



600 NE Grand Ave.
Portland, OR 97232-2736

Council meeting agenda

Thursday, July 29, 2021

2:00 PM

<https://zoom.us/j/615079992> or
888-475-4499 (toll free)

Please note: To limit the spread of COVID-19, Metro Regional Center is now closed to the public. This meeting will be held electronically.

You can join the meeting on your computer or other device by using this link:
<https://zoom.us/j/615079992> or 888-475-4499 (toll free).

If you wish to attend the meeting, but do not have the ability to attend by phone or computer, please contact the Legislative Coordinator at least 24 hours before the noticed meeting time by phone at 503-797-1916 or email at legislativecoordinator@oregonmetro.gov.

1. Call to Order and Roll Call

2. Public Communication

Public comment may be submitted in writing and will also be heard by electronic communication (video conference or telephone). Written comments should be submitted electronically by emailing legislativecoordinator@oregonmetro.gov. Written comments received by noon on the day of the meeting will be provided to the council prior to the meeting.

Those wishing to testify orally are encouraged to sign up in advance by either: (a) contacting the legislative coordinator by phone at 503-797-1916 and providing your name and the agenda item on which you wish to testify; or (b) registering by email by sending your name and the agenda item on which you wish to testify to legislativecoordinator@oregonmetro.gov. Those requesting to comment during the meeting can do so by using the "Raise Hand" feature in Zoom or emailing the legislative coordinator at legislativecoordinator@oregonmetro.gov. Individuals will have three minutes to testify unless otherwise stated at the meeting.

3. Consent Agenda

- 3.1 Consideration of the Council Meeting minutes for June 17, 2021.

[21-5579](#)

Attachments: [061721c Minutes](#)

- 3.2 Resolution No. 21-5199, For the Purpose of Amending the Director Form Employment Agreement [RES 21-5199](#)
- Attachments: [Resolution No. 21-5199](#)
[Exhibit A](#)
[Staff Report](#)

4. Resolutions

- 4.1 Resolution No. 21-5195, For the Purpose of Authorizing an Exemption from Competitive Bidding and Procurement of Construction Manager/General Contractor Services by Competitive Request for Proposals for the Oregon Zoo Boardwalk and Gate J Security Improvement Project [RES 21-5195](#)
- Presenter(s): Julie Hoffman (she/her), Metro
Jim Mitchell (he/him), Metro
- Attachments: [Resolution No. 21-5195](#)
[Exhibit A](#)
[Staff Report](#)
- 4.1.1 Public Hearing for Resolution No. 21-5195
- 4.2 Resolution No. 21-5197, For the Purpose of Approving A Class Special Procurement For Third Party Payroll Services [RES 21-5197](#)
- Presenter(s): Gabriele Schuster (she/her), Metro
Erika Chamberlain (she/her), Metro
- Attachments: [Resolution No. 21-5197](#)
[Staff Report](#)
[Attachment 1](#)
- 4.3 Resolution No. 21-5190, For the Purpose of Amending the FY 2021-22 Budget and Appropriations Schedule To Provide For Changes In Operations [RES 21-5190](#)
- Presenter(s): Cinnamon Williams (she/her), Metro
- Attachments: [Resolution No. 21-5190](#)
[Exhibit A](#)
[Exhibit B](#)
[Exhibit C](#)
[Exhibit D](#)
[Staff Report](#)
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- 4.4 Resolution No. 21-5196, For the Purpose of Authorizing the Execution of an Intergovernmental Agreement with the City of Gresham for Local Share Funding Pursuant to the 2019 Parks and Nature Bond Measure

[RES 21-5196](#)

Presenter(s): Jon Blasher (he/him), Metro

Attachments: [Resolution No. 21-5196](#)

[Exhibit A](#)

[Staff Report](#)

5. **Chief Operating Officer Communication**
6. **Councilor Communication**
7. **Adjourn**

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Thông báo về sự Metro không kỳ thị của

Metro tôn trọng dân quyền. Muốn biết thêm thông tin về chương trình dân quyền của Metro, hoặc muốn lấy đơn khiếu nại về sự kỳ thị, xin xem trong www.oregonmetro.gov/civilrights. Nếu quý vị cần thông dịch viên ra dấu bằng tay, trợ giúp về tiếp xúc hay ngôn ngữ, xin gọi số 503-797-1700 (từ 8 giờ sáng đến 5 giờ chiều vào những ngày thường) trước buổi họp 5 ngày làm việc.

Повідомлення Metro про заборону дискримінації

Metro з повагою ставиться до громадянських прав. Для отримання інформації про програму Metro із захисту громадянських прав або форми скарги про дискримінацію відвідайте сайт www.oregonmetro.gov/civilrights. або Якщо вам потрібен перекладач на зборах, для задоволення вашого запиту зателефонуйте за номером 503-797-1700 з 8.00 до 17.00 у робочі дні за п'ять робочих днів до зборів.

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Ogeysiiska takooris la'aanta ee Metro

Metro waxay ixtiraamtaa xuquuqda madaniga. Si aad u heshid macluumaad ku saabsan barnaamijka xuquuqda madaniga ee Metro, ama aad u heshid warqadda ka cabashada takoorista, booqo www.oregonmetro.gov/civilrights. Haddii aad u baahan tahay turjubaan si aad uga qaybqaadatid kullanka dadweynaha, wac 503-797-1700 (8 gallinka hore illaa 5 gallinka dambe maalmaha shaqada) shan maalmo shaqo ka hor kullanka si loo tixgaliyo codsashadaada.

Metro의 차별 금지 관련 통지서

Metro의 시민권 프로그램에 대한 정보 또는 차별 항의서 양식을 얻으려면, 또는 차별에 대한 불만을 신고 할 수 www.oregonmetro.gov/civilrights. 당신의 언어 지원이 필요한 경우, 회의에 앞서 5 영업일 (오후 5시 주중에 오전 8시) 503-797-1700를 호출합니다.

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សេចក្តីជូនដំណឹងអំពីការមិនរើសអើងរបស់ Metro

ការគោរពសិទ្ធិពលរដ្ឋរបស់ ។ សំរាប់ព័ត៌មានអំពីកម្មវិធីសិទ្ធិពលរដ្ឋរបស់ Metro ឬដើម្បីទទួលបានកម្មប្រណ័ងរើសអើងសូមចុះលេខស្សនាគោលដៅ www.oregonmetro.gov/civilrights។ បើលោកអ្នកត្រូវការអ្នកបកប្រែភាសានៅពេលអង្គប្រជុំសាធារណៈ សូមទូរស័ព្ទលេខ 503-797-1700 (ម៉ោង 8 ព្រឹកដល់ម៉ោង 5 ល្ងាច ថ្ងៃធ្វើការ) ប្រាំពីរថ្ងៃ ថ្ងៃធ្វើការ មុនថ្ងៃប្រជុំដើម្បីអាចឲ្យគេសម្រួលតាមសំណើរបស់លោកអ្នក ។

إشعار بعدم التمييز من Metro

تحتزم Metro الحقوق المدنية. للمزيد من المعلومات حول برنامج Metro للحقوق المدنية أو لإيداع شكوى ضد التمييز، يُرجى زيارة الموقع الإلكتروني www.oregonmetro.gov/civilrights. إن كنت بحاجة إلى مساعدة في اللغة، يجب عليك الاتصال مقدماً برقم الهاتف 503-797-1700 (من الساعة 8 صباحاً حتى الساعة 5 مساءً، أيام الاثنين إلى الجمعة) قبل خمسة (5) أيام عمل من موعد الاجتماع.

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Уведомление о недопущении дискриминации от Metro

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Avizul Metro privind nediscriminarea

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Metro txoj kev ntxub ntxaug daim ntawv ceeb toom

Metro tributes cai. Rau cov lus qhia txog Metro txoj cai kev pab, los yog kom sau ib daim ntawv tsis txaus siab, mus saib www.oregonmetro.gov/civilrights. Yog hais tias koj xav tau lus kev pab, hu rau 503-797-1700 (8 teev saww ntxov txog 5 teev tsaus ntuj weekdays) 5 hnub ua hauj lwm ua ntej ntwam lub rooj sib tham.

Agenda Item No. 3.1

Consideration of the Council Meeting Minutes for June 17, 2021

Consent Agenda

Metro Council Meeting
Thursday, July 29, 2021

Metro

*600 NE Grand Ave.
Portland, OR 97232-2736
oregonmetro.gov*



Metro

Minutes

Thursday, June 17, 2021

2:00 PM

Revised 6/17

<https://zoom.us/j/615079992> or 888-475-4499 (toll free)

Council meeting

1. Call to Order and Roll Call

Council President Peterson called the Metro Council meeting to order at 2:01 p.m.

Present: 7 - Council President Lynn Peterson, Councilor Shirley Craddick, Councilor Bob Stacey, Councilor Christine Lewis, Councilor Juan Carlos Gonzalez, Councilor Mary Nolan, and Councilor Gerritt Rosenthal

2. Public Communication

Council President Peterson opened the meeting to members of the public wanting to testify on a non-agenda items.

Seeing no public comment, Council President Peterson closed the public comment portion of the meeting.

3. Consent Agenda

A motion was made by Councilor Gonzalez, seconded by Councilor Stacey, to adopt items on the consent agenda. The motion passed by the following vote:

Aye: 7 - Council President Peterson, Councilor Craddick, Councilor Stacey, Councilor Lewis, Councilor Gonzalez, Councilor Nolan, and Councilor Rosenthal

3.1 Considerations of the Council Meeting Minutes for May 20, 2021 Minutes

4. Resolutions

4.1 Resolution No. 21-5187A, For the Purpose of Directing the Chief Operating Officer to Develop and Coordinate Analysis and Assessment of Supportive Housing Services Strategies and Programs to Evaluate Ongoing Regional Need.

Councilors Gonzalez introduced Resolution 21-5187A at the time of the meeting, co-sponsored by Councilors Nolan and Stacey.

Councilor Gonzales spoke to how amendments to this Resolution addresses the concerns of partners and constituents.

President Peterson opened for public comment on Resolution 21-5187A.

Chair Harrington (she/her), Washington County: Chair Harrington addressed how the resolution fulfills best practices and proposed a modification to the wording that directs the Chief Operating Officer to “continue” coordinating with regional partners on Supporting Housing Services.

The sponsoring councilors approved of the friendly amendment made to the resolution.

A motion was made by Councilor Gonzalez, seconded by Councilor Nolan, that this Resolution was adopted as amended. The motion carried by the following vote:

Aye: 7 - Council President Peterson, Councilor Craddick, Councilor Stacey, Councilor Lewis, Councilor Gonzalez, Councilor Nolan, and Councilor Rosenthal

4.2 Resolution No. 21-5174A (as amended on June 10th), For the Purpose of Adopting the Annual Budget for Fiscal Year 2021-22, Making Appropriations and Levying Ad Valorem Taxes

Council President Peterson introduced Marissa Madrigal (she/her) and Brian Kennedy (he/him) to present on the Resolution.

Marissa summarized the budget process, summary, and covered highlights.

At Councilor Craddick's request, Marissa and Brian reviewed Metro's reserves and credit rating.

The Council held a vote to move the budget note into the budget-- moved by Councilor Stacey, and seconded by Councilor Nolan.

Council President Peterson introduced Councilor Stacey and Brian Kennedy to speak to the Parks and Nature amendment.

The Council held a vote to adopt the amendment-- moved by Councilor Rosenthal, and seconded by Councilor Lewis.

Council President Peterson outlined the process conducted thus far regarding the FY2021-2022 Budget and opened the Public Hearing for Resolution 21-5174A.

Seeing no public comment, Council President Peterson closed public comment.

Councilor Rosenthal proposed technical changes to be made to the resolution. Council President Peterson requested Carrie and Brian's input as to whether these changes were necessary, and the process for incorporating such changes.

Carrie and Brian asserted that the resolution meets all legal requirements as-is, but was open to the technical changes.

Councilor Rosenthal retracted the proposed technical changes.

A motion was made by Councilor Gonzalez, seconded by Councilor Rosenthal, that this Resolution was adopted as amended. The motion carried by the following vote:

Aye: 7 - Council President Peterson, Councilor Craddick, Councilor Stacey, Councilor Lewis, Councilor Gonzalez, Councilor Nolan, and Councilor Rosenthal

- 4.3 Resolution No. 21-5175, For the Purpose of Adopting the Capital Improvement Plan for Fiscal Years 2021-22 Through 2025-26 and Re-Adopting Metro's Financial Policies

Council President Peterson introduced Brian Kennedy to

present on the Resolution.

Brian outlined the two functions of the resolution: 1) to approve the FY2021-2022, 2025-2026 Capital Improvement Plan, and 2) re-adopts Metro Council’s financial policies that provide the framework for the overall fiscal management of the agency.

Council Discussion

There was none.

A motion was made by Councilor Lewis, seconded by Councilor Craddick, that this Resolution was adopted. The motion carried by the following vote:

Aye: 7 - Council President Peterson, Councilor Craddick, Councilor Stacey, Councilor Lewis, Councilor Gonzalez, Councilor Nolan, and Councilor Rosenthal

- 4.4 Resolution No. 21-5180, For the Purpose of Amending the FY 2020-21 Budget and Appropriation Schedule and FY 2020-21 through FY 2024-25 Capital Improvement Plan to Provide for Changes in Operations

Council President Peterson introduced Cinnamon Williams (she/her) to present on the Resolution.

Cinnamon summarized the requests outlined in the Resolution.

Council Discussion

There was none.

A motion was made by Councilor Craddick, seconded by Councilor Rosenthal, that this Resolution was adopted. The motion carried by the following vote:

Aye: 7 - Council President Peterson, Councilor Craddick, Councilor Stacey, Councilor Lewis, Councilor Gonzalez, Councilor Nolan, and Councilor Rosenthal

4.5 Resolution No 21-5173, For the Purpose of Approving the Clackamas County Local Implementation Plan for the Regional Supportive Housing Services Program

Council President Peterson introduced Patricia Rojas (she/her) to present on the Resolution.

Patricia described the purpose of the Local Implementation Plans and how they contribute to the regional effort to provide supportive housing services and uphold Metro values and priorities. She also summarized the outcomes of approving the Resolution.

Council Discussion

Councilor Nolan expressed concerns regarding the extent to which the Clackamas County Local Implementation Plan comports with Metro's priorities.

Councilor Lewis identified aspects of the plan which are moving in a positive direction and the work of staff as her reason for voting yes; however, she did agree with elements of Councilor Nolan's concerns.

Councilor Gonzalez reiterated Councilor Nolan and Lewis' concerns and thanked staff for their contributions to the Local Implementation Plan (LIP). He additionally asserted that Metro has established the tools to remain responsible stewards of the funds allocated for the project.

Councilor Craddick celebrated the accomplishment of approving the third Local Implementation Plan and expressed concerns about the funding distribution.

Patricia and Carrie stated that the intergovernmental agreements would be responsible for working out the details regarding the funding distribution.

Councilor Craddick clarified the distinction between the Urban Growth Boundary and the Metro Service Boundary.

Councilor Stacey expressed like concerns regarding the lawfulness of the funding distribution, wanting to ensure that resources collected by Metro apply to those within the Metro Service Boundary.

To the question of lawfulness Carrie asserted that the funding expenditure proposed was not in violation of the law, as no Supportive Housing Services (SHS) dollars would be spent outside of the Metro Service Boundary. However, she did identify another proposed practice that would be later sorted through the intergovernmental agreement development.

Councilor Nolan expressed appreciation for the distinction and reiterated her concerns about the diversion of funding.

Council President Peterson agreed with the need to clarify this issue and track the use of the funding and progress of Clackamas County moving forward.

Councilor Gonzalez identified the LIP as being integrated into a larger body of binding work that would ensure the program comports with Metro's priorities and expectations, and identified this as among his reason for voting yes.

Councilor Lewis sought to clarify Commissioner Fischer's intent.

Patricia weighed in on the question of intent, asserting that the purpose was to provide a continuum of care.

A motion was made by Councilor Lewis, seconded by Councilor Gonzalez, that this Resolution was adopted. The motion carried by the following vote:

Aye: 5 - Council President Peterson, Councilor Craddick, Councilor Lewis, Councilor Gonzalez, and Councilor Rosenthal

Nay: 2 - Councilor Stacey, and Councilor Nolan

5. Chief Operating Officer Communication

Chief Operating Officer Marissa Madrigal provided an update on the following events or items:

- Juneteenth Observation

6. Councilor Communication

Councilors provided updates on the following meetings or events:

- I-5 Bridge Replacement Project
- WCCC
- JPACT

7. Adjourn

Seeing no further business, Council President Lynn Peterson adjourned the Metro Council work session at 4:33 p.m.

