

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING AN)
INTERGOVERNMENTAL AGREEMENT)
WITH THE CITY OF PORTLAND FOR)
REFORESTATION ON METRO OPEN)
SPACES PROPERTIES)

RESOLUTION 99-2750

Introduced by Mike Burton
Executive Officer

WHEREAS, Metro's Open Spaces Parks and Streams bond measure (Measure 26-26) was approved by the voters of the region in May 1995; and

WHEREAS, using proceeds from the bonds, approximately 4,000 acres of open space have been acquired to date, most of which is or was once forestland; and

WHEREAS, reforestation is required by law on portions of those lands and is the optimum management option on others; and

WHEREAS, the City of Portland Bureau of Environmental Services (BES) Watershed Re-Vegetation Program is a qualified, experienced reforestation program; and

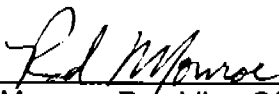
WHEREAS, Metro entering into an intergovernmental agreement utilizing the BES Watershed Re-Vegetation Program enables both the City of Portland and Metro to enhance the cost-effective management of their reforestation efforts; and

WHEREAS, the BES Watershed Re-Vegetation Program will provide at market cost plant material needed by Metro and solely-available through their program; now therefore

BE IT RESOLVED,

That the Metro Council approves and authorizes the Executive Officer to execute the intergovernmental agreement with the City of Portland BES, attached hereto as Exhibit A, for reforestation on Metro properties.

ADOPTED by the Metro Council this 28th day of January, 1999.



Rod Monroe, Presiding Officer

INTERGOVERNMENTAL AGREEMENT

METRO
and
CITY OF PORTLAND
BUREAU OF ENVIRONMENTAL SERVICES

Reforestation on Metro Open Spaces Properties

This Intergovernmental Agreement (“Agreement”) dated this _____ day of _____, 1999, is by and between Metro, located at 600 Northeast Grand Avenue, Portland, Oregon 97232-2736, and City of Portland, by and through the Bureau of Environmental Services, located at 1220 Southwest Fifth Avenue, Portland, Oregon 97204 (“City”).

RECITALS:

WHEREAS, on May 16, 1995, voters approved Ballot Measure 26-26 authorizing Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, to issue up to \$135.6 million in general obligation bonds for the protection of open spaces, parks and streams; and,

WHEREAS, the ballot measure identified a goal of acquiring forest lands throughout the metropolitan region; and,

WHEREAS, approximately 4,000 acres of land have been purchased to date, most of which is or was former forested land; and,

WHEREAS, reforestation is required on portions of these forest lands, both under the Oregon Forest Practices Act and as the preferred long-term, most cost-effective management option; and,

WHEREAS, the City of Portland Bureau of Environmental Services Re-Vegetation Program (“BES Watershed Re-Vegetation Program”) staff have the qualifications and experience of reforestation for the purpose of establishing diverse, native forests; and,

WHEREAS, combining Metro’s reforestation efforts with those of BES Watershed Re-Vegetation Program, and contracting with BES Watershed Re-Vegetation Program to supervise the reforestation efforts on Metro properties, will be more cost-efficient due the larger economy-of-scale when purchasing plant material and contracting labor; and,

WHEREAS, specific plant material appropriate for Metro’s reforestation sites is available solely through the BES Watershed Re-Vegetation Program; and,

WHEREAS, staff of the BES Watershed Re-Vegetation Program are familiar with Metro's forest lands acquired with open spaces bond proceeds and share the same goal of establishing a diverse, native forest system; and,

WHEREAS, the BES Watershed Re-Vegetation Program estimates that the cost of supervising reforestation efforts on Metro newly-acquired properties requiring reforestation should not exceed \$25,000; and,

WHEREAS, Metro and the City acknowledge that they have authority to enter into this Agreement pursuant to the powers contained in their respective charters and in ORS 190.010;

NOW, THEREFORE , the parties hereby agree as follows:

AGREEMENT

Section A. Project Declaration The activities described in this Agreement are for the supervision and implementation of reforestation efforts on portions of land purchased by Metro using proceeds from general obligation bonds for the protection of open spaces, parks and streams, as provided for in Measure 26-26 Open Spaces, Parks, and Streams Bond Measure.

