### AGENDA

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



#### Agenda

MEETING:METRO COUNCIL REGULAR MEETINGDATE:July 12, 2001DAY:ThursdayTIME:2:00 PMPLACE:Metro Council Chamber

### CALL TO ORDER AND ROLL CALL

- 1. INTRODUCTIONS
- 2. CITIZEN COMMUNICATIONS
- 3. EXECUTIVE OFFICER COMMUNICATIONS
- 4. AUDITOR COMMUNICATIONS
- 5. MPAC COMMUNICATIONS
- 6. LEGISLATIVE UPDATE
- 7. CONSENT AGENDA
- 7.1 Consideration of Minutes for the July 5, 2001 Metro Council Regular Meeting.

#### 8. **RESOLUTION**

- 8.1 **Resolution No. 01-3084,** For the Purpose of Endorsing the Presiding Officer's Bragdon Authority to Enter into a Contract Regarding Council Transition.
- 8.2 **Resolution No. 01-3086,** For the Purpose of Authorizing the Executive Officer Park to Purchase Property in the Gresham Civic Neighborhood for a Transit-Oriented Development Project.
- 9. COUNCILOR COMMUNICATION

#### ADJOURN

1. 17 La 19 6	Sunday (7/15)	Monday (7/16)	Tuesday (7/17)	Wednesday (7/18)	Thursday (7/12)	Friday (7/13)	Saturday (7/14)
CHANNEL 11 (Community Access Network) (most of Portland area)		4:00 P.M.					
CHANNEL 21 (TVCA) (Washington Co., Lake Oswego, Wilsonville)							
CHANNEL 30 (TVCA) (NE Washington Co people in Wash. Co. who get Portland TCI)							
CHANNEL 30 (CityNet 30) (most of City of Portland)	8:30 P.M.						
CHANNEL 30 (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)	8:00 A.M. (previous meeting)	7:00 P.M. (previous meeting)	8:00 A.M. (previous meeting)	1:00 P.M. (previous meeting)	6:00 P.M. (previous meeting)	7:00 A.M. (previous meeting)	5:00 P.M. (previous meeting)
CHANNEL 33 (ATT Consumer Svcs.) (Milwaukie)	4:00 P.M. (previous meeting)					10:00 P.M. (previous meeting)	9:00 A.M. (previous meeting)

#### Cable Schedule for July 12, 2001 Metro Council Meeting

PLEASE NOTE THAT ALL SHOWING TIMES ARE TENTATIVE BASED ON THE INDIVIDUAL CABLE COMPANIES' SCHEDULES. PLEASE CALL THEM OR CHECK THEIR WEB SITES TO CONFIRM SHOWING TIMES.

Portland Cable Access www.pcatv.org Tualatin Valley Cable Access www.tvca.org West Linn Cable Access www.ci.west-li Mitwaukie Cable Access

www.pcatv.org www.tvca.org www.ci.west-linn.or.us/wltvsked (503) 288-1515 (503) 629-8534 (503) 722-3424 (503) 654-2266

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542. Public Hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by email, fax or mail or in person to the Clerk of the Council. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Agenda Item Number 7.1

Consideration of the July 5, 2001 Regular Metro Council Meeting minutes.

Metro Council Meeting Thursday, July 12, 2001 Metro Council Chamber

Agenda Item Number 8.1

Resolution No. 01-3084, For the Purpose of Endorsing the Presiding Officer's Authority to Enter into a Contract Regarding Council Transition.

Metro Council Meeting Thursday, July 12, 2001 Metro Council Chamber

# BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENDORSING THE PRESIDING OFFICER'S AUTHORITY TO ENTER INTO A CONTRACT REGARDING COUNCIL TRANSITION

**RESOLUTION NO 01-3084** 

) Introduced by) Presiding Officer David Bragdon

WHEREAS, the Metro Council and Executive Officer agreed that a change in Metro's structure was in the long term interest of the region; and

WHEREAS, the Metro Council passed Resolution No. 00-2929A on August 10, 2000 which submitted to the voters an amendment to the 1992 Metro Charter abolishing the Office of the Executive Officer, creating the Office of Council President and making related changes; and

WHEREAS, the voters overwhelmingly passed Measure 26-10 and endorsed structural changes at Metro; and

WHEREAS, the Metro Council passed a budget amendment in the 2001-02 fiscal year providing funds for transitional purposes; and

WHEREAS, Metro Code provides full authority of signing contracts on behalf of the Council rests with the Presiding Officer.

WHEREAS, the Presiding Officer wishes to work closely with the Council on transitional matters; now therefore

# **BE IT RESOLVED:**

(Internal

The Metro Council endorses the Presiding Officer's authority entering into a contract regarding matters of transition.

ADOPTED by the Metro Council this \_\_\_\_\_day of \_\_\_\_\_ 2001.

David Bragdon, Presiding Officer

APPROVED AS TO FORM:

Daniel B. Cooper, General Counsel

JAS.v2 H:My Documents/Legislation2001/Res. 01-3084 6/26/01

## STAFF REPORT

Resolution No. 01-3084: For the Purpose of endorsing the Presiding Officer's authority to enter into a contract regarding Council transition. June 25, 2001 Prepared by Jeff Stone

## DESCRIPTION:

In a June 21<sup>st</sup> memo by Presiding Officer Bragdon and Deputy Presiding Officer McLain, a process of transition was outlined. In this four-phase process, it is the intent of the Presiding Officer to seek advice from the Council on all aspects of the transition and its implementation.