Respectfully submitted,



Shay Perez, Council Policy Assistant

Agenda Item No. 3.2

Resolution No. 21-5199, For the Purpose of Amending the Director Form Employment Agreement
Consent Agenda

Metro Council Meeting
Thursday, July 29, 2021

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE)	RESOLUTION NO. 21-5199
DIRECTOR FORM EMPLOYMENT)	
AGREEMENT)	Introduced by Chief Operating Officer
)	Marissa Madrigal in concurrence with
		Council President Lynn Peterson

WHEREAS, Metro’s Personnel Code, Section 2.02.010, as amended, provides that the Metro Council may delegate authority to the Chief Operating Officer (“COO”) by resolution to execute written employment agreements on a case by case basis, or as group for Director level employment agreements where all terms in those employment agreements are identical except salary; and

WHEREAS, the Metro Council, in Resolution No. 17-4797, delegated authority to the Chief Operating Officer to execute written employment agreements in a form approved by the Office of Metro Attorney with the Metro department directors and substantially similar to a form agreement approved by Metro Council in Resolution No. 17-4797; and

WHEREAS, the Metro Council continues to believe it is in the best interests of Metro for the COO to directly negotiation and execute written employment agreements with the Metro department directors; and

WHEREAS, Metro has updated certain benefits which necessitates amending the form agreement approved by Metro Council in Resolution No. 17-4797; now therefore

BE IT RESOLVED that the Metro Council hereby approves the amended director-level form employment agreement attached as Exhibit A, and reaffirms the Metro COO’s authority to execute written employment agreements with Metro department directors substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this 29th day of July 2021.

Christine Lewis, Council President

Approved as to Form:

Carrie MacLaren, Metro Attorney

AT-WILL EMPLOYMENT AGREEMENT

THIS AGREEMENT is entered into by and between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter (herein referred to as “Metro”) and _____ (herein referred to as “Employee”).

RECITALS

1. Metro requires the services of a _____.
2. Employee has the qualifications and the desire to serve Metro as its _____.
3. This Agreement shall be referred to as “At-Will Employment Agreement” (herein referred to as “Agreement”).

NOW, THEREFORE, IN CONSIDERATION of the compensation to be paid by Metro to Employee as specified in this Agreement, and in consideration of the mutual promises contained in this Agreement, the parties hereby agree as follows:

AGREEMENT

1. **Engagement.** Subject to the parties’ right to terminate this Agreement as specified below, Metro hereby employs and Employee hereby accepts employment from Metro for Employee’s services as the _____.
2. **Term of Agreement.** The terms of this Agreement shall apply to Employee’s employment upon execution and approval by the Metro Council, and shall continue until terminated as provided herein.
3. **Services.** Employee shall faithfully, industriously and to the best of their ability provide their service as the _____ at Metro, and shall perform all duties as may be required of them by the Metro Charter, the Metro Code, the Chief Operating Officer (“COO”), and any designee of the COO.
4. **Exclusivity.** During the term of this Agreement, and except as otherwise provided herein, Employee shall primarily devote their business efforts, time, attention, knowledge, and skills to Metro as the _____. Employee may engage in outside business or professional activities, provided that Employee obtain the written consent of the COO prior to engaging in any outside business or professional activities and provided that the COO has determined, in the COO’s sole discretion, that such activities: (a) do not impair performance of Employee’s duties under this Agreement, (b) do not make use of Metro resources, (c) are not substantially similar to the services Employee renders to Metro under this Agreement, and (d) are not in violation of or otherwise inconsistent with the

requirements of Metro policies, Metro Charter, Metro Code, or with any other applicable rules, regulations or legal requirements (as amended from time to time). The COO shall consult with the Metro Attorney before making their determination.

5. **Employment At-Will.** Metro and Employee understand and acknowledge that Employee serves at the pleasure of the COO. Metro and Employee understand and acknowledge that Employee’s employment with Metro constitutes “at-will” employment. Subject to Metro’s obligation to provide severance benefits as specified in this Agreement, Employee and Metro acknowledge that this employment relationship may be terminated at any time, upon written notice to the other party, with or without cause or good reason and for any or no cause or reason, at the option of either Metro or Employee. It is further understood and agreed that neither this Agreement, nor any service provided under this Agreement, shall create a property interest of any kind.

6. **Compensation.**
 - A. **Salary.** As compensation for Employee’s services, Metro shall pay Employee the sum of \$_____ - per year, payable in the same frequency and manner as other Metro employees. Employee’s performance and salary shall be reviewed annually by Metro as provided below, and thereafter Employee’s salary may be adjusted by the COO, consistent with the Metro pay plan. The compensation paid to Employee shall be subject to customary withholding taxes and other taxes as required with respect to compensation paid by Metro to an employee.

 - B. **Benefits.** Employee shall receive benefits at a level determined by the COO. For the purposes of this section, “benefits” means health insurance, including dental and vision care, life insurance, disability insurance, paid leave, employee assistance, retirement benefits pursuant to the Public Employees Retirement System (“PERS”), and any other benefits which are routinely provided to Metro’s non-represented employees. Metro shall pay the six percent (6%) employee contribution required by PERS. Except as otherwise expressly provided in this Agreement, the employee benefits provided to Employee under this section are subject to any additions, reductions or other changes made by the Metro Council to the benefits provided to Metro’s non-represented employees.

 - C. **Annual Vacation Leave.**
 - (1) Employee shall accrue annual vacation leave as provided in the Metro Personnel Rules, as they may be amended from time to time, except that Employee may exceed the annual 350 hour limit on accrued leave and accrue up to 750 hours of leave. Employee shall accrue vacation at a rate of ____ hours per hour paid. This

amounts to ___ hours per year. Employee shall also receive a one-time bank of ___ hours of vacation leave upon initial employment, which may be used at any time.

- (2) Employee shall annually forfeit any vacation leave that both (a) exceeds the 350 hour limit; and (b) is accrued in a fiscal year in which Employee has not taken at least 80 hours of annual leave (“minimum leave”). The “minimum leave” requirement may be waived by the COO or their designee under extraordinary circumstances.
- (3) Upon voluntary resignation of their employment or termination for cause as defined in Section 9(C), Employee shall only be entitled to payment for accrued and unused vacation leave up to a maximum of 350 hours. If Employee is terminated by Metro without cause, Employee shall be compensated as provided in Section 9(B).

7. **Performance/Compensation Reviews.** The COO or their designee and Employee shall mutually agree on an annual work plan for Employee. In evaluating Employee’s performance, the COO or their designee may consider how Employee’s performance is consistent with standard management practices, personnel policies and performance measures adopted by the COO or their designee.

8. **Reassignment.** Upon written notice by Metro’s COO or their designee, Employee may be temporarily or permanently reassigned to another Metro position or, if to another entity, pursuant to Metro’s “Loaned Executive” policy. If a temporary reassignment results in Employee receiving a higher salary during the reassignment period, Employee shall be returned in good standing to their previous position and salary range upon completion of the reassignment.

Performance reviews covering periods while Employee is temporarily reassigned or on loan to another entity shall reflect all work during the period, and compensation adjustments shall be commensurate with performance during the entire period under review.

9. **Termination.**

A. **Termination by the Parties.**

- (1) **Termination by Metro:** Employee understands and agrees that Employee serves at the pleasure of Metro’s COO and that the COO may terminate Employee’s employment with Metro at any time, with or without cause, by giving Employee a written notice of termination. If the written notice of termination does not specify

the effective date of termination, the effective date of termination shall be the date on which the written notice was given. Cause is defined in section 9C of this Agreement.

- (2) Termination by Employee: Employee may terminate their employment with Metro at any time by giving Metro a written notice of termination specifying the effective date of termination. To terminate in good standing, employee must provide thirty (30) days written notice of termination. If the written notice of termination does not specify the effective date of termination, the effective date of termination shall be the date that is thirty (30) days after the date on which the written notice was given.
 - (3) Upon termination, accrued leave shall be paid as provided by law and the terms of this Agreement.
- B. Termination Without Cause. Metro may terminate this Agreement without cause and, at Metro's sole election may do so without prior notice to Employee. Upon termination of employment without cause, Employee shall receive severance pay and benefits in exchange for a signed release of any and all claims as follows:
- (1) Severance pay shall be guaranteed at three (3) months' salary. Severance pay shall be subject to usual and customary withholdings under applicable local, state, and federal taxes.
 - (2) Upon the effective date of termination, Employee shall be eligible for continued health insurance as established by law ("COBRA"), including any premiums subsidy currently in effect. Metro shall pay for the cost of said insurance to the level utilized by Employee at the time of termination until Employee has become employed in another position, with health coverage in effect, or for six (6) months, whichever is less.
 - (3) Employee shall receive payment for all accrued and unused vacation leave up to a maximum of 750 hours.
- C. Termination for "Cause." Metro may terminate this Agreement for "cause" by giving Employee written notice of intent to terminate for "cause." The written notice shall set forth the reasons for termination constituting cause and provide an opportunity for Employee to respond. In the event that Metro elects to terminate this Agreement for "cause," neither severance pay nor employer paid COBRA benefits shall be due to Employee. At any time prior to the effective date of a termination for cause, Metro may provide written notice withdrawing the notice of proposed termination for cause, and following such withdrawal may elect

to terminate this Agreement pursuant to the provisions of Section 9B. “Cause” shall include one or more of the following:

- (1) Commission of any act specified as a basis for disciplinary action in the Metro Personnel Policies (as it may be amended from time to time), the nature of which would tend to bring discredit or embarrassment to Metro or the Council, as determined by the COO in their reasonable discretion.
- (2) Violation of the Oregon Government Ethics and Practices Act.
- (3) Violation of the Code of Ethics for Metro Officials. Metro Code Chapter 2.17.

10. **Non-Disclosure of Confidential Information.** To the extent allowable under Oregon public records law, Employee agrees that during employment and following separation, Employee shall not disclose confidential information obtained during the scope of employment at Metro.
11. **Termination Authority.** The COO has the sole authority to terminate this Agreement on behalf of Metro. The COO may terminate this Agreement in writing pursuant to any provision of Paragraph 9 of this Agreement.
12. **Disability or Death.**
 - A. If, as the result of any physical or mental disability, Employee shall have failed or is unable to perform their duties for more than twelve (12) consecutive weeks, the COO may, by subsequent written notice to Employee, terminate their employment under this Agreement as of the date of the notice, without any further payment or the furnishing of any benefit by Metro under this Agreement (other than accrued and unpaid salary and accrued benefits), subject to compliance with all applicable laws and regulations including the Americans With Disabilities Act.
 - B. The term of Employee’s employment under this Agreement shall terminate upon Employee’s death. In the event of Employee’s death, Metro shall provide payment of all accrued salary and benefits, but shall not furnish any of the benefits designated under Section 9B of this Agreement.
13. **Successorship.** This Agreement shall inure to and shall be binding upon Metro’s successors, assigns, trustees, executors, and administrators.
14. **Modification.** This Agreement can only be modified by a written amendment, signed by Employee and the COO. No oral or written statements, promises, or course of conduct shall serve to modify the Agreement in any way. No practices

or customs which may arise between Employee and Metro shall modify this Agreement or affect its meaning in any way.

- 15. **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the parties' rights to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of the provision itself or of any other provision.
- 16. **Construction.** This At-Will Employment Agreement is the final, entire agreement between the parties, shall be construed as having been drafted jointly by the parties, is intended to be a complete and final expression of the agreement between the parties, and shall supersede any and all prior discussions or agreements.
- 17. **Severability.** In the event that any court of competent jurisdiction determines that one or more portions of this Agreement are invalid or unlawful, the remaining portions shall remain in full force and effect.
- 18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Employee consents to the personal jurisdiction of the state and federal courts located in Multnomah County, Oregon for any action or proceeding arising from or relating to this Agreement.

EXECUTED IN DUPLICATE on _____ to be effective _____

EMPLOYEE

METRO

NAME

Chief Operating Officer

APPROVED AS TO FORM:

Carrie MacLaren
Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 21-5199, FOR THE PURPOSE OF AMENDING THE DIRECTOR FORM EMPLOYMENT AGREEMENT

Date: July 27, 2021
Department: Office of the COO
Meeting Date: July 29, 2021

Prepared by: Val Galstad,
val.galstad@oregonmetro.gov
Presenter(s) (if applicable): n/a
Length: n/a

ISSUE STATEMENT

Under Metro Code Section 2.02.010, the Chief Operating Officer may enter into and amend employment agreements on a case by case basis, or as a group for Director-level employment agreements. Metro has executed at-will employment agreements for a number of its director level positions, as follow: Deputy Chief Operating Officer, General Manager of Visitor Venues, the Chief Financial Officer, the Zoo Director, the Parks and Nature Director, and the Human Resources Director. As a best practice, Metro intends to enter into at-will employment agreements with all future director level hires at Metro.

The Chief Operating Officer has been delegated the authority to enter into employment agreements substantially similar to the form employment agreement approved by Metro Council in 2017.

The Chief Operating Officer updated certain benefits to all non-represented employees which necessitates altering the director form employment agreement, and now seeks approval to amend the form employment agreement to reflect these changes.

ACTION REQUESTED

The COO requests approval of the resolution to amend the director form employment agreement.

IDENTIFIED POLICY OUTCOMES

This resolution will allow the Chief Operating Officer to offer equitable vacation and retirement benefits to any newly hired department directors. By amending the form employment agreement, the Chief Operating Officer will have the authority to enter into new employment agreements substantially similar to the form employment agreement in Exhibit A.

POLICY QUESTION(S)

N/A

POLICY OPTIONS FOR COUNCIL TO CONSIDER

Approve Resolution No. 21-5199

- The approval of this resolution will amend the form employment agreement for directors at Metro. This will allow the Chief Operating Officer to enter into employment agreements substantially similar to the form agreement in Exhibit A. New directors will receive the same vacation accrual and retirement benefits as all other non-represented employees.

Do not approve Resolution No. 21-5199

- If Metro Council does not approve this resolution, the form employment agreement for directors at Metro will not be amended. Metro Council will need to approve each employment contract on a case-by-case basis if the new director is to receive the same vacation accrual and retirement benefits as all other non-represented employees.

STAFF RECOMMENDATIONS

Staff recommends that Council approve the resolution to amend the director form employment agreement.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

This resolution allows the Chief Operating Officer to offer the same vacation and retirement benefits to newly hired department directors as to all non-represented employees at Metro. This will allow the Chief Operating Officer to have a consistent approach to wage and benefit negotiations with new directors.

Known Opposition: None

Legal Antecedents: Metro Code Section 2.02.010; Resolution No. 17-4797

BACKGROUND

Metro's Personnel Code, Section 2.02.010, as amended, provides that the Metro Council may delegate authority to the Chief Operating Officer by resolution to execute written employment agreements on a case by case basis, or as group for Director level employment agreements where all terms in those employment agreements are identical except salary.

In Resolution No. 17-4797, Metro Council delegated authority to the Chief Operating Officer to execute written employment agreements in a form approved by the Office of Metro Attorney with the Metro department directors and substantially similar to a form agreement approved by Metro Council in Resolution No. 17-4797. This form agreement has been utilized for department directors hired since 2017.

The Chief Operating Officer updated certain benefits to all non-represented employees in Fiscal Year 2021-2022. Effective July 1, 2021, Metro will pay the 6% contribution to PERS Individual Account Plans (IAP) for all non-represented employees. Prior to July 1, 2021 some non-represented employees paid their own 6% contribution and Metro paid the 6% for others.

Effective July 1, 2021, the Chief Operating Officer expanded vacation accrual benefits for non-represented employees, adding an additional accrual tier. Additionally, the vacation accrual cap was extended from 275 hours to 350 hours.

Former non-represented vacation accrual rates

Level	Total years of continuous service	Accrual rate per hour paid	*Equivalent annual hours for full-time employees working 2080 hours per year
Level 1	Date of hire through completion of 3rd year	.0577 hours	120 hours
Level 2	4th year through completion of 7th year	.0692 hours	144 hours
Level 3	8th year through completion of 11th year	.0808 hours	168 hours
Level 4	12th year or more	.0923 hours	192 hours

Current non-represented vacation accrual rates

Level	Total years of continuous service	Accrual rate per hour paid	*Equivalent annual hours for full-time employees working 2080 hours per year
Level 1	Date of hire through completion of 3rd year	.0577 hours	120 hours
Level 2	4th year through completion of 7th year	.0692 hours	144 hours

Level 3	8th year through completion of 10th year	.0808 hours	168 hours
Level 4	11 th year through completion of 13 th year more	.0923 hours	192 hours
Level 5	14th year or more	0.1038 hours	216 hours

Newly hired Metro directors are subject to the non-represented vacation policy.

