

BEFORE THE CONTRACT REVIEW BOARD  
OF THE METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ACCEPTING )  
A DONATION FROM LOUISIANA PACIFIC )  
FOUNDATION, WAIVING COMPETITIVE )  
BIDDING AND AUTHORIZING A )  
CONTRACT WITH HALSTEAD'S )  
ARBORICULTURE CONSULTANTS )

RESOLUTION NO. 92-1721

Introduced by Rena Cusma,  
Executive Officer

WHEREAS, Louisiana Pacific Foundation has utilized Halstead's Arboriculture Consultants to locate six (6) mature Douglas fir trees for the Zoo's new Roosevelt Elk Exhibit; and

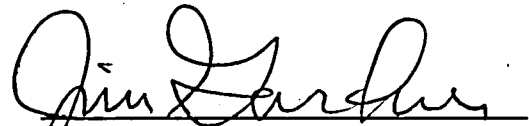
WHEREAS, Louisiana Pacific Foundation is offering an \$18,000 donation to Metro specifically for the relocation and replanting of those trees contingent upon the work being performed by Halstead's Arboriculture Consultants; and

WHEREAS, the Metro Council as public contract review board declares that pursuant to Metro Code Chapter 2.04.041 (c) the use of Halstead's Arboriculture Consultants for this project is a sole source transaction not subject to competitive bidding since this single exemption will not encourage favoritism or substantially diminish competition for public contracts and will result in substantial cost savings and project enhancement for the Zoo; now therefore,

BE IT RESOLVED,

That the Contract Review Board declares the use of Halstead's Arboriculture Consultants under the terms stated above to be a sole source procurement exempt from competitive bidding, and directs the Executive Officer to execute appropriate contract(s) for the acceptance of the donation and relocation and planting of the trees.

ADOPTED by the Contract Review Board of the Metropolitan Service District this  
10th day of December, 1992.

  
Jim Gardner, Presiding Officer

## REGIONAL FACILITIES COMMITTEE REPORT

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RESOLUTION NO. 92-1721, AUTHORIZING AN EXEMPTION TO METRO CODE CHAPTER 2.04.050 FOR A SOLE SOURCE CONTRACT WITH HALSTEAD'S ARBORICULTURE CONSULTANTS FOR THE RELOCATION AND PLANTING OF TREES IN THE ZOO'S ELK EXHIBIT

Date: December 9, 1992

Presented by: Councilor McFarland

**COMMITTEE RECOMMENDATION:** At its December 8, 1992 meeting the Regional Facilities Committee voted 3-0 to recommend Contract Review Board adoption of Resolution No. 92-1730. Voting were Councilors McLain, Gronke, and McFarland. Councilors Washington and Collier were absent.

**COMMITTEE DISCUSSION/ISSUES:** Assistant Zoo Director Kay Rich presented the staff report. He said the zoo is beginning work on an elk exhibit in the meadow area near the waterfowl ponds. The elk will need shade, and the zoo will need large trees to create that shade. The Zoo's Development Officer was able to secure Louisiana Pacific as a sponsor for this project; Louisiana Pacific in turn worked with Halstead's Arboricultural Consultants to determine the cost of relocating and replanting six mature Douglas Fir trees. That cost was determined to be \$18,000, which Louisiana Pacific will pay. The resolution would authorize an exemption from competitive bidding and approve a sole source contract with Halstead's, which is a condition of Louisiana Pacific's agreement to pay the costs. Mr. Rich added that Halstead's would warrant its work for one year, which condition is included in the contract.

Councilor McFarland asked for clarification that this project would not cost the Zoo any money. Mr. Rich confirmed that was the case.

## STAFF REPORT

FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO METRO CODE CHAPTER 2.04.050 TO ENTER INTO A SOLE SOURCE CONTRACT WITH HALSTEAD'S ARBORICULTURE CONSULTANTS FOR THE RELOCATION AND PLANTING OF TREES IN THE ZOO'S ELK EXHIBIT.

Date: November 19, 1992

Presented by: Rob Rudd

### FACTUAL BACKGROUND AND ANALYSIS

The Metro Washington Park Zoo is in the process of constructing a new Roosevelt Elk exhibit, located at the base of its principal Oregon/Cascades exhibit. This exhibit will encompass 2.1 acres of developed exhibit space, and house 3 female and 1 male Roosevelt elk. In addition to a visitor viewing area and holding areas for the elk, extensive landscaping and seeding of the exhibit will be completed.

