

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND PROVIDING FOR FUNDING AND CONSTRUCTION OF STORMWATER IMPROVEMENTS AT THE OREGON ZOO)	RESOLUTION NO. 04-3517
)	
)	Introduced by Chief Operating Officer Michael J. Jordan, with the Concurrence of Council President David Bragdon

WHEREAS, in September of 2002, the City of Portland's Bureau of Environmental Services ("BES") received an Innovative Wet Weather Projects Grant from the U.S. Environmental Protection Agency ("EPA") to identify and construct innovative storm water handling projects in the City of Portland; and

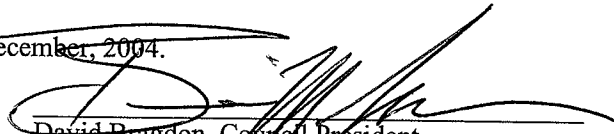
WHEREAS, BES selected the Oregon Zoo ("Zoo") as a potential innovative storm water handling project site, and in 2003 conducted a study that identified a list of several potential innovative storm water handling projects on the Zoo campus and Washington Park parking lot where educational messages regarding storm water could be easily communicated via simple interpretives, as required by the EPA grant; and

WHEREAS, BES and Zoo staff now propose that Metro and BES enter into the intergovernmental agreement attached as Exhibit A, providing for the pass-through of EPA grant funds to Metro in the amount of \$200,000.00, for the purpose of design, engineering and construction of certain projects selected by BES from its list of potential innovative storm water handling projects on the Zoo campus and Washington Park parking lot; and

WHEREAS, there will be no impact on the Zoo's fund balance as no Metro funds will be made available or authorized for expenditure to finance the costs of this IGA, with the exception of long term maintenance costs of the improvements constructed; now therefore

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to execute the attached intergovernmental agreement with the City of Portland providing for funding and construction of storm water improvements at the Oregon Zoo.

ADOPTED by the Metro Council this 2nd day of December, 2004.



David Bragdon, Council President

Approved as to form:



Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 04-3517

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (“IGA”) is entered into by and between the City of Portland acting by and through its Bureau of Environmental Services, hereafter called BES and Metro, acting by and through its agents, hereafter called METRO.

This IGA is authorized pursuant to ORS 190.110 and becomes effective upon full execution of this document.

PURPOSE

BES and METRO desire to work together to implement Innovative Wet Weather Projects (“IWWP”) being funded by the Environmental Protection Agency (“EPA”) as pass through funds to BES.

By this IGA, METRO agrees to plan and implement a variety of stormwater improvement projects on the Oregon Zoo campus at 4001 SW Canton Road. BES agrees to reimburse METRO for costs associated with the provision of these services and improvements as described in this document.

GENERAL PROVISIONS

1. Effective Date and Duration.

This IGA is effective from the date of execution by both parties. Unless earlier terminated or extended, this IGA shall expire when METRO’s completed performance has been accepted by BES or June 30, 2005 whichever date occurs first. Metro’s performance hereunder shall be substantially complete by June 30, 2005.

2. Statement of Work.

The statement of work, (the “Work”) including the delivery schedule for such Work, is contained in Exhibit A. METRO agrees to perform the Work in accordance with the terms and conditions of this IGA.

3. Consideration.

BES agrees to pay METRO a sum not to exceed \$200,000.00, as allocated in Exhibit B.

4. Project Representatives.

Each party has designated a project manager to be the formal representative for this project. All reports, notices, and other communications required under or relating to this IGA shall be directed to the appropriate individual.

Zoo Campus Retrofits

BES

Project Manager: Dawn Hottenroth
Organization: City of Portland
Address: 1120 SW 5th Avenue, Suite 1000
Portland, Oregon 97204
Phone: (503) 823-7767
Fax: (503) 823-6995
Email: dawnh@bes.ci.portland.or.us

METRO – Zoo

Project Manager: Teri Dressler
Organization: Oregon Zoo
Address: 4001 SW Canyon Road
Portland, Oregon 97221-2799
Phone: (503) 220-2453
Fax: (503) 226-6836
Email: dreslert@metro.dst.or.us

