BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A SOLE SOURCE CONTRACT WITH DUCKS UNLIMITED FOR FISH MONITORING SERVICES AT METRO'S MULTNOMAH CHANNEL PROPERTIES	))))))	RESOLUTION NO. 01-3133 Introduced by: Mike Burton, Executive Officer

WHEREAS, via Resolution 96-2357 Metro adopted the Multnomah Channel refinement plan with a stated objective to protect the land for wildlife, flood control, water quality and scenic resources; and

WHEREAS, under the Open Spaces, Parks and Streams bond measure (Ballot Measure 26-26) Metro has purchased 326 acres of open space in the Multnomah Channel target area; and

WHEREAS, Metro currently owns and manages more than 10,000 acres of regional parks, open spaces, natural areas, and recreational facilities; and

WHEREAS, one of the primary management objectives for these properties is to provide protection of fish, wildlife and native plant species; and

WHEREAS, Metro has installed two (2) water control structures at its Multnomah Channel open space property to restore wetland habitat and off-channel salmon habitat through a partnership with Ducks Unlimited and the U.S.D.A. Natural Resources Conservation Service (NRCS); and

WHEREAS, Metro is required through incidental take permits granted by the U.S. National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) to monitor the effects of the two water control structures on salmon for a period of three years (2000-2003); and

WHEREAS, Ducks Unlimited dedicated considerable expertise and staff time to help Metro develop a protocol to support fish monitoring to satisfy the requirements of NMFS and FWS, and co-authored two (2) grant proposals to the U.S. Environmental Protection Agency (EPA) to cover expenses associated with the monitoring project; and,

WHEREAS, the EPA awarded Metro $24,678 for one of the grant proposals; and

WHEREAS, $21,000 of the awarded grant is dedicated to cover contracted services associated with fish-monitoring activities; and

WHEREAS, the second grant proposal submitted to the EPA is currently under review, but is expected to be awarded funding by the EPA in the amount of $ 43,170.70; and

WHEREAS, $38,500 of the second grant is dedicated to cover contracted services associated with fish-monitoring activities; and

WHEREAS, Ducks Unlimited is amply qualified to perform these contracted services and, through its considerable dedication to the development of the project and awarded funds, has demonstrated competence and generously contributed $35,000 worth of time and materials to the project; and

WHEREAS, Ducks Unlimited is the only service provider authorized to provide monitoring services under the EPA-funded grant titled "Fish use of two floodplain wetland units at Metro Regional Parks and Greenspaces' Multnomah Channel Open Space" (Metro Contract 923208); now therefore,

BE IT RESOLVED,

That the Metro Council, acting as the Contract Review Board,

1. adopts the findings as set forth in Exhibit B, which is incorporated by reference into this Resolution as if set forth in full; and

2. based upon such findings, exempts from competitive requirements and authorizes Ducks Unlimited as the sole source provider, and

3. authorized the Executive Officer to execute a personal services contract with Ducks Unlimited in the amount of $59,500 in substantially the form attached as Exhibit A.

ADOPTED by the Metro Council this 13th day of December, 2001.

APPROUVÉ APPROVED METRO COUNCIL CONSEIL MÉTROPOLITAIN METRO

David Bragdon, Presiding Officer

Approved as to form:

Dan Cooper, General Counsel

RESOLUTION No. 01-3133

EXHIBIT A

Project_____
Contract No._____

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 NE Grand Avenue, Portland, OR 97232-2736, and _____ referred to herein as "Contractor," located at _____ _____.

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 _____ _____ and shall remain in effect until and including _____ _____, 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 _____ _____ AND _____/100THS DOLLARS ($_____).

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.

_____	METRO
By_____	By_____
Title_____	Title_____
Date_____	Date_____

SCOPE OF WORK

PROJECT TITLE
Fish use of two floodplain wetland units at Metro Regional Parks and Greenspaces' Multnomah Channel Open Space – Year 2.

CONTRACT # _____

SCOPE OF WORK
Ducks Unlimited (DU) agrees to conduct a fish monitoring study at Metro's Multnomah Channel Open Space adhering to the methods described in this scope of work.

