

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 97-2557  
EXECUTIVE OFFICER TO AMEND THE EAST )  
BUTTES AND BORING LAVA DOMES TARGET AREA )  
REFINEMENT PLAN AND TO EXECUTE )  
AN INTERGOVERNMENTAL AGREEMENT WITH ) Introduced by Mike Burton  
THE CITY OF PORTLAND TO MANAGE THE ROCKY ) Executive Officer  
BUTTE-SCHULTZ PROPERTY )

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 2,500 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, the East Buttes and Boring Lava Domes regional target area was designated as a greenspace of regional significance in the Greenspaces Master Plan and identified as a regional target area in the Open Space, Parks and Streams Bond Measure; and

WHEREAS, on July 17, 1996, the Metro Council adopted a refinement plan for the East Buttes and Boring Lava Domes regional target area which authorized the purchases of sites on the buttes and lava domes, illustrated in a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, a main component of the East Buttes and Boring Lava Domes target area refinement planning focused on protection of the "urban" buttes including Rocky Butte, Kelly Butte and Powell Butte, and the plan designated portions of those buttes as "Tier 1B" properties on a tax-lot specific confidential refinement map; and

WHEREAS, in the East Buttes and Boring Lava Domes target area refinement plan, Tier 1B properties are subject to a challenge grant requiring a minimum 25% partnership contribution by an eligible party; and

WHEREAS, the City of Portland Parks and Recreation Department and citizens' groups, as potential partners, advocated for specific areas on the urban buttes in the target area refinement planning process; and

WHEREAS, the refinement plan for the Rocky Butte portion of the East Buttes and Boring Lava Domes target area does not currently include a portion of a 1.79-acre property (the Schultz Property) and four other complete tax lots totaling 1.3 acres, identified in Exhibit A to this Resolution, and that were identified by the City of Portland Parks and Recreation Department in a confidential brochure entitled "East Buttes Target Area Priorities;" and

WHEREAS, Metro staff and representatives of the City of Portland Parks and Recreation Department omitted a portion of the 1.79-acre property and the four other identified tax lots totaling 1.3 acres from the East Buttes and Boring Lava Domes target area refinement plan map due to a mapping error; and

WHEREAS, Metro and the City of Portland have entered into a Purchase and Sale Agreement to purchase the 1.79-acre property, a portion of which currently lies within the Tier 1B boundary line of Rocky Butte, identified in the East Buttes and Boring Lava Domes Target Area refinement plan as 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 Schultz property, 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, 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, the City has agreed to accept responsibility for operation, maintenance and management of the Schultz property, and potentially other properties on Rocky 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

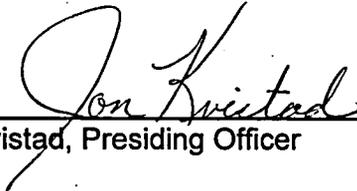
WHEREAS, such an IGA would set forth management, maintenance, and operation guidelines for the City, requiring that the properties be managed for passive recreation, pedestrian/bicycle use, and habitat restoration, with the primary goals being protection of the properties' natural resources, enhancement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

WHEREAS, the IGA attached hereto as Exhibit B has been approved by the Portland City Council for management of the Schultz property, and potentially, additional properties in the East Buttes and Boring Lava Domes Target Area; now, therefore

BE IT RESOLVED,

That the Metro Council amends the East Buttes and Boring Lava Domes regional target area refinement plan to include the properties identified in Exhibit A as Tier 1B properties and authorizes the Metro Executive Officer to execute the Schultz-Rocky Butte IGA with the City of Portland Parks and Recreation, attached hereto as Exhibit B, wherein the City will manage the Schultz property and potentially other properties within the East Buttes and Boring Lava Domes Target Area.

ADOPTED by the Metro Council this 25<sup>th</sup> day of September, 1997.

  
\_\_\_\_\_  
Jon Kvistad, Presiding Officer

Approved as to Form:

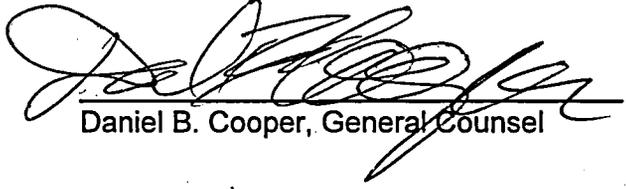
  
\_\_\_\_\_  
Daniel B. Cooper, General Counsel

EXHIBIT A

Resolution 97-2557

Properties to be added to East Buttes and Boring Lava Domes Refinement Plan.

