AGENDA

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736 TEL 503 797 1542 | FAX 503 797 1793



Agenda

MEETING:

METRO COUNCIL REGULAR MEETING

DATE:

February 4, 1999

DAY: TIME: Thursday 2:00 PM

PLACE:

Council Chamber

CALL TO ORDER AND ROLL CALL

- 1. INTRODUCTIONS
- 2. CITIZEN COMMUNICATIONS
- 3. EXECUTIVE OFFICER COMMUNICATIONS
- 4. AUDITOR COMMUNICATIONS
- 5. MPAC COMMUNICATIONS
- 6. METRO LEGISLATIVE UPDATE

PacWest

- 7. CONSENT AGENDA
- 7.1 Consideration of Minutes for the January 28, 1999 Metro Council Regular Meeting.
- 8. **RESOLUTIONS**
- 8.1 **Resolution No. 99-2743,** For the Purpose of Recognizing a bad debt write off related to invoice #53814, issued to Associated Marketing Research.

- 9. CONTRACT REVIEW BOARD
- 9.1 Deliberation on Appeal by Hattenauer Distributing Company of Executive Officer's Rejection of Appeal of Award of contract for Provision of Diesel Fuel to Devin Oil Company, Inc. (Public Hearing and Council Action)

Fjordbeck

10. COUNCILOR COMMUNICATION

ADJOURN

CABLE VIEWERS: Council Meetings, the second and fourth Thursdays of the month are shown on City Net 30 (Paragon and TCI Cablevision) the first Sunday after the meeting at 8:30 p.m. The entire meeting is also shown again on the second Monday after the meeting at 2:00 p.m. on City Net 30. The meeting is also shown on Channel 11 (Community Access Network) the first Monday after the meeting at 4:00 p.m. The first and third Thursdays of the month are shown on Channel 11 the Friday after the meeting at 2:00 p.m. and the first Sunday and Wednesday after the meeting on Channels 21 & 30 at 7:00 p.m.

PUBLIC HEARINGS: Public Hearings are held on all Ordinances second read and on Resolutions upon request of the public.

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542.

For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Consideration of the January 28, 1999 Metro Council Meeting minutes.

Metro Council Meeting Thursday, February 4, 1999 Council Chamber

MINUTES OF THE METRO COUNCIL MEETING

January 28, 1999

Council Chamber

<u>Councilors Present:</u> Rod Monroe (Presiding Officer), Ed Washington, Rod Park, Bill Atherton, David Bragdon, Jon Kvistad

Councilors Absent:

Susan McLain (excused)

Presiding Officer Monroe convened the Regular Council Meeting at 2:03 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATION

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. AUDITOR COMMUNICATIONS

None.

5. MPAC COMMUNICATION

Councilor Bragdon said Councilor McLain and Tualatin Mayor and MPAC Chair, Lou Ogden, presented a draft document, "Principles of Partnership," to MPAC, and the committee reviewed the work plan presented in the Council Growth Management Committee.

Presiding Officer Monroe said MPAC members are pleased about the number of Councilors that have attended MPAC meetings this year and the strong interest shown by the Council.

6. CONSENT AGENDA

6.1 Consideration meeting minutes of the January 21, 1999, Regular Council Meeting.

Motion:

Councilor Washington moved to adopt the meeting minutes of January 21,

1999, Regular Council Meeting.

Seconded:

Councilor Bragdon seconded the motion.

Vote:

The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously by those

present.

7. ORDINANCES - FIRST READING

7.1 Ordinance No. 99-795, For the Purpose of Adopting a Code of Ethics for Metro Officials and requiring registration of lobbyists.

Presiding Officer Monroe assigned Ordinance No. 99-795 to Metro Operations Committee. He reminded Councilors that any proposed amendments to the ordinance should be filed with Michael Morrissey, Senior Council Analyst, by Tuesday, February 2, 1999, to allow for their consideration at the Metro Operations Committee meeting Wednesday, February 3, 1999.

8. ORDINANCES - SECOND READING

8.1 Ordinance No. 99-792, Amending the FY 1998-99 Budget and Appropriations Schedule in the Support Services Fund by Transferring \$270,000 from Contingency to Materials and Services and Capital Outlay in the Administrative Services Department for Unanticipated Expenditures in Information Management Services; and increasing the total FTE in the Administrative Services Department by 1.0 FTE System Analyst; and Declaring an Emergency.

Motion: Councilor Park moved to adopt Ordinance No. 99-792.

Seconded: Councilor Washington seconded the motion.

Councilor Park presented the ordinance. The substance of his remarks are included in the staff report, which is included in the meeting record.

Councilor Bragdon said he supports the Executive Officer agreement to review future training and retention related to PeopleSoft.

Councilor Washington said he will support the ordinance, and commended Councilor Park on his presentation.

Presiding Officer Monroe opened a public hearing. No one appeared to speak with regard to Ordinance No. 99-792. Presiding Officer Monroe closed the public hearing.

Councilor Kvistad said he will not support the ordinance because he is concerned about the project and the way in which the Council is addressing Support Services funds. He said he is specifically concerned about the buy down on the contingency. He recommended paying for a full time, in-house database administrator who knows PeopleSoft, rather than pay a consultant \$110,000.

Councilor Atherton asked staff to address Councilor Kvistad's question about hiring an employee rather than a consultant.

Jennifer Sims, Senior Director/Chief Financial Officer of Administrative Services, said historically, the database administration function had been in-house, but there had been high turnover. They attempted to recruit, but have not been able to attract a qualified party due to Metro's salary structure. The database administrator consultant would be used to fill in and train an existing staff person. In the meantime, they are in the process of working with the bargaining unit and researching their options for retention and attracting qualified people to fill the positions.

Councilor Atherton asked if the bargaining deal includes a way to retain a current staff member who is trained in PeopleSoft, as qualified people can command a salary of \$90,000, for which Metro's structure does not allow.

Ms. Sims said they are considering a combination of an increase in pay ranges for positions that are difficult to recruit and retain, and a bonus system for employees who stay.

Councilor Atherton said he would support this measure because he believes it is reasonable and timely.

Vote:

The vote was 5 aye/ 1 nay/ 0 abstain. The motion passed with Councilor Kvistad voting no.

9. RESOLUTIONS

9.1 Resolution No. 99-2740, For the Purpose of Authorizing the Executive Officer to Execute a Programmatic 4(f) Statement and Negotiate a right-of-way agreement with Clackamas County Department of Transportation and Metro property.

Councilor Atherton presented Resolution No. 99-2740. The substance of his remarks may be found in the staff report, a copy of which is included in the meeting record.

Motion:

Councilor Atherton moved to adopt Resolution No. 99-2740.

Seconded:

Councilor Kvistad seconded the motion.

Motion to

Amend Main
Motion:

Councilor Atherton moved to amend Resolution No. 99-2740. A copy of his

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amendment is included in the meeting record.

Seconded:

Councilor Park seconded the amendment.

Presiding Officer Monroe asked Dan Cooper, General Counsel, if the amendments proposed by Councilor Atherton are substantive and would delay action on the ordinance.

Mr. Cooper said action would not need to be delayed because it is a resolution, and not an ordinance.

Councilor Atherton spoke to his amendments. He said the first amendment would clarify that it would be a sale of land, at market value, and not a taking of land. The purpose of the second amendment is to clarify for the Oregon Department of Transportation (ODOT) and Clackamas County that parkway will not be used in any way to pay for the added expense of the bridge.

Councilor Atherton clarified that the second amendment would follow the last sentence of paragraph 1(d) under BE IT RESOLVED, and would be a separate sentence. He added the proposed language should read "Ceosts of the bridge will <u>not</u> be included in the cost of the project."

Mr. Cooper recommended that the Council clarify the expected funding source for the bridge: whether they would use transportation funds out of the project, or from another source.

Heather Nelson Kent, Planning and Capital Development Manager, Regional Parks and Greenspaces Department, said her understanding was that Councilor Atherton's amendment was to ensure that the cost of the bridge, which might be an additional cost to the project, would be paid for with transportation funded project, and not with other funds such as park funds. She said she is concerned that the amendment is correct as written, and the result of adding the word "not" would be the opposite of Councilor Atherton's intentions.

Councilor Atherton and Mr. Cooper agreed. Councilor Atherton clarified that the proposed amendment would stand as written.

Councilor Bragdon said he supports the amendments.

Councilor Park asked Ms. Nelson Kent or Mr. Cooper about the effect of substituting the word "sale" for "taking."

Mr. Cooper said he saw no harm in using the word "sale" to reflect the actual events, which is a sale and not a condemnation.

Councilor Atherton said this action is supported by North Clackamas Parks and Recreation.

Vote to amend

Main Motion: The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

Vote on the

Main Motion: The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

9.2 Resolution No. 99-2747, For the Purpose of Authorizing Request for Proposals for an Exhibit Fabricator at Oregon Zoo.

Motion: Councilor Kvistad moved to adopt Resolution No. 99-2747.

Seconded: Councilor Washington seconded the motion.

Councilor Kvistad presented Resolution No. 99-2747. The substance of his comments is included in the staff report, which is part of the meeting record.

Vote: The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

9.3 Resolution No. 99-2750, For the Purpose of Approving an Intergovernmental Agreement with the City of Portland for Reforestation on Metro Open Spaces Property.

Motion: Councilor Washington moved to adopt Resolution No. 99-2750.

Seconded: Councilor Bragdon seconded the motion.

Councilor Washington asked staff to give the Councilor report on Resolution No. 99-2750.

Jim Desmond, Manager of Open Spaces Acquisition, presented the resolution. The substance of his comments are included in the staff report, which is part of the meeting record. He added that the reforestation of properties purchased through Open Spaces bond money is time and labor intensive, and needs a licensed forester, which Metro does not have. Under the direction of the Executive Officer and the Council, he and his staff worked to contract out these services. He said his staff would continue to serve in an advisory role to the City of Portland Bureau of Environmental Services (BES) Watershed Re-Vegetation Program.

Mr. Desmond said he is aware that the Council has received phone calls and correspondence from citizens objecting to the resolution. He addressed two of the citizen's concerns. First, some had suggested using Salmon Corps or other volunteer groups in lieu of the foresters. The problem with that suggestion is that volunteer groups are typically labor groups, not foresters, and they are not in the position to take on the 800-acre project. He said volunteer organizations would be involved in the project where appropriate. A second concern is that the Re-Vegetation Program is housed at the Bureau of Environmental Services; some have questioned the record of the BES in environmental matters. He said this issue is more difficult to address, but he has been extremely pleased with the work done by the Re-Vegetation Program, and they share the same philosophy. He said BES has contributed about \$700,000 toward the acquisition of Metro Openspace properties and has been an excellent partner in the Metro Greenspaces Acquisition effort.

Presiding Officer Monroe said there would be a public hearing on the resolution.

Councilor Kvistad asked if the IGA explicitly states that plants used in reforestation must meet Metro's guidelines for native species.

Jim Morgan, Senior Regional Planner, Open Spaces Acquisition, said the contract must conform with Metro's policy to use strictly native species of increased diversity in all plantings.

Councilor Kvistad asked Mr. Morgan to provide documentation at the time of implementation to verify that the requirement has been met. He asked Mr. Desmond about the Salmon Corps.

Mr. Desmond said he believes the Salmon Corps is a volunteer group affiliated with the Yakima tribe, and is typically comprised of young adults across Oregon and Washington who work on revegetation projects and other environmentally related efforts. He said Metro has used the Salmon Corps in the past and will continue to use them.

Councilor Kvistad asked about the terms of the contract.

Mr. Desmond said the terms of the contract are set out in the intergovernmental agreement (IGA) and are basically for the profession services and the forestry supervisory services and plant matter. He said the estimated annual cost will be \$20,160, which is significantly less than it would be through the private sector and retail plant cost. He said planting season is nearing and most of the activity will be conducted over the next few months.

Councilor Kvistad asked if Mr. Morgan has a process of monitoring in place.

Mr. Morgan said he has scheduled all the properties, the acreage, and when the properties are to be visited. The results will be reported to him as they occur.

Councilor Kvistad said Mr. Morgan answered his concerns about monitoring hours and results.

Councilor Park asked about costs involved in the project. He said he would like to discuss in the future whether it is good policy to have the private sector compete with the public sector.

Mr. Morgan said the purchase of plant material is coming from both the City of Portland and a few commercial growers who have worked closely with the department to develop the types of plants needed. He said the plant material needed is not commercially available.

Councilor Park said if the plant material is grown in the public sector, and not contracted out, then the demand is not created in the commercial sector.

Mr. Morgan agreed that there is a conundrum of trying to develop plant material commercially but at the same time, have it available for year-to-year projects. He said they are developing partnerships between governments and commercial growers.

Councilor Bragdon asked if the fee of \$40 per hour is for a strictly supervisory personnel fee.

Mr. Desmond said that was correct, the \$40 per hour fee is for the professional services for the City of Portland's foresters, who would supervise the work crews. He said the work crews could either be volunteers or groups to which the city contracts out.

Councilor Bragdon asked if a Request for Proposals (RFP) was submitted, and if staff knows the private sector market for those professional services.

Mr. Desmond said they did not enter into a formal RFP process because after making a few phone calls, it was clear that the BES rate was dramatically lower than any private sector rates.

Mr. Morgan said the purchasing of the plant material was through the city but most of the material does come from commercial suppliers, and there was a bid process to obtain the best possible price on the commercial market. He said the IGA would take advantage of the City's experience and its established relationships with commercial growers.

Councilor Bragdon asked about the advantages and disadvantages doing the work in-house.

Mr. Desmond said the Parks Department proposed both a parks forester and a volunteer coordinator in last year's budget, but agency was trying to limit new full time equivalents (FTEs). The department asked to prioritize the two new positions requested, and Charles Ciecko, Manager of Parks and Greenspaces, determined that the volunteer coordinator was the more eminent need. They were requested to see if they could hire a forester on contract for less money than a new FTE, so they are thrilled to have found an arrangement for \$20,000 to \$25,000 through the BES.

Councilor Atherton asked if Metro expects to purchase significant amounts of plant material in the future, and should consider announcing its purchase plans be announced to the private sector.

Mr. Morgan said no, he expects the amount of plant material purchased in the near future to stay the same or decrease.

Mr. Desmond added at this point, 4,000 acres have been purchased of a total goal of 6,000 acres, so they do not anticipate as many new properties.

Councilor Atherton said he understands the Weyerhaeuser and other large timber companies make plant materials available as donations, and he asked if Metro has taken advantage of that.

Mr. Morgan said normally they do not, mainly because if a planting is scheduled for January or February, and labor contracts are in place, the plant material needs to be committed. He said most of the surplus plant material does not become available until February or March. He said they have used it in the past when they have added on additional acreage or properties.

Presiding Officer Monroe opened a public hearing on Resolution No. 99-2750.

Liz Callison, West Multnomah Soil and Water Conservation District, 6039 Southwest Knightsbridge Rive, Portland, said that Salmon Corps has an office in the Portland area. She read her letter into the record, a copy of which may be found in the permanent record of this meeting.

Chuck Fall, 3712 Southeast Salmon, Portland, said is concerned that Metro has taken over the management of Lone Fir Cemetery, in his neighborhood, but does not have a licensed forester on staff. He said 6,000 acres of openspace is a significant property issue, and not having a forester in-house is poor management. He recommended withholding action on Resolution NO. 99-2750 for further analysis. A copy of his testimony is included in the meeting record.

Presiding Officer Monroe closed the public hearing.