KEY PROJECT PERSONNEL:

Name	***Organization***	***Position***
Charles Lobdell	Ducks Unlimited	DU Project Manager
Cyndi Baker	Ducks Unlimited	Lead Biologist
Andrew Reasoner	Ducks Unlimited	Project Support
Mike Rausch	Ducks Unlimited	Project Support
Peter Bayley	Oregon State University	Project Support
Curt Zonick	Metro Regional Parks and Greenspaces	Metro Project Manager

STUDY AREA
The inventories will be conducted within 2 wetland units at the Metro Regional Parks and Greenspaces Multnomah Channel Open Space (MCOS), located in northwest Multnomah County.

STUDY PERIOD
The Year 2 study will be conducted between the dates of December 15, 2001 and December 31, 2002. The Year 3 study is contingent on availability of pending grant awards. The Year 3 study will extend the Year 2 Scope of Work through to December 31, 2003.

PROJECT OBJETIVES AND TASKS
The primary objectives are to:

1. Document salmonid passage through the full-round riser water control structure at the north unit and the sloping-weir fishway at the south unit by multiple methodologies to ensure robust results.

2. Continuously monitor fish movement into and out of floodplain wetland at the north unit, which acts as a "treatment site". (This site has a full-round riser and is in close proximity to a main river channel and is part of a larger study involving a treatment and control site on Sauvie Island, which are stratified from the north unit as they are further off-channel.)
3. Sample fish in the north and south units seasonally using a standard seasonal wetland sampling (SSWS) strategy in order to:
   - Tag salmonids so that they may be recaptured at traps below structures to document passage capability;
   - Document the assemblage of fishes in the wetlands on a seasonal basis;
   - Compare relative abundance in terms of catch per unit effort and species composition between sites, and;
   - Address fish stranding post-drawdown in the wetlands.
4. Describe and monitor habitat conditions.

METHODS

The following pages describe methods for sampling to be performed by Ducks Unlimited within the north (Multnomah North) and south (Multnomah South) water control structures/wetland complexes.

MULTNOMAH NORTH

This unit consists of a tidal creek and a series of ponds and sloughs running generally through the NE and SE quarters of Section 1 T2N R2W (See Attachment I; "North Unit" map). Sampling at this site will be conducted using both seasonal and continuous approaches. The water control structure at this site is a full-round riser with reverse tide-gates and adjacent undershot fish bypass with adjustable gate.

Seasonal Sampling

Seasonal sampling within the north wetlands will be conducted using various trap nets (e.g., box, Oneida Lake, fyke) using standard methods. This sampling has three objectives:

1. To capture salmonids in the wetlands prior to their encountering the structures in order to tag the fish so that they may be captured later below the structure and evaluate:
   - Fish passage through the water control structure
   - Duration of stay in the wetland
   - Fish growth during stay in wetland
2. To document fish assemblages using the wetlands on a seasonal basis (these data will be compared with catch at the control structures, which will be monitored more continuously than the SSWS).
3. To compare relative abundance (catch per unit effort) and species composition between sites.

Wetland habitat in the Multnomah North unit will be sampled in January, April and late May/early June. This will support evaluations about seasonal abundance and mark-recapture approaches to evaluate duration and growth estimates.

Sampling may be stratified, depending on the site, and locations within strata will be quasi-randomized. The following data will be recorded for fish caught:

- Trap location
- Trap set
- Species
- Fork length (± 1mm)
- Wet weight (± 0.1g) (salmonids only)

PIT Tags

Salmonids will be scanned for previous PIT (passive integrative transponder) tags and PIT tagged (if > 70mm) if no previous tag has been inserted. If salmonids are less than 70mm but greater than 55mm they will be tagged with visible implant florescent elastomer (VIE) so that they can be detected if caught in the trap nets below the structures. The PIT tag will convey a unique identifier for that fish whereas the VIE tag

provides a "batch mark" used when fish are too small for a PIT tag conveying information that the fish was caught before.

Tagging will facilitate estimates of duration of wetland from fish that were tagged during the SSWS and subsequently recaptured at the traps below the water control structures. Growth data will be collected if the time period between mark and recapture is long enough to detect a change in length or weight of the PIT-tagged fish.