<u>City of Portland.</u> <u>Tax Account Number</u>	<u>Acreage</u>
R54800800	.78
R942282840	1.79
R138200210	.18
R138200250	.17
R138200230	<u>.17</u>
<u>TOTAL</u>	3.09 Acres

**INTERGOVERNMENTAL AGREEMENT**

**Rocky Butte-Schultz Property**

This Intergovernmental Agreement ("Agreement") dated this \_\_\_\_\_ 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 1.79 acres of real property near to Rocky Butte Natural Area in the City of Portland, Oregon, known as the Schultz Property at NE Hill Way and Cadet Street, Portland, Oregon, is available for purchase, as more particularly described in Exhibit A attached hereto ("Schultz 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 Schultz 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 Schultz 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 Schultz Property for FIFTY FIVE THOUSAND DOLLARS (\$55,000). At closing Metro will contribute 75% of the purchase price (\$41,250), plus taxes and assessments as set forth in the Purchase & Sale Agreement, not to exceed TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500); and the City will contribute 25% of the purchase price (\$13,750), plus taxes and assessments as set forth in the Purchase & Agreement, not to exceed SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500).

EXHIBIT B  
Resolution 97-2557

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 Purchase and Sale 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 Schultz Property in accordance with the terms of this Agreement.
2. The Schultz Property shall be managed, maintained and operated in accordance and in a manner consistent with this Agreement, Metro's Greenspaces Master Plan, and the Rocky 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 Schultz Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Schultz Property.
5. The term of the City's management, maintenance, and operation responsibilities for the Schultz 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 Schultz Property may be used by the public, in the City's discretion, for passive recreation, pedestrian activity, nonmotorized bicycle use, and/or habitat enhancement.

EXHIBIT B  
Resolution 97-2557

Metro shall have the right to approve of any improvements, trails or alteration of any water or timber resource on the Schultz 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 Schultz Property. In any event, no improvements or trails shall be constructed on the Schultz 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 Schultz 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 Schultz Property.
4. The Schultz Property shall not be subdivided or partitioned, nor shall any development rights, timber rights, mineral rights, or other rights related to the Schultz 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 Schultz Property the City agrees to be responsible for funding the operation and maintenance of the Schultz Property with the City's own resources. The City's management responsibility shall include responsibility for all taxes or assessments for the Schultz Property.
2. The City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Schultz Property.
3. Any permits granted by the City to users of the Schultz 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

EXHIBIT B  
Resolution 97-2557

Schultz Property, including but not limited to construction of trails or in relation to any other improvement on the Schultz Property.

2. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of the Schultz 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 Schultz 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 Schultz 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 Schultz 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.

EXHIBIT B  
Resolution 97-2557

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: \_\_\_\_\_

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

Title: Director of Parks and Recreation

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

**EXHIBIT B**  
**Resolution 97-2557**

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

The East half of the East half of the Northeast quarter of the Northwest quarter of Section 28, Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM the portions included in ACADEMY HEIGHTS and CARNEY HEIGHTS, and ALSO EXCEPTING that portion taken for N.E. Rocky Butte Road (County Road No. 1340-A).

FURTHER EXCEPTING THEREFROM Parcel II of that certain Real Estate Contract recorded April 17, 1990, in Book 2292, Page 2340.

EXHIBIT B  
Resolution 97-2557

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 Rocky 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 Rocky 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 Rocky Butte-Schultz Property Intergovernmental Agreement executed on \_\_\_\_\_, this property shall be managed pursuant to the terms of the Intergovernmental Agreement.

Sincerely,

\_\_\_\_\_  
Metro

## Staff Report

### **CONSIDERATION OF RESOLUTION NO. 97-2557 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO AMEND THE EAST BUTTES AND BORING LAVA DOMES TARGET AREA REFINEMENT PLAN AND TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND TO MANAGE THE ROCKY BUTTE - SCHULTZ PROPERTY.**

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**Date: September 8, 1997**

**Presented by:**

**Charles Ciecko  
Jim Desmond**

#### **PROPOSED ACTION**

Resolution No. 97-2557 would provide Metro Council approval for an amendment to the East Buttes and Boring Lava Domes Target Area confidential refinement map, and 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 Rocky Butte area of the East Buttes and Boring Lava Domes Target Area.