Councilor Washington clarified for Ms. Callison that staff was not brought in to sell the Council on anything; staff was brought in to inform the Council.

Ms. Callison asked if Councilor Washington was referring to staff from the Columbia Slough Project. Councilor Washington said he meant Metro staff.

Councilor Washington asked Ms. Callison for her suggestions on what the Council should do instead of the measures outlined in Resolution No. 98-2750.

Ms. Callison said she knows staff was had a number of discussions, including with the potential contractor, about doing an in-house project. She said she supports that idea. She does not think the Council needs to be pushed into a decision for this planting season. She recommended delaying action for a few weeks to a month in order to get more input. She said staff has not spoken with any members of the public, some of whom have experience, even on Metro projects.

Councilor Park asked Ms. Callison if suggestion of delaying a month and then going through another process, is essentially recommending that the planting not be done this year.

Ms. Callison said no, it would not necessarily hold up the planting. She said if the Council approves Resolution No. 99-2750 in a month, the planting should still be able to occur as scheduled. She asked if

it would be a serious option for Metro to consider doing reforestation in-house, and if staff had ever asked the Council for a forester position.

Presiding Officer Monroe said according to staff testimony, a year ago in the budget cycle, a forester position was requested by the department, but the Executive Officer did not have the funding and it was not recommended to the Council.

Ms. Callison said if Resolution No. 99-2750 is not approved for this season, it would necessarily mean that the planting season would be lost.

Councilor Park asked Ms. Callison when she thought the planting could occur, assuming the Council did not approve the resolution, went through an additional process and tried to develop a volunteer group under Metro guidance. Secondly, he asked who had the ultimate responsibility of seeing that the project was completed in the Tryon Creek streambank project Ms. Callison coordinated.

Ms. Callison said completion of the Tryon Creek project was her responsibility; she applied for the grant and hired the necessary people. She said it may be possible to do some or most of the planting in the fall. She said Metro staff does not appear to be well aware of many of the community groups available to help with the work.

Councilor Park asked if the prior project was under the Forest Practices Act and subject to those rules.

Ms. Callison said no, they obtained funding for Oregon Department of Fish and Wildlife Restoration and Enhancement Board. She said it was a precedent setting project because it was the first time that agency had invested in an urban stream. She said the land was Metro park land, in Portland, and not subject to the rules of the Forest Practices Act.

Councilor Park asked Mr. Desmond if Metro is under any special rules and responsibilities because the land in question is under the Oregon Forest Practices Act.

Mr. Desmond said the properties that fall under the Forest Practices Act, which requires that a certain number of trees per acre be planted and nurtured so that they are free to grow at the end of five years. He said every season is important to reach that goal, and they are concerned that if plant materials are not planted now, they could be overtaken by exotic plants and crowding plants this summer. He said the next few months are critical in the process.

Councilor Atherton said he listened carefully to Ms. Callison and Mr. Fall, and they raised a number of interesting policy questions. He said he made a list of five clear policy points for the Council to consider in its decision making: 1) keep costs as low as reasonable, 2) use the efficiencies of the private sector as much as possible, 3) build up the ability to use volunteers to keep costs low and build a sense of community, 4) develop a long-range plan for urban forestry, and 5) the Council needs to ask the Executive Officer to develop a plan for establishing long-term funding. He said Ms. Callison made excellent points, but he is persuaded by staff that there are some lands which needs services immediately.

Mr. Desmond stressed the Parks Department's commitment to using volunteers and reviewed their current volunteer program. He said Ms. Callison's project at Tryon Creek was a model project and the department is thrilled with her work. He pointed out, however, that the Tryon Creek project covered about .5 acre in a densely populated, active neighborhood, whereas the proposed lands are much larger and more remote.

Councilor Washington said he appreciated the testimony from all sides. He said he does not find any compelling reasons in the testimony he heard to overturn the resolution, and he urged the Council to vote yes.

Vote: The vote was 6 aye/ 0 nay/ 0 abstain, and the motion passed unanimously of those present.

9.4 Resolution No. 99-2751A, For the Purpose of Appointing Nominee Ted Kyle to the Metro Committee for Citizen Involvement (MCCI).

Motion: Councilor Washington moved to re-refer Resolution No. 99-2751A to the Metro Operations Committee.

Seconded: Councilor Atherton seconded the motion.

Councilor Kvistad made a point of order that at the request of the committee chair, a resolution may be re-referred without a motion. He said it is almost automatic, unless there is an objection.

Presiding Officer Monroe agreed, but said he would like Kay Durtschi, MCCI Chair, to speak before he asked for any objections.

Ms. Kay Durtschi, MCCI Chair, said she is happy to speak before the new Council and looks forward to the next year. She invited the Council to the meetings of MCCI, and thanked Councilor Bragdon for attending the meeting last week. She said she finds the method in which Resolution No. 99-2751A was re-referred to committee unsettling. She said MCCI is a chartered committee of Metro, and its bylaws are approved by the Council. She said MCCI follows a standard procedure, set out in its bylaws, to appoint nominees to the committee. MCCI is a committee of 27 people from the community within the Metro boundary, representing each of the Councilor districts and the counties at large. In addition, MCCI has written a set of principles which were brought to the Council and approved over a year ago. At least 14 of the current 27 members of MCCI are employed, and therefore MCCI holds its meetings in the late afternoon or early evening to accommodate those who are employed. She urged the Council not to discredit employment or place of employment because where members are employed is not a major criteria for membership in MCCI. She said MCCI is and has been composed of former Metro Councilors, business people, and citizen activists, and they are always seeking more diversity on the committee. Hence, she finds it appalling that a new member of the Council has sought to undermine the process followed by MCCI, which was in place and in progress before the name of MCCI's nominee came before the Council. She asked the Council to consider that MCCI does not feel it has conflicts of interest because they address citizen involvement. She asked the Council to carry the nominee's name forward and approve it as soon as possible so that MCCI can operate at full strength to ensure citizen involvement in all aspects of Metro.

Councilor Bragdon said he was not a member of the committee that forwarded the nomination to Council, although he did observe it was forwarded by a vote of 3/0. He said he was present at MCCI's last meeting, and noted that the nominee attended and was greeted by the committee with an enthusiastic round of applause. He said during consideration of Resolution No. 99-2750, the importance of volunteers and citizen involvement was stressed, and he would not want to do anything to discourage a legitimate nominee.

Presiding Officer Monroe asked Councilor Washington to comment on his intent for Resolution No. 99-2750.

Councilor Washington said his intention is to bring Resolution No. 99-2751A back to committee for further consideration.

Councilor Park said he recently spoke with an MCCI member from his district and was comfortable with the process that took place and supported the nomination, even though he had not met the nominee personally.

Presiding Officer Monroe asked for any objection to the motion. There was none. Presiding Officer Monroe re-referred Resolution No. 99-2751A to the Metro Operations Committee.

10. CONTRACT REVIEW BOARD

Presiding Officer Monroe recessed the Council Regular Session and convened the Contract Review Board.

10.1 Resolution No. 99-2738, For the purpose of Authorizing an amendment to Contract 920909 with Natural Data for a Database Administrator.

Motion: Councilor Park moved to adopt Resolution No. 99-2738.

Seconded: Councilor Kvistad seconded the motion.

Councilor Park presented the resolution. The substance of his remarks are included in the staff report, which is part of the meeting record.

Councilor Kvistad complimented Councilor Park on his presentation. He said while he has concerns about this item, as it relates to the total project, he feels it is important for the Council to move forward on Resolution No. 99-2738 in order to stay on its timelines. He said he will support the resolution.

Councilor Park urged an aye vote.

Vote: The vote was 6 aye/ 0 nay/ 0 abstain. The motion passed unanimously of those present.

Presiding Officer Monroe adjourned the Contract Review Board and reconvened the Council Regular Session.

11. COUNCILOR COMMUNICATION

Councilor Washington apologized for any offense that may have been given during the meeting and said it was all meant in fun.

Councilor Park said he would like to continue discussions about the direction of Metro's volunteer programs and Metro's responsibilities under the Forest Practices Act. He said he would also like to use as much material out of the private sector as possible.

Councilor Kvistad said it is the Council's custom to give a hard time to new Councilors the first time they carry ordinances or resolutions at the full Council.

Councilor Atherton said as fellow pilots and farmers, he and Councilor Park have thick skins and are not bothered by the Council's attempts. He mentioned his hearing disability and said he is still learning the sound system in the Council Chamber.

Councilor Bragdon empathized with his two fellow new Councilors and said he would not be at Council for the next six months.

12. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Monroe adjourned the meeting at 3:37 p.m.

Prepared by,

Chris Billington

Clerk of the Council

Document Number	Document Date	Document Title	TO/FROM	RES/ORD
012899c-01	1/21/99	Minutes of the Metro Council Meeting, January 21, 1999	TO Metro Council/FROM Chris Billington, Clerk of the Council	6.1 Consent agenda
012899c-02	1/27/99	Staff Report, Ordinance No. 99-795	TO Metro Council/FROM Michael Morrissey	Ordinance No. 99-795
012899c-03	1/28/99	Councilor Atherton amendments to Resolution No. 99- 2740	TO Metro Council/FROM Councilor Atherton	Resolution No. 99-2740
012899c-04	1/26/99	Letter in support of Resolution No. 99- 2740	TO Presiding Officer Monroe/FROM Mike Henley, NCPRD Director	Resolution No. 99-2740
012899c-05	1/28/99	Metro Operations Committee Report, Resolution No. 99- 2750	TO Metro Council/FROM Councilor Washington	Resolution No. 99-2750

Metro Council Meeti January 28, 1999 Page 12	ng			
012899c-06	1/27/99	Staff Report, Resolution No. 99- 2750	TO Metro Operations Committee/ FROM: Michael Morrissey	Resolution No. 99-2750
012899c-07	1/28/99	Copy of electronic mail regarding Resolution No. 99-2750	TO George Kraal (cc: Metro Council)/FROM Liz Callison	Resolution No. 99-2750
012899c-08	1/27/99	Summary of phone message from Chuck Fall	TO Metro Council/FROM Chris Billington	Resolution No. 99-2750 and 99-2751A
012899c-09	1/28/99	Summary of phone message from Dorothy Gage	TO Metro Council/FROM Chris Billington	Resolution No. 99-2750 and 99-2751A
012899c-10	1/28/99	Summary of phone message from Nancy Kelly	TO Metro Council/FROM Chris Billington	Resolution No. 99-2750 and 99-2751A
012899c-11	1/27/99	Summary of phone messages from Para Fadrey, Corinne Weber, Deedee Kerbaugh	TO Metro Council/FROM Chris Billington	Resolution No. 99-2750 and 99- 2751A
012899c-12	1/27/99	Phone message from Mary Rigg	TO Rod Monroe, Jon Kvistad/FROM Mary Rigg	Resolution No. 99-2750 and 99-2751A
012899c-13	1/26/99	Letter urging opposition to Resolution No. 99-2751A	TO Metro Council/FROM Lewis Marcus	Resolution No. 99-2751A
012899c-14	1/27/99	Phone message from Sally McLarty	TO Metro Council/FROM Suzanne Myers	Resolution No. 99-2751A

Agenda Item Number 8.1

Resolution No. 99-2743, For the purpose of recognizing a bad debt write off rélated to invoice #53814, issued to Associated Marketing Research.

Metro Council Meeting Thursday, February 4, 1999 Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF OBTAINING TH APPROVAL OF COUNCIL TO WRITE OF	F)
CERTAIN ACCOUNTS RECEIVABLE) Introduced by Mike Burton) Executive Officer
WHEREAS, The Metro Code, Sec	tion 5.02.06(h) provides that the Executive
Officer may end pursuit of accounts recei	ivable consistent with prudent credit practices,
when the likelihood of collection does not	t justify future collection costs. Such actions will
be reported to Council in writing on a mor	nthly basis when the amount exceeds \$500, and
amounts over \$10,000 will require counci	il approval.
WHEREAS, invoice # 53814, issue	ed to ASSOCIATED MARKETING RECOURCES
is over \$10,000 and does not justify furth	er collection efforts or cost.
BE IT RESOLVED, that invoice #	53814 issued to Associated Marketing Resources
in the amount of \$28,506 is approved for	accounting write-off as a bad debt.
ADOPTED by the Metro Council th	nis, 1999.
· •	Rod Monroe, Presiding Officer
Approved as to Form:	
·	
Daniel B. Cooper, General Counsel	

STAFF REPORT

RESOLUTION 99-2743 FOR THE PURPOSE OF RECOGNIZING A BAD DEBT WRITE-OFF RELATED TO INVOICE # 53814, ISSUED TO ASSOCIATED MARKETING RESOURCES.

Date: January 8, 1999 Presented by: Kerry Gilbreth and Dick Bolen

Purpose of the Report

As required by generally accepted accounting principles, it is necessary to periodically review the overdue accounts to identify those for which there is no likelihood of recovery. The accounts so identified are "written off" or removed as accounts receivable.

Code Requirements

Metro Code 5.02.060(h) states that the executive officer may end pursuit of an account receivable consistent with prudent credit practices, when the likelihood of collecting does not justify further collection cost. Such action shall be reported to the council in writing on a monthly basis when the amount exceeds \$500, and amounts over \$10,000 shall require Council approval.

Background

The purpose of this report is to request approval to write off invoice # 53814 dated July, 16,1996 in the amount of \$28,506. This invoice was billed to Associated Marketing Resources, (AMR) 6700 SW 105th, Beaverton, OR 97005-5404. (Attachment A) In August 1995, DRC entered into Personal Services Agreement, Contract # 904463 with Associated Marketing Resources. Under the agreement, Metro agreed to provide AMR with copies of the vacant land atlases, and AMR agreed to sell up to sixteen sets of the atlases and provide customer support. Additionally, AMR agreed to reimburse Metro for 70% of the retail price of each vacant land atlas sold. Subsequently AMR provided documentation to Metro advising that as of March 31, 1996, AMR had sold a total of 9 single atlases and 14 atlas sets. Accordingly there was a total owing to Metro, which was invoiced, in the amount of \$28,506. (Attachment B) On April 25, 1997 Metro sent written notification to David G. Olesen, President of Associated Marketing Resources, Inc., advising that pursuant to section 14 of the Personal Services Agreement, Metro was terminating the contract effective May 5, 1997. Metro received three checks from AMR dated May 1 and 2, 1997 totaling \$1,400. These checks were returned from the bank NSF. (Attachment C) On July 24, 1997 Marvin D. Fjordbeck sent a certified letter to AMR requesting payment of the outstanding invoice and the NSF checks. (Attachment D) David Olesen replied August 6, 1997 advising that AMR ceased operations on June 15,1997 and permanently closed its doors. He further advised that AMR was essentially bankrupt with virtually no assets

and approximately \$180,000 in liabilities including approximately \$38,000 to the IRS, \$20,000 the State of Oregon. (Attachment E) In light of the financial status of the company, no further legal action was taken.

Current research of Associated Marketing Resources finds that it is a dissolved corporation with an outstanding legal balance in excess of \$87,000, a portion of this balance is comprised of nine outstanding tax liens. The initiation of legal action would increase our loss through court cost.

Executive officer's Recommendation

The Executive Officer recommends adoption of Resolution No 99-2743 for the purpose of recognizing the write off of invoice # 53814, issued to Associated Marketing Resources in the amount of \$ 28,506.