The Rocky Mountain Elk Foundation, a nationally organized and highly respected organization advised that trees planted in the exhibit should provide needed shelter and sun protection. Based on this finding, the Zoo investigated ways to locate large trees for the exhibit.

The Metro Washington Park Zoo asked the Louisiana Pacific Corporation in October of 1992 to assist in locating and transporting six large (40-50 feet tall) Douglas fir for installation in the exhibit. These trees would provide shade in the summer, and protection from the elements during the winter. These trees will also provide a visual cue to visitors about the elks' natural habitat.

The Zoo and Louisiana Pacific Corporation began working with a volunteer arborist in determining the feasibility of relocating these extremely large trees to the Zoo. After extensive study by experts at Louisiana Pacific and by David Halstead, arborist, it was determined that the trees could be relocated to the Zoo, but at considerable expense (\$18,000).

At this point, Louisiana Pacific offered to donate to the Zoo the sum of \$18,000 to pay for the expenses of relocating the trees and planting them at the Zoo. This decision was made based on two principal factors: 1) their interest in the exhibit, and in supporting the Zoo in its efforts, and 2) their confidence in the experience of Mr. Halstead to perform the very difficult and complicated task of moving these trees.

The Metro Washington Park Zoo now requests an exemption from the public bid procedures to enter into a sole source contract based on the following factors:

1. Halstead's Arboriculture Consultants is uniquely qualified to perform this type of tree removal and tree relocation. At present, no other firms in the area perform this sort of work on the level required by the project. Halstead's has had a consistent track record of successful tree relocations similar to this project, and has received national acclaim for their work in this area.

2. Louisiana Pacific Corporation has based its decision to donate \$18,000 in cash support to the project based on their confidence in Halstead Arboriculture Consultants. This trust has evolved during the period of time of planning the project, and was crucial in convincing Louisiana Pacific to fund the project from their own resources.

#### BUDGET IMPACTS

Funds were secured entirely through a private donation from the Louisiana Pacific Foundation for this project.

Contract No. 902776

PUBLIC CONTRACT

THIS Contract is entered into between the METROPOLITAN SERVICE DISTRICT, a municipal corporation, whose address is 2000 S.W. First Avenue, Portland, Oregon 97201-5398, hereinafter referred to as "METRO," and HALSTEAD'S ARBORICULTURAL CONSULTANTS, INC., whose address is P.O. Box 1182, Tualatin, Oregon 97062, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I

SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to METRO the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II

TERM OF CONTRACT

The term of this Contract shall be for the period commencing November 18, 1992 through and including June 30, 1992.

ARTICLE III

CONTRACT SUM AND TERMS OF PAYMENT

METRO shall compensate the CONTRACTOR for work performed and/or goods supplied as described in Attachment B. Metro shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment B.

## ARTICLE IV

### LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify and hold harmless METRO, its agents and employees, 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 Contract. CONTRACTOR is solely responsible for paying CONTRACTOR's subcontractors. Nothing in this Contract shall create any contractual relationship between any subcontractor and METRO.

## ARTICLE V

### TERMINATION

METRO may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of termination. METRO shall not be liable for indirect or consequential damages. Termination by METRO will not waive any claim or remedies it may have against CONTRACTOR.

## ARTICLE VI

### INSURANCE

CONTRACTOR shall maintain such insurance as will protect CONTRACTOR from claims under Workers' Compensation Acts and other

employee benefits acts covering all of CONTRACTOR's employees engaged in performing the work under this Contract; and from claims for damages because of bodily injury, including death and damages to property, all with coverage limits satisfactory to METRO. Liability insurance shall have minimum coverage limits of at least the dollar amounts listed in ORS 30.270. Additional coverage may be required in the Scope of Work attached hereto. This insurance must cover CONTRACTOR's operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them. CONTRACTOR shall immediately increase the amounts of liability insurance required to reflect any changes in Oregon Law so that the insurance provided shall cover, at a minimum, the maximum liability limits under the Oregon Tort Claims Act.

If required in the Scope of Work attached hereto, CONTRACTOR shall provide METRO with a certificate of insurance complying with this article and naming METRO as an 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.

CONTRACTOR shall not be required to provide the liability insurance described in this Article if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

## ARTICLE VII

### PUBLIC CONTRACTS

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 provision were a part of this Agreement, including, but not limited to, ORS 279.310 to 279.320. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with this agreement.

## ARTICLE VIII

### ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

## ARTICLE IX

### QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by METRO, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or



subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of METRO.

