

BEFORE THE METRO COUNCIL

APPROVING A SETTLEMENT AGREEMENT) RESOLUTION NO. 06-3738
WITH RANDOLPH AND DEBORA SLIPHER)
REGARDING METRO NOTICES OF) Introduced by Metro Chief Operating Officer
VIOLATION NOS. 158-06 AND 160-06) Michael Jordan, with the concurrence of
) Metro Council President David Bragdon

WHEREAS, Randolph and Debora Slipher own property at 5305 N.E. 115th Avenue, Portland, Oregon (the "Property"), located inside the Metro boundary and Urban Vision Corporation ("UVC") leases a portion of the Property from the Sliphers and conducts operations at the Property; and

WHEREAS, on August 1, 2006, the Metro Solid Waste and Recycling Department Director (the "Director"), under authority delegated to him by the Chief Operating Officer ("COO"), issued Notice of Violation No. NOV-158-06 to the Sliphers and UVC for violating Metro Code Sections 5.01.030(a) and 5.01.045(a)(1) on July 20, 2006, by establishing, operating, or maintaining a solid waste facility at the Property without obtaining a required Metro solid waste facility license, and the Director imposed a \$500 civil penalty against the Sliphers and UVC for these violations; and

WHEREAS, neither the Sliphers nor UVC requested a contested case hearing regarding NOV-158-06 within the 30 day time period provided, and on October 5, 2006, the Director therefore issued a Final Order By Default against both the Sliphers and UVC, ordering them to pay the \$500 civil penalty within 10 days; and

WHEREAS, on August 31, 2006, the Metro Chief Operating Officer ("COO") issued Notice of Violation No. NOV-160-06 to the Sliphers and UVC for violating Metro Code Sections 5.01.030(a), 5.01.045(a)(1), and 5.01.135 by establishing, operating, or maintaining a solid waste facility at the Property without obtaining a required Metro solid waste facility license and by denying access to Metro solid waste facility inspectors investigating the solid waste activities on the property, and the COO found that the violations of Code Sections 5.01.030(a) and 5.01.045(a)(1) were continuing violations that took place over a 30-day time period and imposed a \$16,000 civil penalty against the Sliphers and UVC for these violations; and

WHEREAS, the Sliphers submitted to Metro a timely request for a contested case hearing regarding NOV-160-06 in a letter from their attorney, John Davenport, dated September 27, 2006, which Metro received on September 28, 2006; and

WHEREAS, the Sliphers have offered to provide Metro staff with access to the facility at any time in order for Metro to determine whether UVC is in compliance with the Metro Code; and

WHEREAS, the COO has investigated this matter further and concluded that the Sliphers have not played any role in UVC's operations on the Property; and

WHEREAS, Metro Code Section 2.03.090 requires the Council to approve any settlement of unpaid civil penalties assessed by the Director or the COO; and


WHEREAS, the COO recommends that Metro fully settle and compromise NOV-158-06 and NOV-160-06 with respect to the Sliphers and pursue collection of the civil penalties imposed in those notices from UVC; now therefore

BE IT RESOLVED that the Metro Council approves settlement with the Sliphers regarding NOV-158-06 and NOV-160-06 and authorizes the Chief Operating Officer to enter into a settlement agreement substantially similar to the document attached as Exhibit A.

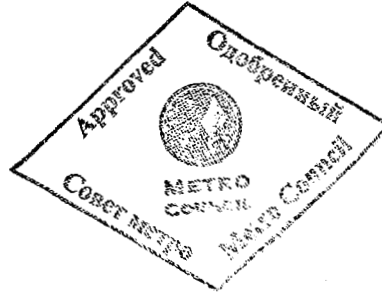
ADOPTED by the Metro Council this 2nd day of November, 2006


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney

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SETTLEMENT AGREEMENT

Metro, a metropolitan service district organized under the Oregon Constitution, Oregon Revised Statutes Chapter 268, and the 1992 Metro Charter, (“Metro”) and Randolph and Debora Slipher (“the Sliphers”) enter this Settlement Agreement (“Agreement”) effective the date that this Agreement is fully executed (the “Effective Date”). Metro and the Sliphers shall collectively be referred to herein as the “Parties” and each individually as a “Party.”

