

BEFORE THE METRO CONTRACT REVIEW BOARD

CONSIDERATION OF RESOLUTION NO. 01-3047) RESOLUTION NO. 01-3047
FOR THE PURPOSE OF AUTHORIZING THE)
EXECUTIVE OFFICER TO EXECUTE A MULTI-) Introduced by Mike Burton
YEAR CONTRACT FOR ADVERTISING SERVICES) Executive Officer
AT THE OREGON ZOO.)

WHEREAS, The Zoo intends to contract for an advertising agency for pro bono services, with the Zoo paying out-of-pocket expenses; and

WHEREAS, The Zoo mailed RFPs , reviewed proposals, conducted interviews, and chose an advertising agency; and

WHEREAS, The contract amount goes directly for the production and purchase of advertising, and not to the contractor for any design work;


WHEREAS, This contract is designated to have significant impact on Metro,

BE IT RESOLVED:

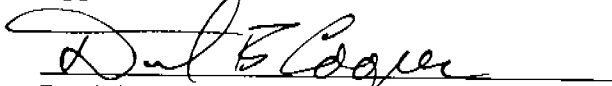
That the Metro Council authorizes the Executive Officer to execute the zoo's contract for advertising services.

ADOPTED by the Metro Contract Review Board this 3RD day of May, 2001.




David Bragdon, Presiding Officer

Approved as to form:


Daniel B. Cooper, General Counsel

Attachment A

Project: Advertising agency
Contract No. 922838

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and COLE AND WEBER, 115 NW First Avenue, Suite 400, Portland, Oregon 97209.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective March 26, 2001, and shall remain in effect until and including March 25, 2006, unless terminated or extended as provided in this Agreement.
2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed One million three hundred fifty-nine thousand, three hundred six dollars and no/100ths (\$1,359,306.00).
4. Insurance.
 - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (2) Automobile bodily injury and property damage liability insurance.
 - b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.
 - c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.
 - d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the

assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

f. Contractor shall provide Metro with a certificate of insurance complying with this article and naming Metro as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or

claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

COLE AND WEBER

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCOPE OF WORK/TERMS OF PAYMENT

This is a one year contract renewable for four additional years by agreement of both parties. Cole & Weber will provide the following services to the Oregon Zoo:

1. Create Spring, Summer and Fall advertising campaigns aimed at the local market and potential visitors within a day's drive of the Oregon Zoo.
2. Produce up to 6 ads per year on new animals or programs.
3. Oversee production of advertising.
4. Recommend and place media buys.
5. Help develop strategies for the reaching the tourist market, recommend media buys for this market, and create and produce up to 4 ads per year.
6. Meet with the Zoo Marketing Manager for up to 20 hours per year to provide consultation on marketing and advertising strategies.

The Zoo Marketing Manager must approve all materials written or produced by the Contractor in concept development, draft, pre-production and final phases.

The Zoo has the right to pre-approve all personnel that are working on this contract.

TERMS OF PAYMENT

1. The maximum sum payable for the period of April 15, 2001 through June 30, 2001 will not exceed \$80,000. The maximum sum payable for the period of July 1, 2001 through June 30, 2002 will not exceed \$246,000. The maximum sum payable for the period of July 1, 2002 through June 30, 2003 will not exceed \$258,300. The maximum sum payable for the period of July 1, 2003 through June 30, 2004 will not exceed \$271,215. The maximum sum payable for the period of July 1, 2004 through June 30, 2005 will not exceed \$284,776. The maximum sum payable for the period of July 1, 2005 through April 14, 2006 will not exceed \$299,015. This includes all services outlined in the Scope of Work as well as all production and media bills.
2. The agency may bill the zoo for services of subcontractors such as graphic designers, videographers, photographers, printers, etc. incurred in carrying out the work outlined in Attachment A, Scope of Work. All production expenses must be approved in advance by the Zoo Marketing Manager.
3. The agency will place and bill the zoo for actual cost of advertising in various media. All media buys must be approved in advance by the Zoo Marketing Manager.
4. Contractor shall provide to Metro Accounts Payable, 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, an original, fully itemized monthly invoice detailing all goods and services provided and received.

To expedite processing, an additional copy clearly marked "Duplicate" should be mailed to the Marketing Division, Oregon Zoo, 4001 S.W. Canyon Road, Portland, Oregon 97221-2799.

5. All invoices must be approved in writing by the Marketing Manager and/or Assistant Zoo Director, prior to payment by Metro.
6. Metro shall pay Contractor for approved invoices within thirty days after receipt of same from Contractor.

