

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN )  
INTERGOVERNMENTAL AGREEMENT )  
WITH THE CITY OF PORTLAND FOR )  
REFORESTATION ON METRO OPEN )  
SPACES PROPERTIES )

RESOLUTION NO.00-2883  
Introduced by Mike Burton  
Executive Officer

WHEREAS; Metro's Open Spaces Parks and Streams bond measure (Measure 26-26) was approved by the voters of the region in May 1995; and

WHEREAS, using proceeds from the bonds, approximately 5,184 acres of open space have been acquired to date, most of which is or was once forestland; and

WHEREAS, reforestation is required by law (Oregon State Forest Practices Act) on portions of those lands and is the optimum management option on others; and

WHEREAS, the Portland Watershed Re-Vegetation Program is a qualified, experienced reforestation program; and

WHEREAS; Metro entering into an intergovernmental agreement utilizing the Portland Watershed Re-Vegetation Program enables both the City of Portland and Metro to enhance the cost-effective management of their reforestation efforts; and

WHEREAS, the Portland Watershed Re-Vegetation Program will provide at market cost plant material needed by Metro and solely-available through their program; and

WHEREAS, Metro Council via Resolution 99-2750 entered into an IGA in January 1999 with the City of Portland for reforestation on Metro properties; and

WHEREAS, Metro successfully implemented that IGA to plant 103,228 trees and 21,444 shrubs on 122 acres of Metro property, supervise reforestation on 327 acres, conduct vegetation surveys on 121 acres and purchase plant materials at more than a 50% cost savings; now therefore

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to execute the intergovernmental agreement with the City of Portland, attached hereto as Exhibit A, for reforestation on Metro properties.

ADOPTED by the Metro Council this 27<sup>th</sup> day of January, 2000

Approved as to Form:

  
David Bragdon, Presiding Officer


  
Daniel B. Cooper, General Counsel

EXHIBIT A  
Resolution No. 00-2883

INTERGOVERNMENTAL AGREEMENT

METRO  
and  
CITY OF PORTLAND

**Reforestation on Metro Open Spaces Properties**

This Intergovernmental Agreement ("Agreement") dated this \_\_\_\_\_ day of \_\_\_\_\_, 2000, is by and between Metro, located at 600 Northeast Grand Avenue, Portland, Oregon 97232-2736, and City of Portland, located at 1220 Southwest Fifth Avenue, Portland, Oregon 97204 ("City").

RECITALS:

WHEREAS, on May 16, 1995, voters approved Ballot Measure 26-26 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; and,

WHEREAS, the ballot measure identified a goal of acquiring forest lands throughout the metropolitan region; and,

WHEREAS, over 5,000 acres of land have been purchased to date, most of which is or was former forested land; and,

WHEREAS, reforestation is required on portions of these forest lands, both under the Oregon Forest Practices Act and as the preferred long-term, most cost-effective management option; and,

WHEREAS, the Portland Watershed Re-Vegetation staff have the qualifications and experience of reforestation for the purpose of establishing diverse, native forests; and,

WHEREAS, combining Metro's reforestation efforts with those of Portland Watershed Re-Vegetation Program, and contracting with Portland Watershed Re-Vegetation Program to supervise the reforestation efforts on Metro properties, will provide the following benefits to Metro:

- Greatly increase staff efficiency by utilizing the skills of professional foresters with proven results throughout the Region.
- Significant cost savings in purchasing and storing plant materials by allowing access to the Portland Watershed Re-Vegetation Program established vendors.
- Increased planting quality and plant survival due to intensive quality control inspections conducted by Portland Watershed Re-Vegetation Program foresters.

WHEREAS, specific plant material appropriate for Metro's reforestation sites is available solely through the Portland Watershed Re-Vegetation Program; and;

WHEREAS, staff of the Portland Watershed Re-Vegetation Program are familiar with Metro's forest lands acquired with open spaces bond proceeds and share the same goal of establishing a diverse, native forest system; and,

WHEREAS; the Portland Watershed Re-Vegetation Program estimates that the cost of plant materials and supervising reforestation efforts on Metro newly-acquired properties requiring reforestation should not exceed \$156,000 (One Hundred and Fifty Six Thousand dollars) and,

WHEREAS, Metro and the City acknowledge that they have authority to enter into this Agreement pursuant to the powers contained in their respective charters and in ORS 190.010;

NOW, THEREFORE , the parties hereby agree as follows:

## **AGREEMENT**

**Section A. Project Declaration** The activities described in this Agreement are for the supervision and implementation of reforestation efforts on portions of land purchased by Metro using proceeds from general obligation bonds for the protection of open spaces, parks and streams, as provided for in Measure 26-26 Open Spaces, Parks, and Streams Bond Measure.