Section B. Specific Work Tasks

1. Vegetation Surveys

Each reforestation site identified by Metro will be initially assessed by the BES Watershed Re-Vegetation Program staff for number, species, and condition of trees per acre. Attention will be given to pest control, both vegetation and animal, needed to insure tree seedlings reach the "free-to-grow" stage in approximately five years. "Free-to-grow" stage is the height, age, and condition at which tree seedlings will be able to grow toward maturity without further maintenance despite competition from other plants. Brief prescriptions for each site will be written by the BES Re-Vegetation staff outlining results of the survey and recommendations for insuring seedlings reach the "free-to-grow" stage, which will be subject to Metro's review and approval. Prescriptions will include specific actions required for the site to grow into an established, diverse forest and to comply with Oregon Forest Practices Act, if applicable.

Survey estimated 620 acres over 12 sites 140 hours @ \$40/hr. = \$5,600

2. Contract Development

Contracted labor is needed for site preparation, planting, brush cutting, and herbicide application. The City will prepare, advertise, and award public contracts, following the public bid and selection process, to accomplish the recommendations set forth in the vegetation surveys. Metro must review and approve all service contracts documents prior to their award, both contracts jointly

funded by the City and Metro and those solely funded by Metro. Metro will contract directly with labor contractors and BES Watershed Re-Vegetation Program staff will supervise contract implementation.
Develop, advertise, and award contracts, one contract for each of the following tasks: planting, brush cutting, and herbicide application
3 contracts x \$320/contract = \$960

3. Consolidate Purchase of Plant Material

Because of cost savings realized by combining purchase of plant materials and due to the availability of specific tree seedlings solely through BES Watershed Re-Vegetation Program, the City and Metro agree to combine efforts in purchasing plant material. Tree seedlings purchased from growers directly by the City will be sold to Metro at wholesale cost plus 7% of cost to cover administration costs. BES Watershed Re-Vegetation Program will arrange storage and delivery of tree seedlings. Metro will purchase the amount and species of tree seedlings from the City specified in the prescription as approved by Metro. Metro and BES Watershed Re-Vegetation Program agree to share costs of plants/material storage and deliveries in proportion to plants/materials purchased by each entity.

Cost of plant material to Metro=wholesale cost (estimated \$7,000-\$10,000) + 7%
Estimated cost to Metro for storage = \$1,500
Estimated cost to Metro for delivery = \$1,200

4. Supervision of Initial Planting

On Metro-owned sites where tree seedlings are being planted for the first time, as determined by Metro and as set forth in the vegetation survey, BES Watershed Re-Vegetation Program staff will supervise the delivery and handling of tree seedlings obtained as described in Section B(3) above and supervise the planting of those seedlings by labor contracted by Metro through the process described in Section B(2) above. Planting will follow specifications outlined the prescription developed from the vegetation surveys and as written in the labor contracts approved by Metro.

40 acres (8 sites) 50 hours @ \$40/hr. = \$2,000

5. Supervision of Interplanting

For those sites where existing tree stock is inadequate or partially-stocked according to the Metro-approved vegetation survey, BES Re-Vegetation staff will supervise the delivery and handling of tree seedlings obtained as described in Section B(3) above and supervise the interplanting of those seedlings by labor contracted by Metro through the process described in Section B(2) above. Interplanting of additional trees will follow specifications outlined the prescription developed from the vegetation surveys and as written in the labor contracts approved by Metro.

100 acres (4 sites) 50 hours @ \$40/hr. = \$2,000

Section D. Payment and Schedule

1. The City will invoice Metro for services as they are provided at a frequency no greater than once a month.
2. Billable rates for supervision of reforestation activities will not exceed those listed in Section B above. No additional overhead or administration cost associated with personnel hours will be charged to Metro. The City staff hours expended for supervision of reforestation activities estimated in Section B may vary, depending on the number of acres and sites where reforestation is required, but in no event shall the amounts owed or paid by Metro exceed those set forth herein.
3. The maximum amount that the City shall invoice Metro for reforestation activities under this Agreement shall not exceed \$25,000.
4. The effective date of this Agreement is December 1, 1998 to November 30, 1999. All work tasks, including surveys, contract bid and award, plantings, cuttings, herbicide applications as set forth herein shall be completed by November 30, 1999.

Section E. General Obligations

1. **Indemnification.** The City shall defend, indemnify and hold harmless Metro and its officers, agents and employees, for, from, and against any and all loss, damages, injury, property damage, expenses, judgments, claims, penalties, fines, actions, or liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to the wrongful acts of the City's officers, agents and employees acting within the scope of employment or duties in performance of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act ORS Chapter 30.