ATTACHMENTS

Resolution No. 21-5199

Exhibit A to Resolution No. 21-5199

Agenda Item No. 4.1

Resolution No. 21-5195, For the Purpose of Authorizing an Exemption from Competitive Bidding and Procurement of Construction Manager/General Contractor Services by Competitive Request for Proposals for the Oregon Zoo Boardwalk and Gate J Security Improvement Project

Resolutions

Metro Council Meeting
Thursday, July 29, 2021

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 21-5195
EXEMPTION FROM COMPETITIVE)
BIDDING AND PROCUREMENT OF) Introduced by Chief Operating
CONSTRUCTION MANAGER/GENERAL) Officer Marissa Madrigal in
CONTRACTOR SERVICES BY) concurrence with Christine Lewis,
COMPETITIVE REQUEST FOR) Acting Council President
PROPOSALS FOR THE OREGON ZOO)
BOARDWALK AND GATE J SECURITY)
IMPROVEMENT PROJECT)

WHEREAS, Metro intends to renovate the Boardwalk and install Security Improvements at Gate J at the Oregon Zoo. (the “Oregon Zoo Boardwalk and Gate J Security Improvements Project”); and

WHEREAS, ORS 279C.335 and Metro Local Contract Review Board Administrative Rule ("LCRB Rule") 49-0130 require that all Metro public improvement contracts be procured based on competitive bids, unless exempted by the Metro Council, sitting as the Metro Contract Review Board; and

WHEREAS, Metro's LCRB Rule 49-0620 authorizes the Metro Contract Review Board to exempt a public improvement contract from competitive bidding and direct the appropriate use of alternative contracting methods that take account of market realities and modern innovative contracting and purchasing methods, so long as they are consistent with the public policy of encouraging competition, subject to the requirements of ORS 279C.335; and

WHEREAS, ORS 279C.335(2) and (5)(a), and LCRB Rules 49-0630 through 49-0690 require that the Metro Contract Review Board hold a public hearing and adopt written findings establishing, among other things, that the exemption of a public improvement contract from competitive bidding is unlikely to encourage favoritism or substantially diminish competition for public improvement contracts; and that said exemption will likely result in substantial cost savings to Metro; now therefore.

BE IT RESOLVED THAT THE METRO CONTRACT REVIEW BOARD:

1. Exempts from competitive bidding the procurement and award of a Construction Manager/General Contractor (“CM/GC”) public improvement contract for the construction of the Oregon Zoo Boardwalk and Gate J Security Improvements Project; and
2. Adopts as its findings in support of such exemption the justification, information and reasoning set forth on the attached Exhibit A, which is incorporated herein by reference as if set forth in full; and

3. Authorizes the Chief Operating Officer to:

3.1 Prepare a form of Request for Proposals for CM/GC Contractor services that includes the following evaluation criteria for contractor selection:

- Contractor's proposed fees for pre-construction services
- Contractor's proposed overhead and profit for construction services
- Contractor's Project understanding and proposed project approach
- Contractor's record of completion of projects of similar type, scale and complexity, including demonstrated public improvement CM/GC project experience and expertise
- Contractor's record of coordinating multi-disciplinary approaches to value engineering challenges
- Contractor's record of working with owners and design professionals to identify ways to incorporate long-term operational efficiencies into projects
- Contractor's Proposed milestone dates, including but not limited to substantial completion
- Contractor's demonstrated quality and schedule control
- Contractor's Financial capacity
- Contractor's experience in incorporating sustainability construction practices and design into projects
- Contractor's demonstrated commitment to workforce diversity and record of use of subcontractor businesses certified by the Certification Office of Business Inclusion and Diversity (COBID)
- Any other criteria that ensure a successful, timely, and quality project, in the best interest of Metro and in accord with ORS 279C.335(4)(c) and LCRB Rule 49-0640(2)(a) and (b);

3.2 Following the approval of said form of Request for Proposals and Contract by the Office of the Metro Attorney, to issue said form, and thereafter to receive responsive proposals for evaluation; and

3.3 Following evaluation of the responses to the Request for Proposals, authorizes the Chief Operating Officer to execute a CM/GC contract with the most advantageous proposer to construct the Oregon Zoo Boardwalk and Gate J Security Improvement Project.

ADOPTED by the Metro Council this 29th day of July, 2021.

Christine Lewis, Acting Council President

Approved as to Form:

Carrie MacLaren, Metro Attorney

Oregon Zoo Boardwalk and Gate J Security Improvements - Exhibit A

Findings in Support of an Exemption from Competitive Bidding and Authorizing the Procurement by Request for Proposals of Construction Manager General Constructor (CM/GC) Services for the Oregon Zoo Boardwalk and Gate J Security Improvements

Pursuant to ORS 279C.335(2) and (4), and Metro Code Section LCRB 49-0620 through 49-0660, and 49-0690, the Metro Contract Review Board makes the following findings in support of exempting the procurement of the Oregon Zoo Boardwalk and Gate J Security Improvements project from competitive bidding, and authorizing use of a Request for Proposal (RFP) process for a Construction Manager General Contractor (CM/GC) public improvement construction contract:

A. The exemption is unlikely to encourage favoritism or substantially diminish competition.

The Metro Contract Review Board finds that exempting the procurement of the construction of the Oregon Zoo Boardwalk and Gate J Security Improvements project from competitive bidding is “unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts” as follows: The RFP will be formally advertised with public notice and disclosure of the alternative contracting method and will be made available to all qualified contractors. Award of the contract will be based on the identified selection criteria and dissatisfied proposers will have an opportunity to protest the award. Full and open competition based on the objective selection criteria set forth in the Metro Contract Review Board resolution will be sought, and the contract will be awarded to the most advantageous proposer. Competition for the RFP will be encouraged by: Posting on ORPIN (Oregon Procurement Information Network), public advertisements placed in the Portland Business Tribune and other minority business publications; performing outreach to local business groups representing minorities, women, and emerging small businesses and by contacting contractors known to Metro to potentially satisfy the RFP criteria. The subcontractor selection process will be a low bid competitive method for contracts by requiring a minimum of three bids per scope, unless there is an approved exception. Competition among subcontractors will be encouraged by contacting local subcontractors, including COBID firms and notifying them of any opportunities within their area of expertise and by performing outreach to local business groups representing minorities, women, and emerging small businesses.

B. The exemption will likely result in substantial cost savings to Metro.

The Metro Contract Review Board finds that exempting the procurement of the construction of the Oregon Zoo Boardwalk and Gate J Security Improvements project from competitive bidding will likely result in substantial costs savings to Metro, considering the “type, cost and amount of the Contract,” the 14 factors required by ORS 279C.335(2)(b), and the “additional findings” per Metro Local Contract Review Board (LCRB) Administrative Rule 49-0630(3)(B) as follows:

Type, Cost and Amount of the Contract: (type of project, budgeted/expected overall cost (of project), budgeted/expected contract amount)

The CM/GC project delivery model is a common public improvement procurement practice. Area agencies such as City of Portland, Multnomah County, Tri-Met, and Port of Portland utilize the CM/GC process for their large, complex public improvement projects. In CM/GC projects the General Contractor becomes a part of the project team during the design process, in order to provide constructability, logistics and value engineering expertise to the construction documentation process. CM/GC offers a distinct advantage to Metro over traditional design-bid-build (low bid) method in its ability to obtain

Oregon Zoo Boardwalk and Gate J Security Improvements - Exhibit A

enhanced participation by COBID contractors. The current rough-order-of-magnitude estimate for the entire project is \$800,000.

Statutory Factors

1. **Number of entities available to bid:** This factor is unaffected by exemption from competitive bidding. Regardless of procurement method, there are numerous firms interested in participating in the procurement, many of which would have bid on the project in the absence of the exemption from competitive bidding.
2. **Construction budget and future operating costs:** Using an RFP to select a General Contractor will allow Metro to obtain cost reductions through pre-construction services by the contractor during the design phase, including a constructability review, value engineering, and other services. Involving the contractor early in the design process fosters teamwork that results in a better design, fewer change orders, and faster progress with fewer unexpected delays, resulting in lower costs to Metro. The potential for faster progress and an earlier completion date will also help Metro avoid the risk of inflationary increase in materials and construction labor costs. Contractor constructability review also allows for an ongoing review of the long term operating costs of design options, allowing for midcourse design changes, leading to a project having lower long term operating maintenance and repair costs.
3. **Public Benefits:** The procurement of a CM/GC construction contract through the RFP process will help realize Metro's goal of obtaining COBID participation by enabling a qualitative review of proposers' approach to COBID outreach and mentoring partnerships.
4. **Value Engineering:** The process will enable the contractor to work with the project architect and Metro staff to help reduce construction costs by providing early input and constructability review to designers, avoiding costly redesign and change orders, and providing opportunities for the architects and contractor to work together on both practical and innovative solutions to meeting the project budget. This type of contract will allow the designers to more easily explore with the contractor the feasibility of innovative design solutions and incorporate ongoing value engineering.
5. **Specialized Expertise Required:** The contractor and subcontractors must be able to demonstrate in their proposal that they have experience constructing operations and maintenance facilities and park facilities, demonstrated successes with sustainability and subcontractor equity, and have successfully completed public improvement projects, understand the logistics of general public and staff traffic control, access, removing demolished materials, etc. The selection of a contractor with such expertise to construct the project will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed on or ahead of schedule, resulting in lower costs and increased benefit to the community. The ability to factor expertise and experience into contractor selection is inherent in the RFP process, but is not part of the traditional low bid process.
6. **Public Safety:** The CM/GC contracting process will enable the contractor to work with the project architect and Metro staff to plan for minimizing safety hazards and conflict between the project and ongoing operations by providing early input into issues of project phasing, construction staging areas, construction access and scheduling. Such integrated early planning efforts are expected to limit risks to public and Metro staff safety. The ability to factor safety performance on similar projects into contractor selection is inherent in the RFP process, but is not part of the traditional low bid process.

Oregon Zoo Boardwalk and Gate J Security Improvements - Exhibit A

7. **Reduces risk to Metro and the public.** The risks to Oregon Zoo's ongoing operations posed by the inability of the contractor to meet the schedule deadlines will be reduced by the selection of the contractor based on the demonstrated ability to perform the work as specified and based on successful prior experience working safely, effectively and efficiently in or near a similar environment where Metro staff and the public are present, rather than awarding the project to the low bidder.
8. **Exemption's effect on funding:** Does not apply.
9. **Better Control of Impact of Market Conditions on Cost and Time to Complete:** Does not apply.
10. **Technical complexity:** The exemption will allow the Contractor to select subcontractors that have demonstrated technical expertise, knowledge, and experience with the logistical challenges of demolition and construction in a similar setting, all of which can be factored into the contractor selection in the RFP process. The selection of a contractor with demonstrated experience and success in implementing similar projects will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed on budget, with fewer construction delays and change orders, resulting in lower costs. The RFP process will take into account each contractor's past performance and technical knowledge.
11. **New construction, renovation or remodel:** The project is most appropriately scoped as a major renovation and Security Upgrade. The addition of the general contractor to the project team during project scoping and design will pay dividends by helping to inform Metro's decision-making. Construction of the Oregon Zoo Boardwalk and Gate J Security Improvements project is tentatively slated to start in mid-FY 22.
12. **Occupancy during construction:** The existing Oregon Zoo Boardwalk is the main visitor access to the Zoo. The Zoo will be occupied and visitors and staff will be using the Boardwalk during construction. Gate J will remain operational while the Security Improvements are taking place. The CM/GC contracting process will enable the contractor to work with the project architect and Metro staff to minimize conflict between the project and ongoing operations, by providing early input into issues of project phasing, construction staging areas, construction access and scheduling. Such integrated early planning efforts are expected to limit conflicts and thus reduce the risk of construction delays and costly change orders.
13. **Phased Construction Work:** Part of the CM/GC's pre-construction work will be determining whether the project can be conducted in phases, allowing for early work amendments to start on some phases while finalizing overall design, which ultimately saves time on the overall project and may mitigate impact to ongoing operations. Early work phases are expected to uncover latent conditions at the project site that, once exposed, will then be addressed efficiently and less expensively during ongoing design, avoiding costly redesigns and change orders.
14. **Availability of personnel, consultant and legal counsel with CM/GC expertise.** The Office of Metro Attorney, Project Manager, and Project Architect have the necessary qualifications and expertise to negotiate, administer, and enforce the terms of Metro's CM/GC public improvement contract, including prior experience governing large CM/GC projects and managing them to a successful completion.

Oregon Zoo Boardwalk and Gate J Security Improvements - Exhibit A

Additional Findings:

1. Industry practices, surveys, trends. The industry-accepted benefits of the CM/GC method include:

- Results in a better design that meets the owner's objectives
- Encourages competition, especially for COBID subcontractors
- May be completed in a faster time frame
- When skillfully managed, costs less than a design-bid-build project that is designed and constructed in the traditional manner, due to higher likelihood of constructability of design and opportunities for value engineering early in the design process.
- Reduces the risks of delays, cost overruns, and disputes
- Limits the number of change orders for unforeseen conditions

2. Past experience and evaluation of Metro CM/GC projects.

The \$47 million Oregon Zoo Polar Passage, Primate Forest and Rhino ("PPR") project was substantially complete in March 2021. The benefits to the Oregon Zoo PPR project achieved through the CM/GC process include:

- Cost reductions through pre-construction services by the contractor during the design phase, including a constructability review (e.g., materials, phasing, layout and design) and value engineering.
- Phased construction was able to start while integrated delivery planning for future phases was still being developed. This kept the project on schedule and allowed for ongoing construction activities during daily Oregon Zoo business operations.
- Seven and ½ percent of the Guaranteed Maximum Price in change orders. On a project of this size and complexity, one would ordinarily expect a ratio of at least ten percent or greater in change orders increasing the cost of construction.
- The project exceeded 14 percent COBID subcontractor participation. This achievement accounts for more than \$4.7 million going to the local COBID subcontractor community.
- Partnering with the Oregon Zoo through preconstruction planning and ongoing coordination, the Zoo was able to safely maintain normal business operations: during 24 months of major construction in the middle of the zoo.

3. Benefits and drawbacks of CM/GC to the Oregon Zoo Boardwalk and Gate J Security

Improvements project. The CM/GC method provides an invaluable means of addressing the risks to Metro presented by the project's site conditions and timeline.

By involving the contractor extensively during the design process, Metro will be able to better account for, plan around, and address the above factors prior to and during construction. This avoids project delays and expensive change orders, helps to reduce liability and revenue risks to Metro, and provides a foundation of cooperation upon which a high-quality result may be achieved, on schedule and on budget. Pre-construction services provided during the process include a constructability review, value engineering, and other services during design. Involving a contractor during the design fosters teamwork that results in a better design, faster progress with fewer delays and lower risk of costly change orders.

Given Metro's favorable experience with CM/GC, staff foresees no drawbacks to adopting the CM/GC method to implement the Oregon Zoo Boardwalk and Gate J Security Improvements project.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 21-5195 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND PROCUREMENT OF CONSTRUCTION MANAGER GENERAL CONTRACTOR SERVICES BY COMPETITIVE REQUEST FOR PROPOSALS FOR THE OREGON ZOO BOARDWALK AND GATE J SECURITY IMPROVEMENT PROJECTS.

Date: July 29, 2021

Prepared by: Jim Mitchell

BACKGROUND

The Oregon Zoo Boardwalk is a pressure treated heavy timber structure constructed in 1998. The Boardwalk is the main arterial for visitors to access the zoo from the main entry. The walking surface has been recoated approximately every three to four years. The current rubber coating is deteriorated and allows water through onto the wood surface and beams causing potential damage. The Gate J, located off of Kingston in Washington Park is the only gate at the zoo that does not use a keycard system and does not have adequate security cameras to view night activity at the gate.

The purpose of this project is to address these issues, by investigating the extent of damage to the Boardwalk, repairing as necessary and designing a more robust walking surface such as a liquefied membrane with a concrete topping slab. The investigation and extent of repair will define the scope of work. The CM/GC will be utilized through an Early Work Amendment to assist with the investigation. A new keycard and notification system along with cameras will help keep the zoo secure. Utilizing a CM/GC on the Boardwalk will be critical to coordinating the work with the zoo and keeping the Boardwalk open to visitors and staff. The estimated value of these projects is \$800,000.

The architecture/engineering consultants for the project are beginning the planning and programming phase with Metro staff in June. The design phase will follow, tentatively in September. It is desired that the Construction Manager General Contractor (CM/GC) project delivery method be used whereby the General Contractor will join the team at the beginning of the design phase, providing beneficial pre-construction expertise. Procurement of a CM/GC requires an exemption from competitive bidding in lieu of procurement by competitive Request for Proposals.

An alternate, qualifications based procurement method, a Request for Proposals, enables Metro to specifically request and qualitatively evaluate proposers' prior experience with the unique parameters of the project including experience with operations and maintenance facilities, park facilities, demonstrated successes with sustainability and their approach to COBID outreach and partnership and workforce diversity. This delivery method offers a better ability for public agencies to increase the use of COBID firms in sub-contracting opportunities.

The attached resolution and findings in Exhibit A describe the specialized nature of this project. Based on these findings, the Metro procurement manager believes that a value-based selection process is more appropriate than a traditional, competitive bid (which solely considers lowest bid price). CPMO staff and the Office of the Metro Attorney concur.

Therefore, staff seeks Council authorization to pursue the alternative procurement of Construction Manager General Contractor Services by a competitive Request for Proposals, for the Oregon Zoo Boardwalk and Gate J Security Improvement project. This will allow Metro to consider cost as well as experience and expertise in completing similar projects and in selecting the most advantageous contractor for this project.

ANALYSIS/INFORMATION

1. **Known Opposition:** None

2. **Legal Antecedents:** LCRB Rule 49-0620(1), 49-0130, 49-0630, 49-0640, and 49-0690; Oregon Revised Statutes 279C.335 and ORS 279C.337.