#### ARTICLE X

##### 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 hereto that such documents are works made for hire. CONTRACTOR does hereby convey, transfer and grant to METRO all rights of reproduction and the copyright to all such documents.

#### ARTICLE XI

##### SUBCONTRACTORS; DISADVANTAGED BUSINESS PROGRAM

CONTRACTOR shall contact METRO prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from METRO before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

METRO reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

If required in the Scope of Work, CONTRACTOR agrees to make a good faith effort, as that term is defined in METRO's Disadvantaged Business Program (Section 2.04.160 of the Metro Code) to reach the goals of subcontracting \_\_\_\_\_ percent of the contract amount to Disadvantaged Business Enterprise and \_\_\_\_\_ percent of the contract amount to Women-Owned Business Enterprise. METRO reserves the right, at all times during the period of this agreement, to monitor compliance with the terms of this paragraph and METRO's Disadvantaged Business Program.

## ARTICLE XII

### RIGHT TO WITHHOLD PAYMENTS

METRO shall have the right to withhold from payments due 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.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in METRO's opinion, violated that provision, METRO shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by METRO under this Article shall become the property of METRO and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

### ARTICLE XIII

#### SAFETY

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

### ARTICLE XIV

#### INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any bidding documents including, but not limited to, the Advertisement for Bids, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between METRO and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both METRO and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XV

ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from METRO.

HALSTEAD'S ARBORICULTURAL  
CONSULTANTS, INC.

METROPOLITAN SERVICE DISTRICT

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT B

SCOPE OF WORK

## I. GENERAL

1. Contractor shall broom clean all work areas and road ways, remove debris as needed, and in no event less frequently than once per day.
2. Contractor shall provide and maintain safety barriers as needed to protect visitors, Zoo employees, Contractors employees and materials at all times.
3. Tools and materials must be kept out of the reach of Zoo employees and visitors.
4. Staging of materials shall not impede access to parking areas or to buildings.
5. Contractors' employees must park in designated areas. Vehicles may be brought to the job site to unload materials and tools, but then must be removed to designated parking areas.
6. Contractor shall access the site from Gate "A" which is located just west of the main Zoo entrance.
7. Insurance Requirements
  1. The contractor shall purchase and maintain at the contractor's expense, the following types of insurance covering the contractor, its employees and agents.
    - A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operations and product liability. The policy must be endorsed with contractual liability coverage.
    - B. Automobile bodily injury and property damage liability insurance.

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.

METRO, its councilors, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to METRO thirty (30) days prior to the change.

8. Warranty Requirements

Contractor and all subcontractors shall provide at least a one-year written warranty on all materials and workmanship. Where any manufacturer of any component of the project provides a warranty of a longer period, the longer period shall be recognized for that component. Furnish two copies of all warranties bound neatly into a folder or loose-leaf binder, clearly labeled with the name of the project. The project shall not be considered complete until this documentation is received and approved by the Zoo.

9. As-Built Documents

Contractor shall furnish one reproducible copy of all as-built information, clearly showing the location and extent of variation from the design documents for any aspect of the project. The project shall not be considered complete until this documentation is received and approved by the Zoo.

II. TERMS OF PAYMENT

1. The maximum payable under this contract is \$18,000.00 (Eighteen Thousand and No/100th Dollars)
2. The Contractor may render monthly progress billings on the form provided to:  
Metro  
Accounts Payable  
Accounting Division of Finance and Management Information  
2000 SW First Avenue  
Portland, Oregon 97201-5398  
  
Forward a copy of the invoice to:  
Metro Washington Park Zoo  
Design Services Division  
4001 SW Canyon Road  
Portland, Oregon 97221  
  
Attn: Buck Miller - Project Coordinator
3. Contractor shall receive payment of approved invoices within thirty (30) days.

III. PLANTING

- A. Furnish and install six (6) Douglas Fir trees in Elk Meadow. The trees shall be:
  1. 40-50 feet tall
  2. Have a canopy approximately 16' in diameter at 8' above the ground.

3. Have a trunk diameter of approximately 18"
4. Be dug up, balled, burlapped, transported to the site, and planted at the Washington Park Zoo in locations as directed by Zoo Project Manager.
5. Contractor shall use all care and diligence usually associated with the handling and planting of such mature trees.

B. The work shall include:

1. Excavation of the trees from their present location
2. Restoration of the original site
3. Handling, loading, and transportation to the Zoo
4. Excavation for planting in Elk Meadow
5. Purchase and installation of soil amendments as required
6. Restoration of the new site
7. Removal from the site and legal disposal of all surplus materials