

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING)
TWO INTERGOVERNMENTAL AGREEMENTS)
WITH THE CITY OF PORTLAND FOR)
MANAGEMENT OF PROPERTIES IN THE)
FANNO CREEK GREENWAY TARGET AREA)

RESOLUTION NO. 97-2565

Introduced by Mike Burton
Executive Officer

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

WHEREAS, at the election held on May 16, 1995, the Metro area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition and capital improvements; 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, on May 16, 1996, the Metro Council adopted a refinement plan for the Fanno Creek Greenway regional target area, which included a confidential tax-lot specific map identifying priority properties for acquisition, and which encouraged partnerships involving Metro and local governments in the acquisition of land along Fanno Creek and its tributaries; and

WHEREAS, in January, 1997, Metro acquired 3.36 acres on Ash Creek (Taylor Woods property), a Fanno Creek tributary; and

WHEREAS, in September 1997, Metro acquired the Edwards property, .86 acres adjacent to Taylor Woods; and

WHEREAS, the City of Portland contributed 25% of the purchase price to the acquisition of the Taylor Woods and Edwards properties; and

WHEREAS, the City of Portland and Metro desire that the City of Portland should operate, manage, and maintain the Taylor Woods and Edwards properties, as well as properties in the same vicinity that are acquired in the future; and

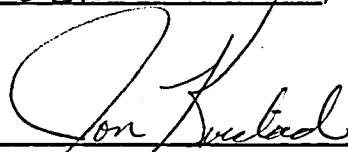
WHEREAS, an intergovernmental agreement (IGA) involving Metro and the City of Portland would benefit the Taylor Woods property, the Edwards property, and future acquisitions in this vicinity, as well as the public in general by providing increased care for the properties and by encouraging public use; and

WHEREAS, the IGAs attached to this resolution as Exhibits A and B set forth management, maintenance, and operation guidelines for the City of Portland, requiring that the properties be managed for passive recreation, pedestrian/bicycle use, and habitat restoration, with the primary goals being the protection of the properties' natural resources, the enhancement and protection of wildlife habitat, and public recreation consistent with these goals;

BE IT RESOLVED,

That the Metro Council approves and authorizes the Metro Executive Officer to execute the Intergovernmental Agreements with the City of Portland, attached hereto as Exhibits A and B, wherein the City of Portland will manage the Edwards property, the Taylor Woods property and potentially other properties within the Fanno Creek Greenway Target Area.

ADOPTED by the Metro Council this 16th day of October, 1997.



Jon Kvistad, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

Resolution No. 97-2565

INTERGOVERNMENTAL AGREEMENT**Fanno Creek - Edwards 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 .86 acres of real property, owned by Alice Ruth Edwards, and located adjacent to public open spaces owned by Metro and the City of Portland, is available for purchase (hereafter the "Edwards Property" or "the Property"); and

WHEREAS, the Property is located at the terminus of S.W. 52d Avenue, and is commonly known as Tax Lot 8 of Lot 20, Map 4024, in the Crestwood Subdivision, Multnomah County, Oregon, as more particularly described in Exhibit A attached hereto; and

WHEREAS, the Fanno Creek Greenway 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"); and

WHEREAS, the Refinement Plan for the Fanno Creek Greenway regional target area, adopted by the Metro Council on May 16, 1996, identified certain areas as Tier 1b, requiring a 75%-25% partnership between Metro and local governments for acquisition of identified properties; and

WHEREAS, the Edwards Property is within the Fanno Creek Regional Target Area and is identified as a Tier 1B property in the Refinement Plan; and

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

WHEREAS, Metro and the City wish to purchase the property and to preserve it as open space in accordance with the Metro Open Spaces Bond 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 Edwards Property;

Now, therefore, the parties agree as follows:

A. Acquisition

1. Metro and the City are hereby authorized to purchase the Edwards Property for FORTY SIX THOUSAND DOLLARS (\$46,000) in accordance with the Option. At closing Metro will contribute 75% of the purchase price (\$34,500), and the City will contribute 25% of the purchase price (\$11,500).
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 having a 1/4 undivided interest. The deed will restrict the property to open space use in perpetuity.
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 Bond Measure Implementation Workplan. 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 Agreement, the Metro Greenspaces Master Plan, and the City's Comprehensive 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 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 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