This resolution endorses the Presiding Officer's exercising the authority to enter into a contract. Phase 1 begins the transition process by examining and evaluating the Council office by an outside management team (Marjory Hamann Consulting).

#### EXISTING LAW:

Metro Code section 2.04.020, Authority to Award and Execute Contracts, Budget Limitations, indicates that the council presiding officer is delegated authority to award and execute contracts on behalf of the council. Unless the council expressly approves a contract containing a requirement to the contrary, no contract may obligate Metro to the payment of funds not appropriated for that purpose by the Council (Ordinance No. 96-635B, Sec. 3).

# BACKGROUND AND ANALYSIS:

The Metro Council set forth a manner in which dollars for transitional planning may be drawn from by passing an amendment to the Council budget (known as Council Amendment #17).

Council Amendment #17 carries forward \$71,500 of underspending in Council and Executive Office budgets from FY 2000-01 to FY 2001-02, adding this amount to the \$6,000 already budgeted for transition-related needs. This amendment was approved unanimously by the Budget & Finance Committee at its June 19, 2001, meeting, and was formally adopted by Council on June 21, 2001, as part of the budget approval process for FY 2001-02.

The amendment specifies that the \$71,500 will be allocated to Special Appropriations, Contracted Professional Services, in the General Fund, and that expenditures are for Council-authorized transition-related costs only.

Metro Code provides full authority of signing contracts on behalf of the Council rests with the Presiding Officer. While this Resolution is not technically necessary, it is the intent of the Presiding Officer to work with the council in a proactive and inclusive manner.

### **BUDGET IMPACT:**

The contract to be signed by the Presiding Officer with Marjory Hamann Consulting is for \$17,600.

OUTSTANDING QUESTIONS: None

Agenda Item Number 8.2

Resolution No. 01-3086, For the Purpose of Authorizing the Executive Officer to Purchase Property in the Gresham Civic Neighborhood for a Transit-Oriented Development Project.

Metro Council Meeting Thursday, July 12, 2001 Metro Council Chamber

### **BEFORE THE METRO COUNCIL**

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY IN THE GRESHAM CIVIC NEIGHBORHOOD FOR A TRANSIT-ORIENTED DEVELOPMENT PROJECT

### **RESOLUTION NO. 01-3086**

Introduced by Mike Burton, Executive Officer

WHEREAS, the Metro Council authorized start-up activities for the Transit-Oriented Development Implementation Program (TOD Program) by Resolution No. 98-2619 on April 9, 1998, including the adoption of a Work Plan that provided for acquisition of TOD sites; and

WHEREAS, the procedure for approving a TOD site for acquisition or site improvements is for the TOD Steering Committee to review the proposal and initiate action, followed by a Seven-Day Notice to the Metro Council providing the Council the opportunity to request review of the proposal in executive session; and

WHEREAS, Metro is undertaking value enhancing activities in the Gresham Civic Neighborhood area and it is in the public interest to capture the value of these activities through site control as soon as possible; and

WHEREAS, on April 23, 2001 a Seven-Day Notice was issued for the 4.36 acre parcel ("Civic SW") at the southwest corner of the Civic Drive and MAX intersection and for options to purchase up to 5.5 acres on the northwest corner and 12,500 square feet at the northeast corner from Gresham Station, LLC. The Metro Council toured these sites prior to the Council meeting on May 3, 2001; and

WHEREAS, acquisition and resale with TOD conditions of the vacant land surrounding the future Civic Neighborhood MAX station is an excellent opportunity for the TOD Program to facilitate the construction by the private sector of 4-5 story, mixed-use projects with housing above ground floor retail; and WHEREAS, Gresham Station, LLC, will only sell the Civic SW Property to Metro on the condition that Metro accept the Property in "as is" condition, waive all claims against Gresham Station, LLC and release Gresham Station, LLC from any and all claims related to the transaction and/or the Property itself, including environmental conditions; and

WHEREAS, Metro's Phase I Environmental Assessment did not reveal evidence of recognized environmental conditions in connection with the Property;

WHEREAS, the "as is," waiver, and release clauses required by Gresham Station LLC shift liability, requiring Metro to assume a larger share of the risk that the property suffers from some latent defect. It is therefore necessary that the Metro Council approve of Metro's acquisition of the property by Metro under said conditions; now, therefore,

BE IT RESOLVED,

That the Metro Council approves the acquisition of the Civic SW Property subject to the "as is," waiver, and release provisions set forth in Section 11 of the Agreement of Purchase and Sale between Metro and Gresham Station, LLC (attached in part as Exhibit A).

ADOPTED by the Metro Council this \_\_\_\_\_day of \_\_\_\_\_, 2001.

Approved as to Form:

David Bragdon, Presiding Officer

Daniel B. Cooper, General Counsel

MG/ff Turans/transadm/staff/floyd/resolutions/2001/GreshamCivic TOD/May 2001 Resolution/ APF No. 1559.doc

I:\DOCS#10.TRN:07REGLFI.NNC:05TOD\09gresham.civic.neigh\APF 1559 RES Greaham station.02.doc OGC/JEM/sm 6/27/2001 reasonable efforts and cooperate with FATCO to provide Metro with additional ALTA Extended Owner's title insurance coverage at Metro's cost as set forth below, in the full amount of the Purchase Price specified above, insuring fee simple title vested in Metro or its nominees, subject only to the Permitted Exceptions as established under Section 5 of this Agreement.

