

CONTRACTUAL AGREEMENT
Greenspaces Restoration Grant

This Agreement, dated this ____ day of December, 1993, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and Portland Public School District 1, P.O. Box 3107, Portland, Oregon 97208, (hereinafter referred to as "Recipient"), and shall remain in full force and effect for the period December 1, 1993, to March 1, 1995.

W I T N E S S E T H:

WHEREAS, Metro and Recipient have mutual interests in the accomplishment of a specific demonstration project to restore urban wetland streams and/or riparian corridors (hereinafter referred to as "Project"), desire to jointly participate in that Project, and have agreed on the Scope of Work for said Project as outlined in Attachment "A" included herein; and

WHEREAS, Metro has received a grant from the U.S. Fish and Wildlife Service and a portion of said grant has been set-aside for demonstration grants; and

WHEREAS, Metro and Recipient have agreed that this Project will be funded no more than fifty percent (50%) by Metro through those grant funds and by at least fifty percent (50%) funding by Recipient, either through cash or in-kind contributions;

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the parties hereto as follows:

1. Project Declaration:

Metro hereby approves the Project proposal and authorizes Recipient to proceed with the Project in accordance with the Scope of Work included as Attachment "A."

2. Funding:

The total estimated cost of the Project is TWENTY THOUSAND TWO HUNDRED AND NO/100s DOLLARS (\$20,200.00) with Metro's participation limited to the lesser of FIVE THOUSAND AND NO/100s DOLLARS (5,000.00) or FIFTY PERCENT (50%) of actual Project cost. The Recipient shall in the first instance, pay all the costs of the Project and then

request reimbursement upon completion of the Project. Upon receipt of an invoice from Recipient, Metro shall submit said costs to U.S. Fish and Wildlife Service for reimbursement. Upon receipt of said funds, Metro will issue payment to Recipient. Detailed terms of the arrangements are set forth in Attachment "B" of this Agreement.

3. Funding Limitation:

Metro through the above cited grant from the U.S. Fish and Wildlife Service has established this Agreement with the sole purpose of promoting the Greenspaces Program through funding of this community Project. Therefore, while accepting a leadership role, Metro neither intends nor accepts any direct involvement in this Project which can or could be construed to result in supervisory responsibility during the course of construction, and upon completion of the Project there will be no further obligations on the part of Metro and U.S. Fish and Wildlife Service.

4. Funding Requirements:

Recipient agrees to comply at all times with provisions of the Greenspaces Restoration Grant between U.S. Fish and Wildlife Service, U.S. Department of the Interior and Metro, which appear as Attachment "C" to this Agreement and by this reference are made a part hereof.

5. Situs:

This contract is entered into within the state of Oregon, and the law of said State, whether substantive or procedural, shall apply to this contract, and all statutory, charter and ordinance provisions that are applicable to public contracts in the state of Oregon shall be followed with respect to this contract.

6. Funding Declaration:

Recipient will document on-site, on final products and/or through visual presentations that partial funding came from the Greenspaces Program of Metro and the U.S. Fish and Wildlife Service.

7. Indemnification:

Recipient shall indemnify Metro and its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of persons, or property damage, arising out of or in anyway connected to the tortuous acts of the Recipient's officers, agents and employees acting within the scope of employment or duties in performance of this Agreement.

Metro shall indemnify Recipient and its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of persons, or property damage, arising out of or in anyway connected to the tortuous 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.

8. Termination for Cause:

Metro may terminate this Agreement in full, or in part, at any time before the date of completion, whenever Metro determines, in its sole discretion, that Recipient has failed to comply with the conditions of this Agreement and is therefore in default. Metro shall promptly notify Recipient in writing of that determination and document such default as outlined hereinbelow.

In this, and all instances, Metro shall only reimburse Recipient to the extent of federal reimbursement for the completion of the project. If there is no federal reimbursement for an incomplete project, Recipient will receive no reimbursement.

9. Documentation of Default:

Recipient shall be deemed to be in default if it fails to comply with any provisions of this Agreement or if its progress in performance of its obligations is so unsatisfactory that contract performance of the Scope of Work of this Agreement is seriously impaired.