Radiotelemetry

A more detailed look at fish movement through the fish bypass facility adjacent to the full-round risers will be accomplished using radio telemetry. Ten to twenty juvenile chinook salmon will be caught in the wetland in spring and will be surgically implanted with radio tags (Lotek model NCT-3-1) to track movements through wetlands and over water control structures. Fish will be caught entering the wetlands in fyke nets or two-way traps, anesthetizes with MS-222, and surgically implanted with the radio tag as described by Summerfelt and Smith (1990). After implantation, fish will be kept in a netpen in the wetland for 24 to 48 hours and released. A stationary blocknet will encourage them to move through the structure. After these fish pass through the structure and get caught in the outbound trap, they will be transported to a location in the wetland further from the structure to see if they mill around in the wetland or go directly to the structure.

Ten to twenty new salmonids will also be tagged that have no prior knowledge of passage through the structure and will be placed in the wetland away from the structure and their movements followed on a daily basis. After these batches of radio tagged fish pass through the structures their movements further downstream will be followed. We will also attempt to track them from the air if we can get on OSP flight. Fixed-station antennae set up by the OSU study in the Lower Columbia should also pick up signals from these tags.

The transmitters have an expected life of 23 days. Each transmitter will have a unique code on a shared frequency, making each tagged fish individually recognizable. Fish will be tracked with mobile antennae and receiver on a daily basis and a fixed station antennae will be installed at the trap sites or locations where the fish would leave the wetland to re-enter riverine habitat. There may be opportunities to track the radio-tagged fish down the Columbia further if we can get on an Oregon State Patrol (OSP) flight. OSP has a fixed-wing aircraft that is equipped with an antennae with a pilot experienced in tracking fish who helps ODFW with waterfowl counts on a bi-weekly basis. Oregon State University is also conducting a study involving the same radio tags on the Lower Columbia in which they have agreed to scan for our tags.

Continuous Sampling

A continuous trapping effort below the north water control structures will support an evaluation of fish leaving the wetland. This trapping will begin as soon as the water begins to flow through the wetlands.

A two-way fish trap will be used to monitor fish entering and exiting the wetland because the reverse tide-gate allows fish movement both ways through the water control structure, when the tide is high enough to open the flap. Traps will be checked every other day (*i.e.* Monday, Wednesday and Friday) by a fish technician employed by DU. Fish will be removed from the traps and:

- Identified to species
- Measured to fork length (± 1mm)
- Wet weighed (± 0.1g) (salmonids only)
- Described by trap type (*i.e.* fyke, 2-way), and direction (*i.e.* in, out for 2-way traps)
- Salmonids will be scanned for previous tags and tagged if no previous tag exists.
- Salmonids greater than 70mm entering the floodplain wetlands will be PIT-tagged so that individuals can be identified when they are recaptured at the out-going trap. Individuals less than 70mm will be batch marked with a VIE tag so that we can at least determine that they came into the wetland through the trap.
- Fish will be released on the other side of the trap so as to continue in their original direction of travel.

These data will be collected through the sampling period (late October/early November to mid-June) to determine when fish move in to the floodplain wetland and to relate use to:

- Temperature
- Water level
- Direction of flow

Habitat Data

Other standard procedures that will be implemented at all structure locations include:

- Recording the stage of the water from the staff gage at the structures on a daily basis
- Deploying temperature probes, such as Onset Corp. Hobo® temperature probes, that will be set to record temperatures on an hourly basis.
- Downloading data from probes on a monthly basis to avoid data loss

MULTNOMAH SOUTH

This unit consists of a tidal creek and a series of ponds and sloughs running generally through the NE ¼ of Section 12 and the NW and SW quarters of Section 7 T2N R1W (See Attachment II; "South Unit" map). The water control structure is a sloping-weir-fish way that combines the half-round riser and baffled culvert.

Seasonal Sampling

Seasonal sampling within the north wetlands will be conducted using various trap nets (e.g., box, Oneida Lake, fyke) using standard methods. This sampling has three objectives:

1. To capture salmonids in the wetlands prior to their encountering the structures in order to tag the fish so that they may be captured later below the structure and evaluate:
   - Fish passage through the water control structure
   - Duration of stay in the wetland
   - Fish growth during stay in wetland
2. To document fish assemblages using the wetlands on a seasonal basis (these data will be compared with catch at the control structures, which will be monitored more continuously than the SSWS).
3. To compare relative abundance (catch per unit effort) and species composition between sites.

Wetland habitat in Multnomah South unit will be sampled in January, April and late May/early June. This will support evaluations about seasonal abundance and mark-recapture approaches to evaluate duration and growth estimates.

