

A G E N D A

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



METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: September 5, 2002
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. PRESENTATION - PREVIEW OF METRO'S NEW WEBSITE Gemmel

3. CITIZEN COMMUNICATIONS

4. EXECUTIVE OFFICER COMMUNICATIONS

5. MPAC COMMUNICATIONS

6. CONSENT AGENDA

6.1 Consideration of Minutes for the August 8, 2002 Metro Council Regular Meeting.

7. ORDINANCES - FIRST READING

7.1 **Ordinance No. 02-962**, For the Purpose of Amending the FY 2002-03 Budget and Appropriations Schedule Transferring \$72,000 from the Planning Fund Contingency to Capital Outlay to Provide Appropriation Authority for the Carryover and completion of the Transims Computer Purchase; and Declaring an Emergency.

8. RESOLUTIONS

8.1 **Resolution No. 02-3216**, For the Purpose of Declaring the Plaza Building Surplus Property, Exempting the Tenant from Paying Excise Tax, and Authorizing the Execution of a Lease with Big Town Hero. Burkholder

9. COUNCILOR COMMUNICATION

ADJOURN

Cable Schedule for Week of September 5, 2002 (TVTV)

	Sunday (9/8)	Monday (9/9)	Tuesday (9/10)	Wednesday (9/11)	Thursday (9/5)	Friday (9/6)	Saturday (9/7)
CHANNEL 11 (Community Access Network) (most of Portland area)		4:00 PM				2:00 PM	
CHANNEL 21 (TVTV) (Washington Co., Lake Oswego, Wilsonville)	12:00 PM			7:00 PM 11:00 PM		7:00 PM 11:00 PM	
CHANNEL 30 (TVTV) (NE Washington Co. - people in Wash. Co. who get Portland TCI)	12:00 PM			7:00 PM 11:00 PM		7:00 PM 11:00 PM	
CHANNEL 30 (CityNet 30) (most of City of Portland)	8:30 PM	8:30 PM					
CHANNEL 30 (West Linn Cable Access) (West Linn, Rivergrove, Lake Oswego)	4:30 PM			5:30 AM	1:00 PM 5:30 PM	3:00 PM	
CHANNEL 32 (ATT Consumer Svcs.) (Milwaukie)		10:00 AM 2:00 PM 9:00 PM					

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	(503) 288-1515
Tualatin Valley Television	www.tvca.org	(503) 629-8534
West Linn Cable Access	www.ci.west-linn.or.us/CommunityServices/htmls/wltvsked.htm	(503) 650-0275
Milwaukie Cable Access		(503) 652-4408

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).

Consideration of the August 8, 2002 Regular Metro Council Meeting minutes.

**Metro Council Meeting
Thursday, September 5, 2002
Metro Council Chamber**

MINUTES OF THE METRO COUNCIL MEETING

Thursday, August 8, 2002
Metro Council Chamber

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

Councilors Absent: Carl Hosticka (excused)

Presiding Officer Hosticka convened the Regular Council Meeting at 2:04 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Art Lewellan, LOTI Project, 3205 SE 8th #9, Portland, OR presented Councilor Burkholder with some materials and then commented on an Oregonian article on the Urban Growth Boundary and diversity. He supported Councilor Burkholder's position, which included ideas such as infill. He felt that the Damascus parcel represented not much more than urban sprawl. It didn't represent the best we could do. He encouraged development of regional centers. He felt that the 2040 Plan was the leading edge, was groundbreaking. The 2040 Plan was most apt to improve existing neighborhoods. He gave an example of Orenco Station and the Beaverton Round. Many other regional center sites have opportunities greater than Damascus.

3. AUDITOR COMMUNICATIONS

• SOLID WASTE MANAGEMENT FRAMEWORK IS SOUND

Alexis Dow, Metro Auditor and Jim McMullin, Senior Auditor, gave a power point presentation on Solid Waste Management Framework is Sound (a copy of which is found in the record) report, an evaluation of the solid waste management framework. Mr. McMullin talked about Metro's Regional Environmental Management responsibilities, roles, revenue, management framework, report description, and the contents of the survey.

Councilor Bragdon said this report seemed a good description of the framework. He asked if Mr. McMullin looked at performance measures in how you judged how we were doing?

Mr. McMullin spoke to what the survey was and was not. They had gathered a lot of information on programs and processes to be a reference document. They had not gone to the place of taking a particular program and evaluating the effectiveness of that program and whether the performance measures that had been established were relevant. This had been a background study to provide a foundation for future work. Ms. Dow added her remarks about their audit plan for this year, which was to do a survey, which would serve as a background point for future audits.

Councilor Bragdon suggested that follow up would be warranted, understanding the costs and efficiency of the system rather than just describing what the system was. How does it compare to other metropolitan regions and how were we doing? Were all of the processes and 24 committees

necessary? Were they playing an effective and useful function? He felt this information would be useful.

Ms. Dow said in order to deal with any kind of evaluation, you needed to get your arms around what you were dealing with first. She reminded him that it was Metro's largest program and that that degree of study was essential.

Councilor Park asked what additional subjects were identified for future work? The description of the system was nice but his question was, could we be more efficient? Can we reduce costs to the general public? Ms. Dow explained the primary goals of the survey, to get their arms around the activities, guidance, structure, and to understand what was happening within the department as well as the management structure and what was the guiding legislation. The survey information would help establish upcoming audits. You have to start with a base of understanding before you can select an audit. The report was a very thorough overview. The feedback they had received had been favorable.

Councilor Park clarified this report was not an audit. It was the results of a survey to begin an audit. Mr. McMullin said that was correct and then spoke to the next phases, for example, looking at the waste reduction area.

4. CONSENT AGENDA

4.1 Consideration of minutes of the August 1, 2002 Regular Council Meeting.

Motion	Councilor Bragdon moved to adopt the meeting minutes of the August 1, 2002, Regular Council meeting. Councilor Burkholder seconded the motion.
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Vote:	Councilors Bragdon, Atherton, Monroe, Park, Burkholder, and Deputy Presiding Officer McLain voted aye. The vote was 6 aye, the motion passed with Presiding Officer Hosticka absent.
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5. ORDINANCES – SECOND READING

5.1 Ordinance No. 02-950B, For the Purpose of Amending the Metro Code Chapter 7.01 to Increase the Credits Available Against the Solid Waste Excise Tax and Making Other Related Changes.

Motion	Councilor Atherton moved to adopt Ordinance No. 02-950B.
Seconded:	Councilor Bragdon seconded the motion

Councilor Atherton gave an overview of the ordinance and the results of the changes. This would hopefully boost recovery with higher incentives and clarify what material counts toward recovery. There had been question as to whether this program should continue. The Solid Waste and Recycling Committee and members of the solid waste industry had reviewed this work over the past thirteen months. The Committee had recommended adoption. He noted that this program would be reviewed every two years for its effectiveness.

Councilor Bragdon added that this was a great illustration of an item he would welcome some independent auditing advice on, the efficacy and efficiency of these sorts of programs. Councilor

Park said he would be supporting this ordinance. He talked about the attributes of the program. It moved Metro towards one of its goals, recycling. It allowed the capitalistic system to work. This was another example of good government. Councilor Monroe spoke about the process of this work and why they were increasing the credits.

Deputy Presiding Officer McLain opened a public hearing on Ordinance No. 02-950B. No one came forward. Deputy Presiding Officer McLain closed the public hearing.

Councilor Atherton said this was good work and urged an aye vote.

Vote:	Councilors Park, Burkholder, Bragdon, Atherton, Monroe and Deputy Presiding Officer McLain voted aye. The vote was 6 aye, the motion passed.
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5.2 Ordinance No. 02-951B, For the Purpose of Amending Metro Code Chapter 5.02 to Modify the Regional System Credit Fee Program.

Motion	Councilor Atherton moved to adopt Ordinance No. 02-951B.
Seconded:	Councilor Bragdon seconded the motion

Councilor Atherton said this ordinance was similar to the previous one in that it adjusted the regional system credit fee program. It specified what counted towards recycling credits. It was workable and we would better achieve our goals. He spoke to Councilor Monroe's amendment concerning brick. The Solid Waste and Recycling Committee and the solid waste industry endorsed the ordinance. Councilor Monroe clarified the materials issues and what should be counted towards the credit to reach recycling goals. He said the purpose of this program was to help reach their goals. Councilor Park said this re-linked their credit and fee program back together. Prior action of the Council increased the regional system fee that we charged in order to help offset the cost between the private and public transfer stations so that the programs that Metro was charged to carry out was not subsidized by one user of facilities versus another. This helped re-link those dollars back together on those who were recycling. He noted Councilor McLain's amendment, which provided a good check and balance. Councilor Bragdon said what they were set out to achieve and did achieve was to be able to give the people who were actually performing the work in private industry some certainty about what counted. He was very supportive.

Councilor Atherton urged an aye vote.

Deputy Presiding Officer McLain opened a public hearing on Ordinance No. 02-951B. No one came forward. Deputy Presiding Officer McLain closed the public hearing.

Vote:	Councilors Burkholder, Bragdon, Atherton, Monroe, Park and Deputy Presiding Officer McLain voted aye. The vote was 6 aye, the motion passed.
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6. RESOLUTIONS

Councilor McLain gave an overview of all three resolutions, Resolution Nos. 02-3176, 02-3177A and 02-3218A. She thanked all of those who had given input to these resolutions. She talked about the history of the issues and the three-part Natural Resources Protection Plan for Goal 5.

She provided information about the three year public involvement process and outreach to the public which included newspaper notices, written notice to property owners, 93 coffee talks, a Let's Talk Conference, a utility bill insert notification, and workshops around the region. They had sent out close to \$60,000 in notification. We were currently in the first step of the process, the inventory step. She explained what this step did and did not do. She also reviewed step 2, Economic Social Energy Environmental (ESEE) analysis and step 3, actual program of the Natural Resources Protection Plan for Goal 5.

6.1 Resolution No. 02-3176, For the Purpose of Adopting a Draft Map of Regionally Significant Fish Habitat Pursuant to Resolution No. 01-3141C.

Motion	Councilor Monroe moved to adopt Resolution No. 02-3176.
Seconded:	Councilor Atherton seconded the motion

Deputy Presiding Officer McLain explained the resolution which was to adopt a regionally significant fish habitat and riparian corridor map. She gave a history of the process to consider adoption of the resolution.