Prior to termination under this provision, Metro shall provide Recipient with written notice of default and allow Recipient thirty (30) days within which to cure the defect. In the event Recipient does not cure the defect within thirty (30) days, Metro may terminate all or any part of this Agreement for cause. Recipient shall be notified in writing of the reasons for the termination and the effective date of the termination.

Recipient shall be liable to Metro for all reasonable costs and damages incurred by Metro as a result of and in documentation of the default.

If, after notice of termination, Metro agrees or a court finds that Recipient was not in default or that the default was excusable, such as a strike, fire, flood, or other event that is not the fault of, or is beyond the control of Recipient, Metro may allow Recipient to continue work, or both parties may treat the termination as a joint termination for convenience whereby the rights of the Recipient shall be as outlined hereinbelow.

10. Joint Termination for Convenience:

Metro and Recipient 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 shall be effective upon ten (10) days written notice of termination issued by Metro subject to that mutual agreement.

Upon termination under this provision, Recipient shall be entitled to payment in accordance with the terms of the contract for contract work completed before termination, and to payment for all reasonable contract close-out costs subject to the inherent limitation that Metro shall only be responsible to Recipient to the extent, if any, of federal reimbursement.

Within thirty (30) days after termination pursuant to this provision, Recipient shall submit an itemized invoice(s) for all unreimbursed work within the Scope of Work of this Agreement completed before termination and all close-out costs actually incurred by Recipient.

Metro shall not be liable for any costs invoiced later than thirty (30) days after termination unless the Recipient can to Metro's full satisfaction show good cause beyond the Recipient's control for the delay.

11. Documents are Public Property:

All records, reports, data, documents, systems and concepts, whether in the form of writings, figures, graphs, or models which are prepared or developed in connection with the Project shall become public property.

12. Project Records:

Comprehensive records and documentation relating to the Scope of Work and all specific tasks involved in the Project shall be maintained by Recipient.

Recipient shall establish and maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Agreement.

13. Audits, Inspections, and Retention of Records:

Metro, and any of its representatives, shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of Recipient's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls and other matters covered by this Agreement.

All documents, papers, time sheets, accounting records, and other materials pertaining to costs incurred in connection with the Project shall be retained by Metro and Recipient and all of its contractors for three years from the date of completion of the Project, or expiration of the Agreement, whichever is later, to facilitate any audits or inspection.

A final determination of the allowability of costs charged to the Project may be made on the basis of an audit or other review. Any funds paid to Recipient in excess of the amount to

which Recipient is finally determined to be entitled under the terms of this Agreement constitute a debt to Metro, and shall be returned by Recipient to Metro.

14. Copyright, Patent Rights, Trademarks, and Trade Secrets:

Recipient shall hold Metro harmless, indemnify and pay the entire cost of defending any claim or suit brought against Metro for alleged infringement of a copyright, patent, trademark, or trade secret based on work products supplied by Recipient or infringements caused by Recipient.

Metro shall hold Recipient harmless, indemnify and pay the entire cost of defending any claim or suit brought against Recipient for alleged infringement of a copyright, patent, trademark, or trade secret based on work products supplied by Metro or infringements caused by Metro subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution.

15. 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 courts 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 Recipient and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws chapter 684.

16. Assignment:

Recipient may not assign, delegate, or subcontract for performance of any of its responsibilities under this Agreement without prior written consent from the Metro representative.

17. 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.

18. Entire Agreement:

This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. Recipient, by the signature below of its authorized representative, hereby acknowledges that Recipient has read this Agreement, understands it and agrees to be bound by its terms and conditions.

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

PORTLAND PUBLIC SCHOOL DISTRICT 1

METRO

Date

Date

APPROVED AS TO FORM

APPROVED AS TO FORM

Date

Date

s:\pd\cont\94\903448

ATTACHMENT "A"

SCOPE OF WORK

1. Portland Public School District 1's application for Greenspaces restoration funds, Exhibit 1 hereto, outlines the specific tasks to be carried out.
2. The work activities which are covered under this Greenspaces Restoration Grant may be carried out during the period: December 1, 1993, to March 1, 1995.
3. All tasks and program activities funded by this Greenspaces Restoration Grant are subject to Metro and U.S. Fish and Wildlife Service audit.
4. Recipient agrees to carry out the items outlined in Exhibit 2 hereto.