- 9. Costs. Metro shall pay the cost of recording the deed from Seller to Metro and for the cost of its investigations of the Property. Seller shall pay all other recording charges, if any. Seller shall pay the premium for standard ALTA owner's title insurance coverage only. Metro shall pay the additional insurance premium required to obtain ALTA Extended Owner's title insurance coverage and any endorsements. Seller shall pay all conveyance, excise, and/or transfer taxes payable by reason of the purchase and sale of the Property. Metro and Seller shall each pay one-half of all other escrow fees and costs. Metro and the Seller shall each pay its own legal and professional fees of other consultants incurred by Metro and the Seller, respectively. All other costs and expenses shall be allocated between Metro and the Seller in accordance with the customary practice in Multnomah County, Oregon.
- 10. Seller's Representations and Warranties. Seller hereby warrants and represents to Metro the following matters, and acknowledges that they are material inducements to Metro to enter into this Agreement. Seller agrees to indemnify, defend, and hold Metro harmless from all expense, loss, liability, damages and claims, including attorneys fees, arising out of the material breach or falsity of any of Seller's representations, warranties, and covenants. Seller warrants and represents to Metro that the following matters are true and correct, and shall remain true and correct through Closing:
  - a) <u>Authority</u>. Seller represents that Winmar has agreed to convey the Property to the Seller under the agreement referenced in Exhibit B. Under its agreement with Winmar, Seller has the immediate, unconditional right to close its acquisition of the Property from Winmar, and Seller will not amend or terminate its agreement with Winmar in any material way without first obtaining Metro's consent, such consent not to be unreasonably withheld, conditioned or delayed. Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller, if Seller is not an individual, have full power and authority to sign for Seller and to bind it to this Agreement) and to sell, transfer and convey all right, title, and interest in and to the Property in accordance with this Agreement. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.
  - b) <u>Hazardous Substances</u>. For purposes of this Agreement, the phrase "Hazardous Substances" shall include but not be limited to the substances defined in ORS 465.200. Seller has consulted with the Current Title Holder and warrants, represents, and covenants as follows:
    - i) To Seller's actual knowledge, there are no Hazardous Substances in, upon, or buried on or beneath the Property and no Hazardous Substances have

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Exhibit A-1 of 6 APF No. 1559 Res 01-3086 been emitted or released from the Property in violation of any environmental laws of the federal or state government;

- ii) Seller has not brought onto, stored on, buried, used on, emitted or released from or on the Property, any Hazardous Substances in violation of any environmental laws of the federal or state government;
- iii) Except as set forth in any environmental study or analyses delivered to Metro by Seller, to Seller's actual knowledge, no underground storage tanks are located on the Property, including (without limitation) any storage tanks that contain, or previously contained, any Hazardous Substances, and Seller agrees not to cause or permit any such tanks to be installed in the Property before Closing;
- iv) To Seller's actual knowledge, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it;
- v) The Seller has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property;
- vi) The Seller has not transferred Hazardous Substances from the Property to another location that is not in compliance with applicable environmental laws, regulations, or permit requirements; and
- vii) To Seller's actual knowledge, there are no proceedings, administrative actions, or judicial proceedings pending or, to the best of Seller's knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.
- c) <u>Contracts, Leases, Rights Affecting Property</u>. Seller has not entered into, and will not enter into, any other contracts for the sale of the Property. Except as shown on FATCO Supplemental Title Report #918495, dated April 3, 2001 there are no rights of first refusal, options to purchase the Property, leases, mortgages, licenses, easements, prescriptive rights, permits, or other rights or agreement, written or oral, express or implied, which in any way affect or encumber the Property or any portion thereof. The Seller has not sold, transferred, conveyed, or entered into any agreement regarding timber rights, mineral rights, water rights, "air rights," or any other development or other rights or restrictions, relating to the Property, and except as shown on FATCO Supplemental Title Report #918495, dated April 3, 2001, to Seller's actual knowledge no such rights encumber the Property, and will not through Closing.

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Exhibit A-2 of 6 APF No. 1559 Res.01-3086

- d) <u>No Legal Proceedings</u>. To Seller's actual knowledge, there is no suit, action, arbitration, judgment, legal, administrative, or other proceeding, claim, lien, or inquiry pending or threatened against the Property, or any portion thereof, or pending or threatened against Seller which could affect Seller's right or title to the Property, or any portion thereof, affect the value of the Property or any portion thereof, to liability.
- e) <u>Mechanic's and Other Liens</u>. No work on the Property has been done or will be done, or materials provided, giving rise to actual or impending mechanic's liens, private liens, or any other liens, against the Property or any portion thereof.
- f) <u>Public Improvements or Governmental Notices</u>. To Seller's actual knowledge, there are no intended public improvements which will result in the creation of any liens upon the Property or any portion thereof, nor have any notices or other information been served upon Seller from any governmental agency notifying Seller of any violations of law, ordinance, rule or regulation which would affect the Property or any portion thereof.
- g) <u>Breach of Agreements</u>. The execution of this Agreement will not constitute a breach or default under any agreement to which Seller is bound or to which the Property is subject.
- h) <u>Possession</u>. Seller will be able to deliver immediate and exclusive possession of the entire Property to Metro at the close of escrow, and no one other than Seller will be in possession of any portion of the Property immediately prior to close of escrow.
- i) <u>Bankruptcy Proceedings</u>. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or, to Seller's actual knowledge, threatened against the Seller, nor are any such proceedings contemplated by Seller.
- j) <u>Recitals</u>. The statements and information applicable to Seller set forth in the Recitals are true and correct.
- k) <u>Changed Conditions</u>. If Seller discovers any information or facts that would materially adversely change the foregoing warranties and representations, Seller shall promptly give notice to Metro of those facts and information. If any of the foregoing warranties and representations cease to be true before the close of escrow, Seller may elect to either terminate this Agreement or use its commercially reasonable efforts to remedy the problem before the close of escrow. If the problem is not remedied 10 days before Closing, Metro may elect to either (a) terminate this Agreement, in which case Metro shall have no obligation to purchase the Property and all escrow payments shall be refunded to Metro, and Seller shall have no further obligation or liability to Metro, or (b) defer the Closing Date for a period not to exceed thirty (30) days or until such problem

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Exhibit A-3 of 6 APF No. 1559 Res. 01-3086 has been remedied, whichever occurs first. If the problem is not remedied in that time frame, Metro may elect to terminate the Agreement as set forth above.