Invoice





METRO

To: AS	SOCIATED MARKETING RESCURCES	:			53814
670	00 SW 105TH				•
EE	AVERTON, OR 97005-5404			•	•
N ₂	dioting -	· · · · · · · · ·			
			Date: July	16, 1996	
For servi	ces/products provided by: Metro Washington Park Zoo Metro Center Transportation Department	•	Customer's Order Number:	000000-121000-0	00000
	 ☐ Regional Environmental Management ☐ Metro Oregon Convention Center ☐ Regional Parks & Greenspace ☐ Growth Management Department 	nt	Terms: Net 30 days. You date Metro receives payr make your check payable copy with payment.	nent at the address	above. Please
Quantity	Item	Reve	nue/Expense Account	Unit Price	Amount
9	Single Sets - Vacant	140-1	30000-34150038020	995.00	8,955.00
	Lend Atlas		38020		
14	Full Sets - Vacant	140-1	30000-341500-38425	1,396.50	19,551.00
			38020		
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					\$100 miles
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	CUSTOMER	* # 1	BILL #	Total Due	28.506.00
ender war is a letter	7/23/96 jm 4/00	2	53814		

ENTERED BY ACCOUNTING COPY

AMR INC To whom it may concern: This is the amount AMR was billed for on vacant land

Atlas -

To:

Dick Bolen, Metro

From:

Dave Olesen, Associated Marketing Resources, Inc.

Re:

Vacant Lands Atlas Activity Report for the period of:

March 1, 1996 to March 31, 1996

Promotional / Marketing Activity:	Hours:	LaborCost:	Materials Cost:
1. Mailed flyers to 3, 800 Realtors	1	\$40.00	\$300.00
2. Mailed 400 VLA flyers to WA & CA Developers	16	\$640.00	\$407.99
3. Sent VLAS ample Products to approximately 30 Builders, Developers & Engineers	8	\$320.00	\$1.93 each / \$57.90 total
Builders, Developers & Engineers 4. Printed 200 additional VLA sample products	1	\$40.00	\$26.25

Personal Contacts / Presentations:		(One Contact Represents One Hour Spent)		
1. Kevin Warn 2. Marc Curningham 3. Herb Good 4. Dave Disney 5. Mark Crardall	6. Valarie Ames 7. Bill Hupfer 8. Dale Burkhokler 9. George Hale 10. Jim Barham	11. Melvin Broadus 12. Nick Rossi 13. Cal Roslan 14. Marc McGuire 15. Mike McKerna	16. Lannie Rogers 17. Peter Green 18. Mike Cocco	

Feedback:

Thanks for the Multnomah County errata pages!!

To Date:

Total Units Sold:

Clackamas Only:	1	2	Total Hours Spent:	26
Multnomah Only:	1 9	2	Total Labor Cost:	\$1,040,00
Washington Only:	0	5	Total Materials Cost:	\$792,14
Complete Set:	1	14	Total AMR Costs:	\$1,832,14

Sets = 14x\$1995=\$27,930 \(\times .70\)
\[\times .70\)
\[\tag{9551+6,269=\$25,820}

AMR Promotional Efforts:

Ε

N



(Attachment C, page 1)

June 11, 1997

To: Marvin Fjordbeck

From: Rex Beazer

Subj: Insufficient Fund Checks; Associated Marketing Resources, Inc.

Enclosed are three insufficient funds checks totalling \$1,400.00 issued to Metro by Associated Marketing Resources, Inc. in May 1997. I have called and talked to Dick Oleson and he promised to come in and make them good. He didn't come in as agreed. I called back and the number had been changed. I called the new number and left a message and received no response. I called again and received no response. Today I called and the number is no longer in service.

My assumption is that he does not intend to make these checks good, therefore I am forwarding them to you to include in your litigation with him. If we can help you in any way, please call.

Sincerely.

Rex Beazer

Ext. 1945

Cc: John trezonese

WELLS FARGO BANK, NA.		(Attachment C, page 2)
ACCOUNT NUMBER	OFFICE	DATE
157 630300	RE CLAMATIONS	4.
YOUR ACCOUNT HAS BEEN CHARGED FOR THE FOLL	OWING ITEM(S) RETURNED UNPAID:	05/07/97
MAKER	REASON FOR NON-PAYMENT	BANK FEE AMOUNT
* * *	INSUFFICIENT FUN INSUFFICIENT FUN INSUFFICIENT FUN	IDS . 100 00
GENERAL ATTN ACCOUNTING MANAGE GOO NE GRAND AVE PORTLAND OR S	- 9ER 97232-2736	SITE: TEMPE ORIGINATION ((3))
ASSOCIATED MARKETING RESOURCES, INC. RESEARCH I 6700 S.W. 105TH AVE. NO. 213 503-644-5933 BEAVERTON, OR 97005	5842 5/1997 24-7038/3230 2678	New number (888)569-4900
AY TO THE ROER OF REMOVED (503) 275-2222	\$ & & & & & & & & & & & & & & & &	(000)
Cedar Mill Office 2676 12000 horthwest Cornell Road Portland OA 97229 OR		PROPERTY OF THE PROPERTY OF TH
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ASSOCIATED MARKETING RESOURCES, INC.	5843	e a as lor
RESEARCH I	<u> </u>	\$ non or was
AY.TO THE SUBSTITUTE OF THE SU	\$/00°	buck on 5-2-97 for \$700.00 was talen
Que hundrel	DOLLARS	
Bank of America Cedar Mill Office 2676 12800 northwest Cornes Road Portland OR 97229		
OR	En. ',00000 10000',	yer i.
August	Guardan [®] Salety Ores	ישחי וי

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100 NORTHEAST GRAND AVENUE | PORTLAND, OREGO



Marvin D. Fjordbeck Tele: (503) 797-1533 FAX: (503) 797-1792

July 24, 1997

<u>VIA CERTIFIED MAIL</u> RETURN RECEIPT REQUESTED

AMR 6700 SW 105th Avenue Beaverton, OR 97008

Dear AMR:

On January 30, 1996, Associated Marketing Resources ("AMR") entered into a contract with Metro, a metropolitan service district organized under the laws of the State of Oregon in the 1992 Metro Charter, for distribution of vacant land atlases. Under the agreement, Metro agreed to provide AMR with copies of the vacant land atlases, and AMR agreed to sell up to sixteen sets of the atlases and provide customer support. Additionally, AMR agreed to reimburse Metro for 70% of the retail price of each vacant land atlas sold.

Subsequently, AMR sold all of the vacant land atlases provided to it, and failed to reimburse Metro for the atlases it sold. Accordingly, there is now due and owing to Metro the sum of \$28,000.00 for the vacant land atlases.

On May 1 and 2, 1997, Associated Marketing Resources tendered three checks totaling \$1400.00 to Metro for additional atlases. Each check was returned on grounds of insufficient funds to support the check. Oregon law allows an action against any person who makes a check for the payment of money which has been dishonored for lack of funds. The plaintiff may recover from the defendant up to triple the amount for each check so long as damages recovered shall not exceed by more than \$500.00 the amount of the check. Metro intends to collect the sums owing under these checks as well, including attorneys' fees pursuant to ORS 20.090, unless the amounts of the checks are paid in full.

Accordingly, Metro hereby demands payment in the amount of \$28,000.00 for AMR's breach of its distribution contract with Metro for the vacant land atlases. Additionally, Metro demands payment on Bank of America check #5842 in the amount of \$600.00, payment on Bank of America check #5843 in the amount of \$100.00, and payment on Bank of America check # 5845 in the amount of \$700. If payment is not received on these checks, Metro will seek to recover on them, as well as seeking the statutory damages associated with each check. Payment of all of these amounts must be made to Metro by 5:00 p.m., August 29, 1997, and must be made by certified check, payable to Metro, and directed to my attention. If payment is not made by

Recycled Paper

AGENCIATED MAR	KFTING RESOURCES, INC.		5845
ASSOCIATED MARKETING RESOURCES, INC. RESEARCH I 6700 S.W. 105TH AVE. NO. 213 503-644-5933 BEAVERTON, OR 97005 AY TO THE SEAVERTON OR 97005 Bank of America (503) 275-2222 Cedar Mill Office 2676 12500 Morinage Comps Road Portlands OA 97229: 3 2 3 0 7 0 3 8 0 1: 5 8 4 5 m 2 6 7 6 0 m 0 2 1 5 6 1	5845 24-7038/3230 2678 \$ 700000 DOLLARS (1)	-/2-19.97 	24-7038/3230 2678
WELLS FARGO BANK, NA. ACCOUNT NUMBER	Charden Sales, Green WC	DATE	
YOUR ACCOUNT HAS BEEN CHARGED FOR TH MAKER ASSOC. MKTG RESON TOHN R. SANTIA	REASON FOR NON-PAYMENT		AMOUNT 700.00
M METRO GENERAL ATTN ACCOUNTING M 600 NE GRAND AVE PORTLAND	ANAGER OR 97232-2736	SITE	

AMR July 24, 1997 Page 2

August 29, 1997, Metro will file suit against AMR for its breach of the distribution contract, for damages on the insufficient funds checks tendered to Metro, and for its attorneys' fees. Payment by AMR will make that action unnecessary.

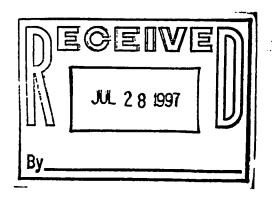
Please make your payment to Metro in the total amount of \$29,400.00 by August 29, 1997, or stand ready to litigate this matter.

Very truly yours,

Marvin B. Fjordbeck Senior Assistant Counsel

bcc: Dan Cooper, John Fregonese, Dick Bolen

MDF/kij INDOCS#07.P&DN12CONTRA.CTSWIDISPUTW723OLSN.#3





Four different versions of this letter were sent to four different versions of AMR's address, as listed below.

METRO

AMR 6700 SW 105TH AVENUE BEAVERTON, OR 97008

METRO

AMR, INC. 6700 SW 105TH BEAVERTON, OR 97005-5404

AMR, INC. RESEARCH I 6700 SW 105TH AVE., NO. 213 BEAVERTON, OR 97005

METRO

AMR, INC. C/O DAVID G. OLESON, PRESIDENT 6700 SW 105TH AVE., 213 BEAVERTON, OR 97008-5486



Marvin D. Fjordbeck Tele: (503) 797-1533 FAX: (503) 797-1792

August 5, 1997

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Associated Marketing Resources c/o David G. Olesen 6494 SE Nathan Court Hillsboro, OR 97123

Dear Mr. Olesen:

On January 30, 1996, Associated Marketing Resources ("AMR") entered into a contract with Metro, a metropolitan service district organized under the laws of the State of Oregon in the 1992 Metro Charter, for distribution of vacant land atlases. Under the agreement, Metro agreed to provide AMR with copies of the vacant land atlases, and AMR agreed to sell up to sixteen sets of the atlases and provide customer support. Additionally, AMR agreed to reimburse Metro for 70% of the retail price of each vacant land atlas sold.

Subsequently, AMR sold all of the vacant land atlases provided to it, and failed to reimburse Metro for the atlases it sold. Accordingly, there is now due and owing to Metro the sum of \$28,000.00 for the vacant land atlases.

On May 1 and 2, 1997, Associated Marketing Resources tendered three checks totaling \$1400.00 to Metro for additional atlases. Each check was returned on grounds of insufficient funds to support the check. Oregon law allows an action against any person who makes a check for the payment of money which has been dishonored for lack of funds. The plaintiff may recover from the defendant up to triple the amount for each check so long as damages recovered shall not exceed by more than \$500.00 the amount of the check. Metro intends to collect the sums owing under these checks as well, including attorneys' fees pursuant to ORS 20.090, unless the amounts of the checks are paid in full.

Accordingly, Metro hereby demands payment in the amount of \$28,000.00 for AMR's breach of its distribution contract with Metro for the vacant land atlases. Additionally, Metro demands payment on Bank of America check #5842 in the amount of \$600.00, payment on Bank of America check #5843 in the amount of \$100.00, and payment on Bank of America check #5845 in the amount of \$700. If payment is not received on these checks, Metro will seek to recover on

Recycled Paper

Associated Marketing Resources c/o David G. Olesen August 5, 1997 Page 2

them, as well as seeking the statutory damages associated with each check. Payment of all of these amounts must be made to Metro by 5:00 p.m., September 5, 1997, and must be made by certified check, payable to Metro, and directed to my attention. If payment is not made by September 5, 1997, Metro will file suit against AMR for its breach of the distribution contract, for damages on the insufficient funds checks tendered to Metro, and for its attorneys' fees. Payment by AMR will make that action unnecessary.

Please make your payment to Metro in the total amount of \$29,400.00 by September 5, 1997, or stand ready to litigate this matter.

Very truly yours,

Marvin D. Fjordbeck

Senior Assistant Counsel

bcc: Dan Cooper, John Fregonese, Dick Bolen

MDF/taj

INDOCS#07.PADAI2CONTRA.CTS/01DISPUT/0805olas.doc

Associated Marketing Resources, Inc.

August 6, 1997

RECEIVED

AUG 0 8 1997

Mr. Marvin Fjordbeck 600 Northeast Grand Avenue Portland, OR 97232-2736 TIME: METRO SERVICE DISTRICT OFFICE GENERAL COUNSEL

Dear Mr. Fjordbeck,

Thank you for your letter of August 5th, 1997. As you know, several months ago I personally called you and tried to explain the nature of the highly unusual circumstances by which Associated Marketing Resources, Inc. found itself in default on it's obligation concerning the Vacant Lands Atlases and the Data Collection contract. (If you will remember, US WEST Communications reneged on a two year agreement with AMR toward the middle and latter parts of 1996 thereby "burning" AMR by \$200,000. Successful litigation against US WEST would be prohibitively expensive and time consuming.)

I also tried to explain, in very specific detail, the steps AMR was taking to rebuild itself to perform for Metro, i.e., it's new Internet-based database management system. This system was specifically designed to provide a higher level of data service to Metro, to provide an additional distribution channel for the Data Resource Center, and significantly lower AMR's operating costs thereby ensuring a return to profitability. Dick Bolen was doing an excellent job of managing the situation and should have been commended rather than pulled from oversight. Mr. Bolen was diligently monitoring AMR's progress on the project. Nevertheless, Metro elected to terminate the Data Collection contract and VLA Distribution Agreement because of an IRS levy against AMR's Metro contract revenues - even though the IRS (Jean Jannsen) had agreed to cooperate as AMR sought to rebuild itself.

Within a few weeks of receipt of Metro's termination of the VLA distribution agreement, AMR returned all remaining Vacant Lands Atlases to the Data Resource Center via courier.

Because the revenue stream from the Metro Data Collection contract was critical to the survival of Associated Marketing Resources, Inc., the company was forced to cease operations on June 15th, 1997 and permanently close it's doors.

As of this date, AMR is essentially bankrupt with virtually no assets and approximately \$180,000 in liabilities including approximately \$38,000 to the Internal Revenue Service, \$11,500 to the State of Oregon Department of Revenue, and \$8,500 to the State of Oregon Employment Division.

Upon the advise of the company's attorney, AMR has not formally sought bankruptcy protection, however, it will do so if necessary to stop legal action. Because I am personally liable for AMR's IRS and State of Oregon obligations and am also now unemployed, I have have found myself virtually destitute with no real property assets and am also facing personal bankruptcy, if necessary.

AMR has notified the IRS, State of Oregon, and Washington County that it has permanently closed it's doors.

I truly regret the loss to Metro.