Sampling may be stratified, depending on the site, and locations within strata will be quasi-randomized. The following data will be recorded for fish caught:

- Trap location
- Trap set
- Species
- Fork length (± 1mm)
- Wet weight (± 0.1g) (salmonids only)

Seasonal Sampling

Seasonal sampling within the north wetlands will be conducted using various trap nets (e.g., box, Oneida Lake, fyke) using standard methods. This sampling has three objectives:

1. To capture salmonids in the wetlands prior to their encountering the structures in order to tag the fish so that they may be captured later below the structure and evaluate:

- Fish passage through the water control structure
- Duration of stay in the wetland
- Fish growth during stay in wetland

2. To document fish assemblages using the wetlands on a seasonal basis (these data will be compared with catch at the control structures, which will be monitored more continuously than the SSWS).
3. To compare relative abundance (catch per unit effort) and species composition between sites.

PIT-Tags

Captured salmonids will be scanned for previous PIT (passive integrative transponder) tags and PIT tagged (if > 70mm) if no previous tag has been inserted. If salmonids are less than 70mm but greater than 55mm they will be tagged with visible implant florescent elastomer (VIE) so that they can be detected if caught in the trap nets below the structures. The PIT tag will convey a unique identifier for that fish whereas the VIE tag provides a "batch mark" used when fish are too small for a PIT tag conveying information that the fish was caught before. PIT-tagging will facilitate estimates of duration of wetland from fish that were tagged during the SSWS and subsequently recaptured at the traps below the water control structures. Growth data will be collected if the time period between mark and recapture is long enough to detect a change in length or weight of the PIT-tagged fish.

Radiotelemetry

Ten to twenty fish caught in the wetland in April and will be surgically implanted with radio tags. Salmonids will be captured in the lower section of Crabapple Creek, upstream of the confluence with Multnomah Channel and downstream of the structure, with trap nets to document fish passage up the baffled culvert and into the creek above the control structure. Species, lengths, and wet weight (salmonids only) of fish will be recorded. Fish will also be tagged as previously described. They will be put into a net pen just below the baffled culvert so that they may ascend volitionally. Fixed-station antennae will monitor movement through the baffled culvert to document when and how long it takes them to get through the culvert and flows can be estimated. Fish passage will be reported by species, size and discharge through the culvert. A flashboard riser and slotted weir at the top of the structure controls discharge through the baffled culvert. Sampling will be repeated at the high, optimum, and low flow that was modeled for this structure at this site to document range of success of juvenile salmonid passage up the baffled culvert.

Once passage through the structures has been evaluated, radio-implanted fish will be released above the structure and allowed to enter the wetland. Mobile antennae will be used in Crabapple Creek and the wetland area to document movement and location of radio-tagged fish on a daily basis for as long as the batteries of the radio tags last or until the fish can no longer be tracked in the Columbia River.

Continuous Sampling
No continuous sampling will be conducted at this site.

Habitat Data
Other standard procedures that will be implemented at all structure locations include:

- Recording the stage of the water from the staff gage at the structures on a daily basis
- Deploying temperature probes, such as Onset Corp. Hobo® temperature probes, that will be set to record temperatures on an hourly basis.
    - Downloading data from probes on a monthly basis to avoid data loss

MONITORING SCHEDULE

Site	Relative abundance and community composition	Fish Passage	
	SSWS*	Trap Netting	Radio Tracking
Multnomah North	January 14-16, 2002 April 8-10, 2002 July 8-10, 2002	2-way trap continuously monitored Dec-June	April 2002**
Multnomah South	January 16-18, 2002 April 15-17, 2002 July 10-12, 2002	Trap nets above and below fishway (spring 2002) and a version of a 2-way trap below fishway for limited periods after SSWS	April 2002**

* Standard Seasonal Wetland Sampling

** This sampling subject to Metro's management of the water control structures in 2001/2002.

Permits

DU agrees to obtain and carry all necessary permits required to conduct the proposed work.