 Seller's Actual Knowledge. Whenever a representation is made to "Seller's actual knowledge" or terms of similar import, the accuracy of such representation shall be based solely on the actual knowledge of Fred Bruning and Jean Paul Wardy on the date of this Agreement, excluding constructive or imputed knowledge or the duty of investigation or inquiry.

### 11. "AS IS" Transaction; General Release.

a) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THE DEED AND SECTION 10. THE SALE OF THE PROPERTY HEREUNDER IS AND WILL BE MADE ON A STRICTLY "AS WHERE WITH ALL FAULTS" BASIS WITHOUT IS. IS. REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, BY SELLER OR ANY OF SELLER'S AGENTS, EMPLOYEES OR CONTRACTORS, INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR WARRANTY CONCERNING TITLE TO, OR PHYSICAL, SEISMIC, STRUCTURAL, LEGAL, ENVIRONMENTAL OR FINANCIAL CONDITION OF THE PROPERTY, OR CONCERNING ANY CONTRACTS, AGREEMENTS, LEGAL REQUIREMENTS, LEASES. UTILITIES, SOILS, GROUNDWATER, TAXES, INCOME, EXPENSES. CHARGES, LIENS, ENCUMBRANCES, RIGHTS OR CLAIMS AGAINST OR AFFECTING OR PERTAINING TO THE PROPERTY OR ANY PART THEREOF. METRO REPRESENTS AND WARRANTS THAT, ON OR BEFORE TEN DAYS PRIOR TO THE CLOSING DATE, IT SHALL HAVE CONDUCTED AND COMPLETED ALL NECESSARY "INVESTIGATIONS" (AS DEFINED ABOVE) AND EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THE DEED AND SECTION 10, WILL ACOUIRE THE PROPERTY SOLELY ON THE BASIS OF THE INVESTIGATIONS AND THE TITLE INSURANCE PROTECTIONS AFFORDED BY THE TITLE POLICY. METRO ACKNOWLEDGES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN THE DEED AND SECTION 10, NEITHER SELLER NOR ANY OF ITS AGENTS, REPRESENTATIVES, ATTORNEYS OR EMPLOYEES HAVE MADE REPRESENTATIONS OR WARRANTIES OF ANY KIND, VERBAL OR WRITTEN, WITH RESPECT TO THE PROPERTY. INCLUDING BUT NOT LIMITED TO ITS FITNESS FOR ANY PARTICULAR PURPOSE, QUALITY OF CONSTRUCTION, WORKMANSHIP, CONDITION, ENVIRONMENTAL CONDITIONS, STATE REPAIR, SAFETY, MERCHANTABILITY, ACCURACY OF OF DIMENSIONS, STRUCTURAL SOUNDNESS, COMPLIANCE WITH LEGAL AND INSURANCE REQUIREMENTS, FINANCIAL VIABILITY OR COMPLETENESS OR ACCURACY OF THE REVIEW ITEMS. EXCEPT FOR THE REPRESENTATIONS AND ACCORDINGLY,

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Exhibit A-4 of 6 APF No. 1559 Q.S. D1 - 3086

WARRANTIES OF SELLER SET FORTH IN THE DEED AND SECTION 10, METRO HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS METRO MIGHT HAVE AGAINST SELLER, ITS AFFILIATES, AND ANY OF THEIR RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS OR REPRESENTATIVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED, RELATING TO THE RELEASES AND FOREVER PROPERTY, AND COMPLETELY DISCHARGES SUCH PARTIES OF AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER, IN LAW OR IN EQUITY, WHETHER SUCH CLAIMS ARE KNOWN OR UNKNOWN, DIRECT OR INDIRECT, FIXED OR CONTINGENT, WHICH METRO NOW HAS, HAS HAD OR MAY CLAIM TO HAVE AGAINST SELLER CAUSED BY OR ARISING OUT OF THE FOREGOING MATTERS, INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY. METRO WAIVES THE BENEFIT OF ANY STATUTE, LAW OR CASE DECISION WHICH WOULD IN ANY WAY LIMIT OR RESTRICT THE PROVISIONS OF THIS SECTION 11.