Sincerely

Dave Olesen President 0

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(Attachment E, Page 2)

Date:

August 12, 1997

To:

John Fregonese, Director of Growth Management

Dick Bolen, Data Resources Center Manager

From:

Marvin D. Fjordbeck, Senior Assistant Coungel

Regarding:

Collection Action Against Associated Marketing Resources

Attached is a letter from David Olesen, the president of Associated Marketing Resources. Olesen's letter comes in response to my demand for payment under the Vacant Land Atlas distribution agreement. Olesen claims that the company returned any remaining Vacant Land Atlases that it had to Metro, and also claims to be financially destitute. Please inform me if the return of the atlases is accurate, and advise me of the value of the returned atlases, if any, so that I can adjust any lawsuit that might be filed accordingly. Also, please advise me if you wish the government to continue to pursue this collection action, in light of the claims of the financial status of the company, or if you would like the matter turned over to a collection company.

Enclosure

cc:

Dan Cooper

MDF:kaj 1:\DOCS#07.P&D\12CONTRA.CTS\01DISPUT\0812B0LN.MEM

Agenda Item Number 9.1

Deliberation on Appeal by Hattenauer Distributing Company of Executive Officer's Rejection of Appeal of Award of contract for provision of Diesel Fuel to Devin Oil Company, Inc.

Contract Review Board

Metro Council Meeting Thursday, February 4, 1999 Council Chamber

17



PECEIVED

DEC 0 7 1998

TIME

OFFICE GENERAL COUNTY

Date:

December 7, 1998

To:

Mike Burton, Executive Officer

From:

Scott Moss, Risk and Contracts Manager

RE:

Appeal of RFB #98B-63-REM, for Providing Diesel Fuel

We have received the attached appeal of the REM conditional award of the above referenced contract. This appeal was faxed on Friday, December 4, 1998 and received certified mail on Monday, December 7, 1998.

The appeal appears to be timely in accordance with Metro Code Section 2.04.070(b)(1).

Pursuant to Metro Code, the Executive Officer has 10 working days, or until Friday, December 18, to send notice of acceptance or rejection of the appeal. The Office of General Counsel will assist you with this decision.

Attachments

cc: Bruce Warner, Director of REM
Chuck Geyer, Senior Solid Waste Planner, REM
Dan Cooper, General Counsel
Mary Fjordbeck Senior Assistant Counsel

J:\CONTRACT\APPL-A&E.DOC

FOSTER, PEACHEY & YOUNG

ATTORNEYS AT LAW
420 EAST THIRD STREET
THE DALLES, OREGON 97058
TELEPHONE (541) 296-5474
FAX NO. (541) 296-5570

JAMES R. FOSTER KATHERINE YOUNG THOMAS C. PEACHEY JOHN T. LEWIS (1925-1993)

December 4, 1998

RECEIVED

VIA REGISTERED & REGULAR MAIL

CEO 07 1998

Mr. Scott Moss, Metro Procurement Officer Metro 600 N.E. Grand Avenue Portland, OR 97232-2736 HISK & UUTVINNUT

RE: Our Client: Hattenhauer Distributing Company RFB 98B-63-REM

Notice of Appeal

Dear Mr. Moss:

Please be advised that this office represents Hattenhauer Distributing Company regarding RFB 98B-63-REM, a bid request for the provision of diesel fuel to Metro. As you are aware, Hattenhauer Distributing Company submitted a bid that was deemed to be nonresponsive to the requirements of the RFB and was therefore rejected.

Pursuant to the provisions of OAR 137-30-104 and Metro Administrative Rule no. 2.04.070, Hattenhauer Distributing Company hereby gives Notice of Appeal to the rejection of Hattenhauer Distributing Company's bid and the award of the bid to Devin Oil Co. This appeal is based upon the following grounds:

- 1. Hattenhauer Distributing Company's bid was unfairly evaluated and would have, but for such material violation, been the lowest bidder on the project. (OAR 137-30-104)
- 2. The rejection of the bid by Hattenhauer Distributing Company and the award of the bid to Devin Oil Co. was not impartial contrary to the provisions of ORS 279.005.
- 3. Metro's bid request stifled competition by limiting competition by one potential supplier in violation of ORS 279.007.
- 4. Metro's bid expressly required a brand name product in violation of ORS 279.017 and OAR 137-30-011 without the findings required by law.
- 5. Metro failed to award the bid to the lowest responsible bidder pursuant to the provisions of ORS 279.029.

Mr. Scott Moss December 4, 1998 Page 2

- 6. Good cause did not exist to reject Hattenhauer Distributing Company's bid in violation of provisions of ORS 279.035.
- 7. Metro improperly rejected Hattenhauer Distributing Company's request for change of solicitation specifications pursuant to the provisions of OAR 137-30-050.
- 8. Metro failed to award the contract to the lowest responsible bidder in violation of OAR 137-30-090.

In support of its appeal, Hattenhauer Distributing Company relies on its correspondence previously submitted to Metro that requested a change in bid specifications and its bid documents submitted by its president, J. Douglas Hattenhauer.

Your attention to this Notice of Appeal will be sincerely appreciated.

Very truly yours,

Thomas C. Peachey

TCP: cmk

cc: Mr. Hattehhauer



December 18, 1998

Thomas Peachey
Foster, Peachey & Young
Attorneys at Law
420 East Third Street
The Dalles, OR 97058



Re:

Appeal of Hattenhauer Distributing Company

RFB 98B-63-REM

Dear Mr. Peachey:

On December 1, 1998, Metro awarded a contract for the provision of diesel fuel to Devin Oil Company. By letter dated December 4, 1998, Hattenhauer Distributing Company filed its notice of appeal of the award. I have reviewed the HDC appeal and the grounds submitted supporting it. Because several of the grounds of the appeal are supported by administrative rules that are not applicable to Metro, those appeals must be rejected. The remainder of the grounds for appeal rely on alleged violations of competitive bidding statutes, and are either unmeritorious or unsupported. Accordingly, those appeals are rejected as well.

HDC sets forth eight different appeals. Appeal Nos. 1, 4, 7 and 8 each rely in whole or in part on the provisions of the Attorney General's model public contracting rules set forth in Oregon Administrative Rules 137-30-104. Metro has not adopted those rules, and therefore the rules are not applicable to the Regional Government. Accordingly, appeals on those grounds must be denied.

Appeal Nos. 2, 3, 4, 5 and 6 allege violations of Oregon Competitive Bidding Statutes, which are applicable to Metro.

First, HDC alleges, without providing any factual support for the allegation, that the rejection of the bid of HDC and the award of the bid to Devin Oil was not impartial, contrary to the provisions of ORS 279.005. The statute to which the company refers is a general policy statute requiring that public contracts be awarded impartially "to the maximum extent possible." In this matter, HDC appears only to contend that the specifications are not impartial because it disagrees with the terms of the specifications. Without showing more, a claim of non-impartiality under ORS 279.005 is insupportable. This appeal is therefore rejected.

Thomas Peachey December 18, 1998 Page 3

Because the appeal of HDC is not supported by either the Metro Code or Oregon public contracting law, it must be rejected. If HDC wishes to do so, it may appeal this decision in writing to the Metro Council within five working days from the postmarked date on this notice of rejection.

Mike Burton

Executive Officer

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FOSTER, PEACHEY & YOUNG

ATTORNEYS AT LAW
420 EAST THIRD STREET
THE DALLES, OREGON 97058
TELEPHONE (541) 296-5474
FAX NO. (541) 296-5570

JAMES R. FOSTER KATHERINE YOUNG

THOMAS C. PEACHEY JOHN T. LEWIS (1925-1993)

1148 1000

December 21, 1998

VIA REGISTERED, REGULAR MAIL & FACSIMILE

Metro Regional Services 600 N.E. Grand Avenue Portland, OR 97232-2736

RE: Our Client: Hattenhauer Distributing Company

RFB 98B-63-REM Notice of Appeal

Gentlemen:

I am in receipt of a letter from Mike Burton, Executive Officer of Metro, dated December 18, 1998 rejecting an appeal that was forwarded to you on December 1, 1998. Hattenhauer Distributing Company hereby appeals Mr. Burton's decision to the Metro Council on those bases as set forth in my letter to Metro dated December 1, 1998.

An opportunity to be heard at the time that this matter is considered by the Council would be sincerely appreciated.

Very truly yours,

Thomas C. Peachey

TCP: cmk

cc: Mr. Hattenhauer

Foster, Peachey & Young Attorneys at Law 420 East Third Street The Dalles, OR 97058

CERTIFIED

P 037 764 462

MAIL





Lanch Wagon 1990s 23 USA



USA 32 Lamb Warn 1890a 23 USA

VIA REGISTERED MAIL

METRO REGIONAL SERVICES 600 NE GRAND AVENUE PORTLAND OR 97232-2736

97232X2736 Ø1

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPOINTING)	RESOLUTION NO. 99-2751 A
NOMINEE TED KYLE TO THE METRO)	•
COMMITTEE FOR CITIZEN)	Introduced by Councilor Susan McLain
INVOLVEMENT (MCCI))	•

WHEREAS, the Metro Council adopted the Regional Urban Growth Goals and Objectives (RUGGOs) on September 26, 1991 by Ordinance 91-418B; and

WHEREAS, Citizen Participation is included in the RUGGOs as the first objective under Goal 1, The Regional Planning Process; and

WHEREAS, Objective 1.1 states that Metro shall establish a Regional Citizen

Involvement Coordinating Committee (RCICC) to assist with the development, implementation
and evaluation of its citizen involvement program; and

WHEREAS, these Bylaws identify the committee as the Metro Committee for Citizen Involvement (MCCI); and

WHEREAS, the Bylaws have been adopted by the Metro Council by Resolution No. 92-1580A on May 28, 1992; and subsequently revised four times, most recently by Resolution No. 98-2645 on May 14, 1998; and

WHEREAS, the Metro Charter called for the creation of an Office of Citizen Involvement, and the establishment of a citizens committee therein; and

WHEREAS, the Metro Council created said Office and established the MCCI as the citizen committee within that Office, by adopted Ordinance No. 93-0479A; and

WHEREAS, the Metro Council accepted the initial membership of the MCCI by
Resolution No. 92-1666 on August 27, 1992 with subsequent rounds of applicants approved by
Resolution No. 92-1702 on October 20, 1992; Resolution No. 93-1763A on February 25, 1993;

Resolution No. 93-1859 on October 15, 1993; Resolution No. 93-1882 on December 23, 1993; Resolution No. 94-1899 on February 24, 1994; Resolution No. 94-1945 on April 28, 1994; Resolution No. 94-2048 on November 10, 1994; Resolution No. 95-2071A on January 12, 1995; Resolution No. 95-2080A on January 26, 1995; Resolution No. 95-2181 on July 27, 1995; Resolution No. 96-2264 on January 18, 1996, Resolution No. 96-2363 on July 25, 1996; Resolution No. 96-2432 on January 23, 1997; Resolution No. 97-2489 on May 1, 1997; Resolution No. 97-2520 on July 17, 1997, Resolution No. 97-2581A on December 11, 1997, Resolution No. 98-2597 on January 22, 1998, Resolution No. 98-2616 on March 12, 1998, Resolution No. 98-2631 on May 14, 1998, Resolution No. 98-2667 on July 2, 1998 and Resolution 98-2700 on September 17, 1998; and

WHEREAS, this portion of the selection process for nomination to MCCI has been initiated, resulting in the nomination of the following citizens:

Ted Kyle	2465 Randall Street	District 2, Position 4		
	West Linn, OR 97068			

BE IT RESOLVED that the Metro Council accepts the above citizens for membership on the Metro Committee for Citizen Involvement (MCCI).

ADOPTED BY THE METRO COUNCIL this day of	, 1999.
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Rod Monroe, Presiding Officer	

METRO OPERATIONS COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 99-2751A, FOR THE PURPOSE OF APPOINTING NOMINEE TED KYLE TO THE METRO COMMITTEE FOR CITIZEN INVOLVEMENT (MCCI).

Date: January 27, 1999 Presented by: Councilor Atherton

Committee Action: At its January 20, 1999 meeting, the Metro Operations Committee voted 3-0 to recommend Council adoption of Resolution No. 99-2751A. Voting in favor: Councilors Atherton, Monroe and Washington.

Council Issues/Discussion: Aleta Woodruff, chair of MCCI's nomination committee made a brief presentation on this issue and requested that the name of Mr. Rexin be removed for position 7, District 3. He is unable to assume duties at this time. She then made positive comments about the remaining candidate, Mr. Ted Kyle for the District 2, position 4 opening.

Mr. Kyle's name was reviewed by MCCI along with seven other names which were on record as being interested in this position. Because eight applications were on record, the opening was not advertised. The staff report indicates marked effort on the part of Mr. Kyle in attending MCCI meetings, even before he was nominated to the Metro Council. However Councilors have received at least two communications from citizens asking that this nomination process be re-opened.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 99-2751A FOR THE PURPOSE OF ACCEPTING NOMINEE TED KYLE TO THE METRO COMMITTEE FOR CITIZEN INVOLVEMENT (MCCI).

JANUARY 19, 1999

KAREN WITHROW (x1539)

BACKGROUND

Following the most recent meeting of the MCCI nominating committee we are able to send a new nominee for your review and approval.

We had a vacancy in District 2 due to a member resigning as a result of family health concerns and have found a replacement. The nominating committee has selected Mr. Ted Kyle for this position. He has been involved with several projects in his county, Clackamas, and we believe he will be an excellent member. Ted has already attended a meeting for the purpose of getting to know our committee.

MCCI thanks you for your consideration and asks that you approve these nominees for full Metro Council approval.

Name Theodore S. Kyle Council district/County Clackanas 10ist 2
Address 2465 Randall St. West Linn State/ZIP OR 97068
Phone: Home 657 6785 Work 823 5563 FAX 655 6854 (H) TKyle@MSN. Co
Occupation/place of employment
occopation place of employment.
Education, work or volunteer experience
—I hold a Bachelors of Science in Civil Engineering. I currently work for the City of Portland's
Bureau of Environmental Services as a Capital Improvement Program Manager: I am responsible
for all of the wastewater projects in the Columbia Slough drainage, including the Combined
Sewer Overflow projects in North Portland and all of the projects at the City's treatment plants
and pump stations. My responsibilities include project planning, design management, and
construction management for over \$200 million in projects to be completed over the next five
years I served on the West Side Light Rail design team for three years. I have coordinated many
municipal projects with fransportation facilities over my 20 years of work in the municipal
engineering field.
List and describe any involvement you have had with groups, boards, organizations, etc.
I currently serve as chair elect for the Bolton Neighborhood Association in West Linn
Past service includes:
City Councilor for the City of West Linn from October 1995 through January 1997
Planning Commissioner from December 1994 to October 1995.
Board member Clackamas County Board of Ratio Review 1995 and 1996,
Tri-City Service District budget committee member 1996, 1997,
South Fork Water Board Member 1996.
As a Major in Civil Air Patrol I am trained in aircraft search and rescue, and I am a pilot.
Name the committee(s) you are interested in and explain why you think the committee issues are
important
I am interested in serving on the Regional Transportation Plan Citizen Advisory Committee.
Tail interested in serving on the Regional Transportation Plan Citizen Advisory Committee.
Our transportation system connects our community together. It allows us to meet for work or
play, It defines our cities and it makes it possible for us to interact face to face. Our
transportation system is critical to our region's vitality. If we cannot move throughout our
community, we will not get to work or enjoy time with our family or friends. Our transportation
system makes it possible for each of us to pursue our goals and aspirations. If we can get to
where we want to go easily, we can accomplish our business and enjoy its fruits. However, if we
are grid locked, we will spend more time just getting to where we need to be. Transportation
-systems also take space, and their presence effects our lives and our environment. I know most
-people-will say we need more transportation facilities, but not in my back yard. As a former City
_Councilor, I have heard citizens concerned with street changes next to their homes and I have

experienced growth next to mine. But, as a community, we will have to face many transportation related issues. We will have to look past the individual and special interests to the good of the



region as a whole.