DELIVERABLES

At the end of the field season, data will be compiled and analyzed by DU, and a draft report will be submitted to Metro for review by August 15, 2002. The report will:

- Detail sampling evaluating the movements of fish through the 2 tidal creeks/WCSs relative to water levels and temperatures and other pertinent factors.
- Relate sampling data to the effects of the water control structures on stranding and migration delays of juvenile salmon (especially Chinook salmon and coastal cutthroat trout).
- Interpret the effectiveness of the 2 fishways based upon mark-recapture studies of PIT-tagged juvenile Chinook salmon.
- Include technical notes/papers on fishway design and effectiveness and technical papers interpretations of the role of wetland restoration in the salmon life cycle.
- Describe in a short summary DU's recommendations for effective management of each wetland unit using each of the water control structures.

DU will also seek to disseminate the lessons learned and applications identified through this study to the scientific and natural resource protection community by presenting to a variety of professional forums at the local, national and potentially international level.

PAYMENT AND BILLING

Metro agrees to support the above stated work by providing DU with an amount not to exceed TWENTY ONE THOUSAND DOLLARS ($ 21,000.00). Each of Metro's payments to DU shall equal the percentage of the work accomplished during the billing period but shall not exceed 90% of the total amount prior to the submission of the final report. All reports are due to Metro by October 1, 2002 or a date mutually agreed upon. The maximum amount includes all fees, costs and expenses of whatever nature. DU shall include an itemized statement of work done and expenses incurred during each billing period. Metro will pay DU within 30 days of receipt of an approved billing statement.

The Year 3 study, which includes the period January 1, 2003 through December 31, 2003, is pending the availability of funds. All terms of Payment and Billing listed above will apply in the Year 3 study, with the exception of all reports will be due October 1, 2003 or a date mutually agreed upon.

Resolution No. 01-3133
Exhibit A, Page 15
Map

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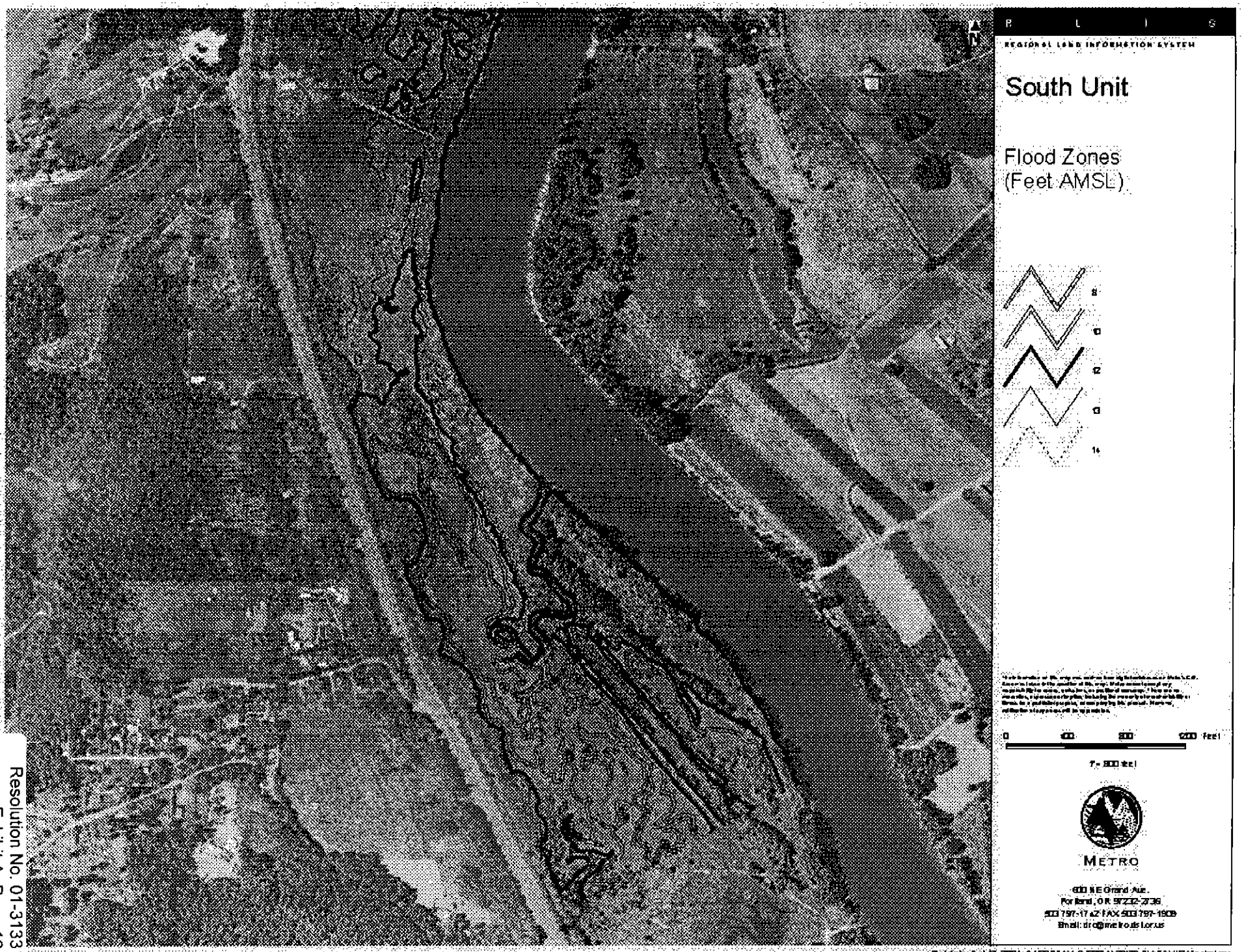