Deputy Presiding Officer McLain opened a public hearing on Resolution No. 02-3176, 02-3177A and 02-3218A.

Charlotte Lehan, Mayor of Wilsonville, 30000 Town Center Loop East, Wilsonville, OR 97070 summarized her testimony (a copy of which is found in the record). City of Wilsonville had finished their Goal 5 and ESEE process. She encouraged the Council to move on to their ESEE analysis, a lot of refine occurred there. She spoke to levels 1 through 9 and suggested giving some recognition of level one as important storm water and urban forestry canopy values. She noted that the Metro mapping program and the City of Wilsonville's mapping program had come out very similar.

Stephan Lashbrook, Community Development Director, City of Lake Oswego, PO Box 369 Lake Oswego, OR 97034 made a suggestion about developed small residential lots that had tree cover. They had discovered that there was at least one set of circumstances that did not fit the numbers and that had to do with developed small residential lots with a great deal of tree cover. In Lake Oswego they considered these to already be protected by their ordinances that protect the trees and would rather not take those developed lots through the ESEE process. They discouraged Metro from doing so region-wide at least for those jurisdictions that have ordinances in place to protect the trees. They thought, in the long run, Metro would do themselves and the region a service if you do not take those through the ESEE process because they would not be served by the end result (a copy of his remarks are included in the record). He felt that they would provoke a lot of unnecessary fear in the communities. He commended Metro for its efforts.

Angela Harris, Oregon Community Protection Coalition, 3945 SE Hawthorne, Portland, OR 97214 read her comments supporting Metro's Goal 5 program (a copy of which is found in the record).

Tom Wolf, Oregon Council Trout Unlimited, 22878 NW Chestnut Street, Hillsboro, OR 97124 talked about the group's membership. They supported adoption of all three resolutions. He encouraged protection of levels 1 through 9 rather than 2 through 9 concerning habitat protection.

Ron Carley, Audubon Society of Portland and Coalition for a Livable Future, 5151 NW Cornell Rd., Portland, OR 97210 gave his testimony in favor of all three resolutions (a copy of which is

found in the record). He urged consideration of sites 1 to 9 as significant. He suggested an amendment where Metro pulled out site 1 and addressed them through an urban forest canopy, storm water, and watershed management strategy.

Dorothy Cofield, Attorney at Law, Cofield Law Office, 4248 Galewood, Lake Oswego, Oregon 07034 said she represented The Hawkins-Kimmels. She had included information in the record at the Natural Resources Committee. They opposed all three resolutions. She said that her clients had received only one notice, a June 10th Partners for Natural Places notice. She believed there were mapping errors. She spoke to maps she had submitted to Metro (a copy of which is found in the record) and her concerns about the map correction process.

Jim Labbe, Homeowner for Habitat, 4805 N. Borthwich, Portland OR 97217, said he represented 23 individuals around the region. He supported all three resolutions. It was time we had an inventory (a copy of his email, a map of Hillsboro airport, postcards, and a letter signed by 23 individuals are all included in the record). He spoke about the map that he included in the record concerning the Hillsboro Airport, which covered the headwaters of Dawson Creek. He also noted the postcard concerning the Rock Creek headwaters.

Jere Retzer, Crestwood Headwaters Group 5115 SW Alder, Portland, OR said he lived in a conservation area. He said it had not been a problem to do what he wanted to do on his property. He talked about the attributes of his neighborhood. They believed that their property values would be severely impacted if they didn't have protection. He urged adoption of all three resolutions. He suggested casting a wide net so we didn't lose resources. He thought considering the tree canopy for storm water purposes was a good idea. He suggested walking the walk as well as talking the talk.

Alex Cranson, Property Owner, 5505 Prosperity Park Rd, Tualatin OR 97062, gave a suggestion on amending the map processes to exclude property under forest deferment protection program and/or if they could prove they were providing good stewardship for the land. He felt that by doing this you could prevent a lot of complaining, gain a lot of public support, and create a way for people to remove themselves from this process other than the one means that was left. Currently, the only way to remove their land from Metro's protection was to clear-cut it, have a map correction, and then the land was not longer protected. This seemed to be a rash way of keeping their land out of protection but it would be a reality if other measures were not considered.

Bob Sallinger, Audubon Society of Portland, 5151 NW Cornell Rd., Portland OR 97210 was testifying on behalf of the Audubon Society of Portland. He read his letter into the record (a copy which is included in the record). He did encourage consideration of site 1 as well as 2 through 9.

Joe Poracsky, 1826 SE 22nd Ave, Portland, OR 97214 testified in favor of all three resolutions. He was a professor of Geography at Portland State University. He talked about his experience with his students when they performed some of the original natural area inventory for Metro in the Greenspaces program. He then had focused his efforts on the urban forest. He viewed the region-wide interconnection of greenspaces as absolutely essential to our quality of life. However, that region-wide system was just a portion of the entire urban forest. He urged adoption of the inventories, the local plan analysis and to include the wildlife sites, which scored one on the inventory for additional consideration. He added his comment about the United We Stand organization which had attacked the scientific integrity of the Metro inventory work. They had cited a report by Fishman Environmental Services. He had reviewed the report and felt that this group had misapplied Fishman's comments. They had selected just the negatives and had taken

them out of context. As the past president of the Oregon Academy of Science he pointed out that scientists do not operate in lock step uniformity in their approach to research questions. As a result, science frequently deals not in blacks and whites but in shades of gray. The polarized and narrow position that the United We Stand group takes in this instance serves to negate any scientific credibility they may be attempting to convey. In his personal and professional opinion the accusation that Metro's inventory was junk science was totally bogus.

Presiding Officer McLain noted for the record a letter from the City of Hillsboro and a memo on the Independent Multidisciplinary Science Team response. There was also a letter to David Bragdon from Andy Cotugno concerning challenges to the science from the City of Hillsboro.

Deputy Presiding Officer McLain closed the public hearing. She asked Mark Turpel, Planning Department – Manager of Long Range Planning, to talk about the public input, requests, the responses and the amendment process.

Mr. Turpel talked about the over 100 proposed changes in the maps by both individuals and jurisdictions. The Council had a summary sheet of the list of changes (a copy which is found in the record). There were some that were still being processed. He noted that two of the resolutions directed staff to continue to make map corrections. He clarified the direction Council had given them in making those changes.

Councilor Burkholder asked about the issue of properties that were under forest deferment. How many acres were in the Urban Growth Boundary (UGB)? Mr. Turpel said those properties that were under a tax deferral for forestry could be both inside and outside the UGB as well as the Metro Jurisdictional Boundary but outside the Metro UGB. They could identify those sites. There was a question about the state regulations and the Metro regulations and how those would be coordinated. They were looking on this issue. Councilor Burkholder said his question was how that might effect the inventory.

Councilor Park asked under the Oregon Forest Deferral Program if they had to comply with the Oregon Forest Practices Act? He asked about agriculture and its impact at a program level. He suggested taking a look at the issue as to whether fully developed single family lots listed in the inventory should be dropped from the ESEE analysis or treated differently in the ESEE analysis.

Councilor Atherton asked, on the issue of developed single and multiple dwelling lots, didn't they all have a score of no greater than 1? Mr. Turpel said there were areas that scored higher than that. Councilor Atherton asked about agriculture, state law now provides that farmers may put intermittent streams in pipes and then cover them. How were these areas scored and had they identified those? Mr. Turpel said they had taken the standard inventory approach for Goal 5 which, was if resource exists like a stream at the surface they showed it that way. If it had been altered since the mapping was done it would be a candidate for a map correction if it had been piped since the time the inventory was done. They showed what existed. He talked about the work with the Tualatin Basin Coordinating Committee. The comments that Washington County staff had made was that they recognized that Senate Bill 1010 very much limited what the county or Metro could do because the state law concerning agricultural areas preempts any other kind of action. They were also looking at the possibility of some mitigation and restoration in those agricultural areas.

Councilor Atherton said his concern was areas that had been farmed or are being farmed adjacent to urban areas and if there was a transition to urban use. Was it appropriate to keep the streams in

the pipes? Mr. Turpel said, if a stream had been piped, they did have stream net and there could be restoration opportunities.

Councilor Bragdon said there were a couple of suggestions made that he would like to see pursued as they go toward ESEE analysis; the single family lots addressed in the Lake Oswego letter and the question designation of forestry use under state regulation. He wanted to learn more about those issues. He thought that these could be looked under the ESEE analysis.

Councilor Park clarified that the Department of Agriculture didn't regulate whether a farmer could put a stream into pipes, it was Division of State Lands. If you were going to move more than 50 cubic yards you had to have a permit.

Deputy Presiding Officer McLain reminded the Council what they were considering today at this time.

Councilor Atherton commented, on "be it resolved" number 3, the Council still reserved the opportunity to minimally or substantially alter the map. This was a continuing process to review the maps.

Vote:	Councilors Bragdon, Atherton, Monroe, Park, Burkholder and Deputy Presiding Officer McLain voted aye. The vote was 6 aye, the motion passed.
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6.2 Resolution No. 02-3177A, For the Purpose of Establishing Criteria to Define and Identify Regionally Significant Wildlife Habitat and Adopting a Draft Map of Regionally Significant Wildlife Habitat Areas.

Motion:	Councilor Monroe moved to adopt Resolution No. 02-3177A.
Seconded:	Councilor Atherton seconded the motion

Councilor McLain asked Mr. Turpel to speak to the issue of protecting 1 through 9 versus 2 through 9. She clarified what the resolution did; it set up the inventory for wildlife habitat and gave designation on the map as to what they meant to that inventory.

Mr. Turpel described that the wildlife habitat was a map that was scoring areas between 1 point through 9 points, 9 being the highest and one the lowest. One still had some function. There were five criteria that built the map, four of which were ones that were used for the scoring system. The difference between the ones and the twos was about 2000 acres of land. The ones were relatively small parcels between two-acres and twenty-acres and were relatively scattered. The map no longer showed any of those "one scored" parcels. There were about 2000 acres of land that were at the lowest scoring that were not currently shown on the map.