Regional Transportation Plan Citizens Advisory Committee

Supplemental Questions

Name Theodore S. Kyle
Do you have any experience in transportation related issues or activities? Please list dates served
(month/year).
As a city councilor, I have faced the tough decisions relating to transportation systems. In West
Linn, I have sponsored planning code amendment to improve our transportation system. These
issues include street width standards, pedestrian facility requirements, sidewalk standards, and
other issues that relate to our quality of life. I participated in prioritizing all of the capital needs
for West Linn including transportation facilities. I worked to support a project for improving Highway 43 in my neighborhood as both a City Councilor and neighborhood association member
and officer.
and officer.
How do you hope the transportation system will change over the next twenty years?
I hope the transportation system will continue to meet the demands of growth. As our region
grows, we must maintain our ability to move throughout the region and connect with the rest of
the country. I have no preconceived ideas about how to increase our system's capacity. It will
need to include many transportation modes, from private vehicles and mass transit, to bicycle and pedestrian. We will need to blend high capacity facilities like light-rail and possibly freeways with
a well-connected network of local street, sidewalks, and pedestrian paths. We will also need
facilities for freight, including shipping port, rail, motor freight and airport facilities. We will need
to face issues of noise, air and water pollution that transportation creates. Outlining a plan for
siting, and funding our facilities will be a continuing challenge.
Do you represent a particular interest group(s)? Which one(s)?
Ownershy Law agains as the Chair clast of the Polton Naighborhood Association in the City of
Currently, I am serving as the Chair elect of the Bolton Neighborhood Association in the City of West Linn. As such I can represent the interests of citizens in the Cities of Clackamas County.
-West Elini. As such I can represent the interests of citizens in the cities of clackanias county.
How will you maintain two-way communication between that group and the committee throughout
your involvement?
I will be happy to brief the City Councils in Clackamas county of our work. I can also make presentations to other neighborhood association and interest groups within the various cities of
Clackamas county.
Oldonalian County.

Please submit these supplemental questions with your completed Metro Advisory Committee application by November 15, 1996; to: Barbara Herget, Metro, 600 NE Grand Ave., Portland, OR 97232-2736, FAX: (503) 797-1799, phone: (503) 797-1539 or T.D.D. (503) 797-1804.

Regional Transportation Plan Citizens Advisory Committee

Supplemental Questions

Name_Theodore S. Kyle
Do you have any experience in transportation related issues or activities? Please list dates served (month/year).
As a city councilor, I have faced the tough decisions relating to transportation systems. In West Linn, I have sponsored planning code amendment to improve our transportation system. These issues include street width standards, pedestrian facility requirements, sidewalk standards, and other issues that relate to our quality of life. I participated in prioritizing all of the capital needs for West Linn including transportation facilities. I worked to support a project for improving Highway 43 in my neighborhood as both a City Councilor and neighborhood association member and officer.
How do you hope the transportation system will change over the next twenty years?
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THEODORE S. KYLE, P.E.

2465 Randall St. West Linn, OR 97068 (503) 657-6785

REGISTRATION:

Oregon Civil and Environmental Engineer No. 10698

Arizona Civil Engineer No. 18401

Date: Date:

July 18, 1980 April, 1985

EDUCATION:

B.S. Civil Engineering, Oregon State University

Graduated: September, 1976

EXPERIENCE:

City of Portland, Bureau of Environmental Services Employers:

Period: Oct 1996 - Present Period: March 1995 - Oct. 1996

Sverdrup Civil, Inc.

Position: Major Project: Asst. Deputy CSO Program Manager

City of Portland Combined Sewer Overflow Program

Responsible for implementing the Columbia Slough CSO consolidation projects. These four Project Duties: projects have a combined budget of \$164 million and have a stipulation and final order completion date of December 1, 2000. Schedule, budget and project quality are key

responsibilities. Manage the five design teams and City Bureau of Environmental Services personnel while integrating the interests expressed through many community groups and stakeholders. The projects include a 18,000 foot long 8 to 12 foot diameter conduit, 75 MDG influent pump station, wet weather additions to the existing 300 MGD wastewater treatment

plant, and a new 12,000 foot long outfall line and diffuser in the Columbia River.

Employer:

CH2M-Hill, Inc.

Position: General Duties:

Period: February, 1992 - March 1995 Staffing Manager - Water Business Line

Coordinated the workload for the 35 engineers, scientists, and technicians assigned to the water business line engineering group in the Portland office. Conducted performance evaluations and Developed and implemented performance improvement plans where needed. interviews. Interviewed candidates for hire and assessed staffing needs. Served as project manager on

multiple concurrent projects. Served as expert witness on utility rate hearings and performed

allocations as part of cost of service studies.

Position:

Project Manager

Period: December, 1991 - February 1992

Major Project: Project Duties: West Side Light Rail

Responsible for coordinating utility service and relocation for the \$700 million project. Coordinated utility relocation designs with 19 separate utility companies and agencies, analyzed

utility upgrades, and prepared detailed designs for water and sewer relocation along 6 miles of

track including sections in downtown Portland and Beaverton.

Employers:

CH2M-Hill, Inc. and

Dillingham Construction, N.A., Inc.

Position:

Program Manager

Period: January, 1986 - December, 1991

Major Project:

Project Duties:

Tri-City Service District - Sewerage Facility Construction Program

Responsible for \$70 million construction program of an 11 MGD sewage treatment facility, 4 sewage pump stations, 2 miles of related force mains. 12 miles of interceptor sewers, and lateral sewer improvements. Reported to and advised Director of Utilities on engineer selection and engineering contract negotiation. Reviewed plans and specifications prepared by 12 engineering firms for design consistency, bidability, constructability, and conformance with EPA grant requirements. Prepared EPA grant applications and coordinated construction bidding. Established documentation systems and procedures to prevent and defend claims. Monitored 25

construction sites for progress and timely resolution of disputes or problems.

Employer:

Dillingham Construction, N.A., Inc.

Title:

Project Engineer

Period: January, 1984 - December, 1985

Major Project:

City of Phoenix - Union Hills Water Treatment Plant

Project Duties:

Responsible for the 1400 activity CPM schedule and insuring progress on the \$42 million water filtration plant. Conducted safety program and coordinated contact with OSHA officials. Supervised the instrumentation, electrical, and architectural subcontractors, including scheduling, progress payments, field conflicts, subcontract administration, and coordination with

the City of Phoenix on changes.

Title:

Project Engineer

Period: December, 1981 - December, 1983

Major Project:
Project Duties:

Tri-City Service District - Sewerage Facility Construction Program

Completed cost estimates for the district's transmission system and pump stations and prepared schedules and project control procedures during the planning phase. Supervised coordination of designs with Clackamas County Department of Utilities, Department of Transportation and Development Oregon Department of Transportation City of West Linn City of Oregon City

Development, Oregon Department of Transportation, City of West Linn, City of Oregon City, City of Gladstone, Oregon Department of Environmental Quality, U.S. Environmental Protection

Agency, U.S. Army Corps of Engineers, and various utility companies.

Employer:

Robert E. Meyer Consultants, Inc.

Title:

Project Engineer

Period: April, 1979 - November, 1981

Projects:

City of Klamath Falls Sewer System Evaluation Survey City of Klamath Falls Sanitary Sewer Master Plan City of Klamath Falls Industrial Pretreatment Program City of Redmond Sewer System Construction Project

City of Prineville Lagoon Study

City of Prineville Laughlin Sewer Grant Audit

Duties:

Completed engineering studies and reports for various municipal clients.

Employer:

Unified Sewerage Agency of Washington County, Oregon

Titles:

Acting Construction Division Engineer

Period: September, 1976 - March, 1979

Design Engineer

Projects:

Rock Creek Advanced Wastewater Treatment Facility
Durham Advanced Wastewater Treatment Facility

Forest Grove Treatment Facility Upper Tualatin Interceptor Bronson Creek Interceptor Rock Creek Interceptor

Duties: -

As acting Construction Division Engineer, monitored consultants' activities during the start-up

phase of the Rock Creek Facility

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As design engineer, coordinated consulting engineers' activities on the interceptor sewers

project; prepared grant applications, and negotiated easements with property owners.

RELATED VOLUNTEER ACTIVITIES:

Activity:

West Linn City Councilor

Period:

October, 1994 - Present

Responsibilities:

Set city policy; adopt code or ordinance changes to implement that policy; set utility rates; act on other matters requiring council approval for general city business. Act as a liaison between the Council and the Public Works and Library departments. Participate in the budget committee and

adopt the city budget. Represent the city on intergovernmental committees.

Activity:

Clackamas County Board of Ratio Review Member

Period:

June, 1995 - Present

Responsibilities:

Reviews the county assessors annual ratio study. This study sets the annual adjustments to property values so that they represent real market value for the 300,000 people in Clackamas County. The board also decides appeals for reduction of property values brought by citizens.

Activity:

Clackamas County, Tri-City Service District Budget Committee Chair

Period:

April, 1996 - Present

Responsibilities:

Review and approves the annual operating and capital budgets for the regional sewer agency. The service district provides treatment interceptor sewer service to Oregon City, West Linn, and

Gladstone, which have combined population of 45,000.

Activity:

South Fork Water Board Member

Period: Responsibilities: September, 1996 - Present

The board set policy and acts as the governing body for this regional water agency. The board

supplies water to the cities of Oregon City and West Linn with a combines population of 35,000.

The board also has a contract to provide water to the Clackamas River Water District.

Activity:

West Linn Planning Commissioner January, 1994 - September, 1994

Period: Responsibilities:

Review, make findings, and act on development applications for zone change, subdivisions, planned unit developments, conditional use, concurrent design review, and other land use issues. Make recommendations to the City council on code and comprehensive plan amendments.

Participate in joint work sessions with the council on planning policies.

Activity:

Civil Air Patrol Wing Deputy Commander for Education and Training

Period:

August, 1994 - August 1995

Responsibilities:

Oversee and direct the education and training program for over 1000 Civil Air Patrol Senior and Cadet members throughout the state of Oregon. Develop new programs to develop leadership skills, improve understanding of aerospace issues, and prepare our members for emergency

response.

Activity:

Civil Air Patrol Squadron Commander

Period:

March, 1991 - August, 1994

Responsibilities:

Lead a squadron of 30 cadet and senior members. Manage the use and upkeep of a \$120,000 aircraft. Prepare and maintain the trained personnel and equipment to respond to search and rescue emergency and disaster relief (such as the Klamath fall and Los Angeles earthquakes) and downed aircraft. Train cadets (ages 13 through 21) in both acrospace knowledge and leadership

skills. Conduct a region level week long Cadet Leadership School

CONTINUING EDUCATION

Course	Sponsor	Date
US Air Force Squadron Officers School	Air University	October 1994
Pacific Region Staff College	Pacific Region, Civil Air Patrol	July 1992
Able Toastmaster Award	Toastmasters International	June 1993
Competent Toastmaster Award	Toastmasters International	July 1988
Completed the Construction phase training seminar	CH2M HILL	May 1989
Allowability of Change Order and Claim Costs in EPA Funded Projects	University of Michigan	April 1986
Computer Aided Design (CAD) for Managers seminar	CH2M HILL	April 1994

PRESENTATIONS, PAPERS AND PROGRAMS

Presentation Title	Presented to:	Date
Project Management Basic Skills	City of Portland Bureau of Environmental Services project managers	November 1995
Project Monitoring and Controlling	Consulting Engineers Council	March 1996
Project Management	American Public Works Association and Oregon Department of Transportation training program	March 1996, May 1996
Construction Related Issues	American Water Works Association Pacific NW Conference	April 1991
Surviving Treatment Plant Construction	Oregon Wastewater Short School Clackamas Community College	March 1988
A Hitchhiker's Guide to the Universe of Wastewater Treatment Plant Construction	Pacific Northwest Pollution Control Association	October 1989
Treatment Plant Automation Using Windows	Pacific Northwest Pollution Control Association	October 1990
Director of the Pacific Region Cadet Leadership School	Pacific Region, Civil Air Patrol	July 1993
Commandant of Cadets for the Spring Encampment	Oregon Wing, Civil Air Patrol	March 1991, 1992, 1993, 1994
Space Shuttle Flight Planning and Launch Classroom Simulation	Oregon Aerospace Education Association	October 1991





December 18, 1998

Thomas Peachey Foster, Peachey & Young Attorneys at Law 420 East Third Street The Dalles, OR 97058



Re:

Appeal of Hattenhauer Distributing Company

RFB 98B-63-REM

Dear Mr. Peachey:

On December 1, 1998, Metro awarded a contract for the provision of diesel fuel to Devin Oil Company. By letter dated December 4, 1998, Hattenhauer Distributing Company filed its notice of appeal of the award. I have reviewed the HDC appeal and the grounds submitted supporting it. Because several of the grounds of the appeal are supported by administrative rules that are not applicable to Metro, those appeals must be rejected. The remainder of the grounds for appeal rely on alleged violations of competitive bidding statutes, and are either unmeritorious or unsupported. Accordingly, those appeals are rejected as well.

HDC sets forth eight different appeals. Appeal Nos. 1, 4, 7 and 8 each rely in whole or in part on the provisions of the Attorney General's model public contracting rules set forth in Oregon Administrative Rules 137-30-104. Metro has not adopted those rules, and therefore the rules are not applicable to the Regional Government. Accordingly, appeals on those grounds must be denied.

Appeal Nos. 2, 3, 4, 5 and 6 allege violations of Oregon Competitive Bidding Statutes, which are applicable to Metro.

First, HDC alleges, without providing any factual support for the allegation, that the rejection of the bid of HDC and the award of the bid to Devin Oil was not impartial, contrary to the provisions of ORS 279.005. The statute to which the company refers is a general policy statute requiring that public contracts be awarded impartially "to the maximum extent possible." In this matter, HDC appears only to contend that the specifications are not impartial because it disagrees with the terms of the specifications. Without showing more, a claim of non-impartiality under ORS 279.005 is insupportable. This appeal is therefore rejected.

Thomas Peachey December 18, 1998 Page 2

HDC next complains that Metro's bid request stifled competition by limiting competition in violation of ORS 279.007. Like 279.005, ORS 279.007 is simply a general provision seeking to support competition. In this case, Metro set forth specifications designed to meet the requirements of its contract with its transportation contractor. Metro's action violates no prohibition stated in ORS 279.007. Accordingly, the appeal is denied.

HDC next objects that Metro's bid expressly required a brand name in violation of ORS 279.017(1), which states as follows:

"Specifications for public contracts shall not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt under subsection (2) of this section."

On its face, the statue appears to prohibit the use of a <u>particular</u> brand of fuel without making the specified findings. The RFB does not require a particular brand, but merely requires that fuel be branded. The staff believes the branding fuel requirements will result in obtaining diesel fuel of a higher quality and with greater product warranties than it will obtain with unbranded fuel. Because the bid specification did not require a particular brand, but merely requires that the fuels provided be a brand name fuel, the RFB does not appear to fit within the requirements of ORS 279.017. Accordingly, this ground of appeal is rejected.