**Attachment B
REQUEST FOR PROPOSALS**

Advertising Services for Oregon Zoo

DO THE ZOO!

The Oregon Zoo's ad agency contract is up, and we've decided it's time to spread the fun around a little.

The catch is that we are looking for an agency that wants to take us on pro bono. This means you would donate your agency's services, but we would pay for out-of-pocket production expenses and placement of ads. We would like you to promise us one year, with the option of having a longer term relationship.

WHY DO THE ZOO PRO BONO?

Let me count the ways:

1. We offer you the greatest subject matter you'll have on any account. Wait 'til you see our files of gorgeous photos.
2. At the zoo we have a program we call "animal enrichment" in which we think up fun ways to keep the animals stimulated physically, emotionally and intellectually. Think of this project as "employee enrichment." Try it. Just send out an e-mail that says "who wants to work for the zoo????"
3. You get to come to the zoo and hang out with the animals. This job is enrichment for bosses as well as employees!
4. Zoo ads always win awards. Somehow those big-eyed animals always catch a judge's eye.
5. You'll be in good company. Businesses all over Portland are helping the zoo in one way or another.
6. We'll look great on your client list.
7. It will make you feel good inside. We're here to "inspire our community to build a better future for wildlife." You get to help us do so.

We have \$246,000 to spend on ads over the next year. Much of this is earmarked for TV ads, so we will be looking for an agency that produces brilliant TV, but we also do billboards, bus benches, print ads and sometimes a little radio. We also run in several print tourist publications.

Event ads, such as those for concerts, ZooLights, Packy's Birthday, etc. are handled in house and will not be part of this arrangement. Those ads are not included in the budget.

PROPOSED SCOPE OF WORK

- ◆ Create Spring, Summer and Fall advertising campaigns aimed at the local market and potential visitors within a day's drive.
- ◆ Produce up to 6 ads per year on new animals or programs.

- ◆ Oversee production of advertising.
- ◆ Recommend and place media.
- ◆ Help develop strategies, recommend media buys, create and produce up to 4 ads for the tourist market.
- ◆ Meet with the Zoo Marketing Manager for up to 20 hours per year to provide consultation on marketing and advertising strategies.

WHAT TO INCLUDE IN YOUR PROPOSAL

- ◆ Information about your agency
- ◆ Information about the people who would specifically be working on this account, including their role on the work described in the scope of work, the percent of their time on the project, and any special qualifications they have for this work. Include resumes of these individuals as well as a list of subcontractors who will work on this project and their qualifications.
- ◆ History of previous work similar to the services required here. Identify persons on the proposed project team who worked on each of the other projects listed, and their respective roles.
- ◆ A few ads, including a TV ad or two, you've done for other clients that would make us realize how great you'd be on a zoo campaign.
- ◆ An assurance that the zoo would be a priority account, in spite of the fact that it is pro bono.
- ◆ A budget showing how you would allocate our ad budget (we are particularly interested in your allocation of costs to production vs. placement of ads.) List any cost-savings advantages your agency could offer (bonus points for an agency who can sweet talk the media discounting our ads).
- ◆ Hourly fees for any work requested by the zoo that is outside the scope of work
- ◆ Any other information you would like to include to convince us you're the right agency for this job.

REVIEW OF PROPOSALS

The proposals will be reviewed by a team including the zoo marketing manager, deputy director, and director of the Oregon Zoo Foundation. Finalists will be invited to make a presentation to the selection committee.

CRITERIA FOR SELECTION

- ◆ Creativity
- ◆ Qualifications of people who would be working on the account.
- ◆ Relevant experience
- ◆ Allocation of budget

TIMELINE

March 14	Proposals are due
March 16	Decision on finalists
March 19-23	Presentations from finalists
March 26	Award of contract

SEND PROPOSALS TO:

Jane Hartline
Oregon Zoo
4001 SW Canyon Road
Portland, OR 97221

Proposals will not be considered if received after 3 p.m., Wednesday, March 14, 2000

**Bureaucratic wording that has to be included in this RFP...
....and is IMPORTANT for you to read!**

RFP as Basis for Proposal

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any verbal information which is not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be addressed to Jane Hartline at (503) 220-2447. Any questions, which in the opinion of Metro, warrant a written reply or RFP amendment will be furnished to all parties receiving this RFP. Metro will not respond to questions received after March 9, 2001.