Deputy Presiding Officer McLain reminded the Council what they were considering in the resolution concerning scored criteria and maps for the wildlife habitat inventory. She noted the advisory committees' recommendations were in the resolution.

Friendly

Amendment:

Councilor Atherton offered a friendly amendment, which he said addressed some of the concerns about areas scoring number 1, "whereas, areas with a score of 1 in Exhibit B, while not regionally significant Goal 5 resources as individual sites, are

significant resources sites, and in the aggregate have multiple values that provide important elements of wildlife habitat, storm water protection, urban forestry canopy and livability, and

Councilor Monroe accepted the friendly amendment as the maker of the motion. The seconder of the motion, Councilor Atherton accepted the friendly amendment as well. (A copy of Councilor Atherton's rationale for the friendly amendment is included in the record).

Vote:	Councilors Atherton, Monroe, Burkholder, Bragdon and Deputy Presiding Officer McLain voted aye. The vote was 5 aye with Councilor Park abstaining from the vote, the motion passed.
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6.3 Resolution No. 02-3218A, For the Purpose of Combining Metro's Draft Inventory Maps of Regionally Significant Riparian Corridors and Wildlife Habitat for the Goal 5 ESEE Analysis and Approving Metro's Local Plan Analysis.

Motion	Councilor Monroe moved to adopt Resolution No. 02-3218A.
Seconded:	Councilor Atherton seconded the motion

Deputy Presiding Officer McLain covered what was in the resolution. The combined map showed what the riparian and the wildlife map looked like together so you could see how much area was in common. They had not decided if this was the way that they wanted to carry it into ESEE analysis. They were only carrying this forward so they had the total information of the two maps. The second part of the resolution was the local plan analysis. As the coordinating agency, Metro had put in their own regulations that they needed to look for inconsistencies in the local maps. She asked Dan Cooper, General Counsel, to further clarify the resolution. He said her summary of the resolution was very good. He pointed out that the current Functional Plan originally adopted in 1997 which set in motion the Goal 5 program that they were now doing called for the Council to do this determination on inconsistency of local plans after the Council adopted the inventories.

Councilor Burkholder commended the Natural Resources Committee and staff for their work. This was the first step in a three-step process. They were currently in the inventory stage. The question of what we do with those concerns will come at a much later step after there was an independent panel on ESEE analysis. He was comfortable with the stage where they were right now. They had identified areas of concern. The upcoming process would provide balance and help figure out what they did next. What kind of levels of protection do we want to do? He reminded all that that part of the process was a year away. There was a variety of creative ways to achieve those goals.

Vote:	Councilors Monroe, Burkholder, Bragdon, Atherton and Deputy Presiding Officer McLain voted aye. The vote was 5 aye with Councilor Park absent from the vote, the motion passed.
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6.4 Resolution No. 02-3209, For the Purpose of Issuing a Final Order in the Matter of the Imposition of a Civil Penalty against Speyfly, Inc. dba Roofgone and the Revocation of Roofgone's Solid Waste Facility License.

Motion	Councilor Bragdon moved to adopt Resolution No. 02-3209.
Seconded:	Councilor Atherton seconded the motion

Councilor Bragdon explained the resolution issued a final order in an imposition of a fine against an operator of a solid waste facility. He talked about the history of the company and the revocation of the license. This resolution would impose a fine of \$375 because of their violation of activities. He closed by urging an aye vote.

Vote:	Councilors Burkholder, Bragdon, Atherton, Monroe and Deputy Presiding Officer McLain voted aye. The vote was 5 aye with Councilor Park absent from the vote, the motion passed.
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7. CONTRACT REVIEW BOARD

7.1 **Resolution No. 02-3217**, For the Purpose of Authorizing Release of RFB #03-1028-REM for the Construction of a Maintenance Building at the St. John's Landfill, and Authorizing the Executive Officer to Execute a Contract with the Lowest Bidder.

Motion	Councilor Monroe moved to adopt Resolution No. 02-3217.
Seconded:	Councilor Atherton seconded the motion

Councilor Monroe said this resolution would allow Metro to provide habitable working conditions for our employees that were sited at the St. John's Landfill as Metro continues its efforts at monitoring the closing of the landfill. It would also provide a building where they could safely store expensive heavy equipment. It was important to note that this building site was made possible by a negotiated deal with the City of Portland allowing Metro to lease the land in return for our review of their Killingsworth Fast Disposal (KFD) landfill. He gave the details of the Release For Bid (RFB). He urged support.

Councilor Bragdon noted that they needed to keep in mind that this building will sit on land that was leased by Metro for twenty years as part of the monitoring agreement for Killingsworth Fast Disposal. They learned yesterday that under the terms of that lease that any improvements that Metro made will revert to the City of Portland at end of the twenty years unless there was some re-negotiation. He suggested a note to staff that they look for opportunities to make sure that if improvements were made to the site, some of this could be recoverable at the end of twenty years. Also try and work towards an agreement with the City of Portland that was more advantageous so that the solid waste rate payers investment in that facility was not turned over to someone else.

Councilor Atherton noted in the Portland Parks plans and in discussion with our own Parks staff that the expectation in twenty years was that this land would be turned into some kind of a park facility and that this building would be useful in that continued use.

Councilor Monroe closed by saying that Councilor Bragdon's concerns were real and one would hope that within the next 20 years that some amicable agreement could be reached with the City of Portland. He urged support.

Vote:	Councilors Bragdon, Atherton, Monroe, Burkholder, and Deputy Presiding Officer McLain voted aye. The vote was 5 aye with Councilor Park absent from the vote, the motion passed.
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8. COUNCILOR COMMUNICATION

Councilor Burkholder said Council would be receiving a 10-day letter regarding a revenue contract that was related to the Hwy 217-corridor study. The reason it was declared a significant contract was that they had received a \$400,000 grant from the Federal Highway Administration under the value-pricing program. They would be contributing half of the monies toward the corridor study. The reason it was designated a significant contract during the budget process was because they had some concerns at the time that it might make it the majority of the contract and therefore make it difficult. They wanted to look into it and see what kind of strings and conditions were attached. This money was to look closely at the issue of congestion pricing or value pricing on this part of the highway. They did have enough money in the budget that allowed them to look at other modes of transit. He said there was concern because they had a deadline because of federal budget year and they needed to have something signed by the end of September. Metro, Oregon Department of Transportation and Federal Highway Administration all needed to sign it, as they were all three partners to this. There was concern with Council going on recess that if they had to take it through the significant contract process and have a hearing before Council, it would make it difficult to make that deadline in signing for that money.

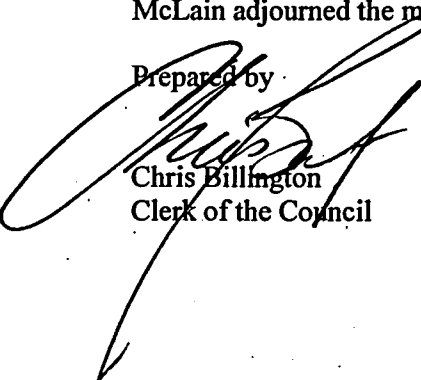
Councilor Bragdon said on June 27th the Council passed a resolution that authorized the Presiding Officer and himself to take the lead on a request for proposal from head hunting firms with regard to the Chief Operating Officer search. He updated the Council, the deadline for proposals was August 1st. Ms. Lily Aguilar, Human Resource Director, received seventeen replies. The Presiding Officer and he would review them. Council was welcome to look at them as well. The Governmental Affairs Committee was in the lead on making that recommendation.

Councilor Atherton talked about an email regarding an attack on a Tri-Met bus, which occurred in Lake Oswego. The attack was not true. There was an errant golf ball and someone who was shooting a BB gun at cars.

9. ADJOURN

There being no further business to come before the Metro Council, Deputy Presiding Officer McLain adjourned the meeting at 4:08 p.m.

Prepared by



Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF AUGUST 8,
 2002**

ITEM #	TOPIC	DOC DATE	DOCUMENT DESCRIPTION	DOC. NUMBER
6.2	EXHIBIT A TO RESOLUTION NO. 02-3177A	8/6/02	TO: METRO COUNCIL, FROM: PLANNING DEPARTMENT EXHIBIT A TO RESOLUTION NO. 02-3177A INCLUDING METRO'S RIPARIAN CORRIDOR AND WILDLIFE HABITAT INVENTORIES, MEMO DATED 7/29/02 CONCERNING REVISIONS TO METRO'S JANUARY 2002 TECHNICAL REPORT ON GOAL 5, MEMO DATED 7/23/02 ENTITLED "CITY OF HILLSBORO'S TECHNICAL REVIEW " WILDLIFE PORTION AND METRO'S TECHNICAL REPORT ON GOAL 5 PLUS APPENDICES	080802C-01
6.2	COMMITTEE REPORT	8/1/02	TO: METRO COUNCIL, FROM: MICHAEL MORRISSEY, COUNCIL ANALYST ON RESOLUTION No. 02-3177A	080802C-02
6.1	COMMITTEE REPORT	6/7/02	TO: METRO COUNCIL FROM: MICHAEL MORRISSEY, COUNCIL ANALYST ON RESOLUTION No. 02-3176	080802C-03
6.2 & 6.3	LETTER	8/2/02	TO: CHRIS BILLINGTON, METRO CLERK OF THE COUNCIL, FROM: DOROTHY COFIELD REPRESENTING HAWKINS-KIMMEL INCLUDES A RIPARIAN ASSESSMENT OF HAWKINS-KIMMEL PROPERTY ON RIGERT ROAD PREPARED BY RICHARD HAWKINS-KIMMEL, USGS QUADRANGLE MAP - BEAVERTON, OR QUADRANGLE, VICINITY MAP, AND AERIAL MAP OF RIGART ROAD RIPARIAN ASSESSMENT FOR RESOLUTION NOS. 02-3177A AND 02-3218	080802C-04
3	MEMO	8/1/02	TO: METRO COUNCIL FROM: JOHN HOUSER, COUNCIL ANALYST CONCERNING QUESTIONS ON THE REGIONAL ENVIRONMENTAL MANAGEMENT AUDIT PRESENTED BY ALEXIS DOW, METRO AUDITOR	080802C-05

