

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN)	RESOLUTION NO. 99 -2788
EXEMPTION TO COMPETITIVE BIDDING)	
PROCEDURES PURSUANT TO METRO)	
CODE CHAPTER 2.04.054 (c), AND)	Introduced by Mike Burton,
AUTHORIZING THE EXECUTIVE OFFICER)	Executive Officer
TO EXECUTE A MULTI-YEAR CONTRACT)	
WITH THE OREGON HISTORICAL SOCIETY.)	

WHEREAS, Metro entered into a five year contract (Contract No. 904226) in 1994 with the Oregon Historical Society (OHS) to provide educational interpretive services of the Bybee House, Barn Museum and historical objects at Howell Territorial Park; and

WHEREAS, OHS is uniquely qualified to perform cultural and historic interpretive services relating to the Bybee House, Barn Museum and related orchards, gardens and historical equipment at Howell Territorial Park; and

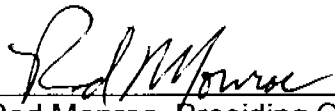
WHEREAS, for several years OHS has demonstrated an ability to provide these services for Howell Territorial Park cost effectively under prior contracts with Metro and previously Multnomah County; and

WHEREAS, Metro wishes to execute another five year contract renewable annually starting July 1, 1999 and shall remain in effect until and including June 30, 2004; now, therefore,

BE IT RESOLVED,

1. The Contract Review Board finds that exemption from competitive bidding requirements will not encourage favoritism in the award of public contracts or substantially diminish competition for public contracts let by Metro.
2. The Contract Review Board finds that award of this contract will result in substantial cost savings to Metro in provision of subject services at Howell Territorial Park.
3. The Contract Review Board exempts the contract with Oregon Historical Society from the competitive bidding requirements pursuant to Metro Code Section 2.04.054 (c).
4. The Contract Review Board authorizes the Executive Officer to execute a Multi-year contract (Exhibit A) with the Oregon Historical Society substantially in compliance with the contract form and contract terms reviewed today.

ADOPTED by the Metro Contract Review Board, this 3RD day of JUNE, 1999.


Rod Monroe, Presiding Officer

Approved as to form:



Daniel B. Cooper
General Counsel

EXHIBIT A

Project: OHS Management Services
Contract No. _____

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and the **Oregon Historical Society** referred to herein as "Contractor," located at **1200 SW Park Avenue, Portland, Oregon 97205**.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective **July 1, 1999** and shall remain in effect until and including **June 30, 2000 with the option to renew annually thereafter for a period not to exceed four additional years (through June 30, 2004)** unless terminated or extended as provided in this Agreement.
2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A — Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. Payment. Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed **Twenty Thousand Six Hundred Dollars (\$20,600.00)**.
4. Insurance.
 - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (2) Automobile bodily injury and property damage liability insurance.

b. Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

f. Contractor shall provide Metro with a certificate of insurance complying with this article and naming Metro as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to; reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

Oregon Historical Society

METRO

By _____

By _____

Title _____

Title _____

Date _____

Date _____

SCOPE OF WORK

1. DESCRIPTION OF SERVICES.

OHS Will provide the following services:

A. Provide for certain aspects of operations and maintenance of the Bybee House and Barn Museum at Howell Territorial Park, as well as the accurate educational interpretation of the house, farm shed, and historical objects associated with the site except as noted in 1. B. below.

- 1) The OHS Project Manager shall be the Curator/Bybee-Howell Site Manager, or other such person as shall be designated in writing by OHS. The OHS Project Manager is authorized to carry out all OHS actions referred to herein.
- 2) Provide maintenance functions at the same level as agreed to in Metro Personal Services Agreement Contract No. 904226, dated April 25, 1995. This includes paying typical utility costs including telephone, garbage (for special OHS events, i.e. "Wintering-In") and electricity.
- 3) Interpretive staff will be on site from noon to 5 PM every Saturday and Sunday from June 5 to September 6, 1999, up to and including Labor Day.
- 4) OHS may contract for services and utilize volunteers to assist in execution of the responsibilities agreed to in this contract, provided proof of adequate insurance addressing workers compensation and professional liability for such contractors and volunteers is submitted to and approved by Metro.

B. Metro will provide the following services:

- 1) The Metro Project Manager shall be the Regional Park Supervisor in charge of Howell Territorial Park or other such person as shall be designated in writing by Metro. The Metro Project Manager is authorized to carry out all Metro actions referred to herein.