3. **Anticipated Effects:** Public procurement process will be open and competitive, but items in addition to cost will be considered in the awarding of the contract. Increased use of COBID subcontractors is anticipated.

4. **Budget Impacts:** The CM/GC project delivery method provides safeguards for schedule and cost control of the project, including early involvement by construction contractor in the design process, as well as reducing the risk of substantial change orders.

RECOMMENDED ACTION

Metro Council, acting as the Local Contract Review Board, approves an exemption from competitive bidding for the Boardwalk and Gate J Security Improvement project, and authorizes procurement of a Construction Manager/General Contractor by request for competitive proposals, and authorizes the execution of the resulting CM/GC contract by the Chief Operating Officer in a form to be approved by the Office of Metro Attorney.

Agenda Item No. 4.2

Resolution No. 21-5197, For the Purpose of Approving A Class Special Procurement For Third Party Payroll Services

Resolutions

Metro Council Meeting
Thursday, July 29, 2021

BEFORE THE METRO LOCAL CONTRACT REVIEW BOARD

FOR THE PURPOSE OF APPROVING A CLASS) RESOLUTION NO. 21-5197
SPECIAL PROCUREMENT FOR THIRD PARTY)
PAYROLL SERVICES) Introduced by Chief Operating Officer
) Marissa Madrigal in concurrence with
) Council President Lynn Peterson

WHEREAS, the Metro Council, acting in its capacity as the Metro Local Contract Review board, has authority under ORS 279B.085 and Metro Local Contract Review board Rule 47-0285 to authorize a class special procurement upon the making of certain findings described in ORS 279B.085(4); and

WHEREAS, Metro staff desires to create a class special procurement for Third Party Payroll Services; and

WHEREAS, pursuant to ORS 279B.085(2), the attached Exhibit A more particularly describes the contracting procedure and the services that are the subject of the special procurement and the circumstances that justify the use of a special procurement under the standards set forth in ORS 279B.085(4); now therefore,

BE IT RESOLVED that the Metro Local Contract Review Board hereby approves the class special procurement described in the attached Exhibit A and finds that the special procurement process described on Exhibit A is justified as it (a) is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts, and (b) otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070.

ADOPTED by the Metro Local Contract Review Board this 29th day of July, 2021.

Christine Lewis, Acting Council President

Approved as to Form:

Carrie MacLaren, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 21-5197 FOR THE PURPOSE OF AMENDING METRO'S CONTRACTING AND PROCUREMENT ADMINISTRATIVE RULES

Date: 07/19/2021

Prepared by: Gabriele Schuster, Procurement Manager

BACKGROUND

The Metro Local Contract Review Board has adopted administrative rules that direct the process by which Metro contracts for goods and services, personal services and construction services. The last significant changes to the contracting and procurement administrative rules were in 2018. Staff has since been monitoring rules for effectiveness to Metro procurements and has identified an area in the rules which would benefit from an update.

Of particular note, staff is recommending updating section 47-0288 Special Procurements Authorized by Rules to add an additional class of special procurements for Third Party Payroll Services.

Metro has utilized a third party payroll provider created by the Union for the venues as performing arts-, convention- and tradeshow payroll services require special skills. Any payroll service provider has to be approved by the Union which complicates the process of conducting a competitive procurement as potential proposers might not comply with venue Union payroll requirements. In addition it is more cost effective to have the third party payroll provider be responsible for the workers compensation and the unemployment insurance that is required. The venues pass the cost of the third party vendor onto their clients. For this service we charge an administrative fee that provides additional revenue, which is included in the final invoice.

ANALYSIS/INFORMATION

1. **Known Opposition.** None known.
2. **Legal Antecedents.** Oregon Revised Statutes Chapter 279 A,B,C. Metro LCRB Rules Division 47, Metro Personal Services Contracting Rules.
3. **Anticipated Effects.** Revises Metro's contracting and procurement administrative rules to add an additional class of special procurements.
4. **Budget Impacts.** None.

RECOMMENDED ACTION

Staff recommends adoption of the revised contracting and procurement administrative rules by the Metro Local Contract Review Board.

Attachment 1

Findings in Support of Resolution No. 21-5197

ORS 279B.085 provides that a Local Contract Review Board may approve “class special procurements” subject to different contracting procedures than those otherwise required by ORS 279B.055 (Competitive Sealed Bidding), ORS 279B.060 (Competitive Sealed Proposals), ORS 279B.065 (Small Procurements) and ORS 279B.070 (Intermediate Procurements). In order to approve a class special procurement the Local Contract Review Board must find that the use of a special procurement:

- (1) Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
- (2) (a) Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or
(b) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070.

FINDINGS

1. **Third Party Payroll Services:** Metro may directly contract for third party payroll services including, but not limited to, timekeeping and payroll services, unemployment coverage, workers compensation coverage, payment of health care contributions, retirement contributions and other related services.
 - a. The use of third party payroll companies is the norm for many venues in the performing arts, convention and trade show business when entities use employees drawn from a Union hall. The Metro Visitor Venues have used a third party payroll company created by the Union for these services for many years but has searched with its Union partners for alternative private payroll companies skilled in these specialized payroll services. Metro has engaged in formal solicitations to obtain these services with no success. Further, any third party payroll company must have Union approval for use by the venues which further complicates the ability to procure these services under traditional methods.
 - b. Based upon the forgoing, the ability to directly contract with a third party payroll company is unlikely to encourage favoritism or to substantially diminish competition as there are a very limited number of payroll companies that have this skill set that are willing to perform these services for a public entity and have approval from the Union. Furthermore, the use of a private third party payroll company will increase revenues for the venues and continue cost savings for unemployment and workers compensation costs in contrast to the current model.

Agenda Item No. 4.3

Resolution No. 21-5190, For the Purpose of Amending the FY 2021-22 Budget and Appropriations
Schedule to Provide For Changes in Operations

Resolutions

Metro Council Meeting
Thursday, July 29, 2021

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE FY 2021-)
22 BUDGET AND APPROPRIATIONS SCHEDULE,)
TO PROVIDE FOR CHANGES IN OPERATIONS)

RESOLUTION NO 21-5190

)
) Introduced by Marissa Madrigal, Chief
) Operating Officer, with the concurrence of
) Council President Lynn Peterson

WHEREAS, the Metro Council has reviewed and considered the need to change appropriations within the FY 2021-22 Budget; and

WHEREAS, Metro Code chapter 2.02.040 requires Metro Council approval to add any new position to the budget; and

WHEREAS, the need for the change of appropriations has been justified; and

WHEREAS, adequate funds exist for other identified needs; and

WHEREAS, ORS 294.463(1) provides for transfers of appropriations within a fund, including transfers from contingency that do not exceed 15 percent of a fund’s appropriations, if such transfers are authorized by official resolution or ordinance of the governing body, and

WHEREAS, ORS 294.463(3) provides for transfers of appropriations or of appropriations and a like amount of budget resources between funds of the municipal corporation when authorized by an official resolution or ordinance of the governing body stating the need for the transfer, and

WHEREAS, ORS 294.338(2) allows an increase in appropriations due to specific purpose grants or gifts when authorized by an official resolution or ordinance of the governing body stating the need for the recognition, and

WHEREAS, ORS 294.338(3) allows an increase in appropriations when a request for services, the cost of which is supplied by another entity, necessitates a greater expenditure of public money for any specific purpose in order to provide the services when authorized by an official resolution or ordinance of the governing body stating the need for the recognition, and

BE IT RESOLVED,

1. That the FY 2021-22 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled “Revision” of Exhibits A and B to this Resolution for the purpose of modifying expenditures, approving new FTE, and transferring funds to and from contingency.

ADOPTED by the Metro Council this 29th day of July, 2021.

Christine Lewis, Acting Council President

APPROVED AS TO FORM:

Carrie MacLaren, Metro Attorney

Exhibit A
Resolution 21-5190
Schedule of Appropriations

	FY 2021-22 Adopted Budget	Revisions	FY 2021-22 Amended Budget
GENERAL FUND			
Council	8,708,256	109,422	8,817,678
Office of the Auditor	856,976	-	856,976
Office of Metro Attorney	3,139,062	-	3,139,062
Information Services	6,266,283	-	6,266,283
Communications	4,409,016	-	4,409,016
Finance and Regulatory Services	8,453,848	-	8,453,848
Human Resources	4,255,445	-	4,255,445
Capital Asset Management	3,333,313	-	3,333,313
Planning and Development Department	33,537,470	-	33,537,470
Parks and Nature	3,262,559	-	3,262,559
Special Appropriations	2,113,803	-	2,113,803
Non-Departmental			
Debt Service	14,388,655	-	14,388,655
Interfund Transfers	25,159,184	-	25,159,184
Contingency	19,096,050	(109,422)	18,986,628
<i>Total Appropriations</i>	136,979,920	-	136,979,920
Unappropriated Balance	27,665,482	-	27,665,482
Total Fund Requirements	164,645,402	-	164,645,402
MERC FUND			
MERC	41,331,049	-	41,331,049
Non-Departmental			
Interfund Transfers	9,701,091	-	9,701,091
Contingency	7,991,712	(947,500)	7,044,212
<i>Total Appropriations</i>	59,023,852	(947,500)	58,076,352
Total Fund Requirements	59,023,852	(947,500)	58,076,352
SOLID WASTE FUND			
Waste Prevention and Environmental Services	105,056,015	429,719	105,485,734
Non-Departmental			
Interfund Transfers	9,263,844	-	9,263,844
Contingency	11,475,294	(429,719)	11,045,575
<i>Total Appropriations</i>	125,795,153	-	125,795,153
Unappropriated Balance	10,796,947	-	10,796,947
Total Fund Requirements	136,592,100	-	136,592,100
Total Appropriations	1,119,639,887	(947,500)	1,118,692,387
Total Unappropriated Balance	439,747,017	-	439,747,017
TOTAL BUDGET	1,559,386,904	(947,500)	1,558,439,404

All Other Funds Remain as Previously Adopted

Exhibit B
Resolution 21-5190
Schedule of FTE

	FY 2021-22 Adopted FTE	Revision	FY 2021-22 Revised FTE
GENERAL FUND			
<i>TOTAL FUND FTE</i>	287.40	1.00	288.40
SOLID WASTE FUND			
<i>TOTAL FUND FTE</i>	176.96	13.00	189.96
TOTAL FTE	974.66	14.00	988.66

All Other FTE Remain as Previously Adopted

Exhibit C
Resolution 21-5190
MetroPaint Budget Forecast

Fiscal Year	Sales	PaintCare	Sub-lease	Total	Notes
14/15	\$ 1,360,872.37	\$ 1,521,211.38	NA	\$ 2,882,083.75	
15/16	\$ 1,286,637.69	\$ 1,720,764.27	NA	\$ 3,007,401.96	
16/17	\$ 1,149,852.05	\$ 1,481,834.36	NA	\$ 2,631,686.41	
17/18	\$ 1,064,213.04	\$ 1,650,050.34	NA	\$ 2,714,263.38	
18/19	\$ 1,156,633.46	\$ 1,507,071.31	NA	\$ 2,663,704.77	
21/22 (projected)	\$ 1,203,641.72	\$ 1,576,186.33	\$220,000	\$ 2,999,828.05	projected using 5 year pre-COVID average

MetroPaint Strategic Plan | 2030 Regional Waste Plan Guidance
May 2021

Regional Waste Plan Goal & Actions

MetroPaint Connection

<p>Goal 3: Ensure that all jobs in the garbage and recycling industry pay living wages and include good benefits.</p>	<p>3.1 Establish a living wage and benefits standard for the lowest-paid positions in the solid waste industry and update the standard on a regular basis. 3.4 Reduce the use of temporary and contract workers in the region’s solid waste industry.</p>	<p>→ Essential program functions currently rely on temporary contracted staff who have historically been paid less than Metro staff for the same work. Solid waste workers are some of the lowest paid staff in the Metro pay scale.</p>
<p>Goal 4: Increase the diversity of the workforce in all occupations where people of color, women and other historically marginalized communities are underrepresented.</p>	<p>4.1 Implement a workforce development and readiness program for garbage and recycling industry jobs. 4.2 Develop a career pathways strategy that aims to increase the diversity of workers in all solid waste occupations. 4.3 Conduct baseline and regular follow up studies of workforce diversity in the regional garbage and recycling industry, including an assessment of barriers to hiring and retaining people of color, women and other historically marginalized groups. 4.4 Design and implement programs that address safety, bullying and harassment in the workplace throughout the solid waste industry. 4.5 In partnership with community-based organizations, create workforce development programs within the reuse sector that focus on people with barriers to employment.</p>	<p>→ The MetroPaint workforce has historically been staffed by majority men of color.</p>

Goal 5:

Reduce the environmental and human health impacts of products and packaging that are made, sold, used or disposed in Oregon.

5.4 Advocate for product stewardship legislation and other policy approaches that can achieve the greatest reduction in environmental and human health impacts from products and packaging made, used or disposed in the region.

→ The PaintCare partnership is a product stewardship framework that ensures the region's discarded latex paint is collected and recycled locally.

Goal 9:

Increase knowledge among community members about garbage, recycling and reuse services.

9.1 Provide culturally responsive education and assistance for garbage, recycling and reuse services to residents and businesses.

→ Switching to the new Community Services and Education division means MetroPaint will be asked to increase community engagement and education opportunities.

Goal 10:

Provide regionally consistent services for garbage, recyclables and other priority materials that meet the needs of all users.

10.4 Provide convenient, accessible and equitable collection of hazardous waste from households and Conditionally Exempt Generators, prioritizing communities with greatest need.

→ Latex paint coming into the program is currently collected at the Household Hazardous Waste facilities, community collection events, and PaintCare drop sites around the region.

Goal 12:

Manage all garbage and recycling operations to reduce their nuisance, safety and environmental impacts on workers and the public.

12.1 Minimize the health and safety impacts of solid waste operations on employees, customers and neighboring communities, with particular focus on low-income communities and communities of color, and identify methods for repairing past harm.

12.4 Implement sustainability practices in the operation of public and private solid waste facilities to reduce energy use, utilize renewable energy, reduce equipment emissions, maximize the use of safe alternatives to toxic materials and achieve other environmental objectives.

→ Processing and producing paint exposes employees to chemical additives and fumes from paint. Any health and safety improvements represent direct benefits to a workforce made up of primarily of people who earn lower-incomes and people of color.

Goal 15:

Improve the systems for recovering recyclables, food scraps and yard debris to make them resilient to changing markets and evolving community needs.

15.3 Develop public-private partnerships to expand local markets for priority recyclable materials, with an emphasis on minority owned and other business owners from historically marginalized groups.

15.8 Advocate for statewide policies or implement regional policies that create a preference, incentive or requirement for use of recycling end-markets in Oregon and the Northwest.

→ Contracts with PaintCare and Miller Paint represent significant public-private partnerships that ensure paint discarded in Oregon is recycled in Oregon, and is sold within the region through local businesses.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION 21-5190 FOR THE PURPOSE OF AMENDING FY 2021-22 BUDGET AND APPROPRIATIONS SCHEDULE TO PROVIDE FOR CHANGES IN OPERATIONS

Date: July 12, 2021

Prepared by:
Jessica Eden, Budget Coordinator

Department: Finance and Regulatory Services

Presented by:
Cinnamon Williams, Financial Planning Director
Marta McGuire, Waste Prevention and
Environmental Services Deputy Director
John Mayer, Community Services & Education
Program Director

Meeting date: July 29, 2021

Length: 30 minutes

ISSUE STATEMENT

This resolution will authorize changes in appropriations and FTE in the FY 2021-22.

ACTION REQUESTED

Council adoption of Resolution 21-5190.

IDENTIFIED POLICY OUTCOMES

Council approval will authorize changes in appropriations and FTE requested by departments for FY 2021-22.

POLICY QUESTION

Council should consider whether the changes in appropriations and FTE have been justified, that adequate funds exist for identified needs and that proposed changes appear appropriate.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

Adoption of the Resolution will provide sufficient appropriations and FTE to accommodate the changes in operations outlined by departments.

Disapproval of the Resolution will require departments to reevaluate their proposed changes to operational plans due to the denied requests for changes.

STAFF RECOMMENDATIONS

The Chief Operating Officer recommends adoption of Resolution 21-5190.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

Relationship to Metro's Core Mission:

Waste Prevention and Environmental Services

A central goal area in the Regional Waste Plan is focused on shared prosperity that includes actions that direct the garbage and recycling industry to build a more diverse and equitable workforce by paying a living wage and offering benefits, reducing the use of temporary and contracted labor, and

recruiting and retaining staff of color. MetroPaint also presents numerous opportunities to advance Regional Waste Plan goals through facility operations, workforce development, safety, environmental and human health initiatives, public-private partnerships, and supporting local recycling infrastructure (see Attachments). Further, MetroPaint production is aligned with approaches to extended producer responsibility that were recently passed by the Oregon Legislature in Senate Bill 582.

