Agreement executed on _____, this property shall be managed pursuant to the terms of the Intergovernmental Agreement.

Sincerely,

Metro

INTERGOVERNMENTAL AGREEMENT

Kelly Butte-Walters Property

This Intergovernmental Agreement ("Agreement") dated this ___ day of _____, 1997 is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Portland, located at 1220 SW Fifth Avenue, Portland, Oregon 97204 ("the City").

RECITALS:

WHEREAS, approximately 1.06 acres of real property adjacent to Kelly Butte Natural Area in the City of Portland, Oregon, known as the Walters Property at the southern terminus of SE 101st Ave, Portland, Oregon, is available for purchase, as more particularly described in Exhibit A attached hereto ("Walters Property" or "Property");

WHEREAS, the East Buttes-Boring Lava Domes was identified as a regionally significant open space by the Metro Greenspaces Master Plan, and by the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Measure");

WHEREAS, the Refinement Plan for the East Buttes-Boring Lava Domes Target Area, adopted by the Metro Council on July 17, 1996, identified certain areas as Tier 1b, requiring a 75%-25% partnership between Metro and local governments for acquisition of identified properties;

WHEREAS, the Walters Property is within the East Buttes-Boring Lava Domes Target Area and is identified as a Tier 1B property in the Refinement Plan;

WHEREAS, Metro has procured an Option to Purchase Real Property for the Property (the "Option");

WHEREAS, Metro and the City wish to purchase the property and to preserve it as open space in accordance with the Metro Open Spaces Measure and with the Metro Greenspaces Master Plan; and

WHEREAS, Metro and the City wish to enter into this Agreement to authorize the purchase and to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, maintenance and operation of this Walters Property;

Now, therefore, the parties agree as follows:

EXHIBIT B
Resolution No. 97-2532

A. Acquisition

1. Metro and the City are hereby authorized to purchase the Walters Property for NINETY THOUSAND DOLLARS (\$90,000) in accordance with the Option. At closing Metro will contribute 75% of the purchase price (\$67,500), and the City will contribute 25% of the purchase price (\$22,500).
2. Metro and the City shall take title to the Property as tenants in common, with Metro having a 3/4 undivided interest and the City have a 1/4 undivided interest.
3. Metro shall be responsible for negotiating the Option Agreement and any terms of the transaction with the Property owner and for undertaking the normal due diligence investigations conducted by Metro pursuant to the Open Spaces Measure practices. If the City requires any due diligence investigations not required by Metro, the City shall be solely responsible for those items. Metro shall also be responsible for drafting and coordinating escrow instructions and closing details, and shall pay the Buyer's closing costs.

B. Management, Maintenance, and Operation

1. The long-term management guidelines for the Property will be set forth in a Resource Management Plan ("Management Plan") for the Property. This Agreement shall set forth the interim protection guidelines for the Property prior to adoption of the Management Plan, and shall also set forth the use limitations for the Property which must be carried forth and reflected in the Management Plan.
2. Metro and the City agree that the City shall be responsible for the ongoing management, maintenance, and operation of the Property, both during the interim period and after adoption of the Management Plan.
3. The term of the City's management, maintenance, and operation responsibilities for the Property shall be determined by the Management Plan, but in no event shall the term be less than ten (10) years from the effective date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.
4. Metro grants to the City, its agents and contractors, the right to enter the Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Property and for the fulfillment of their duties under this Agreement and pursuant to the Management Plan.

C. Interim Protection Guidelines

1. Prior to the adoption of a Management Plan for the Property, the Property shall be managed, maintained and operated by the City in accordance and in a manner consistent with this

EXHIBIT B
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Agreement, the Metro Greenspaces Master Plan, the City's Comprehensive Plan, , and the City's proposed Kelly Butte Natural Area Plan ("the Plans"). In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.