HDC argues that under ORS 279.029, it is the lowest responsible bidder. However, the lowest responsible bidder designation depends on the bidder substantially complying with prescribed bidding requirements, including all applicable specifications. As a general rule, in order for a bid to be acceptable, it must substantially conform to the terms of the invitation for the bids. If this were not the case, then price competition could not exist because the bidders would not be required to submit their offers with the same terms except for price. In this case, HDC has submitted a bid on different terms than those required in the bid specifications. Accordingly, it cannot be the lowest responsible bidder because its bid is not responsive. Therefore, this ground of appeal should be rejected.

Finally, HDC appeals on grounds that good cause did not exist to reject the HDC bid in violation of the provisions of ORS 279.035. That statute provides, pertinently:

"The public contracting agency may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may, for good cause, reject any or all bids upon a finding of the agency it is in the public interest to do so."

HDC's appeal appears to misconstrue the ground for rejection. The HDC bid was not rejected for cause, but rather it was rejected because its bid was not in compliance with the bid specifications. The "good cause" provisions in the statute do not come into play in this matter. This ground of appeal is rejected.

Thomas Peachey December 18, 1998 Page 3

Because the appeal of HDC is not supported by either the Metro Code or Oregon public contracting law, it must be rejected. If HDC wishes to do so, it may appeal this decision in writing to the Metro Council within five working days from the postmarked date on this notice of rejection.

Mike Burton

Executive Officer

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Date:

February 1, 1999

To:

Rod Monroe, Presiding Officer

From:

Marvin D. Fjordbeck, Senior Assistant Couns

Regarding:

Suggested Procedure for Appeal by Hattenhauer Distributing Company

During our meeting on January 13, 1999, you sought our advice with regard to a suggested process for hearing on the Hattenhauer Distributing Company ("HDC") appeal on award of the Metro diesel fuel contract. We discussed the following suggested procedure, which I provide for your reference during the upcoming hearing.

1. Appellant HDC presents its appeal

15 minutes

2. Staff and legal response to appeal

15 minutes

3. Testimony or other comments by all other interested parties

15 minutes

4. Closing statement by appellant

5 minutes

5. Council questions and answers and Council deliberation

10 minutes

Total time for matter

approximately 1 hour

As always, please call me at ext. 1533 if you have any questions.

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√Jeff Stone John Houser

Dan Cooper

MDF-kai

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0204990-01

From:

<phelps@pacwestcom.com>

To:

MetCen.MRC-PO(stoneja,raphaelt,cooperd)

Date:

Thu, Feb 4, 1999 7:52 AM

Subject:

Senate Bill 87

I met yesterday with Sen. Tarno, Chair of Senate Water and Land Use Committee. Veral indicated that the committee will probably move this measure to the floor for a vote. At this point Metro needs to establish its position.

As a previously reported, most of the local governments oppose this measure. DEQ (unofficially) feels that a 20-year land supply for commercial & industrial use is provided in comp plans and updated during periodic review. As a result, DEQ does not feel this legislation is needed. Again, unofficially.

Metro should offer to amend the bill to reflect what it in fact does when it expands the UGB. Based on the testimony Metro provided the committee at its last hearing this would mean changing office, industrial and commercial to employment.

Sen. Tarno commented that the issue is the approximate 5,000 UGB expansion Metro just completed. Metro needs to be able to describe how this expansion reflects a 20-year land supply for both residential and employment. The various groups wanting this measure are pressuring Metro to support it.

I will let you know when the committee plans to schedule this measure for a public hearing.

NOTE: The committee did not have time to hold a public hearing on SB 94.

CC:

MetCen.GWIA("seansmith9@aol.com","pjdonovan@aol.co...

MEMORANDUM

00 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736



TO:

Metro Councilors, Executive Officer Mike Burton

FROM:

Jeff Stone, Council Chief of Staff

COPY TO:

Dan Cooper, Tim Raphael

DATE:

February 4, 1999

RE:

LEGISLATURE

As you may be aware, things are moving quite fast down in Salem and the Council will be asked to take positions on certain pieces of legislation.

BACKGROUND:

Presiding Officer Monroe has determined that he would like the entire council to discuss, when possible, major pieces of legislation moving through the Oregon House and Senate. The purpose of this memo is to bring you up to speed on what has happened up to now and to ask for the council to adopt "guiding principles" for our lobbyist, PacWest.

GENERAL PRINCIPLES:

PacWest met with Executive Officer Burton and Presiding Officer Monroe to obtain some "preliminary" principles to guide them during the first month of the legislative session. The purpose of this action was to help our lobbyist track significant pieces of legislation for review by select staff at Metro. A copy of these "preliminary guiding principles" are attached.

It is my hope that the Council can agree on a set of principles to assist PacWest in their efforts to represent us in Salem.

BILL REVIEW:

Currently, relevant legislation is distributed to key Metro staff for review and recommendations. When the review is completed, General Counsel Dan Cooper, Executive Officer Chief of Staff Tim Raphael, and I discuss the merits and possibilities of the bills that may or may not involve Metro. It was our hope that the Council not be mired down in a bevy of bills when a more selective approach may be more beneficial. A copy of all legislation being tracked is given to the Presiding Officer and Executive Officer. Copies may be distributed to any councilor who wishes to see what we are doing.

SENATE BILL 87

The first major piece of legislation that is recommended for a Metro Council position is Senate Bill 87. Please see attached a copy of the bill and staff review. I would recommend that we go over this legislation at the Council Informal meeting on February 9th and give some direction to PacWest at our regular council meeting on February 11th.

If you have any questions, feel free to talk to me.



METRO

1999 LEGISLATIVE ISSUES

I. GROWTH MANAGEMENT – FUNDEMENTAL CHARTER MISSION

- Statewide Urban Growth Fund
 - Assist local governments acquire future public facilities
 - Planning Funds
 - Managing UGB
 - Establishing and maintaining residential land supply
 - Managing Urban Reserves
 - Salmon Recovery & Watershed Enhancement
 - Emergency Management Act
- Legislative Review
 - UGB Expansion Requirements
 - Annexation Requirements
- Transportation Funding

II. OTHER LEGISLATIVE ISSUES

- Regulate disposal of pool chlorine
- Increase business licensing revenue threshold
- Open Spaces EFU lands acquisition
- Open Spaces Conservation Easements



GENERAL PRINCIPLES GUIDING METRO REPRESENTATIVES

BUSINESS SERVICES

 Support efforts to further ease burdens of multiple licensing requirements in regional area by expanding "one stop shopping" for small business licenses.

SALMON RECOVERY AND WATERSHED ENHANCEMENT

- Monitor implementation of Ballot Measure 66 and fiscal action of agencies impacting water resources and habitat conservation to streamline salmon recovery efforts.
- Help coordinate and assist efforts of local watershed councils; serve as informational resource to councils.

COMMERCE AND TRAFFIC FLOW

- Preserve local/regional authority providing for regional transportation solutions.
- Seek adequate funding for transportation planning.
- Sustain policy and funding for transportation components of regional growth management, including continued support of the Oregon Department of Transportation's Transportation/Growth Management grant program.

LAND USE

- Support continuation of Metro's voter-approved streamlined local/regional land use planning process for the Portland-metropolitan area.
- Ensure that annexation legislation meets planning needs.
- Support adequate funding of the Department of Land Conservation and Development and other agencies working with the local/regional planning process.

RECYCLING AND HAZARDOUS WASTE MANAGEMENT

- Support efforts to preserve streamlined, low cost management of solid waste flow control in the region.
- Support Oregon's successful, voter-approved recycling programs.
- Encourage creation of markets for recycled materials and increase requirements for minimum recycled materials content.

REGIONAL PARKS AND GREENSPACES

Work to support existing streamlined parks and open spaces management programs.

REGIONAL FACILITIES

 Preserve ability to efficiently manage facilities that provide regional and nationwide entertainment and meeting services, as well as direct and indirect employment for the citizens of the region.

METRO BILL REVIEW

D 07	Tower Chow	01/14	4/99 01	/20/99
B 87	Larry Shaw Elaine Wilkerson	01/1-	.,,, 01	
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Reviewed by: _	KN			
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lands	Gines control of			_
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Recommended	action: Support Oppose V	Amend Do nothing		* .
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	Critical or Metro initiated			
	Monitor only			
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Senate Bill 87

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Natural Resources Committee for the Commercial Real Estate Economic Coalition, Associated General Contractors, Building Owners and Managers Association, West Side Economic Alliance, The Commercial Association of Realtors of Portland-Vancouver, International Shopping Centers, Government Relations Committee of Oregon)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires certain local governments to estimate buildable land need within urban growth boundary over next 20 years. Requires local government to take specific action to achieve estimated buildable land supply. Specifies type of development to be considered to generate estimate.

A BILL FOR AN ACT

2 Relating to buildable land supply within urban growth boundary; amending ORS 197.295, 197.296, 197.299, 197.301 and 197.302.

Be It Enacted by the People of the State of Oregon:

SECTION_1. ORS 197.295 is amended to read:

197.295. As used in ORS 197.295 to 197.314 and 197.475 to 197.490:

(1) "Buildable lands" means lands in urban and urbanizable areas that are suitable, available and necessary for residential, office, industrial and retail uses. "Buildable lands" includes both vacant land and developed land likely to be redeveloped.

- (2) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.
- (3) "Government assisted housing" means housing that is financed in whole or part by either a federal or state housing agency or a housing authority as defined in ORS 456.005, or housing that is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided by either a federal or state housing agency or a local housing authority.
 - (4) "Manufactured homes" has the meaning given that term in ORS 446.003.
 - (5) "Mobile home park" has the meaning given that term in ORS 446.003.
 - (6) "Periodic review" means the process and procedures as set forth in ORS 197.628 to 197.646.
- (7) "Urban growth boundary" means an urban growth boundary included or referenced in a comprehensive plan.

SECTION 2. ORS 197.296 is amended to read:

197.296. (1)(a) The provisions of this section apply to local government comprehensive plans for lands:

- (A) Within any urban growth boundary for a city with a population of 25,000 or more;
- (B) Within any urban growth boundary for a city with a population of less than 25,000 with a rate of growth that exceeded the average rate of growth for the state for three of the last five years; and
- 27 (C) For which a functional plan is prepared by a metropolitan service district under ORS 268.390 28 (2).

NOTE: Matter in boldfaced type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in boldfaced type.

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- (b) Notwithstanding paragraph (a) of this subsection, the Land Conservation and Development Commission may waive the requirements of that paragraph.
- (2) At periodic review or any other legislative review of the urban growth boundary, comprehensive plans or functional plans shall provide sufficient buildable lands within urban growth boundaries established pursuant to statewide planning goals to accommodate estimated [housing] residential, office, industrial and retail needs for 20 years.
- (3) As part of [its next] each periodic review pursuant to ORS 197.628 to 197.650 [following September 9, 1995,] or any other legislative review of the urban growth boundary, a local government shall:
 - (a) Inventory the supply of buildable lands within the urban growth boundary;
- (b) Determine the actual density and the actual average mix of housing types of residential development that [have] has occurred within the urban growth boundary since the last periodic review or five years, whichever is greater; [and]
- (c) Determine the actual density and the actual average mix of office, industrial and retail development that has occurred within the urban growth boundary since the last periodic review or five years, whichever is greater; and
- [(c)] (d) Conduct an analysis of [housing] residential, office, industrial and retail [need] needs by type and density range, in accordance with ORS 197.303 and statewide planning goals, [and] rules relating to housing and rules relating to economic development, to determine the amount of land needed for [each needed housing type] residential, office, industrial and retail development for the next 20 years.
- (4) If the [determination] determinations required by subsection (3) of this section [indicates] indicate that the urban growth boundary does not contain sufficient buildable lands to accommodate [housing] projected buildable land needs for 20 years at the actual developed density that has occurred since the last periodic review, the local government shall take one of the following actions:
- (a) Amend its urban growth boundary to include sufficient buildable lands to accommodate [housing] residential, office, industrial and retail needs for 20 years at the actual developed density during the period since the last periodic review or within the last five years, whichever is greater. As part of this process, the amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary;
- (b) Amend its comprehensive plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that [residential] development will occur at densities sufficient to accommodate [housing] residential, office, industrial and retail needs for 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall monitor and record the level of development activity and development density by [housing] type following the date of the adoption of the new measures; or
 - (c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.
- (5) Using the analysis conducted under subsection [(3)(c)] (3)(d) of this section, the local government shall determine the overall average density and overall mix of [housing] residential, office, industrial and retail types at which [residential] development [of needed housing types] must occur in order to meet [housing] development needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (3)(b) and (c) of this section, or if that mix is different from the actual mix [of housing types] determined under subsection (3)(b) and

(c) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that [residential] development will occur at the [housing] types and density and at the mix of [housing] types required to meet [housing] development needs over the next 20 years.

- (6) A local government that takes any actions under subsection (4) or (5) of this section shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to 197.314.
- (7) In establishing that actions and measures adopted under subsections (4) and (5) of this section demonstrably increase the likelihood of higher density residential, office, industrial and retail development, the local government shall at a minimum ensure that land zoned for needed [housing] residential, office, industrial and retail development is in locations appropriate for the [housing] residential, office, industrial and retail types identified under subsection (3) of this section and is zoned at density ranges that are likely to be achieved [by the housing market] using the analysis in subsection (3) of this section. Actions or measures, or both, may include but are not limited to:
- (a) [Increases in] Increasing the permitted density on existing residential, commercial and industrial land;
 - (b) Financial and other incentives for higher density [housing] development;
- (c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;
 - (d) [Removal] Removing or easing [of] approval standards or procedures;
 - (e) Minimum density ranges;
 - (f) Redevelopment and infill strategies;
- (g) [Authorization of housing types] Authorizing residential, office, industrial and retail development not previously allowed by the plan or regulations; and
 - (h) [Adoption of] Adopting an average [residential] overall development density standard.

SECTION 3. ORS 197.299 is amended to read:

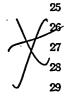
197.299. (1) A [metropolitan service district organized under ORS chapter 268] local government shall complete the initial inventory, determination and analysis required under ORS 197.296 (3) not later than January 1, 1998, and conduct the inventory and analysis at least every five years thereafter.

(2)(a) The [metropolitan service district] local government shall take such action as necessary under ORS 197.296 (4) to accommodate one-half of a 20-year buildable land supply determined under ORS 197.296 (3) within one year of completing the analysis.

- (b) The [metropolitan service district] local government shall take all final action under ORS 197.296 (4) necessary to accommodate a 20-year buildable land supply determined under ORS 197.296 (3) within two years of completing the analysis.
- (3) The Land Conservation and Development Commission may grant an extension to the time limits of subsection (2) of this section if the Director of the Department of Land Conservation and Development determines that the [metropolitan service district] local government has provided good cause for failing to meet the time limits.

SECTION 4. ORS 197.301 is amended to read:

197.301. (1) A [metropolitan service district organized under ORS chapter 268] local government shall compile and report to the Department of Land Conservation and Development on performance measures as described in this section at least once every two years. The information shall be re-



ported in a manner prescribed by the department.

- (2) Performance measures subject to subsection (1) of this section shall be adopted by a [metro-politan service district] local government and shall include but are not limited to measures that analyze the following:
 - (a) The rate of conversion of vacant land to improved land;
- (b) The density and price ranges of residential development, including both single family and multifamily residential units;
- (c) The level of job creation within individual cities and the urban areas of a county inside the [metropolitan service district] jurisdiction of the local government;
- (d) The number of residential units added to small sites assumed to be developed in the [metro-politan service district's] local government's inventory of available lands but which can be further developed, and the conversion of existing spaces into more compact units with or without the demolition of existing buildings;
- (e) The amount of environmentally sensitive land that is protected and the amount of environmentally sensitive land that is developed;
 - (f) The sales price of vacant land;
 - (g) Residential vacancy rates;
 - (h) Public access to open spaces; and
 - (i) Transportation measures including mobility, accessibility and air quality indicators.