In late 2020, staff developed a 5-year strategic plan guided by the 2030 Regional Waste Plan that addresses program needs, advances racial equity goals and expands community resources. The amendment under consideration provides funding to positively impact workforce equity at the program level and workforce equity priorities identified in the plan. Contracted, variable hour, and regular status staff were considered key stakeholders during the strategic planning and amendment development process and have been actively engaged since July 2020. In June 2021, the Regional Waste Advisory Committee reviewed the strategic plan and staffing proposal and expressed strong support for the proposed amendment.

Visitor Venues

This is a technical amendment and does not change operations. This action does not change, but continues to support Metro's Core Mission.

Council Addition

This action does not change, but continues to support Metro's Core Mission.

Relationship to Metro's racial equity goals:

Waste Prevention and Environmental Services

Workforce studies indicate that people working on the front lines of the solid waste industry are more likely to be people of color, who have been burdened with both low paying, unsafe jobs and negative environmental and health impacts. MetroPaint has historically been staffed primarily by men of color in contracted positions with many individuals working full time without health benefits. The proposed amendment provides funding to support:

- Living wage jobs (\$24.56/hour)
- Health benefits, vacation, medical and family leave, and job protections

Visitor Venues

This action does not impact Metro's progress on racial equity goals.

Council Addition

This action does not impact Metro's progress on racial equity goals.

Relationship to Metro's climate action goals:

Waste Prevention and Environmental Services

MetroPaint helps advance climate action goals through the collection and recycling of the region's discarded paint. Life cycle assessments indicate the use of recycled paint can achieve an energy reduction of up to 90% over new paint. For every gallon of recycled paint used, up to 115 lbs CO₂

are eliminated; since 2010, MetroPaint has distributed 1.8 million gallons of recycled paint, which equates to 210 million pounds of CO₂ reduced or the removal of 2,072 cars from the road each year for a decade. In addition to funding the facility's capacity to produce more recycled paint, the proposed amendment also adds capacity to process more discarded paint onsite from Paint Care, which reduces the need to ship excess paint out of state for processing at high financial and environmental cost.

MERC

This action does not impact Metro's progress on climate action goals.

Council Addition

This action does not impact Metro's progress on climate action goals.

Known Opposition: None known.

Legal Antecedents: ORS 294.463(1) provides for transfers of appropriations within a fund, including transfers from contingency that do not exceed 15 percent of a fund's appropriation, if such transfers are authorized by official resolution or ordinance of the governing body. ORS 294.463(3) provides for transfers of appropriations or of appropriations and a like amount of budget resources between funds of the municipal corporation when authorized by an official resolution or ordinance of the governing body stating the need for the transfer. ORS 294.338(2) allows an increase in appropriations due to specific purpose grants or gifts when authorized by an official resolution or ordinance of the governing body stating the need for the recognition. ORS 294.338(3) allows an increase in appropriations when a request for services, the cost of which is supplied by another entity, necessitates a greater expenditure of public money for any specific purpose in order to provide the services when authorized by an official resolution or ordinance of the governing body stating the need for the recognition. Metro code chapter 2.02.040 requires the Metro Council to approve the addition of any position to the budget. Metro's adopted financial policies require any project exceeding \$100,000 or an existing CIP project increasing greater than 20 percent to receive Council approval.

Anticipated Effects: This action provides for changes in operations as described above, and adds FTE.

Budget Impacts: This action changes total appropriations by \$2,237,141 million, adds 14.00 FTE. It has the following impacts on the FY 2021-22 budget:

- **Solid Waste Fund:** Reduces contingency by \$429,719 and realigns \$751,000 is existing materials and services budget to transition 12.00 FTE contracted paint technicians to regular status and add 1.00 additional FTE, totaling 13.00 additional FTE for a total cost of \$1,180,719.

The existing budget includes \$751,000 in funding for contracted staff which will be used to partially fund this request. The department is asking for \$430,000 in funding from contingency. WPES will reprioritize spending on other projects across to department to help offset the additional cost of this request. With additional capacity, staff will also be advancing short term modernization improvements to improve processing efficiencies.

The program has historically been partially subsidized by the Regional System Fee (RSF) and staff recommend a continued investment of 25-35% RSF subsidy annually, which represents those program costs not recovered through program revenue. Staff updated FY 21-22 revenue projections based on the five year average preceding FY 20-21 and the pandemic (see Attachments, Exhibit C) and the \$3M revenue projection is within \$170,000 of the proposed 35% RSF subsidy. Staff anticipate with stable staffing and lifted COVID-19 restrictions the team will be able to meet the 35% goal in FY 21-22 and 22-23, and likely use less than the 35% maximum target. Staff plan to update revenue projections after FY 22-23 which ensures the forecast is built on data from a full year with a fully staffed facility.

Additional funding needs will be identified in the next budget cycle to advance work on longer term design and planning for recycling facility upgrades and modernization. This will require an update to the Capital Improvements Plan.

- **Solid Waste Fund:** Technical adjustment to move the entire Metro Paint program to a single subfund. There are no changes in appropriation related to this amendment.
- **Visitor Development Fund:** Reduces contingency by \$947,500 to offset anticipated reductions in other revenue.
- **General Fund:** Reduces contingency by \$109,422 to fund 1.0 additional FTE in Council Offices.

BACKGROUND

The following amendments have been proposed for Council review and action:

Solid Waste Fund

The MetroPaint program responsibly manages leftover latex paint in the state of Oregon to promote human and environmental health and provide a valuable resource for residents of the region. The program has been recycling latex paint locally since the early 1990s, and since 2010 has been the paint recycler state-wide through a contract with Oregon Paint Care. MetroPaint keeps liquids out of the landfill by collecting leftover latex paint and producing a high quality recycled paint for sale and donation. Over the last 21 years, the program has processed over 6 million liquid gallons of discarded latex paint (from 14.4 million gallon cans) and packaged 3.1 million gallons for retail.

The facility is operated by 25 staff members who are a combination of Metro employees and contracted employees from DPI Staffing (DPI), a Qualified Rehabilitation Facility (QRF). This partnership with DPI was established with the intention of creating job opportunities for individuals facing systemic barriers to employment.

With guidance from the 2030 Regional Waste Plan, to invest in and expand the many community benefits associated with MetroPaint, and center workforce equity, staff engaged in a strategic planning process to develop a 5-year work plan guided by the 2030 Regional Waste Plan. The plan addresses program needs, invests in staff well-being, and expands community resources through six key priorities:

Priority A: Ensure staff of all identities are treated with respect, are provided comprehensive training, receive fair compensation and benefits, know their work is valued, and see clear opportunities for career advancement.

Priority B: Increase collaboration, partnership, and paint donation with local organizations, with a focus on organizations serving communities of color and low income communities.

Priority C: Ensure MetroPaint is an accessible and desirable product for diverse local businesses, governments, non-profits and community members.

Priority D: Manage program funds using best practices to maintain financial stability and allow all program priorities to be met.

Priority E: Increase the safety and efficiency of paint recycling operations while minimizing harmful impacts on workers and the environment.

Priority F: Increase MetroPaint product quality and consistency.

In working toward these priorities, the program provides numerous environmental, economic, and workforce equity benefits to Metro and to the region, which include:

- Keeps 400,000 gallons of waste out of the landfill annually
- Limits extraction of the raw materials, GHG emissions, and air, water, and soil pollution associated with producing new paint
- Provides high quality, low-cost paint to community members, small businesses, and non-profits
- Provides living wage jobs (\$24.56/hour) for people experiencing systemic barriers to employment
- Supports graffiti abatement, community cleanup, and affordable housing through paint donations
- Supports public-private partnerships with Miller Paint distribution and Oregon Paint Care
- Creates career pathways and workforce transition opportunities

In order to realize the benefits above and continue operating at current capacity, as well as center workforce equity, sound financial management, and community relationships (priorities B, C, and D), WPES is proposing the staffing changes outlined in the budget amendment.

The twelve full-time, contracted positions perform a range of essential duties: opening and sorting all incoming paint, color mixing and preparing new batches, customer service and filling orders, database management, and shop maintenance, among others. The 1.0 facility manager position is currently being filled by a work out of class supervisor; for years the facility was supervised by one staff member with 24 direct reports. This manager position was originally proposed in the FY 20-21 budget, but was cut as a result of the pandemic.

Staff engagements during the strategic planning process and a facility lean analysis in 2021 made clear that the current staffing model has significant negative impacts on operations, sales and partnerships, and staff well-being. Over the last fifteen years, 63 percent of contracted staff (90 out of 144) left employment before reaching one year with the program. The transition to Metro FTE and the addition of supervisory support advances significant workforce equity goals and increases capacity, which ensures the program is able to fulfill the numerous environmental and economic benefits associated with recycling paint.

MERC Venues Allocation Reduction:

Travel Portland provided updated Visitor Development Fund allocations to Metro. This resulted in reduced allocations and to be financially prudent, should be reflected correctly in the budget. The current amendment reduces contingency in the Visitor Development Fund by \$967,500 to offset the reductions from partners.

Council Add

Council is requesting the support of a 1.0 FTE Administrative Assistant IV. The annualized cost of the position is \$120,000. This action requests additional appropriation for partial year costs of \$109,422 to be funded by the General Fund Operating Contingency.

ATTACHMENTS

- Resolution 21-5190
- Exhibit A – Schedule of Appropriations
- Exhibit B – Schedule of FTE
- Exhibit C- MetroPaint FY 2021-22 Revenue Forecast
- Exhibit D- Regional Waste Plan Policy Connections Table

Agenda Item No. 4.4

Resolution No. 21-5196, For the Purpose of Authorizing the Execution of an Intergovernmental Agreement with the City of Gresham for Local Share Funding Pursuant to the 2019 Parks and Nature Bond Measure

Resolutions

Metro Council Meeting
Thursday, July 29, 2021

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE)	RESOLUTION NO. 21-5196
EXECUTION OF AN INTERGOVERNMENTAL)	
AGREEMENT WITH THE CITY OF GRESHAM FOR)	Introduced by Chief Operating Officer
LOCAL SHARE FUNDING PURSUANT TO THE)	Marissa Madrigal with the Concurrence of
2019 PARKS AND NATURE BOND MEASURE)	Metro Council President Lynn Peterson

WHEREAS, on June 6, 2019, the Metro Council referred to the Metro area voters a ballot measure authorizing the issuance of general obligation bonds in an amount not to exceed \$475,000,000.00 for the purpose of funding natural area and water quality protection and to connect people to nature close to home (the “Bond Measure”); and

WHEREAS, at the general election held on November 5, 2019, the Metro Area voters approved the Bond Measure, thereby creating a program under which a portion of the total Bond Measure proceeds would be distributed by Metro to local government park providers to protect land, restore habitat, and build and care for parks that connect people to nature in local communities (the “Local Share Program”); and

WHEREAS, the City of Gresham has identified its first project eligible for Local Share Program funding, and Metro staff has determined that the project meets the requirements described in the Bond Measure, including community engagement, racial equity, and climate resilience criteria; and

WHEREAS, Metro staff has negotiated terms and conditions under which Local Share Program funding will be provided to the City of Gresham for the identified project, which terms and conditions are set forth in the proposed intergovernmental agreement attached hereto as Exhibit A; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Metro Chief Operating Officer to execute an intergovernmental agreement with the City of Gresham in a form substantially similar to the attached Exhibit A.

ADOPTED by the Metro Council this 29th day of July 2021.

Christine Lewis, Acting Council President

Approved as to Form:

Carrie MacLaren, Metro Attorney

Exhibit A to Resolution No. 21-5196



Metro

600 NE Grand Ave.
Portland, OR 97232
(503) 797-1700

Intergovernmental Agreement

2019 Parks and Nature Bond Measure Local Share Program

**Metro Contract No.
XXXX**

INTERGOVERNMENTAL AGREEMENT Metro – City of Gresham

This Intergovernmental Agreement (this "**Agreement**") dated effective as of the last day of signature set forth below (the "**Effective Date**"), is entered into under the provisions of ORS chapter 190 by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter ("**Metro**"), and City of Gresham ("**Park Provider**") (each a "**Party**" or together the "**Parties**").

RECITALS

A. The electors of Metro approved Ballot Measure 26-203 on November 5, 2019, authorizing Metro to issue \$475 million in general obligation bonds to preserve natural areas, clean water, and protect fish and wildlife (the "**Measure**").

B. The Measure provided that \$92 million of the total bond proceeds ("**Local Share Bond Funds**") be distributed by Metro to local government park providers to protect land, restore habitat, and build and care for parks that connect people to nature in local communities.

C. After passage of the Measure, Metro developed the Local Share Handbook (the "**Handbook**") which sets forth the requirements that each eligible local government park provider must follow in order to receive its respective proportionate share of Local Share Bond Funds (the "**Program Requirements**"). The Program Requirements ensure that the community engagement, racial equity, climate resilience criteria set are consistently applied and that Local Share Bond Funds are distributed to local government park providers in accordance with the Measure guidelines.

D. Park Provider is a local government jurisdiction designated to receive \$5.4 million of the Local Share Bond Funds ("**Allocated Bond Funds**").

E. In accordance with the Handbook, Park Provider has completed the process required to formally identify capital projects that comply with the Program Requirements and are eligible

Exhibit A to Resolution No. 21-5196

to be paid for with Local Share Bond Funds (the “**Submittal Process**”).

F. The Parties now desire to enter into this Agreement to provide the terms and conditions under which Metro will provide a portion of the Allocated Bond Funds to Park Provider.

AGREEMENT

1. Identified Local Share Projects

1.1 Project List. Park Provider has identified one capital project (a “**Project**”) on which to spend a portion of Park Provider’s Allocated Bond Funds, which Project is more particularly described on the “**Project List**” attached as **Attachment A** to this Agreement. The Project List has been approved by the governing body of Park Provider and the Parties believe that the Project, as described on **Attachment A** and throughout the Submittal Process, meets the Program Requirements set forth in the Handbook and the Measure. If there are any changes to the Applicable Program Requirements set forth on **Attachment A** or the Project Requirements set forth on **Attachment A** for any Project (e.g., an increase or decrease in the Project Cost or change in the scope of work), then Park Provider must submit such changes to the Project through the Submittal Process, which process may be expedited or abbreviated as deemed reasonable by Metro.

1.2 Additional Projects. The Parties expect Park Provider will be identifying new projects to add to the Project List after the Effective Date of this Agreement. Additional projects may be added to the Project List if approved by the Park Provider’s governing body and if deemed by Metro to be in accordance with the Handbook and the Submittal Process, both of which may be amended by Metro in the future. Until such time as the Parties have entered into an amendment to add to the Project List in accordance with **Section 16** below, Metro will have no obligation to fund any additional projects identified after the Effective Date of this Agreement.

1.3 Removal of a Project. Park Provider may remove a Project from the Project List by providing written notice to Metro upon Park Provider’s determination that any such Project has become degraded, cost prohibitive, or otherwise unfeasible, is no longer in the best interest of the Park Provider or that a Project can be accomplished for less funds than estimated or becomes funded through other sources, thereby making such Allocated Bond Funds available for use in an existing Project or a new project approved in accordance with **Section 1.2** above.

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2. Limitations of Funding

2.1 Payment and Use of Allocated Bond Funds. Subject to the terms and conditions of this Agreement, Metro will provide the Allocated Bond Funds to Park Provider up to the Project Cost on a Project-by-Project basis. Metro will have no obligations under this Agreement other than for the payment of Allocated Bond Funds on a Project-by-Project basis pursuant to the Payment Request Requirements described in Attachment B to this Agreement. Park Provider will use the Allocated Bond Funds it receives only for the purposes specified in this Agreement.

2.2 Capital Costs. The Local Share Bond Funds are from tax-exempt general obligation bond proceeds. As such, the Local Share Bond Funds may only be used to pay for expenditures that constitute qualified capital costs, consistent with the Oregon Constitution and federal tax law (“**Capital Costs**”). Capital Costs are costs that are capitalizable under generally accepted accounting principles (GAAP) and under general federal income tax principles and may include the costs of real property acquisition and/or capital construction and improvements to real property. As required by law and in accordance with **Section 13** of this Agreement, all Allocated Bond Funds disbursed to Park Provider may only be spent on Capital Costs. Park Provider must, based on its own financial and accounting policies, ensure that Allocated Bond Funds received are only used to pay for Capital Costs. Park Provider may not use Allocated Bond Funds to pay for or reimburse Park Provider for any Capital Costs incurred prior to April 30, 2020.

2.3 Capped Project Costs. Park Provider may not use Allocated Bond Funds for any administrative costs (even though these are Capital Costs), including Staff Costs, Overhead and Indirect Costs (each defined below) related to any Project in excess of ten percent (10%) of the total Project Cost (as defined on Attachment A), as further described on Attachment B (collectively referred to as “**Capped Project Costs**”). The 10% cap will be applied on a Project-by-Project basis and each Park Provider will be responsible for tracking and accounting for its costs to ensure compliance with the 10% cap. For purposes of clarity related to this cap, the term “Project Cost” refers to the amount of Allocated Bond Funds approved for each Project as shown on Attachment A and does not necessarily reflect the total costs of a Project which may be funded by other sources. By way of example, if the total cost of a Project is \$100,000 but the Project Cost is \$50,000, the amount of eligible Capped Project Costs for that Project is \$5,000. “**Staff Costs**” means Capital Costs that are the actual costs of the Park Provider for all staff time both directly and indirectly related to each Project. “**Overhead and Indirect Costs**”

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means Capital Costs that are the actual costs paid by the Park Provider whose benefit is not readily identifiable for a specific project but is necessary for the execution of each Project.