#### **BACKGROUND AND ANALYSIS**

##### **Amendment to Refinement Map**

On July 17, 1996, the Metro Council approved Resolution No. 96-2361 for the purpose of approving a refinement plan for the East Buttes and Boring Lava Domes Target Area, including a confidential, tax-lot specific refinement map outlining areas in which Metro is authorized to purchase properties under Measure 26-26. A small area was inadvertently left out of the Rocky Butte portion of the map due to a mapping error. The omitted area contains a portion of a 1.79-acre parcel and three other complete tax lots on the west slope, and a tax lot on the north slope, of Rocky Butte, and is more particularly cited in Attachment A. It was identified during the refinement process by the City of Portland Parks and Recreation Department in their confidential brochure entitled "East Buttes Target Area Priorities" (see Attachment B) and should have been included on the Metro Refinement Map. In its confidential brochure, the City of Portland Parks and Recreation Department identifies the five additional lots as "Level 1 Acquisitions" which is their highest priority level. The local citizen groups on Rocky Butte, including the Rocky Butte Preservation Society, testified at Metro's public meetings and council sessions, and advocated very strongly for the subject sites. The omitted area contains approximately 3.09 acres, and is more particularly described in Attachment C.

The portion of the 1.79-acre property and the four other additional lots will be identified in the amended 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 intends to contribute 25% of the purchase price of the 1.79-acre property, as required in the challenge grant established as part of the Refinement Plan.

Metro and the City of Portland have entered into an Agreement to purchase the entire 1.79-acre property. On August 27, 1997, the Portland City Council passed Resolution 171532, authorizing the City to contribute the necessary funds toward purchase of the 1.79-acre property, and to enter into an intergovernmental agreement to manage the property (see Attachment D).

In order to acquire the 1.79-acre piece at this time, and to authorize the potential acquisition of the remaining four properties as noted in Attachment C, Metro must amend the East Buttes and Boring Lava Domes target area refinement map to include the properties.

### **Intergovernmental Agreement**

Measure 26-26 provided funding for acquiring up to 6,000 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 2,500 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 subject 1.79-acre property and the additional four lots will be identified in the East Buttes and Boring Lava Domes refinement plan as Tier IB properties. 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. 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. At Rocky Butte, the

City has adopted the following plans to protect resources and guide development activities in Rocky Butte Nature Park: Rocky Butte Plan District, East Buttes, Terraces and Wetlands Conservation Plan; and the City of Portland's Comprehensive Plans. These plans may be adequate to govern the property, and shall 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 entered into a Purchase and Sale Agreement to purchase the 1.79-acre Schultz property in the East Buttes and Boring Lava Domes Target Area, and is expected to close on that purchase by October 9, 1997.

### **FINDINGS**

Resolution 97-2557 would authorize Metro to amend the refinement plan map for the East Buttes and Boring Lava Domes target area and correct a mapping error. It would therefore also authorize Metro to purchase the entire subject 1.79-acre property owned by Richard and Linda Schultz, and further identified in Attachment A, and allow for the possible purchase of the remaining four lots as identified in Attachment C.

Resolution 97-2557 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 Schultz property 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**

Metro will allocate 75% of the \$55,000 purchase price (or \$41,250) for the Schultz property from the Measure 26-26 bond proceeds. 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.