### **Section B. Specific Work Tasks**

#### **1. Vegetation Surveys**

Each reforestation site identified by Metro will be initially assessed by the Portland Watershed Re-Vegetation Program staff for number, species, and condition of trees per acre. Surveys will follow standard Portland Watershed Revegetation Program monitoring and survey protocols. Attention will be given to pest control, both vegetation and animal, needed to insure tree seedlings reach the "free-to-grow" stage in approximately five years. "Free-to-grow" stage is the height, age, and condition at which tree seedlings will be able to grow toward maturity without further maintenance despite competition from other plants or animals. Brief prescriptions for each site will be written by the Portland Re-Vegetation staff outlining results of the survey and recommendations for insuring seedlings reach the "free-to-grow" stage, which will be subject to Metro's review and approval. Prescriptions will include specific actions required for the site to grow into an established, diverse forest and to comply with Oregon Forest Practices Act, if applicable.

2. Contract Development

Contracted labor is needed for site preparation, planting, brush cutting, and herbicide application on properties for work under this intergovernmental agreement. The City will be awarding public contracts for similar work on City projects. The parties agree that it would be economical and beneficial to share that public contract process for labor and work necessary under this intergovernmental agreement. Therefore, the City will prepare and advertise for public contracts, following the public bid and selection process, to accomplish the recommendations set forth in the vegetation surveys. Metro must review and approve all service contracts documents prior to their award, both contracts jointly funded by the City and Metro and those solely funded by Metro. Metro will contract directly with labor contractors for services solely on Metro properties under this intergovernmental agreement, and Portland Watershed Re-Vegetation Program staff will supervise contract implementation for those services on behalf of Metro. Metro represents that the City's public contract selection process, including preparation of bid requests, advertisement, and evaluation of bid responses, satisfies Metro's legal requirements for contractor selection.

3. Consolidate Purchase of Plant Material

Because of cost savings realized by combining purchase of plant materials and due to the availability of specific tree seedlings solely through Portland Watershed Re-Vegetation Program, the City and Metro agree to combine efforts in purchasing plant material. Tree seedlings purchased from growers directly by the City will be sold to Metro at wholesale cost plus 7% of cost to cover administration costs. Portland Watershed Re-Vegetation Program will arrange storage and delivery of tree seedlings. Metro will purchase the amount and species of tree seedlings from the City specified in the prescription as approved by Metro. Metro and Portland Watershed Re-Vegetation Program agree to share costs of plants/material storage and deliveries in proportion to plants/materials purchased by each entity.

4. Supervision of Initial Planting

On Metro-owned sites where tree seedlings are being planted for the first time, as determined by Metro and as set forth in the vegetation survey, Portland Watershed Re-Vegetation Program staff will supervise the delivery and handling of tree seedlings obtained as described in Section B(3) above and supervise the planting of those seedlings by labor contracted by Metro through the process described in Section B(2) above. Planting will follow specifications outlined in the prescription developed from the vegetation surveys and as written in the labor contracts approved by Metro.

5. Supervision of Interplanting

For those sites where existing tree stock is inadequate or partially-stocked according to the Metro-approved vegetation survey, Portland Re-Vegetation staff

will supervise the delivery and handling of tree seedlings obtained as described in Section B(3) above and supervise the interplanting of those seedlings by labor contracted by Metro through the process described in Section B(2) above. Interplanting of additional trees will follow specifications outlined the prescription developed from the vegetation surveys and as written in the labor contracts approved by Metro.

6. Supervision of Tree Release

To release trees from competitive vegetation on sites (i.e. blackberry, Scotch broom), Portland Re-Vegetation staff will supervise the cutting of brush, either by hand or with machinery, by labor contracted by Metro as described in Section B(2) above.