RECITALS

- A. The Sliphers own property at 5305 N.E. 115th Avenue, Portland, Oregon (the “Property”). The Property is inside the Metro boundary. Urban Vision Corporation (“UVC”) leases a portion of the Property from the Sliphers and conducts operations at Property.
- B. On August 1, 2006, the Metro Solid Waste and Recycling Department Director (the “Director”), under authority delegated to him by the Chief Operating Officer (“COO”), issued Notice of Violation No. NOV-158-06 to the Sliphers and UVC (attached as Exhibit 1). The Director found that the Sliphers and UVC had violated Metro Code Sections 5.01.030(a) and 5.01.045(a)(1) on July 20, 2006, by establishing, operating, or maintaining a solid waste facility at the Property without obtaining a required Metro solid waste facility license. The Director imposed a \$500 civil penalty against the Sliphers and UVC for these violations.
- C. Neither the Sliphers nor UVC requested a contested case hearing regarding NOV-158-06 within the 30 day time period provided. On October 5, 2006, the Director therefore issued a Final Order By Default against both the Sliphers and UVC, ordering them to pay the \$500 civil penalty within 10 days (attached as Exhibit 2).
- D. On August 31, 2006, the Metro Chief Operating Officer (“COO”) issued Notice of Violation No. NOV-160-06 to the Sliphers and UVC (attached as Exhibit 3). The COO found that the Sliphers and UVC had violated Metro Code Sections 5.01.030(a), 5.01.045(a)(1), and 5.01.135 by establishing, operating, or maintaining a solid waste facility at the Property without obtaining a required Metro solid waste facility license and by denying access to Metro solid waste facility inspectors investigating the solid waste activities on the property. The COO found that the violations of Code Sections 5.01.030(a) and 5.01.045(a)(1) were continuing violations that took place over a 30-day time period and imposed a \$16,000 civil penalty against the Sliphers and UVC for these violations.
- E. The Sliphers submitted to Metro a timely request for a contested case hearing regarding NOV-160-06 in a letter from their attorney, John Davenport, dated September 27, 2006, which Metro received on September 28, 2006.

- F. The Parties enter into this Settlement Agreement to fully settle and compromise NOV-158-06 and NOV-160-06 solely with respect to the Sliphers.

NOW, THEREFORE, in reliance on the above recitals and in consideration of the mutual promises described below, the adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. Release Regarding NOV-158-06. Except as otherwise permitted by the terms of this Agreement, as of the Effective Date of this Agreement, Metro hereby agrees not to pursue the Sliphers for collection of the civil penalty imposed in NOV-158-06. Specifically, Metro agrees not to ask the Multnomah County Clerk to list the Final Order By Default issued by Metro regarding NOV-158-06 into the County Clerk Lien Record in a manner that will place any liens on any property owned by the Sliphers. The Parties do not intend that the release provided for in this paragraph shall release any other claim, right, or cause of action or any claim, right, or cause of action for violation of the terms of this Agreement. The release provided for in this paragraph applies only to the Sliphers, and not to any other party named in NOV-158-06.
2. Release Regarding NOV-160-06. Except as otherwise permitted by the terms of this Agreement, as of the Effective Date of this Agreement, Metro hereby releases, acquits, and forever discharges its authority to (a) collect the civil penalty imposed in NOV-160-06 from the Sliphers, and (b) pursue further enforcement action against the Sliphers for the violations alleged in NOV-160-06. The Parties do not intend that the release, acquittal, and discharge provided for in this paragraph shall release, acquit, or discharge any other claim, right, or cause of action or any claim, right, or cause of action for violation of the terms of this Agreement. Provided that the Sliphers do not violate the terms of this Agreement, Metro hereby withdraws and cancels the civil penalty imposed in NOV-160-06 with respect to the Sliphers. The release, acquittal, and discharge, and the withdrawal and cancellation of civil penalty imposed, provided for in this paragraph applies only to the Sliphers, and not to any other party named in NOV-160-06.
3. Grant of Access Onto Property Provided To Metro. The Sliphers, as owners of the Property and under the terms of their lease with UVC and with other tenants on the Property, retain authority to grant access to the Property to other persons. In return for the releases described herein and for other valuable consideration that the Parties hereby acknowledge, the Sliphers authorize Metro solid waste facility inspectors and related Metro solid waste staff to enter onto the Property for the purpose of inspecting the activities of UVC pursuant to Metro Code Section 5.01.135 to ensure that UVC's activities are in compliance with all provisions of the Metro Code. Not later than seven days after the Effective Date of this Agreement, the Sliphers will provide Metro with the combination to the lock on the gate of the Property. Under the authority granted by this paragraph, Metro staff may unlock the gate and enter onto the Property for the limited purposes stated herein. This grant of access shall expire on the earlier of March 31, 2007, or the date that the Sliphers have provided Metro with conclusive documentation that UVC has permanently left the Property. In the event of such departure from the Property by UVC, if UVC later becomes a tenant of any property owned

by the Sliphers prior to April 30, 2007, then this grant of authority shall extend to such property until that date.