6.3	EMAIL	8/7/02	TO: METRO COUNCIL AND MIKE BURTON, FROM: MARIANNE FITZGERALD, MEMBER OF FANNO CREEK WATERSHED SUPPORTING METRO AND CITY OF PORTLAND'S EFFORTS TO PROTECT AND ENHANCE WILDLIFE AND RIPARIAN AREAS AS THEY RELATE TO RESOLUTION NO. 02-3218	080802C-06
6.2	FAX	8/8/02	TO: METRO COUNCIL, FROM: PHIL FORKER OPPOSES RESOLUTION No. 02-3177	080802C-07
3.0	POWER POINT PRES.	JULY 2002	TO: METRO COUNCIL, FROM: ALEXIS DOW, METRO AUDITOR POWER POINT PRESENTATION ON SOLID WASTE MANAGEMENT FRAMEWORK IS SOUND	080802C-08
6.4	COMMITTEE REPORT	8/8/02	TO: METRO COUNCIL, FROM: JOHN HOUSER, COUNCIL ANALYST ON RESOLUTION No. 02-3209	080802C-09
7.1	COMMITTEE REPORT	8/8/02	TO: METRO COUNCIL, FROM: JOHN HOUSER, COUNCIL ANALYST ON RESOLUTION No. 02-3217	080802C-10
6.1, 6.2, 6.3	LETTER	6/1/0/02	TO: DEAR NEIGHBOR, FROM: CHAIR McLAIN AND PRESIDING OFFICER HOSTICKA CONCERNING PROTECTION OF NATURAL ENVIRONMENT, 17535 SW RIGERT ROAD GIS AERIAL PHOTO, TITLE LINE 1 & 2 AERIAL MAP OF SAME SITE, EMAIL DATED 8/7/02 FROM DOROTHY COFIELD TO KEN HELM CONCERNING RESOLUTION No. 02-3177A/GOAL 5 INVENTORY AND EMAIL DATED 8/2/02 TO JUSTIN HOUK FROM DOROTHY COFIELD CONCERNNG SITE #10/17535 SW RIGERT RD. DOCUMENTS WERE SUBMITTED FROM DOROTHY COFIELD TO METRO COUNCIL CONCERNING RESOLUTION NOS. 02-3176, 3177A AND 3218	0808002C-11
6.1, 6.2, 6.3	COPY OF ORAL TESTIMONY	8/8/02	TO: METRO COUNCIL, FROM: CHARLOTTE LEHAN, MAYOR OF WILSONVILLE	080802C-12

			TESTIMONY ON RESOLUTION NO. 02-3176, 3177, 3218	
6.1, 6.2, 6.3	LETTER	8/8/02	TO: METRO COUNCIL, FROM: STEPHAN LASHBROOK, COMMUNITY DEVELOPMENT DIRECTOR, CITY OF LAKE OSWEGO RECOMMENDING AMENDMENTS CONCERNING URBAN TREE CANOPY TO RESOLUTION NO. 02-3177A TO METRO COUNCIL	080802C-13
6.1, 6.2, 6.3	COPY OF ORAL TESTIMONY	8/8/02	TO: METRO COUNCIL, FROM: ANGELA HARRIS, DIRECTOR OF OREGON COMMUNITY PROTECTION COALITION SUPPORTING GOAL 5 AND THE RESOLUTIONS ON FISH AND WILDLIFE, RESOLUTION NO.	080802C-14
6.1, 6.2, 6.3	INITIAL MAP CHANGES AND STAFF RECOMMENDATIONS	AS OF 8/8/02	TO: METRO COUNCIL, FROM: MARK TURPEL, PLANNING DEPARTMENT 22 PAGES OF GOAL 5 PROPOSED MAP CHANGES AND STAFF RECOMMENDATIONS AS OF 8/8/02	080802C-15
6.3	RESOLUTION No. 02-3218A	8/8/02	TO: METRO COUNCIL, FROM: KEN HELM, METRO COUNSEL RESOLUTION NO. 02-3218A PASSED OUT OF NATURAL RESOURCES ON 8/7/02 AND PROPOSED FOR ADOPTION	080802C-16
6.2	AMENDMENT	8/8/02	TO: METRO COUNCIL FROM: COUNCILOR ATHERTON FRIENDLY AMENDMENT TO RESOLUTION NO. 02-3177A	080802C-17
6.3	WRITTEN TESTIMONY	8/8/02	TO: METRO COUNCIL, FROM: MARI MARGIL, BOARD MEMBER OF OREGON COMMUNITY PROTECTION COALITION SUPPORTS ADOPTION OF RESOLUTION No. 02-3218	080802C-18
6.1, 6.2, 6.3	LETTER, ORAL TESTIMONY, MAP, EMAIL AND POSTCARDS	8/8/02	TO: METRO COUNCIL FROM: JIM LABBE REPRESENTING 23 INDIVIDUALS; DAVID KING, MELISSA & JIM MEDIEROS, JASON BUCH, MATT CHAMBERS, CELINE FITZMAURICE, LESLIE AND RANDY LABBE, DAVID CIPRIANO & MEREDITH HAMM, KEITH HADLEY, AMY STORK, BRIAN COMB &	080802C-19

			<p>JUNIPER MURRAY, JOHN AND CHRISTINE PERALA GARDINER, PETER BRAY, ELI SPEVAK, TESS JORDAN, SHARON STANTON, BILL SCHRIER, NANCY AND BILL ROSENFELD.</p> <p>DOCUMENTS INCLUDE LETTER FROM JIM LABBE WITH 23 NAMES, OREGONIAN COMMENTARY ON STREAMFLOW DEBATE WRITTEN BY J. LABBE & L. LABBE, HAND WRITTEN REMARKS FOR ORAL TESTIMONY, AERIAL PHOTO OF HILLSBORO AIRPORT AND DAWSON CREEK, POST CARD ON ROCK CREEK HEADWATERS SENT BY www.pdxstreams.org SUPPORTS ADOPTION OF RESOLUTION No. 02-3176, 3177A, 3218</p>	
6.1,6.2,6.3	<p>LETTER, ORAL TESTIMONY AND WATERSHED PICTURES AND AERIAL MAPS</p>	8/8/02	<p>TO: METRO COUNCIL, FROM: MIKE HOUCK AND RON CARLEY, COALITION FOR A LIVABLE FUTURE AND AUDUBON SOCIETY OF PORTLAND</p> <p>AERIAL PHOTOS OF CEDAR MILLS CREEK WATERSHED AND AERIAL PHOTO OF SUBDIVISION CLEAR-CUT IN ROCK CREEK WATERSHED, LETTER SUPPORTS ADOPTION OF 02-3176, 3177A AND 3218</p>	080802C-20
6.1	<p>MEMO AND SUPPORTING DOCUMENTS</p>	11/14/01	<p>TO: MIKE BURTON, EXECUTIVE OFFICER FROM: ANDY COTUGNO, METRO PLANNING DIRECTOR</p> <p>CONCERNING METRO'S SCIENTIFIC LITERATURE REVIEW COMPLETED BY THE STATE'S INDEPENDENT MULTI-DISCIPLINARY SCIENCE TEAM (IMTS), LETTER DATED 10/9/01 TO ANDY COTUGNO FROM LOGAN NORRIS, CHAIR OF IMTS TEAM, STATE OF OREGON, AND 11/15/01 INDEPENDENT MULTI-DISPLINARY SCIENCE TEAM COMMENTS TO METRO'S SCIENCE LITERATURE REVIEW AND STAFF RESPONSE, MEMO DATED 12/13/01 TO ANDY COTUGNO FROM COUNCILOR BRAGDON CONCERNING CITY OF HILLSBORO'S 12/5/01 SUBMITTAL CHALLENGING METRO'S PROPOSED FUNCTIONAL CRITERIA FOR IDENTIFYING RIPARIAN CORRIDOR</p>	080802C-21

			RESOURCES AND MEMO DATED 7/23/02 TO ANDY COTUGNO AND PAUL KETCHAM FROM LORI HENNINGS CONCERNING CITY OF HILLSBORO'S TECHNICAL REVIEW (FISHMAN REPORT): WILDLIFE PORTION	
6.1,6.2,6.3	WRITTEN TESTIMONY READ INTO THE RECORD	8/8/02	TO: METRO COUNCIL, FROM: BOB SALLINGER, AUDUBON SOCIETY OF PORTLAND SUPPORTS ADOPTION OF RESOLUTION No. 02-3176, 3177A, 3218	080802C-22
6.1,6.2,6.3	LETTER AND OVERSIZED EXHIBITS FROM CITY OF HILLSBORO, PLANNING DIRECTOR	8/8/02	TO: METRO COUNCIL, FROM: WINSLOW BROOKS, PLANNING DIRECTOR, CITY OF HILLSBORO CONCERNING RIPARIAN CORRIDOR MAPS & WILDLIFE HABITAT CRITERIA SAND MAPPING, EXHIBIT A - OVERSIZED MAP OF HILLSBORO GOAL 5 COMPARISON WITH METRO'S WILDLIFE HABITAT AND HABITATS OF CONCERN DATED 7/12/02, EXHIBIT B - TECHNICAL MEMORANDUM ON REVIEW OF METRO GOAL 5 WILDLIFE HABITAT MODEL TO WINK BROOKS AND VALERIE COUNTS CITY OF HILLSBORO PLANNING FROM PAUL FISHMAN DATED 7/29/02 , EXHIBIT C - CITY OF HILLSBORO REVIEW OF METRO'S WILDLIFE HABITAT MAPPING AND HABITATS OF CONCERN MATRIX, EXHIBIT C1-11 OVERSIZED AERIAL MAPS AND AERIAL PHOTOS, EXHIBIT D - OVERSIZED PHOTOGRAPHS OF KEY SITES	080802C-23
6:1,6.2,6.3	FINAL GOAL 5 PROPOSED MAP CHANGES AND STAFF RECOMMENDATIONS AS OF 8/8/02	8/8/02	TO: METRO COUNCIL, FROM: MARK TURPEL, METRO PLANNING DEPARTMENT GOAL 5 MAP CHANGES AND STAFF RECOMMENDATIONS INCLUDING CITIES OF TROUTDALE, LAKE OSWEGO, GRESHAM, HILLSBORO, CORNELIUS, DURHAM, FOREST GROVE, WOOD VILLAGE, BEAVERTON, SHERWOOD, MILWAUKIE, WEST LINN, TIGARD, KING CITY, WILSONVILLE, FAIRVIEW, TUALATIN, COLUMBIA CORRIDOR ASSOC., PORT OF PORTLAND, CLACKAMAS COUNTY, TUALATIN	080802C-24