SECTION 5. ORS 197.302 is amended to read:

197.302. (1) After gathering and compiling information on the performance measures as described in ORS 197.301 but prior to submitting the information to the Department of Land Conservation and Development, a [metropolitan service district] local government shall determine if actions taken under ORS 197.296 (4) have established the buildable land supply and [housing] development densities necessary to accommodate estimated [housing] residential, office, industrial and retail needs determined under ORS 197.296 (3). If the [metropolitan service district] local government determines that the actions undertaken will not accommodate estimated need, the [district] local government shall develop a corrective action plan, including a schedule for implementation. The [district] local government shall submit the plan to the department along with the report on performance measures required under ORS 197.301. Corrective action under this section may include amendment of the urban growth boundary, comprehensive plan, functional plan or land use regulations as described in ORS 197.296.

- (2) Within two years of submitting a corrective action plan to the department, the [metropolitan service_district] local government shall demonstrate by reference to the performance measures described in ORS 197.301 that implementation of the plan has resulted in the buildable land supply and [housing density] development densities within the urban growth boundary necessary to accommodate the estimated [housing] development needs for each [housing] type of residential, office, industrial and retail use [type] as determined under ORS 197.296 (3).
- (3) The failure of the [metropolitan service district] local government to demonstrate the buildable land supply and [housing density] development densities necessary to accommodate [housing] development needs as required under this section and ORS 197.296 may be the basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335.



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Ret	Сор	y of testimony for SE	87	CC:	Paul Phillips	
Phone	797	-1528		Pages:	13	
Fax:	797	-1792		Date:	January 27, 1999	
To:	Dan	Cooper		From:	Ray Phelps	·

Reference my e-mail message on this matter.

Attached are copies of most of the testimony submitted yesterday to the Sen. Water & Land Comm. There were four people following me when I had to leave the hearing. I will be meeting today with the committee administrator on another issue and will ask for copies of the testimony I missed.



METRO

January 26, 1999

TO:

Chair Senator Veral Tarno and Members of the Water and Land Use

Committee

FROM:

Ray Phelps, representing METRO

RE:

SB 87

The Metro Council and Executive Officer are in the process of evaluating this measure. However, the following is a summary of ongoing projects Metro is performing, which we believe are related to the items contained in this measure.

The amendments as shown in SB 87 places into law a requirement on local governments to perform additional work in coordinating comprehensive analysis, reporting and measurement of office, industrial and retail development within the Urban Growth Boundary (UGB) of local jurisdictions. This measure would expand the 20-year buildable land supply requirement to add a provision for office, industrial and retail needs. The current law applies explicitly to housing need.

SB 87 describes only in part work Metro already performs in the course of providing a balanced reporting of urban land needs in the Metro UGB. In addition to housing, the Urban Growth Report is also concerned with land and addresses the need for job land. Previous Urban Growth Reports have detailed the development needs for office, industrial and retail land need. The Urban Growth Report summarizes the status of land supply and 20-year need for the region.

The 1999 Urban Growth Report and a series of Metro research projects are in progress to study the region's future land development needs. This will include residential, office and industrial and retail needs. This series of projects include a refinement to more accurately measure housing redevelopment and infill, jobs redevelopment and infill, jobs density, 1998 vacant land update, and housing development trends in environmentally constrained lands.

In addition to Metro's own research projects, Metro is cooperating with a consortium of economic development interests to further the study of industrial land supply and future need. Metro is cooperating with this research project by providing staff support, industrial data, and Geographic Information System data. A consultant has been retained to perform an independent analysis of buildable land and industrial land need. This information will be shared with all interested in this issue.

We have several early issues some of the language in SB 87. Additional clarification would help us serve our constituents. We can work with staff on these issues. For example:

- 1. SB 87 lists additional development types office, industrial and retail. This list is not complete. It does not include other types of facilities medical, prisons, schools and various other types and places or employment. It may be advisable to change the wording in SB 87 from office, industrial and retail to employment.
- 2. SB 87 does not reflect current and future land needs that are evolving to co-exist with shifting market preferences, new local zoning designation and land use configurations that allow for flex space development, mixed use, and industrial use. It is possible that all industrial, office and retail may co-exist on the same parcel of land, thus making measurements of land consumption and need subject to wide variation of measurement problems.
- 3. Metro is concerned that the data for such specificity of development type as described in SB 87 does not exist and that technical analysis of the data may generate or compound any imbalances in the supply and demand for employment development. What is it that SB 87 really calls out?
- 4. It is not clear what is meant by "rules relating to economic development." SB 87 could be more specific about using best available information and technical means for estimating future economic development and measurement of buildable and vacant lands.
- 5. Sections 3-5 of SB 87 have a technical issue for Metro. ORS 197.299 requires that Metro shall complete the inventory, accommodate a 20-year land supply, report on and apply specific performance measures. SB 87 replaces Metro with the term "local government." An amendment would clarify that Metro is the local government responsible for this work for the metropolitan area of Clackamas, Mulmomah and Washington Counties. Cities and counties would have this responsibility in the rest of the state.

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Department of Agriculture

Mailing address: 635 Capitol Street NE Salem, OR 97310-0110

Location address: 3420 Cherry Ave NE

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January 26, 1999

TO:

Senator Veral Tamo, Chair

Senate Water and Land Use Committee

FROM:

Jim Johnson

SUBJECT:

SB 87



The department has reviewed SB 87. SB 87 would expand existing state laws regarding twenty year residential buildable lands inventories to include office, industrial and retail lands. The department offers the following comments for consideration by the Committee.

- Any proposal to expand the buildable land requirements in state law should also require the better use of lands within an urban growth boundary. For example, large campus developments that involve park-like settings, large single story, "big box" buildings, and single level parking lots now use a great deal of land that, if used more efficiently, could be available to meet some of the buildable lands needs identified.
- Standards should also require regional solutions to regional needs. If a need is justified for inclusion of more buildable lands based upon the needs of a region, the decision where those lands will be provided for should be based upon a regional analysis. Areas within a subject region that do not involve agriculture land should be included first and exhausted before agricultural land is included in an urban growth boundary.
- An important part of determining buildable land needs is population forecasting.
 Coordinating bodies for population forecasts (ORS 195.036) should allocate growth only after an analysis that includes a review of impacts to agricultural lands and agricultural communities.
- Finally we provide for you a copy of the Board of Agriculture's resolution addressing this issue. Resolution No. 162 expresses the Board's concern regarding mandatory requirements placed on local governments to plan for a twenty year supply of buildable lands. The resolution also addresses the Board's concern regarding the conflict between buildable lands requirements and the conservation of farmland.

Thank you for the opportunity to provide these comments.

Attachment:

Board of Agriculture Resolution No. 162

State Department of Agriculture Salem. Oregon

State Board of Agriculture December 10-11, 1998

ACTION ITEM:

BUILDABLE LANDS INSIDE URBAN GROWTH BOUNDARIES

BACKGROUND:

Whereas Oregon agriculture produces in farm gate value in

excess of 3.4 billion dollars annually.

Whereas the Willamette Valley produces approximately one-half of Oregon's 3.4 billion dollar farm gate production.

Whereas Oregon's population growth is projected to increase by 1.7 million people in the next 40 years, primarily in the Willamette Valley.

Be it resolved that the State Board of Agriculture finds that mandating a 20 year supply of buildable lands inside the urban growth boundaries is incompatible with the conservation of farmland for future generations.

Be it further resolved the Board of Agriculture supports the concept of citles and counties regaining local control by making the mandatory 20 year supply of buildable lands inside the urban growth boundary optional.

RESOLUTION NO. 162

Resolved that the State Board of Agriculture supports the above recommendation.

ACTION:

Moved by:

George Pugh

Seconded by:

. Margaret Magruder

Action taken:

Motion passed unanimously by roll call vote.

CHCIDECEBC CCCT/17/TA CZ:90



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January 26, 1999

Senate Water and Land Use Committee State Capitol Salem. OR 97310

Re:

Senate Bill 87

Dear Chair Tamo and Committee Members:

betweenannu us

retail,

1000 Friends of Oregon opposes SB 87, for several reasons. Senate Bill 87 is the authors "one-size-fits-all" bill. And, it is unnecessary – any deficiencies in the supply of land for employment purposes can be addressed under current law.

Senate Bill 87 would require that all large and fast-growing cities provide a 20-year land supply inside the urban growth boundary (UGB) for industrial, retail, and office uses, and would require these cities to comply with other complex and expensive paperwork requirements. This bill does not affect a small number of cities – it would apply to over 100 cities of all sizes, in every part of the state, from Bay City to Brownsville, from Canby to Condon, from Irrigon to Lebanon, as well as the entire Metro area.

Senate Bill 87 requires these cities to conduct a complex buildable lands analysis and, if a deficiency is found, the city must provide additional capacity. The bill allows, and actually even encourages, cities to provide this capacity by expanding their UGBs based on the development patterns of the past five years, even if those patterns are landwasteful. We know from experience that the market is too volatile to look at the immediate past employment patterns, and apply it meaningfully to the next 20 years.

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Cities must conduct this inventory of their office, industrial, and retail land supply by January 1, 1998 (we suspect this is a drafting error) and to repeat this analysis at least every 5 years, with the analysis to be followed by a quick UGB expansion. This bill will effectively result in every city conducting a periodic review of its entire comprehensive land use plan every 5 years. This is a breakneck pace, especially for those cities with little or no permanent planning staff. * will effectively result in which conducting for the periodic review of its entire comprehensive land use planning staff. * will effectively result in which conducting for the periodic review of its entire comprehensive land use planning staff. * will effectively result in which conducting for the periodic review of its entire comprehensive land use planning staff. * will effectively result in which conducting for the periodic review of its entire comprehensive land use planning staff. * will effectively result in every 5 years. This is a breakneck pace, especially for those cities with little or no permanent planning staff. * will effectively result in which conducting a periodic review of its entire comprehensive.

And what would be gained by this complex analysis and attempts to foresee employment land needs for 20 years into the future? Statistics show there are enormous differences in the density of employment, even for the same kind of work. For example, just looking at suburban office space in the Portland area – the Centerpoint office park in Lake Oswego had 450 employees on 35 developed acres in 1990, for a density of 35.52

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employees/acre. The Kruse Woods I development, also in Lake Oswego, had a density of 72.92 employees/developed acre, and the Highlands in Sylvan had an employee density of 89.01 employees/developed acre. These are significant differences for employment density for the same use, and are also observable in industrial use. How would cities begin to project their employment and needs in each of these three categories, for such a long period of time? The land appears to reglet other employment was, such as method, when the property was appears to the employment was, such as method, when the property was appears to the employment was, such as method, when the property was appears to the employment was, such as method, when the property was appears to the employees.

The bill also appears to eliminate the requirement that the current residential lands analysis take into account all needed housing types instead substituting just a "residential" land needs analysis. (Page 2, line 20) This is significant, because state statute defines "needed housing" as the variety of housing types needed by all citizens of the state, including manufactured homes, apartments, and smaller single-family homes.

Finally, the bill also requires every city to compile and report certain complicated and unwieldy information, some of it possibly proprietary in the business field, to the Department of Land Conservation and Development at least every two years, including information on the amount of job creation, the density and price ranges of development, vacancy rates, and more. (Section 4 of bill)

This bill is not needed. Current law requires every city to provide appropriate amounts of land for industrial and commercial purposes, but it provides flexibility as to the number of years for which the land must be supplied, and the types of uses. For some areas, a planning period of 20 years for some employment uses may make sense; in other areas it may not. Does every city really need a 20-year supply for all these uses? Some cities have historic development patterns that focus on one type of employment — a city's economic base may be primarily industrial, service/retail, or tourism-related, for example. Why make every city be a full-service land provider?

This is a significant issue financially for cities. Cities are obligated to provide infrastructure to the lands inside its UGB over time. Do we really want to require many smaller cities to take on this obligation for 20 years? Many cities will be unable to provide a commitment to an urban level of infrastructure for a 20-year period. It seems much more sensible to leave some flexibility at the local level, so each city can plan for, and provide infrastructure to, those employment lands that they expect to need over a period of time that makes sense at the local level.

Senate Bill 87 says nothing about providing land for the other uses that must accompany such growth if we are to maintain any semblance of hvable communities—such as schools, parks, open space, fire and police stations, which cities must also provide for.

The bill allows cities to expend their UGBs based on past, inefficient land uses development patterns. Do we really want to expand our UGBs on to prime farmland because of, for example, the past parking needs of retail establishments?

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1000 Friends

We have firsthand knowledge that the requirements of this proposed bill are complex, expensive to carry out, and are called for at a break neck pace, because the Metro area has been subject to them for the past several years, for residential land only. We have been closely involved with Metro's implementation of these requirements. The Metro area has many more staff and computer resources than any other area in the state, and yet, the requirements of this bill have been proven to be not always well thought out, complicated, and expensive. We believe that Metro has actually developed some better ways to ensure there is an adequate supply of employment land in the region, and we fear this bill will remove that ability to personalize how to accommodate employment growth. Further, we are very concerned about what this means for smaller jurisdictions.

We urge you to oppose Senate Bill 87. Thank you.

. Sincerely,

Mary Kyle McCurdy

Mary Kyle McCurdy

Staff Attorney

Urban Growth Management Program



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OFFICIO MEMBER
I Pritchett

AL COUNSEL TO BOARD & Van Cleave

PTER STAFF
ilg Honoyman, Executive Director

/. Commerce circle e 200 sonville, Oregon 97070 -1 682-3363 Free: 1-800-826-6610 (1503) 682-1696 sage-oregon.org

Associated General Contractors Oregon-Columbia Chapter

National AGC Award-Winning Chapter

Prexident's "We Can - We Care" Award Recipient

TESTIMONY ON SENATE BILL 87 Senate Water and Land-Use Committee January 26, 1999

Mr. Chairman and members of the committee, I am Gary Conkling representing the Associated General Contractors in support of Senate Bill 87.

One of the most significant growth challenges facing communities in Oregon is how to provide needed infrastructure. It takes time and money, as well as a local government willing to provide urban services.

Provisions in existing state law give local communities ample time to plan and prepare for growth by requiring a 20-year supply of buildable land for housing. Decisions about where growth will occur are to be made so there is time for followup actions to assure sewer, water and other essential services are available when actual development takes place.

The same 20-year time horizon also should apply to planning for office, industrial and retail uses, which are just as essential to quality communities as residential dwellings.

As builders of commercial, industrial and retail facilities, AGC members understand the challenges of development as we attempt to use our urban lands more efficiently and assure the continued livability of our cities. For that reason, we strongly support Senate Bill 87 and urge its passage.

SUPPORT FOR SENATE BILL 87 20-YEAR SUPPLY OF BUILDABLE LAND FOR COMMERCIAL DEVELOPMENT

The Commercial Real Estate Economic Coalition (CREEC) represents a broad spectrum of trade and business associations and companies with interests in the commercial real estate industry, including the development, sales, leasing and management of multi-family, office, commercial and industrial properties.