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Resolution No. 01-3133
Exhibit A, Page 16
Map

Resolution No. 01-3133
EXHIBIT B

FINDINGS OF FACT SUPPORTING USING
DUCKS UNLIMITED AS A SOLE SOURCE VENDOR

Metro Contract Review Board

ORS 279.015(1) requires, with certain exceptions, that all public contracts be based on competitive bidding and, under ORS 279.029, awarded to the lowest responsive and responsible bidder. ORS 279.015(2) permits the Metro Contract Review Board, Metro's public contract review authority, to grant, under certain conditions, specific exemptions from the requirement for competitive bidding resulting in contract award to the lowest responsive and responsible bidder.

Metro Code section 2.04.062 provides for the rare occasions when only one qualified provider of the service is available. After review and discussion with interested parties, Metro staff have determined that there is only one qualified provider for this service. ORS allows use of alternative methods if appropriate findings of fact are addressed and supported by the Contract Review Board. ORS 279.011(5) defines findings and includes specific information that should be addressed. A public hearing will be held before these findings are finally adopted, allowing the opportunity for all interested parties to comment.

I
BACKGROUND

Metro Regional Parks and Greenspaces has installed two (2) water control structures at its Multnomah Channel Open Space property to restore wetland habitat and off-channel salmon habitat through a partnership with Ducks Unlimited and the U.S.D.A. Natural Resources Conservation Service (NRCS).

Metro is required through incidental take permits granted by the U.S. National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) to monitor the effects of the water control structures on salmon for a period of three years (2000-03). Ducks Unlimited dedicated considerable expertise and staff time to help Metro develop a fish monitoring protocol to satisfy the requirements of NMFS and FWS, including co-authoring two grant proposals to the U.S. Environmental Protection Agency (EPA) to cover expenses associated with the monitoring project.

One of the grant proposals (submitted to the EPA in 2000 for work in 2001-02) was awarded funding in the amount of $29,678 of which $21,000 is dedicated to cover contracted services associated with fish-monitoring activities. A second grant proposal (submitted to the EPA in 2001 for work in 2002-2003) is currently under review by the

II
FINDINGS

ORS 279.011(5) provides justification for a public agency to use an alternative means to completive bidding. These findings support Ducks Unlimited (DU) as the only qualified proposer:

A) Unique Project: This is a unique project. Special equipment and materials are required. Furthermore, knowledge and expertise is required. The EPA and Metro recognize DU has the necessary skills and equipment to perform the scope of work.

B) Agency Capacity: Metro staff does not have the staff resources or equipment to perform the required work. DU's experience will ensure that the contract is administered appropriately, and that the potential savings and benefits possible through use of this process will accrue to Metro.

C) Industry Practice: It is common industry and governmental practice to use partnership with non-profit agencies to perform this type of work. This pre-project investment and in-kind contribution would not be provided by typical contractors.

D) Budget and Financial: Ducks Unlimited, as a non-profit organization, has offered a considerable investment of time and resources during the project development phase of this project. They have contributed $35,000 in cost-sharing contributions, including sampling for one year, purchasing monitoring equipment and traps and helping to develop the scope of the EPA grant application.