			HILLS PARKS AND RECREATION, AND INDIVIDUALS IN THE REGION. FOR RECORD ON RESOLUTION NO. 02-3176, 3177A, 3218	
6.3	BACKGROUND DOCUMENTS	8/8/02	TO: METRO COUNCIL FROM: KEN HELM, METRO COUNSEL BACKGROUND DOCUMENTS FOR LOCAL JURISDICTION COMPREHENSIVE PLANS FOR GOAL 5, RESOLUTION NO. 02-3218A	080802C-25
6.3	OVERSIZED EXHIBIT	8/8/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS AND WILDLIFE HABITAT EXHIBIT A TO RESOLUTION NO. 02-3218A ADOPTED BY METRO COUNCIL 8/8/02	080802C-26
6.2	OVERSIZED EXHIBIT	8/1/02 DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: POTENTIAL WILDLIFE HABITAT, REGIONALLY SIGNIFICANT WILDLIFE HABITAT EXHIBIT D TO RESOLUTION NO. 02-3177A ADOPTED BY METRO COUNCIL 8/8/02	080802C-27
6.1	OVERSIZED EXHIBIT	8/8/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS BY TOTAL FUNCTION SCORE EXHIBIT A TO RESOLUTION NO. 02-3176 ADOPTED BY METRO COUNCIL 8/8/02	080802C-28
6.2	OVERSIZED EXHIBIT	4/17/02 DECISION DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: SAUVIE ISLAND AND VANCOUVER QUADS (1 OF 10) POTENTIAL WILDLIFE HABITAT BY TOTAL WILDLIFE VALUE SCORE, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION NO. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-29
6.1	OVERSIZED EXHIBIT	4/17/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: SAUVIE ISLAND AND VANCOUVER QUADS (1 OF 10)	080802C-30

			REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS BY TOTAL FUNCTIONAL SCORE, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	
6.2	OVERSIZED EXHIBIT	4/17/02 DECISION DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: GALES CREEK AND FOREST GROVE QUADS (2 OF 10) POTENTIAL WILDLIFE HABITAT BY TOTAL WILDLIFE VALUE SCORE, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION No. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-31
6.1	OVERSIZED EXHIBIT	4/17/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: GALES CREEK AND FOREST GROVE QUADS (2 OF 10) REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS BY TOTAL FUNCTIONAL SCORE, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-32
6.2	OVERSIZED EXHIBIT	4/17/02 DECISION DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: HILLSBORO AND LINNTON QUADS (3 OF 10) POTENTIAL WILDLIFE HABITAT BY TOTAL WILDLIFE VALUE SCORE, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION No. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-33
6.1	OVERSIZED EXHIBIT	4/17/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: HILLSBORO AND LINNTON QUADS (3 OF 10) REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS BY TOTAL FUNCTIONAL SCORE, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-34
6.2	OVERSIZED	4/17/02	TO: METRO COUNCIL FROM: PLANNING	080802C-35

	EXHIBIT	DECISION DRAFT	DEPARTMENT	
			OVERSIZED MAP: PORTLAND AND MT. TABOR QUADS (4 OF 10) POTENTIAL WILDLIFE HABITAT BY TOTAL WILDLIFE VALUE SCORE, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION NO. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	
6.1	OVERSIZED EXHIBIT	4/17/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: PORTLAND AND MT. TABOR QUADS (4 OF 10) REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS BY TOTAL FUNCTIONAL SCORE, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION NO. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-36
6.2	OVERSIZED EXHIBIT	4/17/02 DECISION DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: CAMAS AND WASHOUGAL QUADS (5 OF 10) POTENTIAL WILDLIFE HABITAT BY TOTAL WILDLIFE VALUE SCORE, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION NO. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-37
6.1	OVERSIZED EXHIBIT	4/17/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: CAMAS AND WASHOUGAL QUADS (5 OF 10) REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS BY TOTAL FUNCTIONAL SCORE, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION NO. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-38
6.2	OVERSIZED EXHIBIT	4/17/02 DECISION DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: SCHOLLS AND BEAVERTON QUADS (6 OF 10) POTENTIAL WILDLIFE HABITAT BY TOTAL WILDLIFE VALUE SCORE, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION NO. 02-3177A ADOPTED BY THE METRO COUNCIL	080802C-39

			8/8/02	
6.1	OVERSIZED EXHIBIT	4/17/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: SCHOLLS AND BEAVERTON QUADS (6 OF 10) REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS BY TOTAL FUNCTIONAL SCORE, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-40
6.2	OVERSIZED EXHIBIT	4/17/02 DECISION DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: LAKE OSWEGO & GLADSTONE QUADS (7 OF 10) POTENTIAL WILDLIFE HABITAT BY TOTAL WILDLIFE VALUE SCORE, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION No. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-41
6.1	OVERSIZED EXHIBIT	4/17/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: LAKE OSWEGO & GLADSTONE QUADS (7 OF 10) REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS BY TOTAL FUNCTIONAL SCORE, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-42
6.2	OVERSIZED EXHIBIT	4/17/02 DECISION DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: DAMASCUS & SANDY QUADS (8 OF 10) POTENTIAL WILDLIFE HABITAT BY TOTAL WILDLIFE VALUE SCORE, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION No. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-43
6.1	OVERSIZED EXHIBIT	4/17/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: DAMASCUS & SANDY QUADS (8 OF 10) REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS BY TOTAL FUNCTIONAL SCORE,	080802C-44

			SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	
6.2	OVERSIZED EXHIBIT	4/17/02 DECISION DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: SHERWOOD & CANBY QUADS (9 OF 10) POTENTIAL WILDLIFE HABITAT BY TOTAL WILDLIFE VALUE SCORE, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION No. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-45
6.1	OVERSIZED EXHIBIT	4/17/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: SHERWOOD & CANBY QUADS (9 OF 10) REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS BY TOTAL FUNCTIONAL SCORE, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-46
6.2	OVERSIZED EXHIBIT	4/17/02 DECISION DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: CANBY & OREGON CITY QUADS (10 OF 10) POTENTIAL WILDLIFE HABITAT BY TOTAL WILDLIFE VALUE SCORE, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION No. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-47
6.1	OVERSIZED EXHIBIT	4/17/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: CANBY & OREGON CITY QUADS (10 OF 10) REGIONALLY SIGNIFICANT RIPARIAN CORRIDORS BY TOTAL FUNCTIONAL SCORE, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-48
6.1	OVERSIZED EXHIBIT	5/7/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: RIPARIAN FUNCTIONS: STREAMFLOW MODERNIZATION AND WATER STORAGE FUNCTIONAL SCORES BASED ON MATRIX SPECIFIED IN EXHIBIT A,	080802C-49

			APPENDIX C OF RESOLUTION No. 01-3141C, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	
6.1	OVERSIZED EXHIBIT	5/7/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: RIPARIAN FUNCTION: MICROCLIMATE AND SHADE FUNCTIONAL SCORES BASED ON MATRIX SPECIFIED IN EXHIBIT A APPENDIX A OF RESOLUTION No. 01-3141C, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-50
6.1	OVERSIZED EXHIBIT	5/7/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: RIPARIAN FUNCTION: BANK STABILIZATION, SEDIMENT & POLLUTION CONTROL FUNCTIONAL SCORES BASED ON MATRIX SPECIFIED IN EXHIBIT A, APPENDIX A OF RESOLUTION No. 01-3141C, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-51
6.1	OVERSIZED EXHIBIT	5/7/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: RIPARIAN FUNCTION: ORGANIC MATERIAL SOURCES FUNCTIONAL SCORES BASED ON MATRIX SPECIFIED IN EXHIBIT A, APPENDIX A OF RESOLUTION No. 01-3141C, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-3176 ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-52
6.1	OVERSIZED EXHIBIT	5/7/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: RIPARIAN FUNCTION: LARGE WOOD & CHANNEL DYNAMICS FUNCTIONAL SCORES BASED ON MATRIX SPECIFIED IN EXHIBIT A, APPENDIX A OF RESOLUTION No. 01-3141C, SUPPORTING DOCUMENT TO EXHIBIT A OF RESOLUTION No. 02-	080802C-53

			3176 ADOPTED BY THE METRO COUNCIL 8/8/02	
6.2	OVERSIZED EXHIBIT	5/17/02	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT] OVERSIZED MAP: POTENTIAL HABITATS OF CONCERN & SPECIES SIGHTINGS HOC AREAS BASED ON INPUT FROM FEDERAL, STATE AND LOCAL SOURCES, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION No. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-54
6.2	OVERSIZED EXHIBIT	4/11/02 DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: CONNECTIVITY TO OTHER PATCHES SCORE PROPOSED BY MFW WILDLIFE MODEL BASED ON NEAREST NEIGHBOR ANALYSIS LIMITED TO 1/4 MILE FROM EACH PATCH, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION No. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-55
6.2	OVERSIZED EXHIBIT	4/11/02 DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: CONNECTIVITY TO WATER PROPOSED MFW WILDLIFE MODEL BASED ON PROPORTION OF TH PATCH THAT IS LESS THAN 300 FEET FROM A WATER SOURCE GRASSLAND PATCHES RECEIVE 1/2 TO VALUE, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION No. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-56
6.2	OVERSIZED EXHIBIT	4/11/02 DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT OVERSIZED MAP: SIZE SCORE PROPOSED BY MFW WILDLIFE MODEL BASED ON TOTAL ACREAGE PER PATCH, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION No. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	080802C-57
6.2	OVERSIZED EXHIBIT	4/11/02 DRAFT	TO: METRO COUNCIL FROM: PLANNING DEPARTMENT	080802C-58

			OVERSIZED MAP: INTERIOR AREA SOURCE PROPOSED MFW WILDLIFE MODEL BASED ON TOTAL ACREAGE OF 200 FOOT INTERIOR AREA, SUPPORTING DOCUMENT TO EXHIBIT D OF RESOLUTION NO. 02-3177A ADOPTED BY THE METRO COUNCIL 8/8/02	
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Agenda Item Number 7.1