**Section C. Project Management**

1. Portland Watershed Re-Vegetation staff shall be responsible for managing reforestation activities on Metro properties designated by Metro as needing reforestation.
2. Portland Watershed Re-Vegetation staff shall advertise for bid proposals and select prospective contractors in accordance with the City's public contract process, all public bidding laws including but not limited to ORS 279, and the provisions set forth in Section B(2) above. Selected bidders for services related to this intergovernmental agreement will contract directly with Metro as set forth in Section B(2) above and Portland Re-Vegetation staff will supervise the implementation of the reforestation contracts on site, on behalf of Metro.
3. All notifications made related to this Agreement shall be made in writing to the respective Project Managers listed below:

Metro  
Jim Morgan  
Metro Regional Parks and Greenspaces  
600 N.E. Grand Ave.  
Portland, OR 97232-2736

City  
George Kral  
Portland Bureau of Env. Services  
1120 S.W. Fifth Ave., Rm. 1000  
Portland, OR 97204

**Section D. Payment and Schedule**

1. The City will invoice Metro for services as they are provided at a frequency no greater than once a month. Metro will pay accepted invoices within 30 days of receipt. The billing rate for supervision is \$43.28/hr.
2. No additional overhead or administration cost associated with personnel hours will be charged to Metro. The City staff hours expended for supervision of reforestation activities may vary, depending on the number of acres and sites where reforestation is required, but in no event shall the amounts owed or paid by Metro exceed those set forth herein.
3. The maximum amount that the City shall invoice Metro for reforestation activities under this Agreement shall not exceed \$156,000.

4. The effective date of this Agreement is January 1, 2000 to December 31, 2000. All work tasks, including surveys, contract bid and award, plantings, cuttings, herbicide applications as set forth herein shall be completed by December 31, 2000.

#### **Section E. General Obligations**

1. **Indemnification.** The City shall defend, indemnify and hold harmless Metro and its officers, agents and employees, for, from, and against any and all loss, damages, injury, property damage, expenses, judgments, claims, penalties, fines, actions, or liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to the wrongful acts of the City's officers, agents and employees acting within the scope of employment or duties in performance of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act ORS Chapter 30.

Metro shall defend, indemnify and hold harmless the City and its officers, agents and employees, for, from, and against any and all loss, damages, injury, property damage, expenses, judgments, claims, penalties, fines, actions, or liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to the wrongful acts of Metro's officers, agents and employees acting within the scope of employment or duties in performance of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act ORS Chapter 30

2. **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 court 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.

Specifically, it is a condition of this Agreement that Metro, the City and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by Oregon Laws 1989, chapter 684.

3. **Assignment.** Neither party shall assign any of its responsibilities under this Agreement without prior written consent from the other party, except that both Metro and the City may subcontract for performance their respective responsibilities under this Agreement only as set forth herein.

4. **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.

5. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter set forth herein, and supersedes any prior oral or written agreements or representations. 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: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mike Burton, Executive Officer  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## STAFF REPORT

### **CONSIDERATION OF RESOLUTION NO. 00-2883 FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR REFORESTATION ON METRO OPEN SPACES PROPERTIES**

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**Date: January 7, 2000**

**Presented by: Charles Ciecko  
Jim Morgan**

#### Proposed Action

Resolution No. 00-2883 requests authorization for the Executive Officer to execute an intergovernmental agreement (IGA) with the City of Portland Watershed Re-vegetation Program to share reforestation management responsibilities on Metro Open Spaces properties.

#### Background and Analysis

A large portion of the 5,000 acres of open space property acquired by Metro is forestland, or has been altered from a former forest condition. The Open Spaces Program is entering its third year of conducting reforestation of these properties. Reforestation is needed on most properties because it is required by the State Forest Practices Act. On other properties, a forested condition is the most ecologically appropriate and cost-effective vegetation for the property to maintain. Following planting, the trees must be maintained for a period of up to five years, at which point they are "free to grow" without further human intervention. According to state law, a tree is considered "free to grow" when it is not severely damaged by environmental conditions, exhibits potential for continued height growth, has at least one-third its height in full, live crown, and is taller than – and out competing – surrounding grass, shrubs and less desirable tree species.