- 2) Routine grounds maintenance, except for the orchard which will be a joint project with Metro assuming lead role. The herb garden and annual planting will be the responsibility of OHS.
- 3) Administer the picnic reservation system at Howell Territorial Park.
- 4) Pay the usual monthly invoices associated with the facility's security system and garbage services (related to picnic reservations).
- 5) Administer any special use permits.
- 6) Continue the enhancement of the pasture and wetland areas.
- 7) Construction management on any improvements to the Bybee House, the park barn, or anywhere else on park grounds.
- 8) Supply park brochures for OHS, if needed.

2. PUBLICITY

Metro reserves the right to review and approve, in writing, all written materials which are intended to promote the use of Bybee House and Howell Territorial Park or special events held therein plus reprinting of existing brochure.

3. COMPENSATION

Metro shall pay Contractor \$20,600.00 per year as a fixed fee.

Upon receipt of signed contract, Contractor may invoice Metro and Metro may prepay for the full amount. All correspondence shall be submitted to this address: Metro Regional Parks and Greenspaces Department, Attention: Contractor Administrator, 600 NE Grand Avenue, Portland, Oregon 97232-2736.

METRO OPERATIONS COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 99-2788, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO COMPETITIVE BIDDING PROCEDURES PURSUANT TO METRO CODE CHAPTER 2.04.054(C), AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A MULTI-YEAR CONTRACT WITH THE OREGON HISTORICAL SOCIETY.

Date: May 25, 1999

Presented by: Councilor Atherton

Committee Action: At its May 19, 1999 meeting, the Metro Operations Committee voted 2-0 to recommend Council adoption of Resolution No. 99-2788. Voting in favor: Councilors Atherton and Washington.

Council Issues/Discussion: Resolution 99-2788 continues an historical contractual relationship between Metro and the Oregon Historical Society. The five-year contract would begin July 1, 1999. Oregon Historical Society furnishes the Bybee House and Barn Museum and provides interpretive services. The historical society is found to be uniquely qualified to provide these services, and the sole source for many of the artifacts used in the displays. The annual amount of the contract is \$20,600, with Multnomah County providing half that amount, per a prior intergovernmental agreement.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 99-2788 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO COMPETITIVE BIDDING PROCEDURES PURSUANT TO METRO CODE CHAPTER 2.04.054 (c), AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A MULTI-YEAR CONTRACT WITH THE OREGON HISTORICAL SOCIETY.

Date: June 10, 1999

Presented by:

**Charles Ciecko
Dan Kromer**

FACTUAL BACKGROUND AND ANALYSIS

For several years, the Oregon Historical Society (OHS), under contract with Metro and previously Multnomah County (prior to park services consolidation), has provided cultural and historical interpretive services for facilities at Howell Territorial Park, including the Bybee House, Barn Museum, orchard and herb garden. It has been a past practice of Metro and OHS to enter into a multi-year contract (Contract No. 904226) with annual renewal provisions.

Metro wishes to execute another five-year contract, renewable annually, starting July 1, 1999 and shall remain in effect until and including June 30, 2004. Approval of this contract will continue the partnership with the Oregon Historical Society in managing and providing direct public services at Howell Territorial Park.

FINDINGS

Uniquely Qualified. Exemption from competitive bidding requirements for this contract will not encourage favoritism in the award of other public contracts or substantially diminish competition for other public contracts let by Metro. OHS furnishes the Bybee House and Barn Museum with period artifacts, and is uniquely qualified to interpret the cultural and historical attributes of the house and park. OHS is regarded as the sole source of many of this region's historical artifacts, some of which are used as part of their exhibits at the park.

Cost Savings. Award of this contract will result in substantial cost savings to Metro in provision of subject services at Howell Territorial Park because OHS has demonstrated the ability to provide these services for Howell Territorial Park cost effectively under prior contracts with Metro and Multnomah County. Locating and purchasing/securing historically correct artifacts for exhibits would be very time consuming and cost prohibitive.

FISCAL IMPACT

Compensation in the amount of \$20,600 annually is provided by Metro to OHS on a fixed fee basis for execution of the scope of work. This amount is budgeted in the FY 99-00 Adopted Budget. 50% of the funding comes from the Multnomah County General Fund per Resolution No. 93-1877 which executed the intergovernmental agreement consolidating the Multnomah County Park Services Division and the Metro Greenspaces programs. This will also be the funding arrangement for FY 2000-04, subject to Council approval.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 99-2788.