ATTACHMENT "B"

BUDGET AND METHOD OF PAYMENT

1. Funds which are reimbursable shall not exceed \$5,000.00.
2. A 50 percent local match is required (cash or in-kind).
3. Recipient may bill Metro on a quarterly basis or at the completion of the Project. It will take approximately sixty (60) business days for Metro to transfer funds to the Recipient. Metro must bill and receive full payment from the U.S. Fish and Wildlife Service prior to a corresponding payment to Recipient.
4. Prepare all billings by completion, execution and submission of the standard form(s) attached.
5. All payments are subject to audit(s) by Metro and U.S. Fish and Wildlife Service.
6. Promptly provide Metro's Accounting Division with a copy of any subsequent single audit report for this Project as required by the Single Audit Act of 1984 and thereby demonstrate full and complete compliance with all grant requirements.

METRO

**Parks and Greenspaces Department
600 N.E. Grand Avenue
Portland, OR 97232**

Memorandum

Mel
903448

DATE: March 30, 1994
TO: Charlie Ciekó
FROM: Jim Morgan *JM*
SUB: O & M at Whitaker School Restoration Project

Portland School District received a grant for \$5000 from Metro Greenspaces for a restoration project at the Whitaker School ponds. This project entailed blackberry removal and planting native vegetation with labor provided by Cascadia Quest, a non-profit organization that coordinates environmental work projects using young adults from around the world.

Most of the planting has been completed. However, there is no maintenance plan, which is critical to ensure survival of the plants for the first two years following planting. Nor is there anyone committed to implement a plan if it existed.

Approximately \$3000 in plant materials has been invested at the Whitaker School site using Greenspaces Restoration funds. Greg Wolley, the project manager, has not presented maintenance plans, nor I expect him to have the resources for maintaining the site. I met with Dan Maclean, Maintenance Foreman for the School District, today at the site. He was only recently informed of this project after the planting had occurred. He has no maintenance plans, nor the resources available to maintain these new plants, given their budget cuts. While he supports the intention of the project, he clearly has been presented with new responsibilities for which he cannot afford to assume. The contract administrator for the School District, Susan Johnson, is responsible for administration of the contract. Maurice Caba, the School District administrator with whom Greg Wolley met to obtain permission to conduct this project on school property, apparently did not include their maintenance people in the discussion of this project. Note that Mr. Caba, along with Superintendent Jack Bierworth, met with Ed Washington and I last year regarding the ultimate use of the Whitaker School site. We are waiting for the return of a signed letter of affirmation from the School District detailing their desire for cooperation in restoring the ponds' area.

There are basically two options for managing our investment at the Whitaker School site: (1) benign neglect and hope for good weather to promote success of native plants against exotics, or (2) commit to maintaining the plants at least through the first two years. Thereafter, we should have a management plan developed for the area if we proceed as envisioned.

The first option (benign neglect) may result in a percentage (<50%) of the plants surviving the first year if we have a wet summer. However, exotic plant growth will increase, especially the

MEMORANDUM

TO: Jane Hart/Metro
FROM: Bennett Burns/Walker & Macy
RE: Whitaker Ponds Public Meeting of 12-14-94
JOB #: 9472
DATE: December 21, 1994
COPIES: Doug Macy, John Van Staveren

- I. The meeting was kicked off with comments by Metro Councilor Ed Washington. Jane Hart then provided project background, goals, and next steps for public involvement.

Project goals include:

- Restore the natural resources on the site.
- Provide environmental education and stewardship opportunities.
- Encourage community access and use through a variety of programs.
- Incorporate the needs and concerns of all property owners and users.
- Improve water quality.

The next steps in the Whitaker Ponds management planning process are included at the end of this memo.

- II. The Advisory Panel members were then introduced and each made a brief statement as to their interest in the project. Panel members included:

- Sally Creasman- Madison High School
Sally is a teacher at Madison High School and a member of Columbia Slough Watershed Council. The focus of her interest in the project is on providing environmental education opportunities for school children.
- Erwin Bergman- Cully Neighborhood Association
Erwin is a resident in the nearby Cully Neighborhood and is very interested in improving pedestrian access to the park and enhancing the area as a unique natural area to increase livability and provide a natural "sanctuary" for the densely populated northeast residents.