5. Subcontracts

It is anticipated that METRO will enter into design and construction contracts for the installation of the stormwater facilities. BES and METRO shall jointly develop the contractor scopes for the work scheduled under this IGA. The BES project managers or their designees shall participate on any hiring committee to award contracts to implement these stormwater projects. At 30% and 80% design, BES shall receive design drafts for review and approval. BES shall offer any design comments within 10 working days from the receipt of materials. If BES fails to respond within said 10 working days, said design drafts shall be deemed reviewed and approved. METRO or their contractor shall be responsible for obtaining applicable City permits and for gaining approval for Zoo parking lot projects from the Oregon Zoo Parking Lot Operating Committee (“PLOC”). However, the BES Project Manager shall coordinate with METRO, Metro’s contractor, and Portland’s Bureau of Development Services (“BDS”) and support METRO’s permit applications, assisting METRO and/or Metro’s contractor in obtaining approval of said permit applications from BDS. All day-to-day contract oversight, including construction management, shall be the sole responsibility of the METRO project managers.

6. Pass Through of Federal Funds

- a. Metro, as a recipient of federal funds, pursuant to this Agreement with BES, assumes liability for Metro's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Metro's breach of any such conditions that requires BES to return funds to the EPA, hold harmless and indemnify BES for an amount equal to the funds received under this Agreement.
- b. Metro is responsible for complying with the contracting requirements stipulated as part of the Innovative Wet Weather grant. These common EPA provisions include assurance of BOLI wages rates and MBE/WBE firm utilization. Additionally, Metro shall allow design review, contract review, and construction inspection by EPA staff as required during the course of the project; any such reviews/inspections will be facilitated by BES. BES will require 5 working days after a contractor is selected and before the contract is officially awarded, to facilitate the contract review by local EPA staff. BES will also facilitate design review by federal staff within the 10 working days stipulated in section 5 above. BES will facilitate any inspections required by federal agency staff during the implementation phase of the project.

7. METRO In-Kind Construction Services

METRO will be responsible for the following items:

- a. Coordinating all volunteers or staff members to install facility plantings on Zoo sites. BES shall provide funding to acquire plants, but shall not reimburse for any plant installation costs.
- b. Providing contract management and oversight during the construction phase.

8. Maintenance

METRO will be responsible for all maintenance incurred with the establishment and the ongoing survivability of all stormwater facility vegetation and structural components. Metro shall submit site specific O & M Plans for BES review and approval. This plan shall be recorded against the deed for the Zoo property.

9. Public information.

Neither party is obligated to produce public relations and education information or educational signage regarding facility installation and operation. However, if public relations and education information regarding facility installation and operation is produced by the parties, said materials shall be jointly prepared and released. METRO may develop and produce signage and educational brochures for the stormwater projects. METRO will deliver to BES electronic versions of all informational and educational materials for BES use. Each agency shall be solely responsible to cover their own materials printing and reproduction costs for their own use. Metro shall provide access to the Zoo campus and the associated stormwater retrofit sites with appropriate notice. Notice shall be provided at least 24 hours in advance.

10. Future Stormwater Efforts on the Zoo Campus.

BES shall provide METRO with a finalized version of the Oregon Zoo Stormwater Retrofit Inventory prepared by Greenworks Consultants – include electronic versions of all maps and materials. METRO agrees to provide further consideration of all stormwater retrofit opportunities identified within that report and to implement said storm water retrofit opportunities if and when it becomes financially feasible to do so, as determined by the Zoo in its sole discretion.

11. IGA Documents.

This IGA consists of the following documents, which are listed, in descending order of precedence: This IGA less all exhibits, attached Exhibit A, Work Statement and Exhibit B, Budget. All attached Exhibits are hereby incorporated for reference.

12. Amendments.

The terms of this IGA shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.

13. Reimbursement.

- a. METRO shall submit itemized, project specific invoices to BES for reimbursement of services performed; noting the specific IWWP project and CITY IGA number and the allocation of costs in accordance with line items identified in Exhibit B.
- b. Costs incurred for travel, lodging and meals shall be reimbursed to the extent that they do not exceed on a daily basis per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations and all travel has been approved by the BES Project Manager.
- c. Non-itemized or incomplete billings shall be detained for payment processing until METRO has supplied correct information to BES.
- d. METRO shall submit to BES invoices for costs incurred during the contract period no later than 45 days following the end of the contract period. BES shall not be liable for reimbursement of costs after that date.
- e. Invoices shall be submitted in duplicate to the appropriate project manager identified in item 4 above. All invoices shall specify the specific IWWP project, the CITY IGA number, the services being billed and the amount. BES shall pay all approved invoices within 30 days of date of invoice.