3. Real Property Acquisitions Requirements

3.1 General. In order to be eligible for funding under this Agreement, Projects that involve the acquisition of real property interests in land or improvements (“**Acquisition Projects**”) must comply with the following requirements: (A) title to the property must be held in the name of Park Provider; (B) the property must be acquired from willing sellers and Park Provider may not exercise any powers of eminent domain; (C) Park Provider must obtain an MAI appraisal (subject to no extraordinary assumptions) of the property in compliance with USPAP standards (and federal and ODOT right-of-way acquisition standards, if necessary), to ensure price paid does not substantially exceed the appraised fair market value; and (D) Park Provider must perform commercially reasonable due diligence, including, but not limited to, title reviews and environmental site assessments, to confirm there are no encumbrances, conditions or other issues that would materially restrict Park Provider’s use of the property for one or more of the following uses: (1) to protect water quality, fish wildlife habitat, natural areas, (2) to connect people to parks and nature, (3) as a local or regional trail, or (4) as an environmental educational facility (each, a “**Bond Required Use**”).

3.2 Acquisition Project Payment Requests. Park Provider will request payment of funds for all Acquisition Projects in accordance with the procedures set forth in the Payment Request Requirements attached as **Attachment B** to this Agreement.

3.3 Post-Acquisition Limitations on Sale and Use. All real property and improvements acquired by Park Provider with Allocated Bond Funds must be maintained for one or more of the Bond Required Uses. Park Provider may not sell or otherwise authorize the use of such property other than as a Bond Required Use unless Park Provider complies with all of the Post-Acquisition Restrictions set forth on **Attachment C**.

4. Capital Construction Projects: Requirements

4.1 General. All Projects that are not Acquisition Projects, but involve (A) construction of buildings and other improvements, (B) habitat restoration or habitat connectivity enhancements, (C) maintaining or developing public access facilities at public parks and natural areas, (D) design and construction of local or regional trails, or (E) enhanced or new

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learning/environmental educational facilities by Park Provider using Allocated Bond Funds are referred to in this Agreement as “**Construction Projects**”. All Construction Projects must be an improvement to non-federal, publicly owned real property.

4.2 Construction Project Payment Requests. Park Provider will request payment of funds for all Construction Projects in accordance with the procedures set forth in the Payment Request Requirements attached as **Attachment B** to this Agreement.

4.3 Equity In Contracting, Workforce Diversity, Construction Pathway Careers Requirements. For all Construction Projects, Park Provider will comply with the Equity in Contracting, Workforce Diversity, Construction Career Pathways Requirements set forth by Metro.

4.4 Post-Construction Limitations on Sale and Use. All Construction Projects will be constructed and otherwise maintained for one or more of the Bond Required Uses. Park Provider may not sell or otherwise authorize use of such buildings or improvements pursuant to this Agreement in a manner inconsistent with a Bond Required Use, unless it complies with all of the Post-Construction Restrictions set forth on **Attachment C**.

4.5 Notice of Material Changes. Park Provider will notify Metro of any events during construction that materially affect the Construction Project, including, without limitation (1) significant extensions of the Project schedule, (2) increases to the Project budget, (3) any notices of default issued by Park Provider or other Project lenders, or (4) any other changes that impact the quality or nature of the Construction Project from the Project Requirements described on **Attachment A**. If any such material events occur during Project construction, Park Provider will provide Metro with any additional information Metro reasonably requests related to such events.

4.6 Third Party Indemnification. If Park Provider obtains an indemnification agreement from any third-party developer or general contractor for a Project, Park Provider will contractually require such party to indemnify Metro to the same extent as Park Provider

5. Funding Recognition

5.1 Overall Funding Recognition Requirements. At least once during the Term of the Agreement, Park Provider will hold a public meeting with members of Park Provider's governing

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body, at which Park Provider will recognize Park Provider's partnership with Metro to complete Park Provider's Bond Measure-funded projects. Park Provider will provide the Local Share Program Manager with written notice of such public meeting at least four (4) weeks prior to the scheduled event in order to coordinate with and allow for participation by Metro staff and elected officials.

5.2 Individual Project Funding Recognition Requirements.

A. Park Provider will (1) coordinate with Metro in selecting the date and time for any event recognizing, celebrating or commemorating any Project ground-breaking, completion, ribbon cutting or opening, and provide Metro an opportunity to participate, (2) ensure that the Measure is officially recognized as a funding source at any such event, and (3) provide a speaking opportunity for the Metro elected official representing the district in which the Project is located, if such opportunities are provided to Park Provider or other public officials.

B. Upon execution of this Agreement, Park Provider will publicly recognize Metro and the Measure in any publications, media presentations, or other presentations relating to or describing Projects receiving Allocated Bond Funds. Such project recognition will be included on on-site documentation (e.g. signs) and in any published final products and visual presentations, web site information, collateral materials, newsletters, and news releases.

C. At or before completion of any Project, signage will be installed at the Project site in prominent and highly visible locations near each primary public access point or viewing access area (but not located in a manner that would have a detrimental impact on any natural area viewshed) to acknowledge Metro's funding of the Project and any other partners that have provided funding. Signage will either (1) be a standard, free-standing sign provided by Metro, which Metro will make available to Park Provider upon request at no cost to Park Provider, or (2) include Metro's logo and script in other signage, with Metro's logo and script of a size in comparable proportion to the relative amount of funding provided by the Measure for the Project being recognized, in relation to other agencies recognized on such signage. In no event, however, must Metro's logo and script be larger than the logo and script of Park Provider. Metro will make its graphics available upon request.

D. When the Project is opened to the public, Park Provider will plan and hold at least one community/media event to publicize the Project and its relationship to the Measure. Park Provider will provide the Local Share Program Manager with written notice of such event at least four (4)

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weeks prior to the scheduled event in order to coordinate with and allow for participation by Metro staff and elected officials.

6. Reporting Requirements

6.1 Regular Reporting Requirements. Distribution of Allocated Bond Funds will be conditioned on Park Provider's ongoing demonstration of progress on each Project as presented through regular staff-to-staff conferences, quarterly updates and an annual progress report as described below:

A. Staff-to-Staff Conferences. Park Provider and Metro staff will confer as needed and at least every 6 months by telephone, video conference, in-person meetings, or site visits. Topics will include Project progress, support needs, challenges or issues, and opportunities to share progress with the community and the Metro Council.

B. Quarterly Updates. By September 30, December 31 and March 31 of each fiscal year during the Term, Park Provider will provide brief updates in writing describing Project status (scope, schedule budget) and identifying any issues that may delay or interfere with Project completion.

C. Annual Progress Report. By July 31 of each year of the Term, or until Park Provider has fully completed the Project whichever is first, Park Provider will provide a report to the Local Share Project Manager summarizing its progress, identifying successes and challenges of each Project and the ways it has met the principles and goals outlined in the Local Share Requirements (the "**Annual Progress Report**"). Park Provider will prepare the Annual Progress Report using a template provided by Metro, which may be revised at any time at Metro's sole discretion.

6.2 Annual Financial Report. Distribution of Allocated Bond Funds will be conditioned on Park Provider's delivering an Annual Financial Report as described below. On or before July 31 of each year during the Term, beginning in the year Metro first provides a disbursement of any portion of the Allocated Bond Funds to Park Provider for a Project, Park Provider will provide a report to Metro containing (A) an itemized list of Park Provider's expenditure of Allocated Bond Funds through the end of the applicable fiscal year and the prior fiscal year, (B) a certification from Park Provider to Metro that the Allocated Bond Funds were used only to pay for Capital Costs and the Capped Project Costs do not exceed the 10% cap described in **Section 2.3**, and (C) such other financial items related to this Agreement as may be reasonably requested by Metro (collectively, the "**Annual Financial Report**"). Park Provider will prepare

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the Annual Financial Report using a template provided by Metro, which may be revised at any time at Metro's sole discretion.

6.3 Annual Outcomes and Impacts Report. Distribution of Allocated Bond Funds will be conditioned on Park Provider providing an annual report on or before July 31 of each fiscal year during the Term (A) describing each Project's compliance with the Program Requirements, (B) tracking outcomes that have been emphasized in the Program Requirements, and (C) demonstrating the impact of investments from the Allocated Bond Funds (collectively, the "**Annual Outcomes and Impacts Report**"). Park Provider will prepare the Annual Outcomes Report using a template provided by Metro, which may be revised at any time at Metro's sole discretion.

7. Project Records, Audits and Inspections.

7.1 Project Records. Park Provider will maintain comprehensive records and documentation relating to any Project for which it seeks payment from Metro pursuant to this Agreement, including, without limitation, the establishment and maintenance of books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of any nature that Park Provider incurred or anticipated to be incurred for the performance of this Agreement (collectively, the "**Project Records**") in sufficient detail to permit Metro or its auditor to verify how the Allocated Bond Funds were expended. Project Records will also include all records, reports, data, documents, systems, and concepts, whether in the form of writings, figures, graphs, or models that are prepared or developed in connection with any Project and any other records necessary to clearly document:

A. Park Provider's performance of this Agreement, including but not limited to Park Provider's compliance with this Agreement, and compliance with the Equity in Contracting, Workforce Diversity, Construction Career Pathways Requirements;

B. Any claims arising from or relating to the performance of Park Provider under this Agreement or any public contract entered into by Park Provider that is related to this Agreement;

C. Any cost and pricing data relating to this Agreement;

D. Payments made to all suppliers, contractors and subcontractors engaged in any work for Park Provider related to this Agreement: and

E. Any financial match or other contribution of funds from any other source relating to any Project.

7.2 Maintenance of Project Records. Park Provider will maintain all fiscal Project

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Records in accordance with generally accepted accounting principles. Park Provider will maintain Project Records for the longer period of either (A) three (3) years after the final maturity of the bonds issued for the Local Share Bond Funds, or (B) until the conclusion of any audit, controversy, or litigation that arises out of or is related to this Agreement and that commences within three (3) years from the date of termination of Metro's obligation to provide funds pursuant to this Agreement.

7.3 Availability of Project Records. After Metro provides Park Provider with at least seven (7) days' prior notice of its intent to examine, audit, inspect and copy Project Records, Park Provider will make Project Records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor ("**Metro Representatives**"). Park Provider will make Project Records available within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, Park Provider agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other reasonable expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. Such costs paid by Park Provider to Metro for inspection, auditing, examining and copying such records will not be recoverable costs in any legal proceeding between Park Provider and Metro. Park Provider authorizes and permits Metro Representatives to inspect, examine, copy and audit the books and Project Records of Park Provider related to the Project, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any requirements of this Agreement. Park Provider agrees to disclose Project Records requested by Metro and agrees to the admission of such records as evidence in any proceeding between Metro and Park Provider, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process. Metro will keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of **Section 7.5** below.

7.4 Costs of Audit. Park Provider agrees that if Project Records disclose that Metro is owed any sum of money other than a nominal sum or establish that any portion of any claim made by Park Provider against Metro is not warranted, Park Provider will pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due to Park Provider from Metro.

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7.5 Public Records Law and Public Meetings Law. All Project Records will be public records subject to Oregon Public Records Law (ORS 192.311 to 192.478). Nothing in this **Section** will be construed as (A) limiting Park Provider's ability to consider real property transactions in executive session pursuant to ORS 192.660(1)(e) or (B) requiring disclosure of records that are otherwise exempt from disclosure pursuant to the Public Records Law (ORS 192.311 to 192.478) or Public Meetings Law (ORS 192.610 to 192.690).

8. Project Failure, Misuse of Allocated Bond Funds and Repayment.

Park Provider will use the Allocated Bond Funds strictly in accordance with the terms set forth in this Agreement. If an Acquisition Project fails to close within 90 days after Metro disburses the requested funds, then, unless otherwise directed in writing by Metro, Park Provider will promptly repay to Metro the amount of the Allocated Bond Funds disbursed for the Project, including any interest earned thereon. If a Project is a Construction Project and it fails to commence within 60 days after Metro disburses funds, then, unless otherwise directed in writing by Metro, Park Provider will promptly repay to Metro the amount of the Allocated Bond Funds disbursed for the Project, including any interest earned thereon. If a Project is no longer used for a Bond Required Use or in compliance with the terms set forth in this Agreement, Park Provider will promptly repay the amount of Allocated Bond Funds disbursed for the Project. Park Provider acknowledges and expressly affirms its repayment obligations set forth in this **Section** even if such failure is through no fault of Park Provider.

9. Term; Termination

9.1 Term. It is the intent of the Parties for Park Provider to have completed the Projects, and for all Allocated Bond Funds to have been spent by Park Provider prior to July 1, 2031 (the "**Termination Date**"). Metro's obligation to provide funds pursuant to this Agreement will terminate on the Termination Date. The provisions of Sections 3.3, 4.4, 5, 7, 8, 11 and 13 will survive the completion of any Project. Notwithstanding the foregoing, all terms of this Agreement will terminate on June 1, 2040.

9.2 Termination for Cause.

A. Metro may terminate this Agreement, in full or in part, at any time during the Term of this Agreement if Metro reasonably determines that Park Provider has failed to comply with any provision of this Agreement and is therefore in default. Upon such termination, Metro may

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immediately withhold or suspend future distributions of Allocated Bond Funds in addition to any other rights and remedies set forth herein or available at law, or in equity.

B. Metro will promptly document such default and notify Park Provider in writing of Metro's determination as required in **Section 9.2(C)** below. Notwithstanding any termination for cause, Park Provider will be entitled to receive payments for any work completed or for which Park Provider was contractually obligated on the date that Metro provided written notice of default, except that Metro will not be obligated to make any payment other than for work specifically provided for in this Agreement.

C. Prior to termination for cause, Metro will provide Park Provider with written notice of default that describes the reason(s) that Metro has concluded that Park Provider is in default and includes a description of the steps that Park Provider must take to cure the default. Park Provider will have 90 days from the date of the notice of default to cure the default, or a longer period that Metro may specify in its written notice (the "**Cure Period**"). In the event Park Provider does not cure the default within the Cure Period, Metro may terminate all or any part of this Agreement. Metro will notify Park Provider in writing of the reasons for the termination and the effective date of the termination, which will not be earlier than 90 days from the date of the notice of default. Park Provider will be entitled to receive payments for any work completed, including any contractual obligations entered, after the date of the notice of default and before the date that Metro provided written notice of termination, provided that such work or contractual obligations were undertaken by Park Provider in a good faith effort to comply with one of the steps to cure the default described by Metro in the notice of default, except that Metro will not be obligated to make any payment other than for work specifically provided for in this Agreement.

D. Park Provider will be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default.

E. If, after notice of termination, Metro agrees or a court finds that Park Provider was not in default or that the default was excusable, including but not limited to, a labor strike, fire, flood, epidemics, quarantine restrictions, freight embargoes, or other event that was not the fault of, or was beyond the reasonable control of Park Provider, Metro will allow Park Provider to continue work, or both Parties may treat the termination as a joint termination for convenience whereby the rights of Park Provider will be as provided in **Section 9.3** below.

9.3 Joint Termination for Convenience. Metro and Park Provider may jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision will be effective only upon a mutual, written termination

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agreement signed by both Metro and Park Provider. Within 30 days after termination pursuant to this provision, Park Provider will submit an itemized invoice for all unreimbursed Project work completed before the effective date of termination, provided that Metro will not be obligated to make any payment other than for work specifically provided for in this Agreement. Metro will not be liable for any costs invoiced later than 30 days after termination; provided, however, that Metro may reimburse additional costs, at Metro's sole discretion, if Metro reasonably determines that the delay was due to factors beyond Park Provider's control.

10. Public Contracting Provisions; Compliance with Law

10.1 Public Contracting Provisions. Park Provider will be solely responsible for ensuring that all Projects receiving Allocated Bond Funds comply with prevailing wage rate law, as applicable. All applicable provisions of ORS chapters 187, 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement. Specifically, it is a condition of this Agreement that Park Provider and all employers working under this Agreement are subject employers that will comply with ORS 656.017.

10.2 Compliance with Law. Park Provider will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to its investment and expenditure of the Allocated Bond Funds. No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement may be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, or national origin, 42 U.S.C. §2000d (Title VI), or on the grounds of religion, sex, ancestry, age, or disability as that term is defined in the Americans with Disabilities Act. For purposes of this **Section**, "program or activity" is defined as any function conducted by an identifiable administrative unit of Park Provider receiving funds pursuant to this Agreement.

11. Indemnification; Limitation on Liability

11.1 Indemnification. Subject to the limitations and conditions of the Oregon Constitution and the Oregon Tort Claims Act, Park Provider will indemnify, defend, and hold harmless Metro, its elected officers and employees, from and against any and all liabilities, claims, demands, damages, actions, costs, penalties, losses and expenses (including any attorney's fees in defense of Metro or

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any attorney's fees incurred in enforcing this provision) suffered or incurred as a result of third-party claims arising out of Park Provider's performance of this Agreement or resulting in whole or in part from any act, omission, negligence, fault or violation of law by Park Provider, its officers, employees, agents, and contractors. This indemnity provision does not apply to third-party claims resulting from the negligence or willful misconduct of Metro.