E) Grant Award: This partnership, coupled with the expertise Ducks Unlimited has committed to the project, was an essential component contributing to the successful funding award by the EPA in 2000. Furthermore, Ducks Unlimited is the only contractor that Metro is authorized to use under the contract associated with the current EPA-awarded grant (Metro contract number 923208).

F) Promotes Metro Goals: The partnership with Ducks Unlimited will also incorporate Oregon State University into the project as a Ducks Unlimited partner; thereby supporting the goal of fostering partnerships as developed in the Open Spaces refinement plans.

G) Public Benefits: The public benefits by this arrangement by improving waterways at little cost.

H) Specialized Expertise: DU has the knowledge, skill and experience in performing the scope of work.

I) Technical Complexity: The technical complexity of this work requires the knowledge, skills, and experience of DU.

J) Funding Sources: EPA, the funding source, requires DU to perform the scope of work.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 01-3133 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A SOLE SOURCE CONTRACT WITH DUCKS UNLIMITED FOR FISH MONITORING SERVICES AT METRO'S MULTNOMAH CHANNEL PROPERTIES

Date: November 23, 2001

Charles Ciecko
Jim Morgan

Description

The purpose of the proposed resolution is to allow Metro to award to Ducks Unlimited a personal services contract as a sole provider to monitor fish during 2001-03, as covered through an Environmental Protection Act (EPA) grant awarded to Metro in 2001 and a second EPA grant pending approval for 2002-03.

Existing Law

The proposed resolution affects a personal services contract exceeding $50,000 requiring a request for proposals be prepared and advertised (Metro code 2.04.044A). Regional Parks and Greenspaces is seeking an exemption to this rule. Also, Metro code 2.04.026D requires that the Metro Council approve any contract for personal services contract for a term greater than 12 months and in an amount greater than $50,000.

Background

Metro, through its Regional Parks and Greenspaces Department currently owns and manages more than 10,000 acres of regional parks, open spaces, natural areas, and recreational facilities. One of the primary management objectives for these properties is to provide protection of fish, wildlife, and native plant species.

Toward this goal, Metro Regional Parks and Greenspaces has installed two (2) water control structures at its Multnomah Channel Open Space property to restore wetland habitat and off-channel salmon habitat through a partnership with Ducks Unlimited and the U.S.D.A. Natural Resources Conservation Service (NRCS).

Metro is required through incidental take permits granted by the U.S. National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) to monitor the effects of the water control structures on salmon for a period of three years (2000-03). Ducks Unlimited dedicated considerable expertise and staff time to help Metro develop a fish monitoring protocol to satisfy the requirements of NMFS and FWS, including co-authoring two grant proposals to the U.S. Environmental Protection Agency (EPA) to cover expenses associated with the monitoring project.

One of the grant proposals (submitted to the EPA in 2000 for work in 2001-02) was awarded funding in the amount of $29,678 of which $21,000 is dedicated to cover contracted services associated with fish-monitoring activities. A second grant proposal (submitted to the EPA in 2001 for work in 2002-2003) is currently under review by the EPA, but if funded, will award

$43,170.70 of which $38,500 is dedicated to cover contracted services associated with fish-monitoring activities.

The purpose of the proposed resolution is to allow Regional Parks and Greenspaces to award directly to Ducks Unlimited a contract to monitor fish during 2001-02 as covered through the EPA grant awarded in 2001. Regional Parks and Greenspaces is also seeking approval to award to Ducks Unlimited a contract as a sole provider of services to monitor fish during 2002-2003 provided the pending EPA grant is also awarded funding.

Ducks Unlimited is amply qualified to perform the monitoring work and has earned the privilege of performing these services through its considerable dedication to the development of the project and awarded funds.

Budget Impact

The proposed sole source provider contract has no budget impacts, but directs funds awarded from an external source (EPA) to a specific provider (Ducks Unlimited). Costs associated with management of the contract are expected to be minimal, given the demonstrated competence and commitment of the contractor. Services provided by Ducks Unlimited will significantly reduce Metro staff time and expenses that would be required to fulfill permit requirements.

Outstanding Questions

The second grant proposed to the EPA for $43,170.70 has not been awarded yet, but the EPA is expected to decide by early 2002. The 2002-03 portion of the Ducks Unlimited contract is subject to the award of that grant which provides $38,500 for fish monitoring by Ducks Unlimited.

Executive Officer's Recommendation

The Executive Officer recommends the passage of Resolution 01-3133.