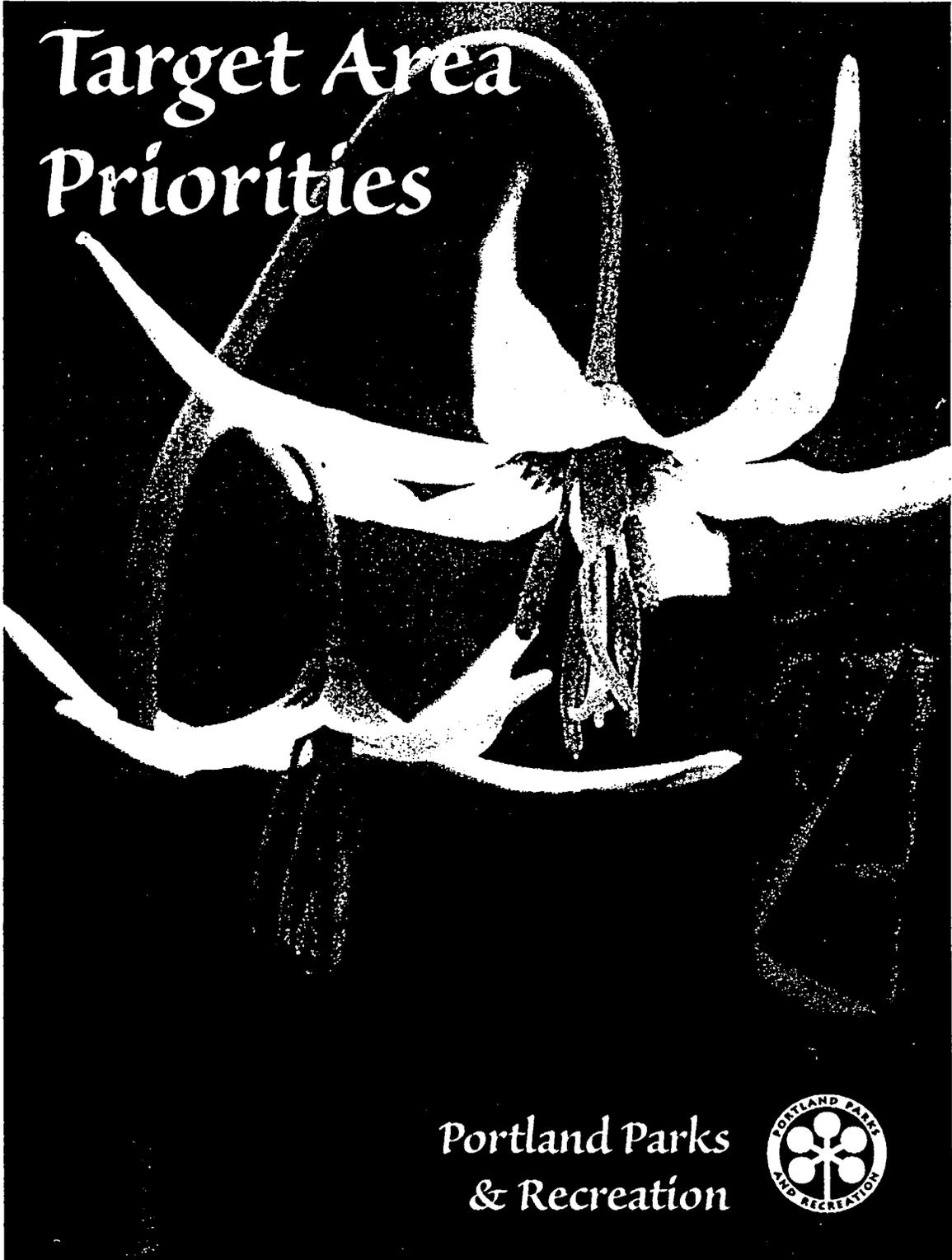
### **Executive Officer's Recommendation**

The Executive Officer recommends adoption of Resolution 97-2557.



# East Buttes

## Target Area Priorities



Portland Parks  
& Recreation



## ROCKY BUTTE ACQUISITION PRIORITIES:

**LEVEL 1 ACQUISITION:** The first priority for acquisition are moderately sized, privately owned parcels along the primary public parkway and entrance to Rocky Butte Park. Most of these parcels include Works Progress Administration (WPA) rockwork of historic significance. This parkway as well as the view point at the top of the butte are officially listed on the National Register of Historic Places. This is the only butte within the study area so recognized. In addition, a parcel at the northern tip of the butte, owned by Oregon State Department of Transportation (ODOT), is of first priority because it would provide a connection to the I-205 bike path and a pedestrian entrance to park through State owned lands on north and east sides of the butte. All parcels are well connected to existing publicly owned land.

**Ownership:** All properties are privately owned, except for 1F which is owned by the State of Oregon Department of Transportation.

**Environmental Zone Overlay:** The four largest properties have some percentage of protection "p" overlay zoning which substantially reduces the likelihood of development on a corresponding portion of the property: 1A-67%, 1B-90%, 1H-33% & 1I-5%. Most properties are located within the Rocky Butte Plan District, zoned for residential use, have special height restrictions signified by an "h" overlay, and 95% to 100% environmental overlay zoning. The two exceptions, 1F & 1G, have no environmental overlay zoning. Additionally, 1F is a remnant of land acquired by ODOT for development of the I-205 Freeway and is located within the City of Maywood Park.