Metro shall defend, indemnify and hold harmless the City and its officers, agents and employees, for, from, and against any and all loss, damages, injury, property damage, expenses, judgments, claims, penalties, fines, actions, or liability, whether arising in tort, contract or by operation of any statute or common law, arising out of or in any way connected to the wrongful acts of Metro's officers, agents and employees acting within the scope of employment or duties in performance of this Agreement, subject to the limitations and conditions of the Oregon Tort Claims Act ORS Chapter 30

2. **Oregon Constitution and Tax Exempt Bond Covenants.** The source of Metro funds for this project is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d), and 11(e) of the Oregon Constitution, and that the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that it will take no actions that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the City breaches this covenant, Metro shall be entitled to what ever remedies are

available to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.

3. **Law of Oregon.** This Agreement shall be governed by the laws of the state of Oregon, and the parties agree to submit to the jurisdiction of the court of the state of Oregon. All applicable provisions of ORS chapters 187 and 279, and all other terms and conditions necessary to be inserted into public contracts in the state of Oregon, are hereby incorporated as if such provisions were a part of this Agreement including but not limited to ORS 279.015 to 279.320.

Specifically, it is a condition of this Agreement that Metro, the City and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by Oregon Laws 1989, chapter 684.

4. **Assignment.** Neither party shall assign any of its responsibilities under this Agreement without prior written consent from the other party, except that both Metro and the City may subcontract for performance their respective responsibilities under this Agreement only as set forth herein.

5. **Severability.** If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.

6. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter set forth herein, and supersedes any prior oral or written agreements or representations. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth above.

CITY OF PORTLAND

METRO

By: _____
Title: _____
Date: _____

By: _____
Mike Burton, Executive Officer
Date: _____

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 99-2750 FOR THE PURPOSE OF APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR REFORESTATION ON METRO OPEN SPACES PROPERTIES

Date: January 7, 1999

Presented by:

**Charles Ciecko
Jim Desmond**

FACTUAL BACKGROUND and PROPOSED ACTION

Metro has purchased 4,000 acres of open space with funds made available from general obligations bonds, which were approved by voters through Open Spaces, Parks and Streams ballot measure (26-26) in 1995. Most of the land purchased is or was forestland. Metro is currently conducting reforestation on portions of these properties because it is either (1) required under the Oregon Forest Practices Act, or (2) best stabilized and more cost-effectively managed if reforested. Metro Regional Parks and Greenspaces staff has managed reforestation efforts to date on the new acquisitions.

As more forestland is acquired in the Open Spaces Program, the need for reforestation management accumulates, since trees planted in the first year of the program still require on-going maintenance until they are about five years old.

The City of Portland Bureau of Environmental Services (BES) embarked on a reforestation program in 1995, focusing primarily on the Columbia Slough watershed. Since that time, the BES Watershed Re-Vegetation Program has developed into a program compatible with Metro's Open Spaces reforestation goals and scale.

Working in the same region and with similar goals, the two programs will benefit significantly by combining efforts when procuring plant material and labor for similar reforestation efforts through the economy of scale. Approval of Resolution No. 99-2750 will allow Metro to enter into an intergovernmental agreement (IGA) that combines the procurement efforts of the two programs.

The resolution will also enlist the services of the BES Watershed Re-Vegetation Program staff to supervise Metro's reforestation efforts for one year. The BES program staff has the reforestation qualifications and experience in establishing diverse, native forests. The BES Watershed Re-Vegetation Program shares Metro's focus on habitat enhancement and water quality improvement, unlike the forestry industry which has a different orientation than Metro Open Spaces in establishing a forest system. BES is willing to make available its qualified personnel and knowledge in forest ecosystems.

The BES Watershed Re-Vegetation Program has secured and grown native plant material most appropriate for Metro sites which are not otherwise market available. These plant materials will be made available to Metro at cost plus 7%, which is a reasonable handling/brokerage charge.

BUDGET IMPACT

This IGA will reduce Metro's bond money stabilization cost by purchasing plant material for reforestation at cost plus 7% (instead of retail price), cooperatively purchasing reforestation labor, and providing BES staff supervision of Metro's reforestation efforts for one year. The IGA total cost is not to exceed \$25,000 and shall be funded from the Metro Open Spaces bond measure funds.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 99-2750.