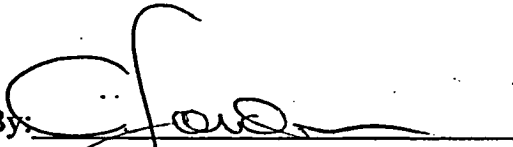
To City: City of Portland
James Sjulín
Natural Resources Supervisor
Portland Parks and Recreation
1220 SW Fifth Ave.
Portland, OR 97204

- 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
PARKS AND RECREATION

METRO

By: 
Title: Director of Parks and Recreation

By: _____
Title: _____

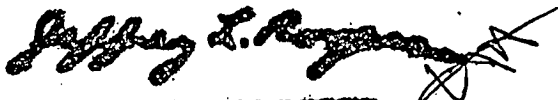
APPROVED AS TO FORM

CITY ATTORNEY

EXHIBIT A

Lot 20, Crestwood, in the City of Portland, Multnomah County, Oregon, EXCEPTING THEREFROM the following described real property being a portion of Lot 20, Crestwood, situated in the Southeast quarter of Section 30, Township 1 South, Range 1 East of the Willamette Meridian, Multnomah County, Oregon, to-wit:

Beginning at a railroad spike marking the northwest corner of Lot 20, Crestwood, and running thence 15.0 feet along the arc of a 570.0-foot radius curve to the left (the long chord of which bears South 00° 56' East 15.0 feet) to an iron pipe, said iron pipe marking the true point of beginning of this description; thence South 89° 16' East 80.0 feet parallel with the north boundary line of said Lot 20 to an iron pipe; thence South 25° 49' 44" East 112.10 feet to an iron pipe; thence North 89° 16' West 118.47 feet to an iron pipe set in the easterly right-of-way line of SW 53rd Avenue; thence following said right-of-way line along the arc of a 570.0-foot radius curve to the right for a distance of 100.97 feet to the true point of beginning of this description.

ALSO EXCEPTING THEREFROM the following described real property being a portion of Lot 20, Crestwood, situated in the Southeast quarter of Section 30, Township 1 South, Range 1 East of the Willamette Meridian, Multnomah County, Oregon, more particularly described as follows:

Beginning at a railroad spike marking the northwest corner of Lot 20, Crestwood; thence along the west line of said Lot 20 on a curve to the left which radius is 570.0 feet, an arc distance of 115.97 feet (the long chord of which bears South 06° 00' 43" East, 115.77 feet) to the southwest corner of a certain tract of land conveyed to Donald Savage et al and recorded April 28, 1969 in Book 674, Page 914, Multnomah County Deed Records, said point also being the true point of beginning of the tract to be described; thence South 89° 16' East along the south line of said Savage tract, 118.47 feet; thence South 14° 24' 19" East, 88.07 feet to a point on the south line of Lot 20, Crestwood; thence North 89° 16' West along the south line of said Lot 20, 117.00 feet to the southwest corner thereof; thence along the west line of said Lot 20 on a curve to the right which radius is 570.0 feet, an arc distance of 88.52 feet (the long chord of which bears North 16° 17' 21" West, 88.43 feet) to the true point of beginning of the above described tract.

FURTHERMORE EXCEPTING THEREFROM part of Lot 20, Crestwood, in the Southeast quarter of Section 30, Township 1 South, Range 1 East of the Willamette Meridian, Multnomah County, Oregon, described as follows:

Beginning at a railroad spike at the northwest corner of Lot 20, Crestwood; thence South 89° 10' East on the north line of Lot 20, 235.0 feet to a point; thence South 00° 50' West, 70.0 feet to a point; thence South 89° 10' East 14.0 feet to a point; thence South 00° 50' West 40.0 feet to a point; thence North 89° 10' West 120.87 feet to a point on the easterly boundary of the Dale Rader property described in instrument recorded April 25, 1969 in Book 2282, Page 286, Multnomah County Deed Records; thence North 25° 49' 44" West 106.31 feet to the northeast corner of the aforementioned Dale Rader property; thence North 89° 10' West 80.0 feet on the north line of the Dale Rader property to a point on the easterly right-of-way line of SW 53rd Avenue; thence on a curve to the right along the easterly right-of-way line of SW 53rd Avenue with a radius of 600 feet through a central angle of 01° 26' 01" an arc distance of 15.0 feet (long chord bears North 00° 47' 58" West 15.0 feet) to the point of beginning.