Metro's Initials:

b)

With the exception of claims based on the representations and warranties of Seller set forth in Section 10, Metro and anyone claiming by, through or under Metro hereby waives its right to recover from and fully and irrevocably releases Seller, its affiliates and their respective employees, officers, directors, representatives, agents, servants, attorneys, affiliates, parent, subsidiaries, successors and assigns, and all persons, firms, corporations and organizations in its behalf, but specifically excepting predecessors in title, ("Released Parties") from any and all claims, responsibility and/or liability that it may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any errors, omissions or other conditions, latent or otherwise, and the presence in the soil, air, structures and surface and subsurface waters of materials or substances that have been or may in the future be determined to be Hazardous Substances or otherwise toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future federal, state and local laws regulations or guidelines), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever, and (ii) with the exception of Seller's representations and warranties provided in Section 10 herein, any information furnished by the Released Parties under or in connection with this Agreement. This release includes claims of which Metro and Seller are presently unaware or which Metro does not presently suspect to exist which, if known by Metro, would materially affect Metro's release to Seller. In this connection and to the extent permitted by law, Metro hereby agrees, represents and warrants that Metro realizes and acknowledges that factual

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Exhibit A-5 of 6 APF No. 1559 Oct. 01-3086 matters now unknown to Metro and Seller may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Metro further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Metro nevertheless hereby intends to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses.

Metro acknowledges that, as of the date of Closing, Metro will have inspected the c) Property and observed its physical characteristics and existing conditions and will have had the opportunity to conduct such investigations and studies on and of said Property and adjacent areas as it deems necessary, and with the exception of claims based on the representations and warranties of Seller set forth in the deed and Section 10, hereby waives any and all objections to or complaints regarding the Property and its condition, including, but not limited to, federal, state or common law based actions and any private right of action under state and federal law to which the Property is or may be subject, including, but not limited to, physical characteristics and existing conditions, including, without limitation, structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Substances on, under, adjacent to or otherwise affecting the Property. Metro further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Substances or other contaminants, may not have been revealed by its investigation

Seller and Metro have each initialed this Section 11 to further indicate their awareness and acceptance of each and every provision hereof.

<u>Zu</u>B Seller's Initials Metro's Initials

12. Seller's Representations, Warranties and Covenants Regarding the Property Through the Close of Escrow. The Seller further represents, warrants, and covenants that, until this transaction is closed or escrow is terminated, whichever occurs first, it shall:

- a) Maintain the Property in its present state, with no material alteration of the Property in any way;
- b) Keep all existing insurance policies affecting the Property in full force and effect;
- c) Make all regular payments of interest and principal on any existing financing; and

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Exhibit A-6 of 6 APF No. 1559 Qs.01-3086

# STAFF REPORT

# RESOLUTION 01-3086; FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO PURCHASE PROPERTY IN THE GRESHAM CIVIC NEIGHBORHOOD FOR A TRANSIT-ORIENTED DEVELOPMENT PROJECT.

Date: June 21, 2001

Presented by:

Andy Cotugno Phil Whitmore

## DESCRIPTION

This Resolution requests authorization for the Executive Officer to acquire property from Gresham Station, LLC, Fred Bruning, President.

## EXISTING LAW

The Metro Council authorized start-up activities for the TOD Implementation Program by Resolution No. 98-2619 on April 9, 1998. This included the adoption of the Work Plan, which provided for acquisition of TOD sites. The procedure for approving a TOD project for site acquisition or site improvements is for the TOD Steering Committee to review the proposal and initiate action. The Steering Committee was a requirement of the Federal Transit Administration for grant approval to broaden the representation of the program and is comprised of representatives of the Governor's Office (Chair), five state agencies, Portland Development Commission, Tri-Met, and Metro. Metro's representative is Councilor Susan McLain. As soon as practical after the Steering Committee action, the Executive Officer is to provide a Seven-Day Notice to the Metro Council during which the Council may request to review a proposal in executive session.

# BACKGROUND

The Federal Transit Administration approved Metro's grant request for the TOD Program in the amount of \$2.99M and provided environmental approval for the Program in March 1998. The Program is the first of its kind in the United States to use federal transit funds for TOD site acquisitions. The Council authorized initiation of the Program the next month and to date 10 projects have been undertaken at transit stations along the east side and west side MAX light rail, ranging from those in the conceptual design stage to completed projects.

The Gresham Civic Neighborhood is an excellent opportunity to acquire and option sites adjacent to a future light rail station and for the TOD Program to facilitate the construction by the private sector of a 4-5 story, mixed-use project with housing above ground floor retail. This TOD will directly connect the transit station to the newly completed first phase of the development project known as Gresham Station, being developed by Gresham Station, LLC.

Gresham Station's president, Fred Bruning, has stated that his company would be "honored" to work with Metro for the mixed-use portion of the project, which Bruning's company does not develop.

Metro has committed to completing the station in the IGA with Tri-Met executed November 18, 1999, and approved by Resolution No. 99-2858, in exchange for Tri-Met's providing local funds

to expand and provide more flexible funding for the TOD Program. The Congestion Mitigation/Air Quality (CMAQ) funds that were initially reserved for the station were conditioned upon 260 housing units above retail directly adjacent to the station. Acquiring and optioning the four corners at Civic Drive and the MAX tracks next to the station will provide for this opportunity.

On January 3, 2001, the Seven-Day Notice was issued by the Executive Officer for the 2.1 acre parcel at the southeast corner of Civic Drive and MAX and that acquisition was completed. On April 23, 2001 the Seven-Day Notice was issued for the 4.36-acre parcel at the southwest corner (the "Civic SW Property" or "Property") and options to purchase up 5.5 acres on the northwest corner and 12,500 square feet at the northeast corner. The Metro Council toured the site prior to the Council meeting on May 3, 2001.