- Trust For Public Land- Jim Desmond
The Trust For Public Land has been actively involved in negotiations to purchase the Klien property north of the western pond, which contains a debris dump. This parcel is key to the management plan since it provides access off 47th Avenue and is contiguous with the School District property.
- IV. An analysis of the existing conditions was presented by Walker & Macy and SRI/SHAPIRO. Maps describing zoning, ownership, existing use patterns and vegetative communities were discussed. It was pointed out that the ponds were shallower than originally presumed and that an existing culvert is spewing oil into the ponds. The origin of this culvert is unclear. It was also pointed out that the area could benefit from more emergent wetlands and an enhanced riparian zone.
- V. The public discussion portion of the evening produced many comments and concerns as summarized below:
- The ponds provide important flood storage capacity during times of heavy rain.
 - Natural springs were historically identified as providing a source of fresh water for the ponds.
 - The surrounding area does not contain sewers, which may have effected ground water quality.
 - The industrial area to the south may have had an impact on water quality in the ponds.
 - A concern was expressed about contaminants in the silt. Testing needs to be conducted on the sediments.
 - Planting of large trees is needed on the south side of the ponds to provide shade and improve habitat.
 - Whitaker School is used heavily for police training operations. Training is focused in the classroom currently, but there may be a need to use the ponds for water training.
 - Police training at Whitaker School may help deter vandalism.
 - A police training operation may not balance with the natural character of the site.
 - Little League currently uses all existing fields for practice or games.
 - 1000 people per day come to the site to watch softball during tournaments.
 - The southernmost field is used for disadvantaged athletes. It is the most accessible.
 - It may be desirable to relocate the northernmost ballfield to create a continuous open space on the north side.

3. January 12, 1995:
Advisory Panel recommends conceptual design for the Whitaker Ponds Management Plan.
4. January 12-January 26:
Consultant refines selected concept and develops narrative for the management plan document.
5. January 26, 1995:
Draft final Management Plan released for public review. Consultant presents draft final Management Plan to Metro Council.
6. February 15, 1995:
Close of public comment period for draft final Management Plan.
7. February 26, 1995:
Final Management Plan document available to public.

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NOTICE

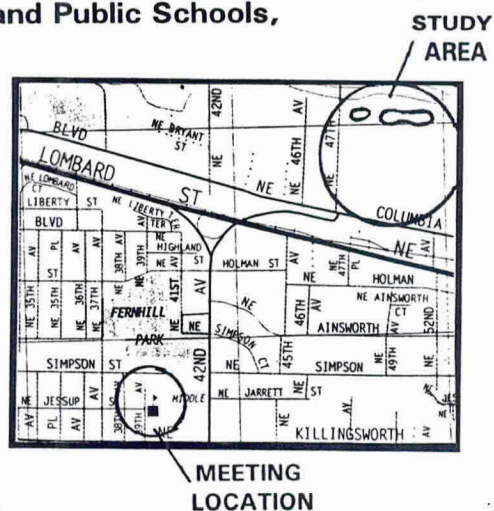
COMMUNITY WORKSHOP

Come view the design drawings for proposed future uses of the Whitaker Ponds study area near the old Whitaker School in NE Portland. We want to know if your ideas and concerns about the study area have been incorporated into the design drawings.

WHAT: A community workshop to review and discuss design drawings of proposed future uses in the Whitaker Ponds study area. Public input at this meeting will help shape a preferred design upon which to develop the Whitaker Ponds Management Plan. Meeting sponsors include Portland Public Schools, EnviroCorps and Metro.

WHEN: Thursday, January 12, 1995
7:00pm to 9:00pm

WHERE: The Whitaker Middle School
The Cafeteria
5700 NE 39th Avenue
Portland, OR



MEETING HIGHLIGHTS

- ◆ Review conceptual drawings that propose various environmental restoration and education opportunities and recreational uses for the Whitaker Ponds Study Area.
- ◆ Provide your ideas and comments about the designs to an independent review panel responsible for recommending a concept design for the Whitaker Ponds study area.
- ◆ Learn about the next steps in the project and your opportunities for future involvement in development of the management plan.

Refreshments will be served.

For additional information, call Jane Hart at Metro 797-1585.