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 in Fanno Creek Greenway Regional Target Area

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 in the Fanno Creek Greenway Regional Target Area:

Tax Lot 8 of Lot 20, Map 4024, in the Crestwood Subdivision, 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 Fanno Creek - Edwards Property Intergovernmental Agreement executed on _____, this property shall be managed pursuant to the terms of the Intergovernmental Agreement.

Sincerely,

Metro

Resolution No. 97-2565

INTERGOVERNMENTAL AGREEMENT**Kenny Property ("Taylor Woods")**

This Intergovernmental Agreement ("Agreement") dated this ___ day of _____, 1996, 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 S.W. Fifth Avenue, Portland, Oregon 97204 ("the City").

WITNESSETH:

WHEREAS, on May 16, 1995, voters approved Ballot Measure 26-26, Open Spaces, Parks, and Streams, authorizing METRO, a metropolitan service district organized under the laws of the State of Oregon and the 1992 METRO Charter, to issue up to \$135.6 million in general obligation bonds for the protection of open spaces, parks and streams ("Metro Open Spaces Bond Measure"); and

WHEREAS, the City is a local parks provider which has received Metro Open Spaces Bond Measure local share funding for this project through an intergovernmental agreement between METRO and the City entered into on _____, 1996 ("Local Share IGA"); and

WHEREAS, pursuant to the Metro Open Spaces Bond Measure, Metro purchased certain property in the Ash Creek Watershed in the City of Portland, Oregon, with Open Spaces Bond Measure proceeds, approximately 3.36 acres of real property known as Taylor Woods, on Ash Creek, a Fanno Creek tributary, in Multnomah County, as more particularly described in Exhibit A attached hereto [legal description] ("Taylor Woods");

WHEREAS, Fanno Creek was identified as a regionally significant natural resource in the Metro Greenspaces Master Plan, and Taylor Woods is within the Fanno Creek Greenway Target Area established pursuant to the Metro Open Spaces Bond Measure;

WHEREAS, Metro purchased Taylor Woods with proceeds from the Metro Open Spaces Bond Measure to preserve it as open space in accordance with the measure;

WHEREAS, Metro and the City wish to preserve Taylor Woods as open spaces in accordance with the Metro Open Spaces Bond Measure and with the Metro Greenspaces Master Plan;

WHEREAS, on _____, 1997 the City Council authorized the City to enter into this Agreement and to manage, operate and maintain Taylor Woods in accordance with the terms set forth in this Agreement;

WHEREAS, on _____, 1997 the Metro Council authorized Metro to enter into this Agreement to transfer management responsibility for Taylor Woods in accordance with the terms set forth in this Agreement, and

WHEREAS, Metro and the City wish to enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the allowable uses, maintenance and operation of Taylor Woods;

Now, therefore, the parties agree as follows:

A. Acquisition

1. On January 28, 1997 Metro and the City purchased Taylor Woods in fee simple ownership with Metro Open Spaces Measure bond proceeds. Metro contributed 75% of the purchase price and the City contributed 25% of the purchase price
2. Metro and the City have taken title to Taylor Woods as tenants in common, with Metro having a 3/4 undivided interest and the City have a 1/4 undivided interest, and with deed restrictions requiring that Taylor Woods shall remain in its natural condition in perpetuity.