11.2 Limitation on Liability. In no event will either Party be liable to the other for, and each Party releases the other from, any liability for special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement, however caused, whether or not arising from a Party's sole, joint or concurrent negligence.

12. Oregon Law; Forum

This Agreement is to be construed according to the laws of the State of Oregon. Any litigation between Metro and Park Provider arising under this Agreement will occur, if in the state courts, in the Multnomah County Circuit Court, and if in the Federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

13. Oregon Constitution and Tax Exempt Bond Covenants

Park Provider acknowledges that Metro's source of funds for the Local Share Program is from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11 and 11b, of the Oregon Constitution, and that certain interest paid by Metro to bond holders is currently exempt from federal and Oregon personal income taxes. Park Provider covenants and agrees that (A) it will take no actions that would jeopardize Metro's general obligation bond levy as exempt from Oregon's constitutional property tax limitations or the income tax exempt status of the bond interest under IRS rules, and (B) all Allocated Bond Funds disbursed hereunder will be used only to pay for or reimburse costs that are of a type that are properly chargeable to a Capital Cost (or would be so chargeable with a proper election) to comply with the Oregon Constitution and other applicable laws with respect to the permitted expenditure of general obligation bond proceeds. In the event Park Provider breaches these covenants, Park Provider will undertake whatever remedies are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof, including, without limitation, reimbursement of Metro for any Projects funded under this Agreement.

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14. Notices

Any notices permitted or required by this Agreement, other than payment requests required pursuant to **Attachment B**, must be in writing to the addresses set forth below and will be deemed given upon (A) personal service, (B) deposit in the United States Mail, postage prepaid, (C) deposit with a nationally recognized overnight courier service or (D) by email delivery, if sent on a business day between the hours of 7:00am and 6:00pm Pacific Time; provided within one (1) business day after sending such notice by email delivery, a follow-up copy of such notice will also be sent pursuant to either clauses (A), (B) or (C) above. All such notices will be deemed received (1) upon personal service, (2) three (3) days after deposit in the United States Mail, postage prepaid, (3) one (1) day after deposit with a nationally recognized overnight courier service or (4) if by email delivery (a) on the date of delivery, provided that the email is sent on a business day during the hours stated above or (b) on the next business day if the email is sent outside of the hours stated above).

Park Provider's Designated Representative(s):

Kathy Majidi and Steve Fancher
Department of Environmental Services
1333 NW Eastman Parkway
Gresham, OR 97030
Phone: 503-618-2583
Email: kathy.majidi@greshamoregon.gov, steve.fancher@greshamoregon.gov

Metro's Designated Representatives:

Attn: Local Share Program Manager
Metro Regional Center
600 NE Grand Avenue
Portland, OR 97232
Phone: 503-797-1583
Email: alex.gilbertson@oregonmetro.gov

with copy to:

Office of Metro Attorney
600 NE Grand Avenue
Portland, OR 97232
Phone: 503-797-1526
Email: michelle.bellia@oregonmetro.gov

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manners set forth above will be effective when received by the Party for whom it is intended. Telephone numbers are for information only.

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15. Assignment; Entire Agreement; Merger; Waiver

This Agreement is binding on each Party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by Park Provider without Metro's written consent, which may be withheld in Metro's sole discretion. This Agreement and attached attachments, exhibits and schedules constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The failure to enforce any provision of this Agreement does not constitute a waiver by either Party of that or any other provision. Any waiver of any breach is not a waiver of any succeeding breach or a waiver of any provision.

16. Amendment

The terms of this Agreement cannot be waived, altered, modified, supplemented or amended except by written amendment signed by both Parties and all necessary approvals have been obtained.

17. No Third Party Beneficiaries

Park Provider and Metro are the only parties to this Agreement and are the only parties entitled to enforce its terms and the sole beneficiaries hereof. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons any greater than the right and benefits enjoyed by the general public.

18. Relationship of Parties

Nothing in this Agreement nor any acts of the Parties hereunder will be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture or any association between any Park Provider and Metro. Furthermore, Metro will not be considered the owner, contractor or the developer of any Project funded with Allocated Bond Funds. This Agreement is not intended to be a contract that provides for the development or construction of any Project, either directly with a construction contractor or through a developer. Metro specifically waives any provision contained in this Agreement, to the extent it is construed to provide Metro the right to manage, direct or control the developer, general contractor or the subcontractors. The rights and duties of any developer, the general

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contractor and the subcontractors are the subject of a separate contract or contracts with Park Provider to which Metro is not a party. Park Provider waives and releases Metro from any claims and actions related to the construction, operation, repair, or maintenance of any Project.

19. Other Agreements

This Agreement does not affect or alter any other agreements between Metro and Park Provider.

20. Further Assurances

Each of the Parties will execute and deliver any and all additional papers, documents, and other assurances, and will do any and all acts and things reasonably necessary in connection with the performance of their obligations under this Agreement and to carry out the intent and agreements of the Parties.

21. No Attorney Fees

Except as otherwise set forth in **Section 11.1** of this Agreement, in the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each Party will be responsible for its own attorneys' fees and expenses.

22. Debt Limitation

This Agreement is expressly subject to the limitations of the Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

23. Severability

If any term or provision of this Agreement is held invalid or unenforceable by a court order or judgment, the validity of the remaining provisions are not affected.

24. Counterparts; Electronic Execution

This Agreement may be executed in counterparts, each of which, when taken together, constitute fully executed originals. Electronic (including e-mail or other digital signatures) operate as original signatures with respect to this Agreement

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25. Authority

Park Provider and Metro each warrant and represent that each has the full power and authority to enter into and perform this Agreement in accordance with its terms; that all requisite action has been taken by Park Provider and Metro to authorize the execution of this Agreement; and that the person signing this Agreement has full power and authority to sign for Park Provider and Metro, respectively. The Parties, by the signatures below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

ATTACHMENTS:

Attachment A:	Projects List
Attachment B:	Payment Request Requirements
Attachment C:	Post-Acquisition and Post-Construction Restrictions on Sale and Use

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The Parties have executed this Agreement as of the Effective Date.

Metro

Gresham

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM BY:

Carrie MacLaren
Metro Attorney

Date: _____

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ATTACHMENT A Projects List

PROJECT #1

A. LOCAL SHARE PARK PROVIDER NAME: City of Gresham

B. PROJECT DETAILS:

1. **Project Name:** Shaull Property Acquisition
2. **Project Contact Information:** Kathy Majidi and Steve Fancher, City of Gresham
3. **Project Description:** Acquisition of approximately 7.8 acre property at 3535 W Powell Boulevard for preservation of natural resources and addition to Gresham's adjacent SW Community Park site.
4. **Project Location (Address and Attach Map):** 3535 W Powell Boulevard
5. **Acquisition Project OR Construction Project:** Acquisition
6. **Stabilization Plan for Land Acquisitions:** Please refer to Local Share project application submitted by City of Gresham

C. PROJECT MEETS FOLLOWING APPLICABLE PROGRAM REQUIREMENTS:

1. **Local Share Investment Category:**
Natural areas or park land acquisition.
2. **Local Share Criteria:**
Park provider selected one or more specific local share criteria, articulated how project meets them and connected these criteria to the project description. Please refer to Local Share project application submitted by City of Gresham.
3. **Climate Resilience Criteria:**
Park provider selected one or more specific climate resilience criteria, articulated how project meets them and connected these criteria to the project description. Please refer to Local Share project application submitted by City of Gresham.
4. **Community Engagement and Racial Equity Criteria:**
Park provider met meaningful engagement criteria and made a good faith effort to engage members of historically marginalized communities. Please refer to Local Share project application submitted by City of Gresham.
5. **Strategies for avoiding gentrification/displacement:**
Park provider identified demographics of community in vicinity of project. Park provider described anti-displacement strategies its agency use or it will employ to mitigate impacts on at-risk communities. Please refer to Local Share project application submitted by City of Gresham.

D. PROJECT REQUIREMENTS: The Project will comply with the following (collectively referred to as the "**Project Requirements**"):

1. **Project Budget:**
 - a. Amount of Allocated Bond Funds Requested ("**Project Cost**"): \$2,475,000
 - b. Description of other Project Funding: \$200,000 is being allocated from East Multnomah Soil and Water Conservation District. The City of Gresham is also contributing additional resources to cover overhead and other expenses related

Exhibit A to Resolution No. 21-5196

to property acquisition due diligence and management. This amount is yet to be determined so is not included in the Total Project Budget at this time.

- c. Total Project Budget: \$2,675,000. Note: The City of Gresham is contributing additional resources to cover overhead and other expenses related to property acquisition due diligence and management. This amount is yet to be determined so is not included in the Total Project Budget listed, which will be amended at a later date.
2. **Project Timeline:** The property sale closing date is set for September 15, 2021, with an option to extend to November 1, 2021.

Exhibit A to Resolution No. 21-5196

ATTACHMENT B Payment Request Requirements

ACQUISITION PROJECT PAYMENT REQUEST PROCEDURES:

- A. **General:** For all Acquisition Projects, Metro will disburse funds in the amount of the final purchase price and closing costs up to the Project Cost (defined in **Attachment A**) at the time of expenditure directly to the seller through an escrow account with a title company to be held until the closing of the transaction. Disbursements for all other Capital Costs related to Acquisition Projects will be made by Metro on a reimbursement basis in accordance with the Reimbursement Request process for Construction Projects described above.
- B. **Each Acquisition Project Funding Request must include:**
1. A completed Acquisition Project Certification on a form provided by Metro, signed by an authorized representative of Park Provider which certifies Park Provider has complied with (i) all Acquisition Project requirements set forth in Section 3 of the Agreement and (ii) all Program Requirements and Project Requirements set forth in **Addendum A** of the Agreement.
 2. A closing statement that details the price of the property and all related closing costs.
 3. Wiring instructions or other instructions related to the transmittal of funds to the title company escrow account.

All of the documents above will be emailed to the attention of Local Share Program Manager. The Metro contract number and Park Provider's name must be referenced in the email subject line. All of the documents above must also be submitted through Metro's online system (ZoomGrants).

- C. **Upon Metro's receipt of an Acquisition Project Funding Request:** Metro's Local Share Program Manager will review the submitted documents to confirm compliance with the Submittal Process, or request additional information from Park Provider as needed. Metro will transfer funds to the escrow account within five (5) business days after receipt of all necessary documents from Park Provider.

Exhibit A to Resolution No. 21-5196

ATTACHMENT C

Post-Acquisition and Post-Construction Restrictions On Sale and Use

The Post-Acquisition and Post-Construction Restrictions on Sale and Use apply until the end of the Term of the Agreement.

I. Post- Acquisition Restrictions:

Park Provider may not sell or otherwise authorize the use of such property for a use other than as a Bond Required Use (provided however a de minimis portion of such property may be transferred or put to another use, which may include, but is not limited to, a road dedication, utility requirements or other requirements necessary to comply with a land use review proceeding initiated to use the overall property consistent with a Bond Required Use), unless Park Provider complies with all of the following:

A. Park Provider's decision to sell or use the property in a manner inconsistent with a Bond Required Use is the result of unforeseen circumstances.

B. Park Provider's intent, at the time it purchased the property, was to use it for a Bond Required Use.

C. In the event of a sale, the property is transferred to a non-federal public agency or jurisdiction.

D. Park Provider provides Metro 180 days advance written notice of its intent to authorize the sale to a third party or change in use of the property.

E. Park Provider holds at least one public hearing regarding the matter, consistent with its adopted public meeting procedures, prior to making a final decision to sell or change the use of the property, and adopts a resolution or ordinance that includes findings that the conditions in subsections (I)(A) through (I)(D) of this Attachment have been satisfied and that Park Provider has satisfied or will satisfy its obligations as described in subsections (I)(F) and (I)(G) of this Attachment.

F. Metro approves Park Provider's determination of the appraisal value of the property pursuant to the following steps:

(1) At least 90 days prior to making a final decision to sell or change the use of the property, Park Provider will provide Metro with an independent MAI appraisal of the fair market value of the property assuming that the property was subject to the same use restrictions as were in place at the time Park Provider purchased the property (such appraisal will be in

Exhibit A to Resolution No. 21-5196

compliance with USPAP standards (and federal and ODOT right-of-way acquisition standards, if necessary) and will not be subject to any other extraordinary assumptions); and

(2) Not later than 90 days after receiving the appraisal obtained by Park Provider, Metro will inform Park Provider whether Metro has approved the appraisal, which decision will be made in good faith and based on whether the appraisal is complete and reasonable. Metro's review will include having the appraisal reviewed by a review appraiser hired by Metro to conduct a review in accordance with USPAP and general appraisal standards. If Metro does not approve the appraisal, then Metro will inform Park Provider the reasons for not approving the appraisal and Park Provider may resubmit a revised appraisal to Metro pursuant to subsection (I)(F)(1) of this Attachment.

G. If approved by Metro as provided above, then within 180 days after selling the property or authorizing the change in use of the property, Park Provider will apply toward completion of a Project listed on **Attachment A**, or a new Project selected consistent with the provisions of **Section 1.2** of the Agreement, an amount equal to the (2) the proceeds of the sale.

II. **Post- Construction Restrictions:**

Park Provider may not sell or otherwise authorize use of such buildings or improvements pursuant to this Agreement in a manner inconsistent with a Bond Required Use (provided however a de minimis portion of such property may be transferred or put to another use, which may include, but is not limited to, a road dedication, utility requirements or other requirements necessary to comply with a land use review proceeding initiated to use the overall property consistent with a Bond Required Use),, unless it complies with all of the following:

- A. Park Provider's decision to sell or use such buildings or improvements in a manner inconsistent with the Bond Required Use is the result of unforeseen circumstances.
- B. Park Provider's intent, at the time it constructed such buildings or improvements, was to use them for a Bond Required Use.
- C. In the event of a sale, the property is transferred to a non-federal public agency or jurisdiction.
- D. Park Provider provides Metro 180 days advance written notice of its intent to authorize the sale to a third party or change in use of such buildings or improvements.
- E. Park Provider holds at least one public hearing regarding the matter, consistent with its

Exhibit A to Resolution No. 21-5196

adopted public meeting procedures, prior to making a final decision to sell or change the use of such buildings or improvements, and adopts a resolution or ordinance that includes findings that the conditions in subsections (II)(A) through (II)(E) of this Attachment have been satisfied and that Park Provider has satisfied or will satisfy its obligations as described in subsections (II)(F) and (II)(G) of this Attachment.

F. Metro approves Park Provider's determination of the appraisal value of such buildings or improvements pursuant to the following steps:

- (1) At least 90 days prior to making a final decision to sell or change the use of such buildings or improvements, Park Provider will provide Metro with an independent MAI appraisal of the fair market value of such buildings or improvements (such appraisal will be in compliance with USPAP standards (and federal and ODOT right-of-way acquisition standards, if necessary) and will not be subject to any other extraordinary assumptions); and
- (2) Not later than 90 days after receiving the appraisal obtained by Park Provider, Metro will inform Park Provider whether Metro has approved the appraisal, which decision will be made in good faith and based on whether the appraisal is complete and reasonable. Metro's review will include having the appraisal reviewed by a review appraiser hired by Metro to conduct a review in accordance with USPAP and general appraisal standards. If Metro does not approve the appraisal, then Metro will inform Park Provider the reasons for not approving the appraisal and Park Provider may resubmit a revised appraisal to Metro pursuant to subsection (II)(F)(1) of this Attachment.

G. Within 180 days after selling such buildings or improvements or authorizing the change in use of such buildings or improvements, Park Provider will apply toward completion of a Project listed on **Attachment A**, or a new Project selected consistent with the provisions of **Section 1.2** of the Agreement, an amount equal to proceeds of the sale.

IN CONSIDERATION OF RESOLUTION NO. 21-5196, FOR THE PURPOSE OF
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH
THE CITY OF GRESHAM FOR LOCAL SHARE FUNDING PURSUANT TO THE 2019
PARKS AND NATURE BOND MEASURE

Date: July 16, 2021
Department: Parks and Nature
Meeting Date: July 29, 2021

Prepared by: Beth Cohen, Alex Gilbertson
Presenter(s): Jon Blasher, Alex Gilbertson
Length: 15 minutes

ISSUE STATEMENT

The 2019 parks and nature bond local share program allocates funds to 27 park providers in the region for projects in their communities that satisfy bond community engagement, racial equity and climate resilience criteria and meet program criteria guidelines.

An intergovernmental agreement (IGA) between Metro and each park provider will formalize commitment to these projects and launch the distribution of funding for projects.

The City of Gresham has submitted for local share funds the acquisition of the Shaull Property site adjacent to the city's Southwest Community Park, and the IGA pursuant to this resolution formalizes the commitment to use local share funds for this project and meeting the relevant bond and program criteria. The resolution for consideration by Council will authorize the execution of the IGA with the City of Gresham when the Gresham City Council approves authorization, planned for August 2021.