**Ordinance No. 02-962, For the Purpose of Amending the FY 2002-03
Budget and Appropriations Schedule Transferring \$72,000 from the
Planning Fund Contingency to Capital Outlay to Provide Appropriation
Authority for the Carryover and completion of the Transims Computer
Purchase; and Declaring an Emergency.**

First Reading

Metro Council Meeting
Thursday, September 5, 2002
Metro Council Chamber

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY 2002-03)	ORDINANCE NO. 02-962
BUDGET AND APPROPRIATIONS SCHEDULE FOR)	
THE PURPOSE OF TRANSFERRING \$72,000 FROM)	
THE PLANNING FUND CONTINGENCY TO)	Introduced by Mike Burton,
CAPITAL OUTLAY TO PROVIDE APPROPRIATION)	Executive Officer
AUTHORITY FOR THE CARRYOVER AND)	
COMPLETION OF THE TRANSIMS COMPUTER)	
PURCHASE; AND DECLARING AN EMERGENCY)	

WHEREAS, the Metro Council has reviewed and considered the need to transfer appropriations within the FY 2002-03 Budget; and

WHEREAS, the need for the transfer of appropriation has been justified; and

WHEREAS, adequate funds exist for other identified needs; now, therefore,

The Metro Council ordains as follows:

1. That the FY 2002-03 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$72,000 from the Planning Fund Contingency to Capital Outlay to provide appropriation authority for the carryover and completion of the Transportation Analysis Simulation (TRANSIMS) computer purchase.

2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

**Exhibit A
Ordinance No.02-962**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
Planning Fund							
Planning Department							
	Total Personal Services	79.00	\$6,677,575	0.00	\$0	79.00	\$6,677,575
	Total Materials & Services		\$11,204,773		\$0		\$11,204,773
	Total Debt Service		\$40,773		\$0		\$40,773
	<i>Capital Outlay</i>						
	<i>CAPCIP Capital Outlay (CIP Projects)</i>						
	5745 Equipment & Vehicles (CIP)		0		72,000		72,000
	Total Capital Outlay		\$0		\$72,000		\$72,000
	Total Interfund Transfers		\$2,711,625		\$0		\$2,711,625
	<i>Contingency and Ending Balance</i>						
	<i>CONT Contingency</i>						
	5999 Contingency		474,553		(72,000)		402,553
	<i>UNAPP Unappropriated Fund Balance</i>						
	5990 Unappropriated Fund Balance		0		0		0
	Total Contingency and Ending Balance		\$474,553		(\$72,000)		\$402,553
	TOTAL REQUIREMENTS	79.00	\$21,109,299	0.00	\$0	79.00	\$21,109,299

Exhibit B
Ordinance No. 02-962
FY 2002-03 SCHEDULE OF APPROPRIATIONS

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Amended</u> <u>Appropriation</u>
PLANNING FUND			
Operating Expenses (PS & M&S)	\$17,882,348	\$0	\$17,882,348
Debt Service	40,773	0	40,773
Capital Outlay	0	72,000	72,000
Interfund Transfers	2,711,625	0	2,711,625
Contingency	474,553	(72,000)	402,553
Unappropriated Balance	0	0	0
Total Fund Requirements	\$21,109,299	\$0	\$21,109,299

All Other Appropriations Remain as Previously Adopted

STAFF REPORT

Consideration of Ordinance 02-962 amending the FY 2002-03 budget and appropriations schedule for the purpose of transferring \$72,000 from the planning fund contingency to capital outlay to provide appropriation authority for the carryover and completion of the TRANSIMS computer purchase; and declaring an emergency

August 14, 2002

Presented by: David Biedermann
Kathy Rutkowski

Description

The purpose of this request is to amend the Planning Department budget, specifically, the Transportation Model Improvement Program within the Technical Services division to provide for the carryover and completion of the Transportation Model Improvement Program computer purchase.

Existing Law

ORS 294.450 provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction.

Background

This request is to provide appropriation authority for the carryover and completion of the project to purchase computer equipment used by the Travel Forecasting Section of the Planning Department for development and application of travel demand forecasting models.

For several years, the Transportation Model Improvement Program has been working in partnership with the Los Alamos National Laboratory on the development of the Transportation Analysis Simulation System (TRANSIMS). This is a set of new transportation and air quality analysis and forecasting procedures developed to meet the Clean Air Act, the Intermodal Surface Transportation Efficiency Act, the Transportation Equity Act for the 21st Century, and other regulations.

In partnership with the Los Alamos National Laboratory and PricewaterhouseCoopers Consulting, Metro is hosting the next phase of the project to simulate the Portland metropolitan region with a model that contains 120,000 links and 1.5 million travelers, including mass transit studies.

The major system was purchased last year and came online in the early spring. On-going testing of the modeling capabilities and training is occurring at Metro as a result.

Last year the Council approved an amendment to the budget and Capital Improvement Plan to accomplish this project. Of the \$300,000 approved, approximately \$228,000 was expended in FY01-02. Items purchased included the Linux cluster servers that drives the modeling, workstations for "visualization" and network editing software, the archival system, and additional capacity for heating/cooling equipment.

Due to other work demands on the staff and additional requirements identified after the initial purchase, delays were encountered in purchasing the remaining components. While not critical to the processing,

they are important to ancillary use of the system: backup systems, additional network editing, and remote access capability.

This action requests that the remaining \$72,000 in appropriation authority from FY01-02 to FY02-03 be carried forward to purchase those remaining components.

Budget Impact

In FY 2001-02, the Council approved a \$300,000 interfund loan from the Regional Environmental Management Department to the Planning Department to provide financing for the project. The Planning Department has a balance of approximately \$72,000 of principal remaining on this interfund loan. This amount has been carried forward to FY 2002-03 in the Planning Fund as Beginning Fund Balance.

This action requests the transfer of \$72,000 from the Planning Fund Contingency to Capital Outlay to provide the appropriation authority for the carry forward and completion of the TRANSIMS computer purchase. The contingency transfer is being funded by the additional beginning fund balance from the carryover of the remaining principal on the interfund loan. The total cost of the project is still anticipated not to exceed \$300,000.

Outstanding Questions

None at this time.

Executive Officer's Recommendation

The Executive Officer recommends adoption of this ordinance.

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Agenda Item Number 8.1

**Resolution No. 02-3216, For the Purpose of Declaring the Plaza Building
Surplus Property, Exempting the Tenant from Paying Excise Tax, and
Authorizing the Execution of a Lease with Big Town Hero.**

**Metro Council Meeting
Thursday, September 5, 2002
Metro Council Chamber**

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DECLARING THE) RESOLUTION NO. 02-3216
PLAZA BUILDING SURPLUS PROPERTY,)
EXEMPTING THE TENANT FROM PAYING) Introduced by Mike Burton
EXCISE TAX, AND AUTHORIZING THE) Executive Officer
EXECUTION OF A LEASE WITH BIG TOWN
HERO

WHEREAS, Metro owns and occupies the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), and a self contained space situated in the northwest corner of the Metro Regional Center hereinafter referred to as the "Plaza Building" including use of a Patio for outdoor dining (collectively, the "Premises").

WHEREAS, Metro currently does not use the Plaza Building for its operations and has leased the Plaza Building to tenants in the past, and

WHEREAS, Metro has budgeted revenue in anticipation of leasing the Plaza Building and will receive excise tax on the lease payments, and

WHEREAS, the tenant provides Metro with a lease payment and is not providing a Metro good or service and is not willing to pay Metro excise tax on tenants gross revenues, and

WHEREAS, Home Town Hero desires to lease the Premises from Metro; now therefore

BE IT RESOLVED:

That the Metro Council,

1. Declares the Plaza Building as surplus property, and
2. Exempts Big Town Hero from paying excise tax on their gross revenues, (excise tax will be received on lease payments to Metro), and
3. Authorizes the Executive Office to enter in a lease agreement substantially similar to the lease agreement attached as Exhibit A with Big Town Hero.

ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

Contract No.

PLAZA BUILDING LEASE

THIS LEASE made as of this _____ day of _____ 2002, between METRO, hereinafter referred to as "Landlord," whose address is 600 N.E. Grand Avenue, Portland, OR 97232-2736, and the Big Town Hero, ADDRESS hereinafter referred to as "Tenant. "

RECITALS

1. Landlord owns and occupies the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), and desires to lease to Tenant a self contained space situated in the northwest corner of the Metro Regional Center and containing 1,600 square feet, located at 600 N.E. Grand Avenue and further described in Exhibit "A" "Partial Floor Plan" and hereinafter referred to as the "Plaza Building" including use of a Patio for outdoor dining (collectively, the "Premises").
2. Tenant desires to lease a the Premises from Landlord.
3. The parties desire to enter into the below set forth agreement defining the terms of the Lease.

In consideration of the mutual covenants contained herein, the parties agree as follows:

SECTION 1. Premises: Tenant leases from Landlord the Plaza Building as depicted in Exhibit "A", including the rights to shared use of the common area (hereafter, the "Patio") (collectively, the "Premises") with Landlord its officers, employees, and contractors and the public, subject to the terms set forth herein.

SECTION 2. Term; Possession:

2.1 **Term.** The Initial Lease Term ("Initial Term") shall commence August 1, 2002 (the "Commencement Date") and continue through July 30, 2007, unless sooner terminated pursuant to the terms hereof. A "Lease Year," as such term is used herein, shall run from the Commencement Date or its anniversary ("Anniversary") until the day immediately preceding the next Anniversary.

2.2 **Delivery of Possession.** Land lord will deliver possession of the Premises to Tenant (the "Possession Date") on the Commencement Date. Tenant's obligation to pay Base Rent hereunder begins six months days after the Possession Date. Tenant shall not have the right to terminate this Lease because of delay in the delivery of possession for any reason, unless possession is delayed beyond January 1, 2003; provided that Tenant shall have no right to terminate if said delay is caused by the direct action or inaction of Tenant. In order to exercise the limited right to terminate provided for by the previous sentence, Tenant shall, at its option, give written notice to Landlord of the termination prior to the delivery of possession to Tenant, thereby terminating its future obligations under this Lease; provided, however, that Landlord shall not be liable to Tenant for any damages, but shall be required to return Tenant's security deposit and prepaid rent. Notwithstanding the above, if possession is not delivered to Tenant on or before the Commencement Date, Tenant's obligation to pay Base Rent will be delayed until possession is delivered.