B. Management, Maintenance, and Operation

1. The City shall be responsible for the ongoing management, maintenance, and operation of the Taylor Woods in accordance with the terms of this Agreement.
2. Taylor Woods shall be managed, maintained and operated in accordance and in a manner consistent with this Agreement, Metro's Greenspaces Master Plan, and the Portland Parks Bureau Parks Futures Plan,. These Plans shall constitute the Resource Protection Plans for Taylor Woods, 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 an agreement to purchase additional property within the Fanno Creek Target Area which Metro would like the City to manage under the terms of this Agreement, Metro shall notify the City in writing in the form attached hereto as Exhibit B ("Notice of Acquisition"). The City shall notify Metro if the City does not wish to accept management responsibilities for that property in accordance with this Agreement, using the City's best efforts to make this notification prior to the closing date for the acquisition. If the City has not so notified Metro within thirty (30) days of receiving Metro's Notice of Acquisition, then the City shall be deemed to have accepted the new Property for management, maintenance and operation responsibilities in accordance with the terms and conditions of this Agreement.
4. Metro grants to the City, its agents and contractors, the right to enter Taylor Woods for the purpose of performing all activities reasonably necessary for the management, maintenance and operation of Taylor Woods.

5. The term of the City's management, maintenance, and operation responsibilities for Taylor Woods 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. Taylor Woods shall be managed, maintained and operated in accordance with its intended use as natural area open spaces, with the primary goal being protection of Taylor Woods' natural resources.
2. Taylor Woods 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 Taylor Woods, 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 Taylor Woods. In any event, no improvements or trails shall be constructed on Taylor Woods 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 Taylor Woods. Any changes in the Plans made or proposed by the City that relate to management, maintenance, or operation of Taylor Woods 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 Taylor Woods.
4. Taylor Woods shall not be subdivided or partitioned, nor shall any development rights, timber rights, mineral rights, or other rights related to Taylor Woods 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.
5. The City shall maintain security of Taylor Woods, and shall provide additional fencing, gates, signage, and other measures as the City may deem necessary to increase safety on Taylor Woods, and to preserve and protect Taylor Woods natural resources.

D. Permits, Assessments, Coordination with Other Public Agencies

1. As stated in the Greenspaces Master Plan, by accepting management responsibility for Taylor Woods the City agrees to be responsible for funding the operation and maintenance of Taylor Woods with the City's own resources. The City's management responsibility shall include responsibility for all taxes or assessments for Taylor Woods.

2. The City shall be responsible for obtaining any permits necessary for management, maintenance or operation of Taylor Woods.
3. Any permits granted by the City to users of Taylor Woods shall comply with the terms and limitations set forth in this Agreement and in the Plans.
4. The City shall be responsible for contacting and coordinating with other local or state agencies regarding any management, maintenance or operation issues that may arise with respect to Taylor Woods.

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 the management, maintenance or operation of Taylor Woods, including but not limited to construction of trails or in relation to any other improvement on Taylor Woods.
2. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for the acquisition of Taylor Woods 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 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 Taylor Woods. Metro will provide on-site signage stating that funding for the acquisition came from Metro Open Spaces Measure bond proceeds, except that the signage on the Jensen Property shall also state that funding also came from regional and local share bond measure contributions by Metro and the City. The City shall also document in any publication, media presentation or other presentations, that funding for acquisition of Taylor Woods came 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 jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest.

Termination under this provision shall be effective upon ten (10) days written notice of termination issued by METRO, subject to the mutual written agreement of the parties.

5. Termination for Cause. Either party may terminate this Agreement in full, or in part, at any time before the date of completion, whenever that party determines, in its sole discretion, that the party has failed to comply with the conditions of this Agreement and is therefore in default. The terminating party shall promptly notify the other party in writing of that determination and document such default as outlined herein. The other party shall have thirty (30) days to cure the problem. Notwithstanding any termination for cause, both parties shall be entitled to receive payments for any work completed or for which that party is contractually obligated for, which completion or contractual obligation occurred prior to the effective date of the termination, provided that no party shall be obligated to make any payment except for work specifically provided for in this Agreement.
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 N.E. Grand Avenue
Portland, OR 97232-2736

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

8. Assignment. The parties may not assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except the parties 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 Taylor Woods. 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: _____
Title: _____

By: _____
Title: _____

EXHIBIT A

Lots 22, 23 and 26, according to the duly filed plat of CRESTWOOD, in the City of Portland, filed January 21, 1936 in Plat Book 1177, Page 47, Records of the County of Multnomah and State of Oregon.