2. The Property shall at all times be managed, maintained, operated, and protected in accordance with its intended use as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing.
3. In accordance with the Metro Greenspaces Master Plan, formal public use of the Property and site development on the Property shall not begin until a Management Plan for the Property has been adopted.
4. Prior to the adoption of a Management Plan for the Property, in the interim period, at the City's discretion, the Property may be used informally by the public for passive recreation, habitat enhancement, pedestrian activity, and/or nonmotorized bicycle use. All uses of the Property in the interim period shall be consistent with this Agreement and with the Plans, and shall not preclude any uses that could later be allowed in the Management Plan.
5. Prior to the adoption of the Management Plan for the Property, in the interim period the City shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Property, except for the control of exotic or pest plant species or as necessary to prevent Property degradation or for security or public safety concerns.
6. Prior to adoption of the Management Plan and thereafter, the City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures as the City may deem necessary to increase safety on the Property, and to deter improper public use of the Property prior to adoption of the Management Plan. During the interim period the City shall control access to the Property, and shall respond to neighborhood or citizen complaints regarding improper use or noise on the Property.

D. Resource Management Plan for the Property

1. The City shall develop a Resource Management Plan ("Management Plan") for the Property. The Management Plan shall set forth the acceptable management, operation, maintenance, types and levels of programmed and public use, and trail and improvement standards for the Property. The City shall manage the Property in accordance with the standards and guidelines developed in the Management Plan.
2. The Management Plan shall ensure that the Property is managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Property comply with the Greenspaces Master Plan and with this Agreement. The Management Plan shall also ensure that the Property is maintained as a natural area open space, with the primary goals being protection of the Property's natural resources; enhancement and protection of wildlife habitat, and public recreation consistent

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with the foregoing. As part of the process of developing the Management Plan, the City shall take an inventory of the resources on the Property.

3. Metro shall designate at least one staff member to participate in the Management Plan process for the Property. In addition to any other approvals required by the City, the Management 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 Agreement and with the Greenspaces Master Plan.

E. Permits, Assessments, Coordination with Other Public Agencies

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property the City agrees to be responsible for funding the operation and maintenance of the Property with the City's own resources. The City's management responsibility shall include responsibility for all taxes, liens or assessments for the Property.
2. Prior to adoption of the Management Plan and thereafter, the City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by the City to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Management Plan for the Property.
4. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property.

F. General Provisions

1. **Indemnification.** The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from any claim based on any act or occurrence arising from the management, maintenance or operation of the Property, including but not limited to construction of trails or in relation to any other improvement on the Property.
2. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for the acquisition of this 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 bond holders 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

EXHIBIT B
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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. The City shall provide on-site signage informing the public that the City is managing the site. Metro will provide on-site signage 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. On-site signage that provides recognition of Metro funding shall be subject to prior review and comment by Metro. All signage will be consistent with Metro guidelines for Open Spaces Projects.
4. Joint Termination for Convenience. Metro and the City may by mutual agreement terminate all or part of this Agreement based upon a determination that such action is in the public interest.
5. Documents are Public Property. All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the acquisition, management, maintenance or operation of the Property shall become public property. Nothing in this section or in any other part of this Agreement shall be construed as limiting Metro's or the City'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).
6. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. 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 Agreement including but not limited to ORS 279.015 to 279.320.
7. Assignment. The City may not assign any of its rights or responsibilities under this Agreement without prior written consent from Metro, except the City may delegate or subcontract for performance of any of its responsibilities under this Agreement.
8. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro:

Metro
Charles Ciecko
Director, Metro Regional Parks and Greenspaces
600 NE Grand Avenue
Portland, OR 97232-2736

EXHIBIT B
Resolution No. 97-2532

To City: City of Portland
James Sjulín
Natural Resources Supervisor
Portland Parks and Recreation
1220 SW Fifth Ave.
Portland, OR 97204

9. 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.

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

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

CITY OF PORTLAND

METRO

By: _____

By: _____

Title: _____

Title: _____

EXHIBIT B
Resolution No. 97-2532

EXHIBIT B

Notice of Acquisition

_____, 199__

City of Portland
James Sjulín
Natural Resources Supervisor
Portland Parks and Recreation
1220 SW Fifth Ave.
Portland, OR 97204

Re: Acquisition of Property at Kelly Butte

Dear _____:

Pursuant to the Intergovernmental Agreement between Metro and The City of Portland Parks and Recreation dated _____, 1997, this shall serve as notice of acquisition of the following property at Kelly Butte:

[Property Address], in the City of Portland, County of Multnomah and State of Oregon, being more particularly described in Exhibit I attached hereto.