2.3 **Tenant's Work.** On the Possession Date, Landlord will notify Tenant that the Plaza Building is ready for Tenant to begin work and installation of Tenant's improvements, personal property and performance of other work. Tenant will apprise Landlord of the date when the Premises are then expected to be ready for occupancy; however, Tenant acknowledges the advisability of commencing space planning, fixture construction and other activities well in advance of the expected Possession Date. Tenant will promptly perform the work, if any, required to ready the Premises for Tenant's possession and use, in accordance with the terms attached as Exhibit "B." Landlord shall be required to perform only such work to ready the Premises for Tenant's occupancy as is set forth in Exhibit "B. "

SECTION 3. Rent. Tenant shall pay to Landlord the Base Rent monthly for the Premises and any additional rent provided herein without deduction or offset. Rent for any partial month during the term shall be prorated to reflect the number of days during the month the Tenant occupies the Premises. "Additional Rent" means amounts determined under Paragraph 4 of this Lease.

3.1 **Initial Term Base Rent.** The Initial Term Base Rent is based upon an initial fair market rate of \$16.50 per square foot per year for comparable ground floor, storefront retail space on 1,600 square feet of leased space. Base Rent for the first six (6) months of the first Lease Year of the Initial Term shall be zero. Base Rent for the remaining six (6) months of the first Lease Year of the Initial Term shall be the amount of \$13,200.00, or \$2,200.00 per month. Base Rent for the Second and Third Lease Year of the Initial Term shall be the amount of \$26,400.00, or \$2,200.00 per month. Tenant acknowledges that the Base Rent for the first Lease Year of the Initial Term, as well as rent for all subsequent years of the Lease, is computed based on the square footage of the Plaza Building.

3.2 **Initial Term Rent Escalator.** Base Rent for the Fourth and Fifth Lease Year of the Initial Term and all renewal terms shall be determined by the following method of computation:

a) Using the Consumer Price Index published by the United States Department of Labor for the Portland, Oregon metropolitan area for All Urban consumers, or if such index is no longer published, the nearest comparable data on changes in the cost of living for the Portland metropolitan area as selected by Landlord ("CPI"), compute the percentage increase, if any, between the most recently published CPI as of the current Anniversary and that most recently published as of 2002;

b) Multiply the Base Rent for the immediately preceding Lease Year by said percentage; provided, however, that, at the minimum, the Base Rent shall be increased by 8 percent of the preceding Lease Year's Base Rent, and

c) Add the product so obtained to the Base Rent for the immediately preceding year, with the sum to be the Base Rent for the current year.

3.3 **Time and Place of Payment.** Base Rent and Common Area Charges, as set forth below, will be paid in advance on the first day of each month at the address for Landlord set forth in this Lease. Rent and Common Area Charges are uniformly apportionable day to day.

SECTION 4. Utilities, Taxes, Other Charges. This is a "triple net" Lease and Tenant shall pay as additional rent the items set forth below. The dollar allocation of the responsibility to Tenant may be adjusted by Landlord in its reasonable discretion if the final proportionate square footages of the Building and its various Premises change.

4.1 **Utilities.** Tenant shall pay all utilities and services for the Premises including electricity, sewer and water, garbage and recycling haul services.

4.2 **Real Property Taxes.** Tenant shall pay all real property taxes on the Premises. Landlord is a tax exempt entity and has no responsibility for payment of real property taxes.

4.3 **Common Area Maintenance ("CAM") Charges.** Tenant shall pay CAM Charges at a rate of \$2 per square foot per year, or \$3,200.00 annually, in monthly installments of \$266.66, to cover Landlord's insurance, maintenance, security, landscaping, and operation of the Common Areas. Specifically, then, Tenant shall not be responsible for any of the charges, costs or expenses of the parking area.

4.4 **Extraordinary Costs.** The parties recognize that by virtue of extraordinary use of the Premises by Tenant, Tenant's actual share of the Plaza Building's operating costs could exceed \$2 per square foot per year. Therefore, the parties agree that the above amount is based only upon use of the Premises during ordinary business hours under ordinary use conditions. Tenant agrees to pay as additional rent any extraordinary expenses incurred by Landlord within forty-five (45) days of demand by Landlord.

SECTION 5. Permitted Use. Tenant shall use the Premises for retail and wholesale vending, for on and off premises consumption of deli, submarine and other sandwiches and related foods and products. No other uses shall be allowed. Tenant shall conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and promptly correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance [unless such changes are required because of Tenant's specific use]. Tenant shall not annoy, obstruct, or interfere with the rights of other Metro Regional Center Campus occupants.

5.1 **Patio.** Landlord shall designate a portion of the Plaza (the "Patio") allowed to be used by Tenant and its patrons for outdoor dining, along with rules and restrictions for Tenant use. Tenant may use the Patio subject to Landlord's rules and restrictions and to the extent allowed by city ordinances and permits. Tenant shall keep the Patio clean.

5.2 **Exclusivity.** With the exception of existing vending machines, catered events, and the periodic fundraising activities of Landlord's employees, Landlord grants Tenant exclusive right to sell deli, submarine style and other sandwiches on the Metro Regional Center Campus property and agrees not to sell, lease, let or permit to be used on the Metro Regional Center Campus property, any entity in competition with the sandwich business of the Tenant.

5.3 **Continuous Operation.** Tenant shall occupy the Premises continuously for the purpose stated in this lease and carry on business during the hours customary in comparable businesses similarly situated with adequate inventory and personnel. This shall not prevent Tenant from closing for brief periods when reasonably necessary for inventory, repairs, remodeling (when specifically permitted by landlord in writing), or other legitimate purpose related to the business carried on, or other factors not within Tenant's control.

SECTION 6. Security Deposit. Upon execution of this lease, Tenant shall pay to Landlord the sum of \$2,200.00, equivalent to one month's Initial Term Base Rent, as security for the full and faithful performance by Tenant of all of the covenants and terms of this lease required to be performed by Tenant.

6.1 **Offset.** Landlord shall have the right to offset against the Security Deposit any sums owing from Tenant to Landlord and not paid when due, any damages caused by Tenant's default, the cost of curing any default by Tenant should Landlord elect to do so, and the cost of performing any repair or cleanup that is Tenant's responsibility under this lease. Offset against the deposit shall not be an exclusive remedy in any of the above cases, but may be invoked by Landlord, at its option, in addition to any other remedy provided by law or this lease for Tenant's nonperformance. Landlord shall give notice to Tenant each time an offset is claimed against the deposit, and, unless the lease is terminated, Tenant shall within 10 days after such notice deposit with Landlord a sum equal to the amount of the offset so that the total deposit amount, net of offset, shall remain constant throughout the lease term. An interest penalty of 1.5 percent per month shall be assessed beginning on the eleventh day after notice for late payment, but not in any event at a rate greater than the maximum rate of interest permitted by law..

6.2 **Last Month's Rent.** Additionally, Landlord at its option, may apply the Security Deposit to satisfy Tenant's obligation to pay the last month's rental due hereunder. If not applied to pay the last month's rental due hereunder, the Security Deposit shall be returned to Tenant after the expiration of this lease, provided Tenant has fully and faithfully carried out all of its terms, including the payment of all amounts due to Landlord hereunder and the surrender of the premises to Landlord in the condition required herein. The Security Deposit may be commingled with other funds of Landlord and shall bear no interest. In the event of a sale of the Premises described in Exhibit A subject to this Lease, Landlord shall have the right to transfer the Security Deposit to the purchaser to be held under the terms of this lease, and Landlord shall thereupon be released from all liability for the return of the Security Deposit; Tenant agrees to look solely to the new Landlord for the return of the Security Deposit.

SECTION 7. Option to Renew Lease. Landlord agrees to allow Tenant to renew this lease at the expiration of the Initial Term for a period of five (5) additional years (the "First Renewal Term") under the same terms and conditions and as those set forth herein, provided Tenant and Landlord sign a lease renewal at least one (1) year prior to the expiration of the Initial Term. Furthermore, if the lease is renewed as per the aforementioned option, then Landlord agrees to allow Tenant an option to further renew the lease at the expiration of the First Renewal Term for a period of (5) additional years (the "Second Renewal Term") under the same terms and conditions as the first renewal lease and those provided herein, providing Tenant and Landlord sign a second lease renewal at least one (1) year prior to the expiration of First Renewal Term.

7.1 Lease Renewal Terms. Upon the inception of the First Renewal Term, the rent shall be adjusted to market or 15 percent higher than the Initial Term's escalated Fifth Lease Year Base Rent, whichever is higher. Upon the inception of the Second Renewal Term, the rent shall be adjusted to market or 15 percent higher than the First Renewal Term's escalated Fifth Lease Year Base Rent, whichever is higher.

SECTION 8. Maintenance and Alterations.

8.1 Tenant's Obligations. Tenant hereby agrees to maintain and keep the Premises, including all interior doors, heating, ventilating, and cooling systems, interior wiring, plumbing and rain pipes, in as good repair, operating condition, working order, and appearance, and as clean and safe during the entire term of this Lease as they were as of the Possession Date, at Tenant's own cost and expense. In this regard, Tenant shall, as necessary: a) replace equipment and fixtures, b) replace broken or damaged interior and exterior glass in the windows and doors of the Premises with glass of as good or better quality as that now in use, and c) paint the interior of the Premises. Finally, Tenant hereby agrees to be responsible and pay for the repair or replacement of any part of the Plaza Building damaged as a result of the action or inaction of Tenant or its agents, independent contractors, employees, suppliers or invitees.