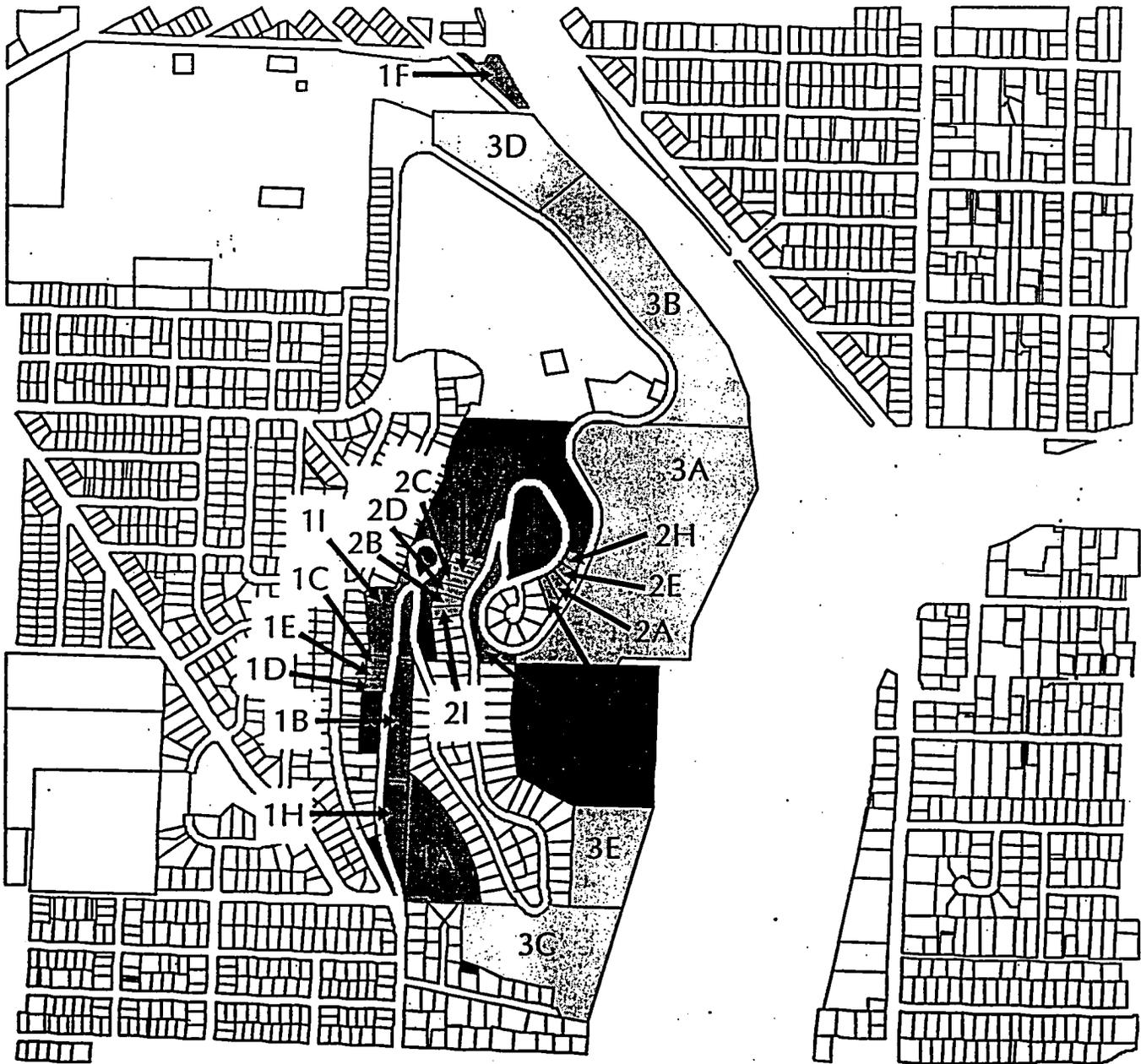
**Valuation:** Price per acre is speculative. The average assessed value is approximately \$54,500 per acre and ranges from \$7,000 to \$135,000. Value is enhanced by excellent views and constrained in some situations by high development costs because of steep terrain and difficult street access.

**Resource Value:** Good to very good.

**Connectivity to Existing Parkland:** Good to excellent, immediately adjacent to existing Rocky Butte Park and other publicly owned properties.