During negotiations to acquire the Civic SW Property, Bruning has indicated that his company will only hold title to the property for a brief period of time. Because of the brief holding period, Gresham Station, LLC will the only sell the Property to Metro in "as is, where is," condition, disclaiming all representations and warranties about the Property and requiring Metro to waive all claims against Gresham Station, LLC relating thereto, except for those representations and warranties specifically negotiated into the agreement with Metro, and qualified as to knowledge. Bruning also requires that Metro release Gresham Station, LLC from any and all future claims related to the transaction or the Property itself, including its environmental condition, except for those representations and warranties specifically negotiated into the agreement with Metro, and qualified as to knowledge. Gresham Station, LLC has the entire Gresham Station Property under acquisition agreement from multiple parties to be taken down in parcels. Because Bruning will not have owned those parcels, he does not want to provide additional assurances as to their environmental condition. However, the release set forth above does not apply to predecessors in interest to Gresham Station, LLC, and therefore does not limit Metro's ability to hold prior owners responsible for claims related to the property and its environmental condition.

The "as is," waiver and release clauses required by Gresham Station LLC shift liability, requiring Metro to assume a larger share of the risk that the property suffers from some latent defect. It is therefore necessary that the Metro Council approve of Metro's acquisition of the property under these conditions.

During Metro's acquisition of the neighboring 2.1-acre parcel in January, Metro conducted extensive environmental investigations, including groundwater testing. Metro's consultant reported that the 2.1 acre property posed no environmental risks. This finding, combined with the fact that the other surrounding property has heretofore been forested, planted in cabbages, or used for nursery stock, suggests that the Civic SW Property does not suffer from the migration of any off-site environmental contaminates. The Civic SW Property itself is predominately forested now, but was last used as agricultural land. Nevertheless, a Phase I environmental assessment has been conducted on the Civic SW Property. The site was field inspected by an environmental consulting firm on June 21<sup>st</sup>. The consultant reports that no specific evidence of environmental contamination was evident. A full Phase I report will be completed and available for Metro Council review prior to Council action.

## **BUDGET IMPACT**

There is no budget impact from this action. The approval for the acquisitions and options were already authorized and funding will come from the TOD Implementation Program.

# EXECUTIVE OFFICER'S RECOMMENDATION

It is recommended that the Metro Council approve the acquisition from Gresham Station, LLC, subject to the "as is," waiver and release provisions attached hereto, providing the Phase I environmental site assessment indicates that the site does not represent an environmental risk.

The Executive Officer recommends adoption of Resolution No. 01-3086.

APF 1559 SR gresham station staff-changes 6-21.doc

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### MINUTES OF THE METRO COUNCIL MEETING

July 5, 2001

Metro Council Chamber

Councilors Present: David Bragdon (Presiding Officer), Susan McLain, Rex Burkholder, Rod Park, Bill Atherton, Rod Monroe, Carl Hosticka

Councilors Absent: None

Presiding Officer Bragdon convened the Regular Council Meeting at 2:02 p.m.

### 1. INTRODUCTIONS

There were none.

### 2. CITIZEN COMMUNICATIONS

There were none.

### 3. EXECUTIVE OFFICER COMMUNICATIONS

There were none.

### 4. AUDITOR COMMUNICATIONS

Alexis Dow, Metro Auditor and Jim McMullins, Senior Auditor, presented a report on MERC's Food Service: Evaluation of Contract and Financial Controls. The Metropolitan Exposition-Recreation Commission (MERC) receives about \$8 million a year from concession and catering sales at the OCC, Expo Center, and PCPA.

MERC had contracted with a private concessionaire, ARAMARK/Giocometti Corporation, to manage and operate the concessions business. The objective of the audit was to evaluate whether the food service contract and MERC's processes for managing the concessionaire reasonably protect metro's financial interests.

To effectively protect these interests, MERC management should have had the following three elements in place:

- First, the contract type should be appropriate to the service required and the contract itself should contain provisions for holding the concessionaire accountable for results, including financial results, so that Metro gets the revenue it was entitled to.
- The second element was that compensation processes should reasonably assure that the concessionaire's compensation was fair and reasonable.
- And the third element was that management should have oversight controls to reasonably prevent and detect concessionaire errors and fraud and safeguard assets used by the concessionaire.

MERC had done a good job in regard to the first two elements and had made major improvements in the third element.

Regarding the first element, conclusions were as follows: the contract requirements generally held the concessionaire accountable and protected the public interest.

In regard to paying the concessionaire fairly, the auditor concluded that MERC's processes reasonably assured that:

- Metro was not overpaying.
- The payments were accurate and
- Were related to work actually performed.

Regarding the third element, oversight of the concessionaire, MERC had been improving its oversight processes.

- Before the audit started, MERC hired a new director of administration and, just recently, an accounting staff person was hired specifically to provide oversight of the concessionaire's financial activities.
- For a period of about one and a half years MERC experienced heightened control risks due to turnover in the staff responsible for concessionaire oversight.
- These risks were subsiding as the new personnel gained experience.
- The new director of administration recognized that MERC needed better systems to account for concessions operations and had been developing more account codes and other procedures to better monitor the concessionaire's financial performance.

Historically, MERC had not had the full range of controls needed to reduce financial risks to a reasonable level.

Several recent thefts at the convention center and the performing arts center demonstrated that the risk of loss was real and needed to be taken seriously.

#### Recommendations

In this environment where MERC management recognized the need for sound financial controls over concessions and was working to develop them, the auditor made the following recommendations for improvements that MERC accepted and was working to implement while the audit was still being completed.

First, the auditor recommended that for each MERC facility, MERC develop detailed monthly budgets that set targeted revenue, expenses and profit.

The second recommendation was for MERC to annually evaluate and test the concessionaire's internal controls over revenue, expenses and inventory and to periodically make spot checks of the concessionaire's activities, such as auditing cash and observing product inventory counts.