4. Breach of Agreement By Sliphers. In the event that the Sliphers breach paragraph 3 of this Agreement, in addition to any other legal remedies available to Metro for breach of this Agreement, Metro may reinitiate NOV-160-06 against the Sliphers by providing them and their attorney, John Davenport, with another copy of NOV-160-06 and another contested case notice pursuant to Metro Code Section 2.05.005.
5. Modification and Waiver. This Agreement shall not be modified unless such modification is in writing and signed by all of the Parties. No provision of this Agreement shall be considered waived by any Party unless such a waiver is made in writing signed by the Party making the waiver. Waiver of any provision(s) of this Agreement shall not affect the enforceability of any other provision(s) of this Agreement.
6. Agreement Not Assignable or Transferable. This Agreement may not be transferred or assigned without the prior written approval of Metro and the Sliphers.
7. Choice of Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
8. Severability. If any non-material provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
9. Entire Agreement. This Agreement is the entire agreement between the Parties.
10. Voluntary Agreement. Each Party hereby declares and represents that it fully understands the terms of this Agreement, that it has had ample opportunity to review this Agreement and solicit and receive the advice of its own counsel, and that it voluntarily enters into this Agreement.
11. Authority to Enter Into This Agreement and Signatory Authority. Each Party hereby declares and represents that it has the legal power, right, and authority to enter into this Agreement. The individuals signing below warrant that they have full authority to execute this Agreement on behalf of the Party for which they sign.

12. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original and all of which together are deemed a single document.

RANDOLPH SLIPHER

Date: _____

DEBORA SLIPHER

Date: _____

METRO

By: _____

Title

Date: _____

APPROVED AS TO FORM:

Paul A. Garrahan, Senior Assistant Metro Attorney

Date: _____

SK:bjl
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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 06-3738 APPROVING A SETTLEMENT AGREEMENT WITH RANDOLPH AND DEBORA SLIPHER REGARDING METRO NOTICES OF VIOLATION NOS. 158-06 AND 160-06

October 20, 2006

Prepared by: Steve Kraten

BACKGROUND

Description of the Resolution

Urban Vision Corporation (“UVC”) is a business that has operated as an unauthorized material recovery facility (“MRF”) and reload, despite warnings and enforcement actions by Metro and the DEQ. The UVC facility, located at 5305 NE 115th Avenue, Portland, is operated by Dan Flannery on property leased to him by Randolph and Debora Slipher. Notice of Violation (“NOV”) number 158-06 was issued by Metro to both Dan Flannery and the Sliphers for operating an unauthorized MRF on July 20, 2006, a day that a routine inspection of the facility was conducted by Metro. The NOV imposed a \$500 penalty. NOV number 160-06 was issued to both Dan Flannery and the Sliphers for continuing to operate an unauthorized MRF at the site over the 30-day period from July 27, 2006 through August 25, 2006, and for denying access to Metro for the purpose of conducting inspections. This NOV imposed a penalty of \$16,000.

Dan Flannery did not respond to the NOVs. He neither paid the penalties, nor requested a contested case hearing. Further, he has persisted in his denial of Metro access to UVC for the purpose of conducting compliance inspections. Randolph Slipher contacted Metro after the issuance of NOV number 160-06. Mr. Slipher has provided Metro staff with sufficient information to establish that he is not a party to the unauthorized material recovery activities of his tenant and has agreed to provide Metro access to the site for the purpose of conducting compliance inspections.

Adoption of Resolution 06-3738 will approve a settlement agreement with the Sliphers that will release them from the civil penalties imposed by the NOVs and provide Metro with ready access to the UVC site in order to monitor compliance with the Metro Code.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed settlement.

2. Legal Antecedents

Metro Code Section 2.03.090 provides that, after the Chief Operating Officer (or his designee) issues a NOV assessing a civil penalty, any settlement that compromises or settles the assessed civil penalty must be approved by the Metro Council.

3. Anticipated Effects

The effects of Resolution No. 06-3738 will be to approve a settlement that formally releases Randolph and Debora Slipher regarding Notice of Violations No. NOV-158-06 and NOV-160-06 and, for the purpose of conducting compliance inspections, provides Metro with access to the property leased from the Sliphers by Dan Flannery. Dan Flannery shall remain liable for the monetary penalties imposed by Notice of Violations No. NOV-158-06 and NOV-160-06.

4. Budget Impacts

No budget impact is anticipated.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 06-3738, approving a Settlement Agreement with the Sliphers substantially similar to the Settlement Agreement attached to the resolution as Exhibit A.