- f. All non-expendable property, including computer hardware and related software, acquired in the provision of these services are the sole property of BES and shall be surrendered upon completion of services or termination of this IGA.
- g. The parties recognize and agree that some of the activities and obligations for reimbursement addressed in this IGA have or will commence or arise prior to the effective date of this IGA.
- h. The parties recognize that invoices for costs incurred by METRO prior to June 30, 2005 may be submitted to BES for reimbursement after the June 30, 2005 expiration date set forth in section 1 above, and that notwithstanding the expiration of the IGA, said costs shall be reimbursed as set forth herein. All invoices shall be received prior to July 18, 2005 unless otherwise authorized in writing by the BES project manager.

14. Termination.

- a. The parties may agree to an immediate termination of this IGA or at a time certain upon mutual written consent.
- b. Either party may terminate this IGA effective not less than 10 days from written notice or at such other date as may be established by both parties under any of the following conditions:
 - 1) If funding is not obtained and continued at levels sufficient to allow for purchase of the specified services. When possible, and when agreed upon, the IGA may be modified to accommodate a reduction in funds.
 - 2) If federal or state regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this IGA, or are no longer eligible for the funding proposed for payments authorized by this IGA.
- c. Either party may terminate this IGA in the event of a breach by the other party. Prior to such termination, however, the party seeking termination shall give the other party written notice of the party's intent to terminate. If the party has not cured the breach within 10 days or a longer period as granted in the cure notice, the party seeking compliance may terminate this IGA.

15. Funds Available and Authorized, Improvements Authorized.

BES certifies that at the time the IGA is executed that sufficient funds are available and authorized for expenditure to finance costs of this IGA within BES' current appropriation and limitation. No Metro funds are available and authorized for expenditure to finance costs of this IGA. Metro understands and agrees that payment of amounts under this IGA attributable to work performed after the last date of the current budget period is contingent on BES receiving appropriations, limitations, or other expenditure authority. BES agrees to obtain written authorization of the Portland City Commissioner with authority over Portland Parks and Recreation to construct stormwater improvement projects within the Oregon Zoo/World Forestry Center/Children's Museum 2/Washington Park parking lot, and submit said writing to Metro.

16. Captions.

The captions or headings in this IGA are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this IGA.

17. Choice of Venue.

Oregon law shall govern this IGA and all rights, obligations and disputes arising out of the IGA. Venue for all disputes and litigation shall be in Multnomah County, Oregon.

18. Severability/Survival.

If any of the provisions contained in this IGA are held unconstitutional or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this IGA for any cause.

19. Ownership of Work Product.

All work products relating to documentation of the project, including reports, research data in hard copy or electronic form that result from this IGA, are the exclusive property of BES. However, METRO reserves the right to retain copies of such items for its records.

20. Access to Records.

Both parties and their duly authorized representatives shall have access to the books, documents, papers, and records which are directly pertinent to the specific IGA for the purpose of making audit, examination, excerpts, and transcript.

21. Compliance with Applicable Law.

Both parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Work under this IGA. Without limiting the generality of the foregoing, parties expressly agrees to comply with: (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Both party's performance under this IGA is conditioned upon either parties compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555, which are incorporated by reference herein.

22. No Third Party Beneficiary.

BES and METRO are the only parties to this IGA and as such, are the only parties entitled to enforce its terms. Nothing contained in this IGA gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

23. Indemnification.

Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each party agrees to indemnify and defend the other and its officers, employees, agents and representatives from and against all claims, demands, penalties and causes of action of any kind or character relating to or arising from this IGA, including the cost of defense, attorney fees arising in favor of any person on account of personal injury, death or damage to property and arising out of or resulting from the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, subcontractors or representatives.

24. Merger Clause.

This IGA constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this IGA shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this IGA.

25. BES Accounting Data.

Vendor Number _____ GL Fund Number _____ Account _____
Center Code 145-30-008 Account 529000 Amount \$5,000
PTS: _____/ _____/ _____/ _____/

 Proj. Org. TW CC

Executed in triplicate by the duly authorized representatives of the parties.