Staffing/Project Manager Designation:

Metro intends to award this contract to a single firm to provide the services required. Proposals must identify a single person as project manager to work with Metro. The consultant must assure responsibility for any subconsultant work and shall be responsible for the day-to-day direction and internal management of the consultant effort.

Information Release

All proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal all proposers agree to such activity and release Metro from all claims arising from such activity.

Minority and Women-Owned Business Program

In the event that any subcontracts are to be utilized in the performance of this agreement, the proposer's attention is directed to Metro Code provisions 2.04.100 & 200. Copies of that document are available from the Risk and Contracts Management Division of Administrative Services, Metro, 600 NE Grand Avenue, Portland, OR 97232 or call (503) 797-1717.

Exceptions and Comments

To facilitate evaluation of proposals, all responding firms will adhere to the format outlined within this RFP. Firms wishing to take exception to, or comment on, any specified criteria within this RFP are encouraged to document their concerns in this part of their proposal. Exceptions or comments should be succinct, thorough and organized.

GENERAL PROPOSAL/CONTRACT CONDITIONS

Limitation and Award

This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.

Billing Procedures

Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. Contractor's invoices shall include an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Metro shall pay Contractor within 30 days of receipt of an approved invoice.

Validity Period and Authority

The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.

Conflict of Interest.

A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

NOTICE TO ALL PROPOSERS -- STANDARD AGREEMENT

The attached personal services agreement is a standard agreement approved for use by the Metro Office of General Counsel. This is the contract the successful proposer will enter into with Metro; it is included for your review prior to submitting a proposal.

REGIONAL FACILITIES AND OPERATIONS COMMITTEE REPORT

CONSIDERATION OF **RESOLUTION NO. 01-3047**, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A MULTI-YEAR CONTRACT FOR ADVERTISING SERVICES AT THE OREGON ZOO

Date: 12 April 2001

Presented by: Councilor Hosticka

Committee Recommendation: At its April 12, 2001, meeting, the Regional Facilities & Operations Committee voted 3-0 to recommend Council adoption of Resolution No. 01-3047. Voting in favor: Councilors Park, Hosticka, and Burkholder. Voting against: none. Absent: none.

Background: Kathy Kiaunis, Assistant Zoo Director, presented the staff report. She stated that the Zoo sent out a Request for Proposal (RFP), interviewed six firms, and selected Cole and Weber to award a multi-year contract for advertising services at the Zoo before realizing that the project was designated "Significant Impact" (SI) and required to go through Council approval. She noted that the Zoo is taking a different approach toward the renewal of an advertising contract: the RFP specified that the work would be pro bono, not paid, with the Zoo paying only out-of-pocket expenses.

Committee Issues/Discussion: Councilor Park asked what the approximately \$1.4 million in the contract was for, if the work was supposed to be pro bono. Ms. Kiaunis replied that it is for purchasing advertising, which would be done by Cole and Weber. Councilor Park then asked why a firm would be interested in bidding on pro bono work? Ms. Kiaunis said that the benefit for the firm would be a lot of exposure, and the opportunity to engage in more creative work, perhaps, than they might be able to do for other types of clients.

Key Public Testimony: none.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 01-3047 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A MULTI-YEAR CONTRACT FOR ADVERTISING SERVICES AT THE OREGON ZOO.

Date: March, 2001

Presented by: Kathy Kiaunis

PROPOSED ACTION

Approve Resolution 01-3047 to authorize Executive Officer to execute Metro Contract No. 922838 (Attachment A) with Cole and Weber resulting from the RFP (Attachment B).

EXISTING LAW

Metro code section 2.04.026 (a) requires council authorization for contracts having significant impact on Metro.

BACKGROUND

Oregon Zoo has had a three-year contract for producing and placing advertising. In the past, the advertising agency was paid a fixed amount each month for creating and overseeing production and placement of the ads. Expenses for graphic production of ads and purchase of advertising space was billed separately through the contract.

The zoo director encouraged the search for an ad agency that would handle the account on a pro bono basis, donating the agency's services. The zoo would pay out-of-pocket production expenses only.

The request for proposals was sent to qualified advertising firms including those owned by minority, women and emerging small business.

This contract is designated as significant impact. Due to an oversight on the part of zoo staff, the RFP was not brought before the council for review. The RFP has since been advertised. All appropriate steps were taken to review proposals and interview advertising firms.

BUDGET IMPACT

Funding for the contract was included in the FY00-01 budget document for a total fiscal year cost of \$206,000.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 01-3047.