MERC could evaluate the concessionaire's internal controls itself or hire a CPA firm to do it. In the industry, most contracts provide for an annual CPA audit that was paid for from operating revenue.

The third recommendation was for MERC to document its concession management and oversight policies and procedures. This could be done in management directives, administrative policies and an operating manual.

In conclusion, MERC had a good framework for managing the financial aspects of its concessions business. By implementing the auditor's recommendations, MERC's financial risks should be low.

Mr. Mullins thanked Mark Williams, MERC's general manager and Bryant Enge, MERC's director of administration, for their cooperation and support during this audit.

Councilor Atherton asked who responds to MERC audits?

Ms. Dow responded that Commissioner George Bell was responsible for responding to this audit and had done so as noted in the audit.

Presiding Officer Bragdon asked if there were lessons or parallels with other parts of Metro.

**Mr. McMullins** said management had similar responsibilities for reporting, budgeting, and controls. He learned that when detailed monthly budgets were established they were key control devices, and good management tools.

Presiding Officer Bragdon asked if the Oregon Zoo followed the same procedures as MERC?

Mr. McMullins said he did not know.

**Councilor Burkholder** asked if a comparative analysis with other convention businesses would be applicable?

**Mr. McMullins** said if Metro was willing to devote the resources, a comparison might turn up some important information. They had had conversations with Mr. Mark Williams, MERC General Manager, concerning in-house versus contractual food services.

### 5. MPAC COMMUNICATIONS

**Presiding Officer Bragdon** said that at the Wednesday, June 27<sup>th</sup> meeting they had discussed fish and wildlife issues and particularly Goal V criteria. There was also some discussion about Goal V in conjunction with the Endangered Species Act. The next meeting would be July 11<sup>th</sup>.

### 6. LEGISLATIVE UPDATE

**Presiding Officer Bragdon** reviewed several bills which had been signed by the governor as well as bills which had passed through both the house and the senate. Presiding Officer Bragdon and Mr. Burton signed a letter opposing a proposal that undermined Metro's natural resource planning. The bill on statutory relief for property owners who wanted to build houses on land they owned before 1975 had no opposing effect on Measure 7 and was not opposed by Metro.

**Jeff Stone**, Chief of Staff, added that the mercury bill passed and was expected to be signed by the governor. The conservation incentive bill would move forward in the senate hopefully before Friday.

Councilor Atherton asked when the legislature should adjourn?

Mr. Stone said he thought it would be this Friday.

**Councilor Park** asked if the issue pertaining to ballot Measure 7 was a compensation issue or a question of ability to build houses.

Presiding Officer Bragdon understood that it was a compensation issue.

Councilor Atherton wanted to know if that was a statutory issue.

**Presiding Officer Bragdon** responded that what was proposed was a statute that would provide compensation to people who were prevented from building houses on farmland that they had owned since before 1975.

Presiding Officer Bragdon moved to item 10.2.

10.2 **Resolution No. 01-3079**, For the Purpose of Confirming the Appointments of Jean Esty-Hoops, Jason Graf, Susan Landauer, and Trevor Nelson to fill four Expiring Terms on the North Portland Rehabilitation and Enhancement Committee.

Motion: Councilor Burkholder moved to adopt Resolution No. 01-3079.

Seconded: Councilor Atherton seconded the motion.

**Councilor Burkholder** introduced two of the members, Jason Graf and Jean Esty-Hoops and spoke to the fact that the committee had adopted a series of recommendations for grants. He explained the charge of the committee, and mentioned how interest from \$2 million was given to projects that would improve that community. There had been 59 grant applications. (Copies of the awards were included as an attachment to the meeting record.)

Jean Esty-Hoops thanked the selection committee for allowing her to serve on the committee. She felt it was a very rewarding experience.

Jason Graf thanked Ms. Esty-Hoops for her efforts and noted what projects were funded. Projects funded included standard projects, monies for various musical events, and new groups like Sisters in Action, North Portland Crime Prevention, and Metro Regional Parks.

Councilor Burkholder asked them to address the Peninsula Children Center.

Mr. Graf and Ms. Esty-Hoops explained the grant award. It was paid out of principle, not interest.

Councilor Burkholder requested approval of the resolution.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

### 7. COMMITTEE CHAIR REPORTS

**Councilor Park** asked Mike Hoglund to speak to the Land Conservation Development Commission's June 15<sup>th</sup> Regional Transportation Plan which was approved with conditions. He thanked Andy Cotugno, Mike Hogland, Dan Cooper, Richard Brandman, and Tom Kloster for their work on the presentation.

**Mike Hoglund**, Director of Regional Planning, said the benefit of this meeting was the dialogue as to what the Planning Department process went through. The plan was held up as a model for the state and the country. LCDC acknowledged that approximately 90% of the plan was acceptable. There was about 9% more work required with wordsmithing necessary to make it more consistent with Transportation Planning Rule. There were two more steps that needed to happen to have the plan fully adopted, 1) adopt performance measures/benchmarks on how well Metro implements the plan over time, and 2) goal exceptions for the I-5/99W connector and the Sunrise corridor. The last concern for the plan was that we needed to make sure that it provided protections for unintended growth consequences.

**Councilor Park** noted the professionalism that the Planning staff brought to Council and the recognition of this by LCDC.

Mr. Hoglund added that they spent about an hour on the Functional Plan.