Pursuant to Paragraph B of the Kelly Butte - Walters Property Intergovernmental Agreement executed on _____, this property shall be managed pursuant to the terms of the Intergovernmental Agreement.

Sincerely,

Metro

INTERGOVERNMENTAL AGREEMENT

Kelly Butte-Walters Property

This Intergovernmental Agreement ("Agreement") dated this ___ day of _____, 1997 is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Portland, located at 1220 SW Fifth Avenue, Portland, Oregon 97204 ("the City").

RECITALS:

WHEREAS, approximately 1.06 acres of real property adjacent to Kelly Butte Natural Area in the City of Portland, Oregon, known as the Walters Property at the southern terminus of SE 101st Ave, Portland, Oregon, is available for purchase, as more particularly described in Exhibit A attached hereto ("Walters Property" or "Property");

WHEREAS, the East Buttes-Boring Lava Domes was identified as a regionally significant open space by the Metro Greenspaces Master Plan, and by the Metro Open Spaces, Parks and Streams 1995 Ballot Measure 26-26 ("Metro Open Spaces Measure");

WHEREAS, the Refinement Plan for the East Buttes-Boring Lava Domes Target Area, adopted by the Metro Council on July 17, 1996, identified certain areas as Tier 1b, requiring a 75%-25% partnership between Metro and local governments for acquisition of identified properties;

WHEREAS, the Walters Property is within the East Buttes-Boring Lava Domes Target Area and is identified as a Tier 1B property in the Refinement Plan;

WHEREAS, Metro has procured an Option to Purchase Real Property for the Property (the "Option");

WHEREAS, Metro and the City wish to purchase the property and to preserve it as open space in accordance with the Metro Open Spaces Measure and with the Metro Greenspaces Master Plan; and

WHEREAS, Metro and the City wish to enter into this Agreement to authorize the purchase and to provide for the responsibilities and obligations of the parties with respect to the acquisition, allowable uses, maintenance and operation of this Walters Property;

Now, therefore, the parties agree as follows:

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A. Acquisition

1. Metro and the City are hereby authorized to purchase the Walters Property for NINETY THOUSAND DOLLARS (\$90,000) in accordance with the Option. At closing Metro will contribute 75% of the purchase price (\$67,500), and the City will contribute 25% of the purchase price (\$22,500).
2. Metro and the City shall take title to the Property as tenants in common, with Metro having a 3/4 undivided interest and the City have a 1/4 undivided interest.
3. Metro shall be responsible for negotiating the Option Agreement and any terms of the transaction with the Property owner and for undertaking the normal due diligence investigations conducted by Metro pursuant to the Open Spaces Measure practices. If the City requires any due diligence investigations not required by Metro, the City shall be solely responsible for those items. Metro shall also be responsible for drafting and coordinating escrow instructions and closing details, and shall pay the Buyer's closing costs.

B. Management, Maintenance, and Operation

1. The long-term management guidelines for the Property will be set forth in a Resource Management Plan ("Management Plan") for the Property. This Agreement shall set forth the interim protection guidelines for the Property prior to adoption of the Management Plan, and shall also set forth the use limitations for the Property which must be carried forth and reflected in the Management Plan.
2. Metro and the City agree that the City shall be responsible for the ongoing management, maintenance, and operation of the Property, both during the interim period and after adoption of the Management Plan.
3. The term of the City's management, maintenance, and operation responsibilities for the Property shall be determined by the Management Plan, but in no event shall the term be less than ten (10) years from the effective date of this Agreement, renewable by mutual written agreement for additional ten (10) year periods.
4. Metro grants to the City, its agents and contractors, the right to enter the Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Property and for the fulfillment of their duties under this Agreement and pursuant to the Management Plan.

C. Interim Protection Guidelines

1. Prior to the adoption of a Management Plan for the Property, the Property shall be managed, maintained and operated by the City in accordance and in a manner consistent with this

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Agreement, the Metro Greenspaces Master Plan, the City's Comprehensive Plan, , and the City's proposed Kelly Butte Natural Area Plan ("the Plans"). In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern.