EXCEPT the West 200 feet and also EXCEPT that part conveyed to the State of Oregon, by and through its State Highway Commission by Deed recorded July 11, 1957 in Deed Book 1851, Page 555 and Deed recorded November 21, 1956, Deed Book 1817, Page 575 of Multnomah County, Oregon Deed Records.

EXHIBIT BNotice of Acquisition

_____, 199__

City of
Parks and Recreation Department

, OR 97

Re: Acquisition of Property in Fanno Creek Greenway Target Area

Dear _____:

Pursuant to the Metro Open Spaces Bond Measure 26-26, and the Intergovernmental Agreement between Metro _____ dated _____, 1997, attached hereto ("Intergovernmental Agreement"), this shall serve as notice of acquisition of the following property along the [target area]:

[Property Address], in the City of _____, County of _____ and State of Oregon, being more particularly described in Exhibit I attached hereto ("the Property").

Pursuant to the Intergovernmental Agreement, Metro requests that the City manage this Property pursuant to the terms of the Intergovernmental Agreement. Please notify Metro in writing if the City does not wish to accept management responsibility for this Property. As set forth in the Intergovernmental Agreement, if the City does not so notify Metro within thirty (30) days of receipt of this letter, the City shall be deemed to have accepted the new Property for management, maintenance, and operation in accordance with the terms and conditions of the Intergovernmental Agreement.

If you have any questions please do not hesitate to contact me at 797-1914.

Sincerely,

Jim Desmond
Manager, Metro Open Spaces Acquisition Division

cc: Charles Ciecko, Director, Metro Regional Parks and Greenspaces

Staff Report

CONSIDERATION OF RESOLUTION NO. 97-2565 FOR THE PURPOSE OF APPROVING TWO INTERGOVERNMENTAL AGREEMENTS WITH THE CITY OF PORTLAND FOR MANAGEMENT OF PROPERTIES IN THE FANNO CREEK GREENWAY TARGET AREA

Date: September 24, 1997

Presented By:

**Charles Ciecko
Jim Desmond**

Proposed Action

Resolution No. 97-2565, requests authorization for the Executive Officer to execute two intergovernmental agreements (IGAs) with the City of Portland for management of properties in the Fanno Creek Greenway Target Area.

Background and Analysis

Metro purchased the 3.36-acre Kenny property, also known as Taylor Woods, in January, 1997. Taylor Woods provides a forested buffer to the headwaters of Ash Creek, a Fanno Creek tributary identified in the Fanno Creek Greenway Target Area as a protection priority. In September of 1997, Metro expanded this protected buffer by acquiring the Edwards property, a .86-acre undeveloped tract nearly adjacent to Taylor Woods.

The City of Portland contributed 25% of the purchase price for both of these properties. In addition, the City is committed to assuming management responsibilities for these properties, as well as for future acquisitions of land in the same vicinity. The Edwards IGA and the Taylor Woods IGA enumerate these responsibilities. In order to effectively transfer management responsibilities arising from the Edwards and Taylor Woods property and from future acquisitions in the same area, the Metro Council must authorize the Executive Officer to execute both IGAs.

Findings

Authorization of the Executive Officer's execution of the Edwards and Taylor Woods IGAs is recommended based upon the following:

- The Fanno Creek Greenway Target Area Refinement Plan includes the following among its objectives:

Encourage participation of other governments . . . in the protection/enhancement of water quality and water quantity by establishing a challenge grant account for land acquisition along the following Fanno Creek tributaries: . . . Ash Creek.

Execution of the Edwards and Taylor Woods IGAs serves this objective.

- The City of Portland has already taken the lead in coordinating land management with the Crestwood Neighborhood Association, a local group with a strong interest in both properties.
- The relatively small size of the site, and its placement within an established neighborhood, make management of the site more appropriate for a local, rather than a regional, agency.
- The IGAs will relieve Metro of management costs arising from the two properties, while fulfilling the acquisition objective for the Fanno Creek Greenway Target Area, the protection of Ash Creek.

Budget Impact

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

Executive Officer's Recommendation

The Executive Officer recommends passage of Resolution No. 97-2565.