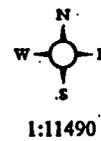
**Development Potential:** High to moderate because of private ownership, zoning and excellent views.

<b># of Properties:</b>	9
<b># of Owners:</b>	7
<b># of Acres:</b>	10.95
<b>Total Assessed Value:</b>	\$356,100



# Rocky Butte Open Spaces

- |   |                     |   |                            |
|---|---------------------|---|----------------------------|
|  | Level 1 Acquisition |  | Level 3 Acquisition        |
|  | Level 2 Acquisition |  | Existing Parks/Public Land |



ATTACHMENT C

Resolution 97-2557

Properties to be added to East Buttes and Boring Lava Domes Refinement Plan.  
City of Portland.

<u>Tax Account Number</u>	<u>Exhibit B Map Locator</u>	<u>Acreage</u>
R54800800	1 F	.78
R942282840	1 L	1.79
R138200210	1 C	.18
R138200250	1 D	.17
R138200230	1 E	<u>.17</u>
<u>TOTAL</u>		3.09

**INTERGOVERNMENTAL AGREEMENT**

**Rocky Butte-Schultz Property**

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**WITNESSETH:**

WHEREAS, approximately 1.79 acres of real property near to Rocky Butte Natural Area in the City of Portland, Oregon, known as the Schultz Property at NE Hill Way and Cadet Street, Portland, Oregon, is available for purchase, as more particularly described in Exhibit A attached hereto ("Schultz 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 Schultz 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 Schultz 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 Schultz Property for FIFTY FIVE THOUSAND DOLLARS (\$55,000). At closing Metro will contribute 75% of the purchase price (\$41,250), plus taxes and assessments as set forth in the Purchase & Sale Agreement, not to exceed TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500); and the City will contribute 25% of the purchase price (\$13,750), plus taxes and assessments as set forth in the Purchase & Agreement, not to exceed SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500).

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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 Purchase and Sale 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 Schultz Property in accordance with the terms of this Agreement.
2. The Schultz Property shall be managed, maintained and operated in accordance and in a manner consistent with this Agreement, Metro's Greenspaces Master Plan, and the Rocky 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 Schultz Property for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of the Schultz Property.
5. The term of the City's management, maintenance, and operation responsibilities for the Schultz 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 Schultz Property may be used by the public, in the City's discretion, for passive recreation, pedestrian activity, nonmotorized bicycle use, and/or habitat enhancement.

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Metro shall have the right to approve of any improvements, trails or alteration of any water or timber resource on the Schultz 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 Schultz Property. In any event, no improvements or trails shall be constructed on the Schultz 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 Schultz 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 Schultz Property.
4. The Schultz Property shall not be subdivided or partitioned, nor shall any development rights, timber rights, mineral rights, or other rights related to the Schultz 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 Schultz Property the City agrees to be responsible for funding the operation and maintenance of the Schultz Property with the City's own resources. The City's management responsibility shall include responsibility for all taxes or assessments for the Schultz Property.
2. The City shall be responsible for obtaining any permits necessary for management, maintenance or operation of the Schultz Property.
3. Any permits granted by the City to users of the Schultz 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

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Schultz Property, including but not limited to construction of trails or in relation to any other improvement on the Schultz Property.

2. Oregon Constitution and Tax Exempt Bond Covenants. The source of funds for the acquisition of the Schultz 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 Schultz 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 Schultz 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 Schultz 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.

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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: \_\_\_\_\_

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

Title: Director of Parks and Recreation

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

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EXHIBIT A  
PROPERTY DESCRIPTION

The East half of the East half of the Northeast quarter of the Northwest quarter of Section 28, Township 1 North, Range 2 East of the Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon.

EXCEPTING THEREFROM the portions included in ACADEMY HEIGHTS and CARNEY HEIGHTS, and ALSO EXCEPTING that portion taken for N.E. Rocky Butte Road (County Road No. 1340-A).

FURTHER EXCEPTING THEREFROM Parcel II of that certain Real Estate Contract recorded April 17, 1990, in Book 2292, Page 2340.

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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 Rocky 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 Rocky 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 Rocky Butte-Schultz Property Intergovernmental Agreement executed on \_\_\_\_\_, this property shall be managed pursuant to the terms of the Intergovernmental Agreement.

Sincerely,

\_\_\_\_\_  
Metro