2. The Property shall at all times be managed, maintained, operated, and protected in accordance with its intended use as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent with the foregoing.
3. In accordance with the Metro Greenspaces Master Plan, formal public use of the Property and site development on the Property shall not begin until a Management Plan for the Property has been adopted.
4. Prior to the adoption of a Management Plan for the Property, in the interim period, at the City's discretion, the Property may be used informally by the public for passive recreation, habitat enhancement, pedestrian activity, and/or nonmotorized bicycle use. All uses of the Property in the interim period shall be consistent with this Agreement and with the Plans, and shall not preclude any uses that could later be allowed in the Management Plan.
5. Prior to the adoption of the Management Plan for the Property, in the interim period the City shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Property, except for the control of exotic or pest plant species or as necessary to prevent Property degradation or for security or public safety concerns.
6. Prior to adoption of the Management Plan and thereafter, the City shall maintain security of the Property, and shall provide additional fencing, gates, signage, and other measures as the City may deem necessary to increase safety on the Property, and to deter improper public use of the Property prior to adoption of the Management Plan. During the interim period the City shall control access to the Property, and shall respond to neighborhood or citizen complaints regarding improper use or noise on the Property.

D. Resource Management Plan for the Property

1. The City shall develop a Resource Management Plan ("Management Plan") for the Property. The Management Plan shall set forth the acceptable management, operation, maintenance, types and levels of programmed and public use, and trail and improvement standards for the Property. The City shall manage the Property in accordance with the standards and guidelines developed in the Management Plan.
2. The Management Plan shall ensure that the Property is managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Property comply with the Greenspaces Master Plan and with this Agreement. The Management Plan shall also ensure that the Property is maintained as a natural area open space, with the primary goals being protection of the Property's natural resources, enhancement and protection of wildlife habitat, and public recreation consistent

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with the foregoing. As part of the process of developing the Management Plan, the City shall take an inventory of the resources on the Property.

3. Metro shall designate at least one staff member to participate in the Management Plan process for the Property. In addition to any other approvals required by the City, the Management 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 Agreement and with the Greenspaces Master Plan.

E. Permits, Assessments, Coordination with Other Public Agencies

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for the Property the City agrees to be responsible for funding the operation and maintenance of the Property with the City's own resources. The City's management responsibility shall include responsibility for all taxes, liens or assessments for the Property.
2. Prior to adoption of the Management Plan and thereafter, the City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Property.
3. Any permits granted by the City to users of the Property shall comply with the terms and limitations set forth in this Agreement and in the Management Plan for the Property.
4. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance or operation issues that may arise with respect to the Property.

F. General Provisions

1. **Indemnification.** The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from any claim based on any act or occurrence arising from the management, maintenance or operation of the Property, including but not limited to construction of trails or in relation to any other improvement on the Property.
2. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for the acquisition of this 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 bond holders 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

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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. The City shall provide on-site signage informing the public that the City is managing the site. Metro will provide on-site signage 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. On-site signage that provides recognition of Metro funding shall be subject to prior review and comment by Metro. All signage will be consistent with Metro guidelines for Open Spaces Projects.
4. Joint Termination for Convenience. Metro and the City may by mutual agreement terminate all or part of this Agreement based upon a determination that such action is in the public interest.
5. Documents are Public Property. All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the acquisition, management, maintenance or operation of the Property shall become public property. Nothing in this section or in any other part of this Agreement shall be construed as limiting Metro's or the City'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).
6. Law of Oregon. This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the courts of the state of Oregon. 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 Agreement including but not limited to ORS 279.015 to 279.320.
7. Assignment. The City may not assign any of its rights or responsibilities under this Agreement without prior written consent from Metro, except the City may delegate or subcontract for performance of any of its responsibilities under this Agreement.
8. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail.

To Metro: Metro
Charles Ciecko
Director, Metro Regional Parks and Greenspaces
600 NE Grand Avenue
Portland, OR 97232-2736

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To City: City of Portland
James Sjulín
Natural Resources Supervisor
Portland Parks and Recreation
1220 SW Fifth Ave.
Portland, OR 97204

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

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

CITY OF PORTLAND

By:  _____

Title:  _____

METRO

By: _____

Title: _____

EXHIBIT B**Notice of Acquisition**

_____, 199__

City of Portland
 James Sjulín
 Natural Resources Supervisor
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Sincerely,

 Metro