To date, no other park providers have submitted projects for local share funds.

ACTION REQUESTED

Staff requests approval of Resolution No. 21-5196, for the purpose of authorizing the execution of an Intergovernmental Agreement with the City of Gresham for local share funding pursuant to the 2019 parks and nature bond measure.

IDENTIFIED POLICY OUTCOMES

The Metro Council's policy direction for the local share program is reflected in the local share program materials, which support park providers in meeting the bond criteria around racial equity, community engagement and climate resilience

Through completing the local share submission process, the City of Gresham demonstrated that the Shaull Property acquisition meets the relevant bond and program criteria for projects that protect clean water, restore habitat and connect people with nature close to home. The Shaull Property acquisition secures for public use a privately owned 7.8-acre

parcel immediately adjacent to a 34-acre parcel purchased by the City of Gresham in 1990 (from the same Shaull family) for development of a community park amenity to be known as Southwest Community Park. The parcel is the final opportunity for preservation of developable land within the 170-acre contiguous area that comprises the Fairview Creek Headwaters. This acquisition effort will complete on-going city efforts to (1) protect further encroachment into this regionally significant habitat area, and (2) develop the first community park-scale amenity for the central west and southwest portions of the City.

The City of Gresham's prioritization of this project has been guided by consistent and strong community voice. On May 11 2021, the Gresham City Council's reviewed results from a community survey on local share project priorities where the top project by vote total was the Shaull Property acquisition.

STAFF RECOMMENDATION

Staff recommends that the Metro Council approve Resolution No. 21-5196, for the purpose of authorizing the execution of an Intergovernmental Agreement with the City of Gresham for local share funding pursuant to the 2019 parks and nature bond measure.

BACKGROUND

Parks and Nature staff launched the local share program by finalizing a program handbook, a ZoomGrants portal for submitting priority projects and a community engagement toolkit and other resources to help park providers identify and submit priority projects.

At the Council work session on local share earlier this spring, the Metro Council affirmed a path that allows for expeditious distribution of local share funds in which the Metro Council approves an IGA form and delegates authority to the Metro Chief Operating Officer (COO) to execute the final IGA negotiated with each park provider.

The Office of Metro Attorney developed a draft IGA form and provided an opportunity for all 27 park providers to review the form. Staff are working now to incorporate comments received from park providers. The IGA pursuant to this resolution reflects feedback from the City of Gresham, but not the full range of comments received from other park providers.

This fall, staff will ask the Metro Council to consider and approve a local share IGA form and delegate authority for approval of individual IGAs with park providers to the COO. Having a Metro Council approved IGA form will allow for the negotiation of individual IGAs with park providers once they have submitted projects for local share dollars.

The IGA pursuant to this resolution is being utilized solely to facilitate the advancement of the Shaull Property acquisition. The City of Gresham will submit its other local share projects after conducting more community engagement. The IGA with the City of Gresham will then be amended to reflect the IGA form that will be approved by Council this fall.

Materials following this page were distributed at the meeting.

Testimony for 7/29 Council Meeting

Name: Chris Chaplin

Your testimony

I urge Metro Council to vote NO on 'business as usual' and to deny approval of Resolution No. 21-5188 (Highway 217) and Resolution No. 21-5192 (I-205 Abernethy Bridge). Climate chaos is here to stay, and we need to do absolutely everything in our power to avoid its increasingly terrifying effects. Studies have repeatedly shown that widening freeways leads to more car traffic, which means more emissions. This at a time when we need to drastically reduce our carbon emissions in order to have a chance at staving off the worst effects of climate disruption. Please do the right thing for our future and increasingly our present, and deny approval of these resolutions.

Name * Claire Vlach

Your testimony

I am asking you to vote "No" on approval of Resolution No. 21-5188 (Highway 217) and Resolution No. 21-5192 (I-205 Abernethy Bridge).

Last week, my two young children and I attended the Youth vs ODOT climate protest. While there, we saw one of the teenaged organizers break down crying during the event because she felt so hopeless. "What can we do?" I overheard her asking her friend, sobbing. "This is the coolest summer of the rest of our lives, and nobody cares. Nobody listens to us."

Please, listen to her and to the other youth activists who are begging you to care about their future. Stop approving funding for infrastructure that supports carbon emissions. Any tolling implemented on our roadways should be for the purpose of managing congestion, with funds allocated to transit and other improvements that make it easier to get around without a car. The wildfires and heat domes and other "climate events" are only going to get worse. Please help solve the problem rather than contributing to it.

Name * Carlynn Woodsong

Your testimony

Dear Councillors,

I'm writing to ask you to deny approval of Resolution No. 21-5188 (Highway 217) and Resolution No. 21-5192 (I-205 Abernethy Bridge). Perhaps you, as elected officials, don't fully realize how many of us are feeling the climate anxiety from the last few months, and how strongly we understand the link between these terrible freeway expansions and our rising oceans and burning forests.

It seems that any time we ask for more funding for transit, biking or walking, our government agencies cry poverty, but when billions of dollars of freeway widening are on the line, our state and local governments don't raise any objection.

In 2021, we simply can no longer tolerate you, or any other, elected leaders approaching freeway widenings on auto-pilot, especially any local leader who ostensibly claims to care about the climate emergency that just killed over 100 Oregonians.

These funding plans for Highway 217 and the Abernethy Bridge, are on the agenda for your July 29th Metro Council meeting. It's vitally important that the Metro Council come to understand that these projects are not 'just normal' any more. Here's why:

There is strong consensus among climate scientists that Oregon's drought, wildfires and last month's "heat dome" are directly related to global climate disruption. We are feeling the impacts of greenhouse gases released globally, but 40% of our local contribution to GHG emissions comes from transportation and it's rising, even as emissions from other sources are trending down (although not as quickly as we need).

A number of these projects have been in the Regional Transportation Plan (the region's federally-mandated list of high-priority projects) for years, if not decades. During that time, our understanding of the climate emergency has only become clearer and more urgent. Other policies in the RTP to reduce

traffic demand have simply not worked. It's time to recognize that the RTP does not work for our community!

It's Not About Congestion, by the way. Elected officials like to hide behind congestion: "If we get traffic flowing freely," we often hear you say, "emissions at the bottleneck will go down."

But overall analysis of the system tells us that there is a direct relationship between roads and emissions. I won't go into the details of induced demand here, but the data is clear: if you add 1% more lane-miles, you get 1% more traffic (and emissions).

As detailed in Transportation For America's Congestion Con report, between 1993 and 2017, the 100 largest urbanized areas in the United States spent more than \$500 billion adding new freeways or expanding existing ones. In those same cities, congestion increased by 144 percent, significantly outpacing population growth. Given your regional portfolio and governing priorities, Metro is well-situated to be the government agency to call ODOT's bluff on their nonsensical claims about congestion relief. Our region absolutely needs to address traffic congestion.

It's time Metro pointed out that ODOT clearly doesn't intend to solve congestion, or to take meaningful action on climate change.

Also, electrification is not going to save us. While electrification of our fleet will reduce GHG emissions, it's not sufficient by itself. The best numbers available tell us that even with aggressive electrification, we need to reduce driving by 20% to 33% to balance our carbon books to avoid the worst impacts of climate change. And to be clear - we're not seeing anywhere near an aggressive uptake of vehicle electrification at this point.

So far in 2021, fewer than 250,000 EVs have been sold in the US. Meanwhile, light trucks like the Ford F-150 continue to dominate: over 1 million were sold in just the last month. These cars will be on our roads for as much as two decades. It's simply imperative we build communities where Oregonians have alternatives to driving for every trip, and dumping billions into freeways robs us of the resources we

need for this shift.

Instead of widening freeways this decade, Metro should adopt a Price Before You Build policy. Good policy imposes pricing first, then assesses whether the resulting demand warrants new capacity in the system.

We are slowly moving to a consensus in Oregon that we have to price use of our road system. But we have not yet converged on a strategy to do that well. Good policy would impose pricing first, then assess whether the resulting demand warrants new capacity in the system.

Incredibly, for both the Rose Quarter and Abernethy Bridge, ODOT will first build the roads, then toll them later to pay off bonds. Decades of research show that congestion pricing is the only tool proven to tackle not only recurring traffic jams but also reduce both air pollution, carbon emissions.

Both the City of Portland and Metro have undertaken significant work to think about the equitable implementation of pricing roads – ODOT's freeway expansions and subsequent tolling for revenue (not for congestion relief) preempt local and regional efforts to implement this policy more in line with equity, climate, public health or congestion relief goals.

However, how you price, also matters. By tolling the Abernethy Bridge, ODOT is basically putting themselves in the situation where they need sustained levels of traffic to pay off the project bonds. Reductions in driving to help GHG emissions would break their financial model. We're baking ongoing GHG emissions into the project!

In contrast, congestion pricing to manage demand over the bridge would include the option to spend the revenue generated on offsetting programs (like transit or active transportation) to reduce demand and increase equity.

The last thing Oregon needs, as the state suffers from over 400,000 acres of wildfires currently burning before the beginning of August, is to create perverse financial incentives for the state to need

to perpetuate carbon-intensive driving to pay off bonds.

Please, vote no on Resolution No. 21-5188 (Highway 217) and Resolution No. 21-5192 (I-205 Abernethy Bridge).

Thank you very much,

Garlynn Woodsong

5267 NE 29th Ave

Portland, OR 97211



MetroPaint and Resolution 21-5190

July 29, 2021



Overview

- WPES is advancing shared prosperity and good jobs in the garbage and recycling industry following Regional Waste Plan direction
- MetroPaint amendment has a cost impact of \$430,000 and adds 13.0 FTE in FY 2021-22



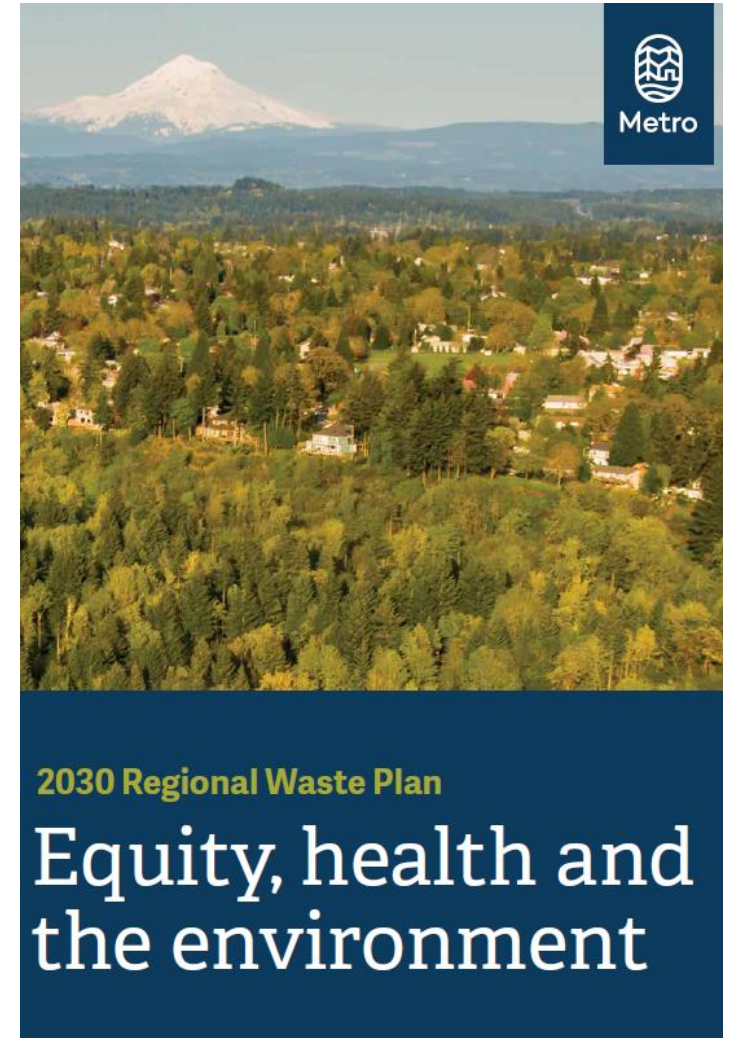
Program vision

- MetroPaint responsibly manages leftover latex paint, produces high quality recycled paint for sale and donation in the community, provides equitable workforce opportunities, and promotes human and environmental health.
- Since 2000, the program has processed over 6 million liquid gallons of paint for recycling



Advance Regional Waste Plan goals

- Workforce development
- Public-private partnerships
- Local recycling infrastructure
- Extended producer responsibility (SB 582)



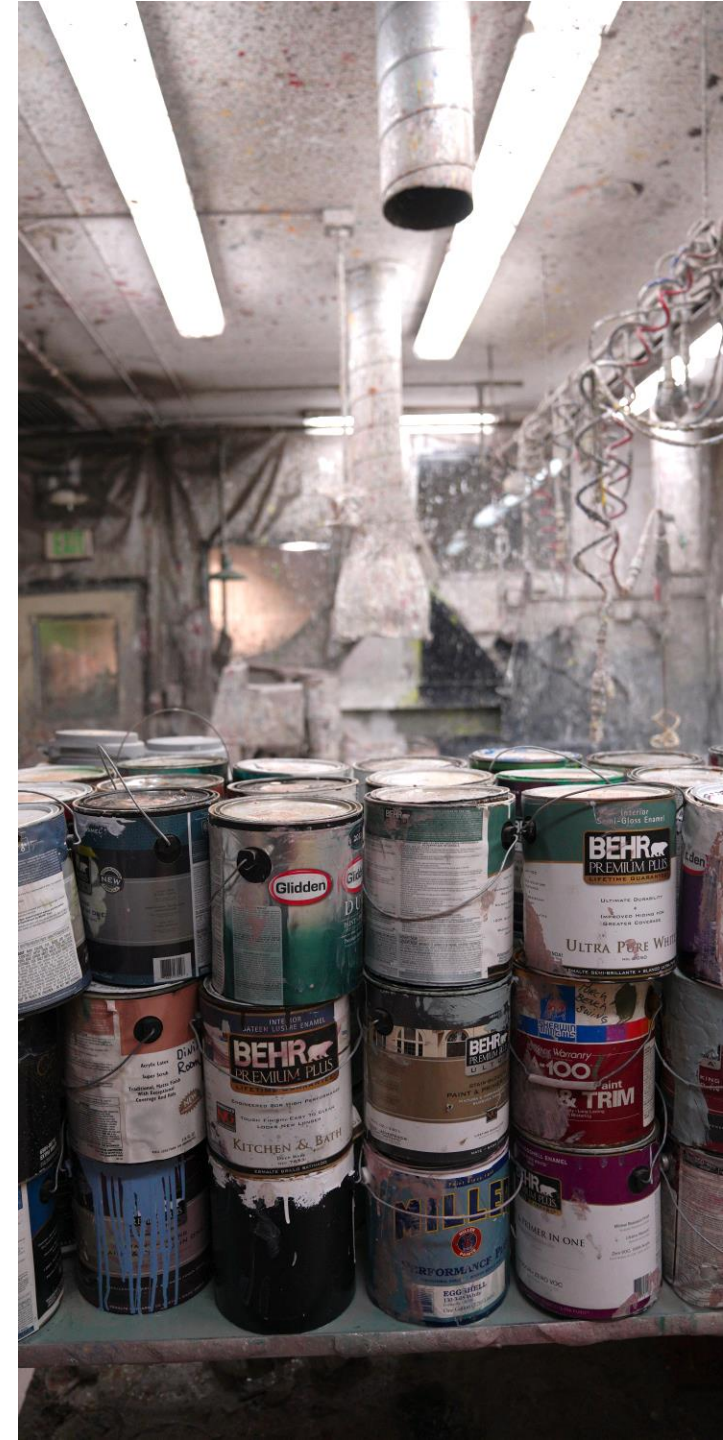
Advance racial equity goals

- Stable career pathways in the solid waste industry
- Living wage jobs (\$26.78/hr & up)
- Health benefits, vacation, medical and family leave
- Job protections



Advance climate goals

- Use of recycled paint can achieve up to 90% energy reduction over new paint
- MetroPaint has reduced 210 million pounds of CO₂ since 2010 by distributing 1.8 million gallons of recycled paint



Amendment summary

- Provides funding to transition 12.0 FTE contracted paint technicians to regular status and add 1.0 additional management FTE
- Supports workforce equity, recycling operations and sales, and community partnerships and donation



Questions.





Metro

In consideration of Resolution No. 21-5196
July 29, 2021

Local share program

- \$92 million, 1/5 of total bond
- 27 park providers (cities, counties, park districts)
- Invests in local projects to meet community needs
- Projects must meet bond and program criteria

Local share program launched

- ✓ If ready, jurisdictional partners can submit priority projects
- ✓ IGA form to formalize project commitments in review with jurisdictional partners
- ✓ Ongoing meetings with and technical assistance to jurisdictional partners

Shaul Property acquisition site



Shaul Property acquisition site



Shaul Property acquisition site



Action requested

Staff requests approval of Resolution No. 21-5196, for the purpose of authorizing the execution of an Intergovernmental Agreement with the City of Gresham for local share funding pursuant to the 2019 parks and nature bond measure.