**Councilor Park** said the Committee was now considering the MTIP and Corridor's Initiative Project.

Mr. Hoglund said they wanted the criteria to be adopted by the OTC on August 9<sup>th</sup>. They wanted input from ACT (which was JPACT and Metro Council).

**Councilor Atherton** asked if there was anything from LCDC about the funding portion of the RTP.

**Mr. Hoglund** said LCDC expressed concern but they did not have jurisdiction over the specifics of funding. The Oregon Administrator had been invited to the next JPACT meeting to address the Transportation Plan, its implementation over time, concerns about Metro's ability to finance it, and their goals for mobility.

Councilor Park thanked Mr. Hoglund for a job well done.

**Councilor Burkholder** said Regional Facilities and Metro Operations would be discussing the Oregon Zoo at their next meeting on July 12<sup>th</sup> at 10 a.m. He indicated that this meeting would be in the annex. He invited all of the council to attend.

**Councilor McLain** said the Budget and Finance Committee had passed the 2001-2002 budget. This particular year they would be looking at the other three goals, long-term funding issues, and capital and maintenance issues.

**Councilor Hosticka** spoke to the Natural Resources Committee meeting on July 11<sup>th</sup>. They would be considering an action plan on the MPAC report on Parks. The full council would be looking at criteria for Goal V later in July.

**Councilor Atherton** said the Solid Waste and Recycling Committee would be considering an application for Recycling America in the next 120 days, and pushing forward on the Strategic Plan. The Rate Review Committee met last week and they focused on the Solid Waste budget. There was more consensus than was expected, additional information would be brought forward by the Director of REM on July 11<sup>th</sup>.

Presiding Officer Bragdon validated Councilor Atherton's efforts in this area.

**Councilor Monroe** said he attended the Cascadia Conference and presented, along with Clark County Commissioner, Craig Pridemore, the Bi-state work between Oregon and Washington. He noted discussion on high-speed rail. He spoke to the MTIP process. Councilor Burkholder and he had met and came up with a priority list for MTIP, which amounted to about \$27 million of the \$38 million available. The next JPACT meeting would be July 12<sup>th</sup>.

### 8. CONSENT AGENDA

8.1 Consideration of minutes of the June 21, 2001 Regular Council Meeting.

Motion: Councilor Atherton moved to adopt the meeting minutes of the June 21, 2001, Regular Council meeting.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed

### 9. ORDINANCES - FIRST READING

9.1 **Ordinance No. 01-913**, For the Purpose of Amending the Metro Code Chapter 5.02 to Modify the Direct-Haul Disposal Charge and to Facilitate Payment by Personal Check for Disposal Services at Metro Transfer Stations.

Presiding Officer Bragdon assigned Ordinance No. 01-913 to the Solid Waste and Recycling Committee.

#### 10. **RESOLUTIONS**

10.1 **Resolution No. 01-3078,** For the Purpose of Replacing the Current classification of Paralegal I with a Job Series Classification of Paralegal I and Paralegal II at Metro.

Motion: Councilor Burkholder moved to adopt Resolution No. 01-3078.

Seconded: Councilor Park seconded the motion.

Councilor Burkholder reviewed the resolution and explained the reasons for the change.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

#### 10.2 Considered after MPAC Communications

10.3 **Resolution No. 01-3082**, For the Purpose of Revising Metro's Non-Represented Employee Pay Plan.

Motion: Councilor McLain moved to adopt Resolution No. 01-3082.

Seconded: Councilor Monroe seconded the motion.

**Councilor McLain** reviewed the resolution and acknowledged the recommended 2.9% increase for Cost of Living.

**Councilor Burkholder** said the National Consumer Price Index was 2.8% and asked why 2.9% was proposed.

Ms. Lily Aguilar, Human Resources Director, clarified the difference.

Presiding Officer Bragdon summarized the difference.

**Vote:** The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

10.4 **Resolution No. 01-3085**, For the Purpose of Appointing Michael Leichner to Solid Waste Rate Review Committee.

Motion: Councilor Atherton moved to adopt Resolution No. 01-3085.

Seconded: Councilor McLain seconded the motion.

Councilor Atherton reviewed the credentials of the appointee.

Councilor McLain asked if he had agreed to serve.

Councilor Atherton said that he had and urged an aye vote.

Vote:

The vote was 7 aye/ 0 nay/ 0 abstain, and the motion passed.

### **10. COUNCILOR COMMUNICATION**

**Councilor Park** spoke to Metro's honorable mention on the mixed use Central Point project. He felt that the design was the important aspect of the award. He also spoke to the Blue Lake Park event on the 4<sup>th</sup> of July. He said the attendance at 3:00 p.m. was greater than any prior year. He noted the good planning and good work of the Parks Department.

He invited all to visit the Oregon Garden, a world class garden and noted all of the innovations in the creation of this garden.

**Councilor Atherton** spoke to the four stories in the Central Point project. He noted a book written by architects and planners about basic patterns which kept re-emerging, four stories seemed to continue to emerge and seemed to work.

**Councilor McLain** spoke to her Washington D.C. trip and the qualities that our region hold vs. those qualities found in Washington D.C.

### 12. ADJOURN

There being no further business to come before the Metro Council, Presiding Officer Bragdon adjourned the meeting at 3:13p.m.

Prepared by u Chris Billington Clerk of the Council

# ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF JULY 5, 2001

1

Торіс	DOCUMENT DATE	DOCUMENT DESCRIPTION	DOCUMENT NUMBER	
		FOOD SERVICE: EVALUATION OF CONTRACT & FINANCIAL CONTROLS	070501-01	