On January 7, 1999 the Metro Council approved Resolution No. 99-2750, which authorized Metro to enter into a one-year IGA with the City of Portland Watershed Re-vegetation Program (Exhibit A). It is more cost and time efficient to use the Portland's supervisory and purchasing expertise for revegetation work than for Metro to conduct this activity alone. Efficiency is greatly increased by pooling labor sources, utilizing Portland's skilled forestry staff, and reducing plant material costs through Portland's purchasing system. Many of the plant species would be unavailable to Metro in the required quantities without the procurement abilities of the Portland Watershed Re-vegetation Program. Native plant materials specifically suited to Metro Open Spaces properties are provided by Portland at wholesale cost plus a reasonable 7% handling and storage charge. The labor rate for supervision, at \$40 per hour, is low for professional consulting services, and is comparable to planning staff salaries with benefits. The City's public bidding process is nearly identical to Metro's, which allows Portland to solicit bids for reforestation activities on Metro's behalf.

The Portland Watershed Revegetation program was established in 1995 with a focus on Columbia Slough watershed, and has expanded its revegetation efforts throughout the region. The similar management objectives of Portland and Metro's revegetation programs led to a successful partnership in 1999.



## **Findings**

The State Forest Practices Act requires replanting to be initiated on forestlands where tree stocks have been reduced below legally acceptable levels, within two years following tree harvest. The Parks and Greenspaces Natural Resources and Property Management staff does not have the forestry expertise or staffing level required to meet these stringent state reforestation guidelines. Therefore, the Natural Resources staff must act quickly following acquisition of formerly forested properties to be in compliance with State law, or risk assessment of civil penalties. To date, our program is in full compliance with the State Forest Practices Act.

Authorization of the Executive Officer's execution of the IGA with the Portland Watershed Revegetation Program is recommended based on the following achievements of the 1999 program:

- The Portland Watershed Revegetation Program foresters successfully supervised reforestation activities on 327 acres of Open Spaces properties.
- 103,228 trees and 21,444 shrubs were planted on 122 acres across five Open Spaces target areas, St. John's Landfill and Smith Lake.
- Extensive vegetation surveys were conducted on 121 acres to evaluate site preparation, planting and maintenance needs for the program.
- A cost savings of greater than 50% was achieved by purchasing plant materials through the city of Portland's established nursery vendors.

Additional site preparation, planting, maintenance and vegetation surveys are needed during the year 2000 to maintain previously planted sites, prepare new sites for planting, and plant sites that have been prepared for planting. Authorization of this IGA will allow this needed work to continue for one additional year.

## **Budget Impact**

This IGA will provide cost savings to the Open Spaces stabilization program by reducing the price of planting materials (purchased at cost plus 7% administration/handling fee), cooperatively contracting reforestation labor, and providing professional supervision of Metro's reforestation efforts for one year. The IGA cost is not to exceed \$150,000, and shall be funded from the Metro Open Spaces bond measure funds.

## **Executive Officer's Recommendation**

The Executive Officer recommends passage of Resolution No. 00-2883.

## **METRO OPERATIONS COMMITTEE REPORT**

CONSIDERATION OF RESOLUTION NO. OO-2883, FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR REFORESTATION ON METRO OPEN SPACES PROPERTIES

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Date: January 21, 2000

Presented by: Councilor Washington

**Committee Action:** At its January 19, 2000 meeting, the Metro Operations Committee voted 3-0 to recommend Council adoption of Resolution 00-2883. Voting in favor: Councilors Atherton, Washington and Monroe.

### **Background:**

- Existing Law—State Forest Practices Act requires replanting to be initiated on forestlands where tree stocks have been reduced below legally acceptable levels within two years following tree harvest. Metro Contracts code (2.04.026) generally requires contracts over to obtain Council approval.
- Budget Impact—reduces labor and materials costs to Metro Open Spaces budget. Total IGA cost not to exceed \$150,000.

**Committee Issues/Discussion:** Charlie Ciecko and Jim Morgan gave the staff presentation. Many Open spaces purchases are in need of some level of reforestation, in part to meet the requirements of state law. The current agreement with the City of Portland is working well, saves Metro money and staff time and is performed in a timely manner. Councilor Washington commended this effort, in light of the savings realized.

Councilor Atherton expressed interest in Metro's developing its own urban forestry capacity. Mr. Ciecko acknowledged that that would bring certain benefits, but our relationship with Portland via this contract, linkage with other agencies and use of volunteers is the best that can be done at this time.