CITY OF PORTLAND

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form:

Bureau Director

Daniel B. Cooper
Metro Attorney

Date: _____

Date: _____

City Auditor

Date: _____

Approved as to form:

By: _____

Title: _____

Date: _____

Exhibit A to BES/Metro IGA

SCOPE OF WORK

The METRO project managers shall be responsible for:

- 1. Selection of a project implementation contractor or consultant or team:**
 - a. Developing a consultant / contractor scope of work to complete the stormwater work; and
 - b. Issuing a request for proposal to complete the stormwater project specific work ; and.
 - c. Convening a proposal review and contract hiring committee that will include the BES project manager or designee; and
 - d. Awarding a contract to the winning contractor or consultant team; and
 - e. Coordinating BES and PLOC review on 30% and 80% designs for all facilities; and
 - f. Coordinating with the contractor to obtain applicable City permits.
 - g. Administering the day-to-day oversight of the contractor, including construction management.

- 2. Deliverables:**
 - a. Development of a joint scope of work; and
 - b. 30% and 80% facility design reviews; and
 - c. Planting plans for all facilities; and
 - d. Photo documentation of before, during and after construction; and
 - e. Electronic copies of all facility signage and educational materials developed for facilities; and
 - f. Mid-term and end of contract reports (see detail below); and
 - g. Submittal of site specific O & M plan.

- 3. Preparation of a mid project and end of project report detailing the following items:**
 - a. Costs of various project phases including bidding, design, and construction; and
 - b. Details on plant survivability; and
 - c. In-kind or volunteer contributions made toward project implementation; and
 - d. Copies of all positive press or public informational items as collected by Zoo staff including any comment by the public regarding the facilities; and
 - e. Description of any unexpected or unavoidable issues that were raised during project implementation – including how the issue was resolved.

Oregon Zoo Specific

4. Installation of all Zoo facility plant materials using volunteer or staff resources. This labor will be seen as an in-kind contribution by METRO.

BUDGET

Oregon Zoo	\$200,000 total from Project #
Parking Lot	
Crossroads (Tentative)	
Samburu Crossing (Tentative)	
Ranger Station (Tentative)	
Elephant Rainbarrels /Chains (Tentative)	

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3517, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND PROVIDING FOR FUNDING AND CONSTRUCTION OF STORMWATER IMPROVEMENTS AT THE OREGON ZOO

Date: December 2, 2004

Prepared by: Tony Vecchio

BACKGROUND

Zoo staff is working together with City of Portland, Bureau of Environmental Services ("BES") to identify innovative storm water handling projects to be constructed at the Zoo. These projects are being funded by the Environmental Protection Agency with pass-through funds to BES. There is \$200,000 in grant funds available for this project. The project will be funded entirely by the grant. The funding period ends June 30, 2004.

A study of potential projects was completed by GreenWorks, a contractor for BES. Based on that study, five projects were identified and agreed to be priorities by BES and the Zoo. The recommended projects are all in public areas where educational messages regarding storm water can be easily communicated via simple interpretives, a requirement of the grant.

The projects selected include installation of bioswales in a portion of the Washington Park Parking Lot, installation of a storm water treatment facility near the concert lawn, disconnecting downspouts on the viewing kiosks adjacent to the elephant front yard, and if funds are available, projects in the Kongo Ranger Station and Sankuru Trader areas of the zoo will be explored.

ANALYSIS/INFORMATION

1. **Known Opposition.** None
2. **Legal Antecedents.** Metro Code Section 2.04.026(a)(2); U.S. Environmental Protection Agency Federal Innovative Wet Weather Grant requirements.
3. **Anticipated Effects.** The anticipated effect is a reduction in storm water runoff at the Oregon Zoo through the completion of innovative storm water handling projects.
4. **Budget Impacts.** The innovative storm water handling projects will be funded by the Environmental Protection Agency ("EPA") as pass through funds to the BES. This action will increase grant revenue in the Zoo Operating Fund by \$200,000, with a corresponding increase to capital outlay. There will be no impact on the Zoo's fund balance as no Metro funds will be made available or authorized for expenditure to finance costs of this Intergovernmental Agreement ("IGA"). The IGA provides that the Zoo will provide perpetual maintenance for the storm water handling facilities constructed with EPA grant funds.

RECOMMENDED ACTION

The Chief Operating Officer, in concurrence with the Council President, recommends adoption of this Ordinance.