I. Background

In 1995, the Oregon State Home Builders Association was successful in gamering support at the legislature for amendments to ORS 30.936, 197.295; and repealing ORS 195.035. These initiatives, related to buildable land available within urban growth boundaries, effected changes in state statute that requires jurisdictions with populations of 25,000 or more within urban growth boundaries, at periodic review of the urban growth boundary to "provide sufficient buildable lands within urban growth boundaries.... to accommodate estimated housing needs for 20 years." The changes were provided for in House Bill 2709.

A similar provision in state statute was not made for "non-residential lands," i.e., office, industrial and retail. CREEC strongly believes that corollary language needs to be added to the ORS to (1) ensure that a similar review is required for these categories of development which generally and necessarily support housing development through the provision of jobs and services; and (2) helps clarify both language and intent in jurisdictional plans regarding UGB amendments.

II. Position

CREEC strongly supports the proposal outlined in SB 87 to include language in state statute which specifically addresses estimated office, industrial and retail needs to assure that comprehensive plans or functional plans provide sufficient buildable lands within urban growth boundaries for these sectors.

The key points of CREEC's support for SB 87 are:

- Current ORS is specific as to the need for local governments to demonstrate and provide for a 20-year supply of buildable land for residential development within UGB's. The ORS is silent as regards office, industrial and retail needs. This has led to a lack of detailed and comprehensive analyses of office, retail and industrial land needs.
- The relationship of <u>both</u> housing <u>and</u> jobs must be provided for through a thorough and objective review of the inventory of buildable land (both vacant and re-developable).
- There must be an analysis of needed office, industrial and retail development by type, and a demonstration that the local government is in compliance with state laws and rules with regard to economic development and jobs.
- The analysis of all buildable lands must be tied to clearly defined baseline standards and performance criteria that allow jurisdictions to regularly measure and evaluate the supply of buildable lands for all commercial types. Such analysis is already underway and in place for residential lands. Unfortunately, no such analysis is in place for lands related to jobs. SB 87 assures that there will be a clear understanding of the dynamics of lands necessary for jobs and establish a sound base of data upon which decision-making can be made.

Commercial Real Estate Economic Coalition (CREEC)

III. Summary

CREEC believes that SB 87 is a necessary housekeeping bill to complete what was initiated with regard to residential development. That being, to assure that sound planning takes place for all land use types. Local jurisdictions need to regularly conduct thorough inventories of their buildable lands, understand the changing dynamics of the residential and commercial industries, and measure performance against clearly established baselines and standards.

To achieve the land use patterns desired within urban growth boundaries, the nexus between residential development, and the jobs that support and service them, must be established. Decision-making requires good information and data. SB 87 establishes the foundation for sound planning.

IV. CREEC MEMBERSHIP

Associated Builders and Contractors
Associated General Contractors
Certified Commercial Investment Members of Commercial Investment Real Estate Institute
Columbia Corridor Association
Commercial Association of REALTORS
International Council of Shopping Centers
National Association of Industrial & Office Properties
Oregon Mortgage Bankers Association
Portland Metropolitan Association of Building Owners and Managers
Retail Task Force
Schnitzer Investment Corp.
Society of Industrial and Office Realtors
West Side Economic Alliance



January 26, 1999

Testimony Before the Senate Water and Land Use Committee Regarding SB 87

Mr. Chairman and members of the Committee, I am Don Schellenberg, Associate Director of Governmental Affairs for the Oregon Farm Bureau. I am here today to express Farm Bureau's opposition to Senate Bill 87.

Some parts of life are very difficult and complicated, should you invest money in stocks or bonds? Some parts of life are very simple, should I get out of bed or not? Land use planning is just like life. Some parts are difficult and complicated such as remembering the difference between a legislative decision and a quasijudicial decision. Some parts are simple, land is either inside or outside of an urban growth boundary.

Land use planning as it relates to agriculture falls into the "simple" category. Either we are going to look at the big picture and protect our productive farmland from development, or we are not. Either we are going to quit pretending that we can continually expand urban growth boundaries without hurting the infrastructure that is so vital to farmers and ranchers, or we will continue to require expansion of urban growth boundaries at the peril of losing our quality of life and a significant portion of our states economy.

Senate Bill 87 also falls into the "simple" category. You can either increase the pressure to expand urban growth boundaries by adopting SB 87 or you can at least not increase the pressure by rejecting SB 87.

This bill increases the pressure to expand urban growth boundaries in two ways. First, it adds three more uses to the definition of buildable lands for which certain local governments are required to provide a 20 year supply of land on which such uses can be established. Farm Bureau is quite aware that the addition of the three uses to the definition do not immediately require the expansion of an urban growth boundary. However, their addition to the list will in the end require an expansion sooner than would have otherwise been needed. Second, SECTION 3 of the bill speeds up the time frame in which the affected cities have to meet the required buildable land supply.

As I testified before this Committee last week, Farm Bureau is of the strong persuasion that the current law is ill advised and should be changed to remove the absolute requirement of a twenty year buildable supply of land for housing. The current law is a promise to eventually pave over every acre of land in the state.

Let me make it clear, the members of Farm Bureau have not adopted a "no growth" policy, yet. They believe that growth can occur, but that it certainly should not occur on the high-value farmland soils that border portions of many of the cities of our state. I would also suggest that there are cities that for a variety of reasons are not interested in growth. You could give the cities the flexibility they desire and go a long way toward protecting the future of agriculture in Oregon by amending SECTION 2 of the bill to make the 20 year supply optional and removing SECTIONS 3, 4 and 5 from the bill.

It is really quite simple, either you can accelerate the pressure to expand urban growth boundaries and increase the development pressure on farmland, or you can adopt Farm Bureau's recommended changes and decrease the pressure being experienced by cities and the surrounding farmland. Farm Bureau respectfully asks that you do the latter.

Thank you for allowing me to comment on Senate Bill 87.

For complete bill content, access: gopher://gopher.leg.state.or.us

Bills for Council Action

Metro Position	Reviewed by C, R & S	Bill Number	Program Area	Description	Assigned To	Take Lead	Monitor Only	No Action	Status
	22-Jan-99	SB 87	growth	Local Govts to estimate 20 year land supply need	Shaw	Х			hrg 1/26
		SB 268	ASD	Provides Metro w/affirmative defense for tort/Y2K claims	Fjordbeck	supp		· · · · · · · · · · · · · · · · · · ·	
		SB 321	Parks	Implements Measure 66	Ciecko	LR			
		HB 2081	transpo	AOC's gas tax measure	cotugno	LR.	wc	, , , , , , , , , , , , , , , , , , , 	
		HB 2082	transpo	AOI's gas tax measure	cotugno	LR	wc		



METRO

December 1, 1998

Mr. Doug Hattenhauer Hattenhauer Distributing Co. P.O. Box 499 201 W. 1st The Dalles, OR 97058

RE: RFB 98B-63-REM

Dear Mr. Hattenhauer:

US Postal Service Receipt for Certified Mail No Insurance Coverage Provided. Do not use for International Mail (See reverse) Hatrenhauex Dou Street & Nu P.O. \$ Postage Certified Fee ひゃいいいいいいいい Special Delivery Fee Restricted Delivery Fee Return Receipt Showing to Whom & Date Delivered Return Receipt Showing to Whom Date, & Addressee's Address TOTAL Postage & Fees \$ Postmark or Date

Z 249 343 715

Thank you for your firm's bid on RFB 98B-63-REM for the Provision of Diesel Fuel to Metro. Unfortunately, the bid was judged to be nonresponsive to the requirements of the RFB and is being rejected.

In particular, Metro has determined that a number of features of the site proposed, as well as variances proposed, do not comply with the requirements of the Scope of Work. A list is provided below:

- 1. In item #1 of the letter accompanying the bid, exception is taken to the branded fuel requirement. This is a material variance unacceptable to Metro.
- 2. In item #4 of the letter, it is proposed to supply replacement fuel through alternative sites rather than solely through a delivery truck. This is a material variance unacceptable to Metro.
- 3. In item #6 of the letter (and accompanying diagrams), Hattenhauer Distributing submits a site plan for meeting the requirements for simultaneous fueling of two trucks. The proposal labeled "Fueling From North" for fueling vehicles is not acceptable because the "pump" shown is not high pressure, there is a fence preventing access to the pump and the location of the gate prevents vehicles from exiting the site. As stated in the Bid Documents under "Delivery", compliance with the requirements of the Scope of Work must be demonstrated at the time of bid opening.

The proposed scheme labeled "Fueling From South" does not comply with the requirements of the Scope of Work as demonstrated in a previous test of the site. The results of the test (which were given to your firm) showed that a STS tractor-trailer combination traveling South cannot satisfactorily navigate between the pump and pump island given the close proximity of a third obstacle the "OFFICE/WAREHOUSE BUILDING" after fueling. These are material variances unacceptable to Metro.

4. In item #7 of the letter, it is proposed to queue two trucks behind the "OFFICE/WAREHOUSE BUILDING" when trucks are accessing the site from the north. Since there is only one pump available to these queued vehicles, they could not simultaneously fuel once the trucks using the island and remote pump are fueled. This is a material variance unacceptable to Metro. It is also proposed to queue on other properties or alternative sites. These likewise do not comply with the Scope of Work and are unacceptable.

Mr. Doug Hattenhauer December 1, 1998 Page 2

5. Item #8 of the letter states that the firm would protest compliance with the separation of commercial and noncommercial traffic requirements of the Scope of Work, and that alternative sites could be used in conjunction with the HWY 19 site in order to satisfy certain requirements. These conditions are unacceptable to Metro.

This process was carefully performed. If you desire to appeal, a letter must be received by Metro's Procurement Officer within five working days of the postmarked date on this notice. Please state the rule upon which the appeal is being made.

This letter shall also serve as notice of Metro's intent to award a contract to the Devin Oil Co. for this project.

Respectfully,

Chuck Geyer
Project Manager

CG:gbc

cc: Jim Watkins, Engineering & Analysis Manager Scott Moss, Metro Procurement Officer Marv Fjordbeck, Senior Assistant Legal Counsel s:\share\geye\misc\diese\rf098\hatt120198.doc Hattenhauer site with car
 entering from north entrance



3) STS truck entering at north entrance from Hwy 19



5) Exiting site at south drive



2) Hattenhauer site looking at island and north entrance



4) STS truck approaching remote pump



6) Devin Oil Company site



0204990-02

FOSTER, PEACHEY & YOUNG

ATTORNEYS AT LAW
420 EAST THIRD STREET
THE DALLES, OREGON 97058
TELEPHONE (541) 296-5474
FAX NO. (541) 296-5570

JAMES R. FOSTER KATHERINE YOUNG

THOMAS C. PEACHEY JOHN T. LEWIS (1925-1993)

FACSIMILE COVER SHEET

Date: February 2, 1999

Time: 2:50pm

FAX NUMBER: 503-797-1797

To: Mr. Jeff Stone, Metro, The Presiding Officer's Office

From: Thomas C. Peachey

Foster, Peachey & Young

Re: RFB 98B-63-REM

OUR FILE #98-0504

If you do not receive 4 pages, (including cover page), please contact Christine at (541) 296-5474.

The original of this document will X will not ______
follow in the U. S. Mail.

MESSAGE:

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FOSTER, PEACHEY & YOUNG

ATTORNEYS AT LAW
420 EAST THIRD STREET
THE DALLES, OREGON 97058
TELEPHONE (541) 296-5474
FAX NO. (541) 296-5570

JAMES R. FOSTER KATHERINE YOUNG THOMAS C. PEACHEY JOHN T. LEWIS (1925-1993)

February 2, 1999

VIA FACSIMILE & REGULAR MAIL

The Presiding Officer's Office METRO Regional Services 600 N.E. Grand Avenue Portland, OR 97232-2736

Attention: Mr. Jeff Stone

RE: Our Client: Hattenhauer Distributing Company

RFB 98B-63-REM - Appeal

Our File: 98-0504

Dear Mr. Stone:

Hattenhauer Distributing Company (Hattenhauer) has appealed to the Metro Board a contract to be awarded to Devin Oil to provide fuel for STS trucks transporting Metro waste from the Metro area to the Arlington landfill, RFB 98B-63-REM. Hattenhauer also appeals the executive officer's December 18, 1998 rejection of Hattenhauer's initial appeal.

The grounds for Hattenhauer's appeal were set forth in a letter dated December 4, 1998 directed to Scott Moss, Metro Procurement Officer. Those grounds are as follows:

- 1. Hattenhauer Distributing Company's bid was unfairly evaluated and would have, but for such material violation, been the lowest bidder on the project. (OAR 137-30-104)
- 2. The rejection of the bid by Hattenhauer Distributing Company and the award of the bid to Devin Oil Co. was not impartial contrary to the provisions of ORS 279.005.
- 3. Metro's bid request stifled competition by limiting competition by one potential supplier in violation of ORS 279.007.
- 4. Metro's bid expressly required a brand name product in violation of ORS 279.017 and OAR 137-30-011 without the findings required by law.
- Metro failed to award the bid to the lowest responsible bidder pursuant to the provisions of ORS 279.029.

Mr. Jeff Stone, Metro February 2, 1999 Page 2 of 3

- 6. Good cause did not exist to reject Hattenhauer Distributing Company's bid in violation of provisions of ORS 279.035.
- 7. Metro improperly rejected Hattenhauer Distributing Company's request for change of solicitation specifications pursuant to the provisions of OAR 137-30-050.
- 8. Metro failed to award the contract to the lowest responsible bidder in violation of OAR 137-30-090.

Hattenhauer's claim of impartiality, in violation of ORS 279.005, is based upon the personal relationship between certain Devin Oil employees, STS employees and their relationship to Metro. Additionally, it is clear from the facts of this case that Metro designed bid specifications not reasonably related to their requirements and specifically designed to exclude Hattenhauer's ability to meet those in its bid.

The executive officer, in response to Hattenhauer's appeal, has alleged that Metro's contract with its transportation contractor required the bid specifications set forth herein. That does not appear to be true. Contract documents forwarded to this office do not appear to require any of the following requirements set forth in your bid:

- 1. That fuel be supplied in eastern Oregon on Highway 19 between the City of Arlington and Cedar Springs Road.
- 2. That branded diesel fuel be required.
- 3. Queuing requirements.
- 4. The elimination of noncommercial customers.

The inclusion of these requirements deterred competition in violation of ORS 279.007.

Hattenhauer has appealed the inclusion of branded fuel. Hattenhauer has requested the inclusion of branded or unbranded purchases, has included the ability to provide branded or unbranded fuel. Hattenhauer has represented that there is no difference in those fuels and that Metro would benefit from the lowest price by permitting unbranded fuels. Metro has, without any factual basis, alleged that branded diesel fuel would be of a higher quality with greater product warranties.

ORS 279.035 requires that your agency use good cause the rejection of a bid and conversely requires good cause to

Mr. Jeff Stone, Metro February 2, 1999 Page 3 of 3

therefore be used in setting forth bid requirements. Because the bid requirements set forth by Metro are not required in their contract with STS, nor is there a factual basis to substantiate their reasonableness, Hattenhauer's request to alter those bid requirements should have bene accepted by Metro which would have led to Hattenhauer's bid being responsive and the lowest responsible bidder under the statute.

The award of bid to Devin Oil must be set aside and the fuel contract awarded to the lowest responsible bidder, Hattenhauer, or Metro should start the process over. Hattenhauer is the lowest responsible bidder, with a proven track record in supplying fuel.

The Board's consideration of this matter will be sincerely appreciated.

Very truly yours,

Thomas C. Peachey

TCP: cmk

cc: Mr. Doug Hattenhauer

Mr. Marvin D. Fjordbeck