8.2 Landlord's Obligations; Representations. Landlord shall not be required to make any repairs, alterations, additions or improvements to or upon the Premises or Plaza Building during the term of this Lease, except only those specifically hereinafter provided. Landlord agrees to maintain in good order and repair during the term of this Lease the exterior walls, roof, gutters, downspouts, structural systems and foundation of the Plaza Building. It is understood and agreed that Landlord reserves and at any and all times shall have the right to repair or improve the Plaza Building or to add thereto, and, for that purpose, at any time may erect scaffolding and other necessary structures about and upon the Plaza Building and Premises. In such event, Landlord and Landlord's representatives, contractors and workmen may enter in or about the Plaza Building and Premises with such materials as Landlord may deem necessary therefore. Tenant waives any claim against Landlord for damages, including disruption of business resulting therefrom, caused by third parties not in Landlord's control. To the best of Landlord's knowledge, the Premises as turned over to Tenant will be in compliance with the structural requirements of the Americans with Disabilities Act ("ADA"). To the extent the Premises are not so compliant, Landlord will be responsible for compliance. (This shall not reduce Tenant's obligation itself to comply with the requirements of the ADA with respect to its own leasehold improvements). Landlord repairs will be made subject to the capital improvements and budgetary approval of the Metro Council.

8.3 Alterations. Except for initial Tenant Improvement work which is described in Exhibit "B," Tenant shall not alter, add to or improve the Premises, Plaza Building or install additional electrical equipment, machinery or any signs without Landlord's prior written consent. All alterations shall be made in a good and workmanlike manner, and any alterations and fixtures, including partitions, plumbing, electrical wiring and other additions and improvements, installed by Tenant (other than trade fixtures and equipment) shall become part of the Plaza Building and belong to Landlord. The parties specifically agree as follows:

8.4 Signs. Landlord must approve in writing Tenant's signage identifying Tenant on the Plaza Building facade. Landlord's prior approval of the proposed placement and design of signage by Tenant is required prior to installation of Tenant signage. All Tenant signage shall be in conformance with the sign code, shall not damage the

Plaza Building's exterior, and in Landlord's reasonable opinion shall be tasteful. In any event, the signage and its installation shall be at the sole cost and expense of Tenant.

SECTION 9. Liens. Tenant shall pay as due all claims for work done on or for services rendered or material furnished to the Premises or, on its behalf, to the Plaza Building, and shall keep the Premises and the Plaza Building free from any liens other than liens created by Landlord or other tenants; provided, however, that, so long as Tenant escrows cash with Landlord or provides a surety bond sufficient to pay the claim or lien, Tenant shall not be required to pay a claim or lien which it is validly contesting and the non-payment of which does not constitute a default by Landlord under any financing against the Plaza Building. If Tenant fails to pay such claim or to discharge any lien created or suffered by Tenant, Landlord may do so and set such amount off against the Security Deposit or collect such amount as additional rent. Amounts so paid by Landlord shall bear interest and be repaid by Tenant as provided in paragraphs 6 or 10.1. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

SECTION 10. Default by Tenant. The following shall be events of default by Tenant:

10.1 **Payment Default.** Failure of Tenant to make any rent or other payment under this Lease within ten (10) days after it is due; provided, however, that Landlord shall give Tenant notice and five (5) business days following such notice to cure such default so long as Landlord has not previously given Tenant notice of a failure to make the same type of payment twice in the last twelve (12) months. An interest penalty of 1.5 percent per month shall be assessed from the beginning of the month for late payments.

10.2 **Unauthorized Transfer.** Tenant makes any transfer without Landlord's prior written consent as required under paragraph 16.

10.3 **Abandonment of Plaza Building.** Tenant abandons the Plaza Building, for which purpose "abandons" means a failure by Tenant to occupy and use the Plaza Building for the purposes permitted under this Lease for a total of seven (7) business days or more during the Lease Term, unless such failure is excused under other provisions of this Lease.

10.4 **Default in Other Covenants.** Failure of Tenant to comply with any other term or condition or fulfill any other obligation of this Lease within the time period provided in this Lease for such performance, or thirty (30) days after notice by Landlord specifying the nature of the default with reasonable particularity, if no time period is herein provided.

SECTION 11. Default by Landlord. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time. However, Landlord shall perform its obligations within thirty (30) days after receiving written notice from Tenant specifying where and how Landlord has failed to perform its obligations. However, if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

SECTION 12. Remedies on Default. Upon default, Landlord may terminate this Lease and exercise any one or more of the following remedies, as well as any other remedy available under applicable law:

12.1 **Retake Possession.** Landlord may reenter and retake possession of the Premises either by summary proceedings, force, any other applicable action or proceeding, or otherwise, all without notice to Tenant except as may be required by law. Landlord may use the Premises for Landlord's own purposes or relet it upon any reasonable terms without prejudice to any other remedies that Landlord may have by reason of Tenant's default. None of these actions will be deemed an acceptance of surrender by Tenant.

12.2 Damages for Default. Whether or not Landlord retakes possession or relets the Premises, Landlord may recover all damages caused by the default (including but not limited to unpaid rent, reasonable attorneys' fees relating to the default, and reasonable . costs of reletting). Landlord may sue periodically to recover damages as they accrue during the remainder of the Lease Term without barring a later action for further damages. Landlord may at any time bring an action for accrued damages plus damages for the remaining Lease Term.

12.3 Cure of Tenant's Default. Without prejudice to any other remedy for default, Landlord may perform any obligation or make any payment required to cure a default by Tenant. The cost of performance, including reasonable attorneys' fees and all disbursements, may be set off against the Security Deposit or be collected from Tenant upon demand, together with interest from the date of expenditure until fully paid at the rate of 1.5 percent per month, but not in any event at a rate greater than the maximum rate of interest permitted by law.

SECTION 13. Surrender & Expiration.

13.1 Condition of Plaza Building. Upon expiration of the Lease Term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition. Depreciation and wear from ordinary use for the purpose for which the Plaza Building was let need not be restored, but all repairs for which Tenant is responsible' shall be completed to the latest practical date prior to such surrender.

13.2 Fixtures. Tenant shall promptly remove all of its furnishings, furniture, and trade fixtures that remain the property of Tenant and reasonably restore all damage caused by such removal. If Tenant fails to effect such a removal within twenty (20) days after Landlord's notice in writing and request for removal, this failure shall constitute an abandonment of the property and Landlord may retain the property and all rights of Tenant with respect to it shall cease. In the alternative, by notice in writing given to Tenant within twenty (20) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, restoration, transportation to storage, and storage, with interest on all such expenses as provided in paragraph 12.3 above.

13.3 Holdover. If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month- to-month, subject to all of the provisions of this Lease (except that the term will be month to month and the initial Base Rent will be 115 percent of the amount of Base Rent being paid by Tenant at the termination or expiration of the Lease), or to eject Tenant from the Premises and recover damages caused by wrongful holdover.

13.4 For Sale and For Rent Signs. During the period of one hundred (100) days prior to the date above provided for the termination of this Lease, Landlord may post on the Plaza Building thereof signs notifying the public that the Premises are "for sale" or "for lease;" provided, however, that any signs outside the Premises shall be above the level of the Premise's windows.

SECTION 14. Damage and Destruction.

14.1 Partial Damage. If the Premises are partly damaged and Section 14.2 does not apply, the Premises shall be repaired by Tenant at Tenant's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Tenant, and shall be performed in accordance with the provisions of Section 8.1.

14.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds 50% of the value of the structure before the damage, Landlord may elect to terminate the lease as of the date of the damage or destruction by notice given to Tenant in writing not more than 45 days following the date of damage. In such event, Tenant shall tender to Landlord that portion of Tenant's all-risk insurance proceeds applicable to the loss and damage to the Plaza Building, and the obligations of the parties shall thereafter cease as of the date of termination. Tenant shall be

entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term. If Landlord does not elect to terminate, Tenant shall proceed to restore the Premises to the same form as prior to the damage or destruction, in accordance with Section 8.1, or some other form approved in writing by Landlord. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Landlord's reasonable control.

14.3 Rent Abatement. Rent shall be abated during the repair of any damage to the extent the Premises are untenantable except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant, its officers, employees, agents, invitees and assigns.

14.4 Damage Late in Term. If damage or destruction to which Section 14.2 would apply occurs within one year before the end of the then-current lease term, and the damage did not occur as the result of the fault of Tenant, Tenant may elect to terminate the lease by written notice to Landlord given within 30 days after the date of the damage.

SECTION 15. Hazardous Substances. Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 5. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. In addition to all other indemnities provided for by this Lease or by law, Lessee shall be solely responsible for and agrees to defend (using legal counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord from and against all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties which may be imposed upon or claimed against Landlord and which, in whole or in part, directly or indirectly, arise from or are in any way connected with Hazardous Substances used, stored or released, by Seller, its employees, agents or assigns on the Premises. This indemnification shall require Lessee to reimburse Landlord for any diminution in value of the Property or other adjacent or nearby property of Landlord, caused by Hazardous Substances, including damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, or any other property of Landlord, including damages arising from any adverse impact on marketing of land or buildings in or near the Property, including other property of Landlord.

SECTION 16. Indemnity and Insurance. The Tenant shall hold and save harmless Metro, and indemnify, and defend its elected officials, employees, and agents from actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties which may be imposed upon or claimed against Landlord and which, in whole or in part, directly or indirectly, arise from or are in any way connected acts or omissions of Tenant, Tenant employees, agents, and visitors in accordance with the Oregon Tort Claims Act, ORS chapter 30. Tenant shall provide a certificate of insurance to the Landlord with the following coverages:

The Tenant shall maintain comprehensive general liability insurance program which provides coverage for injury and property damage in accordance with limits at a minimum of \$1,000,000.

The Tenant shall maintain "all risk" property insurance and shall be responsible for Tenant's improvements and Tenant's property.

SECTION 17. Waiver of Rights. Each party hereby releases the other from any and all liability or responsibility to the other (or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to the Premises, the Plaza Building, or property thereon caused by peril which would be covered by a standard "all risks" property insurance policy and water damage, whether or not such insurance is in force or is collectible, even if such loss or damage shall have been caused by the fault or negligence of the party, or anyone for whom such party may be responsible.

Tenant shall be responsible for the first \$5,000 as a deductible of the Landlords property insurance.

SECTION 18. Assignment and Subletting. Tenant shall not assign this Lease or further sublet all or part of the Premises without the prior written consent of Landlord. Landlord shall not unreasonably withhold consent to any assignment or subletting provided the proposed tenant is compatible with Landlord's standards for the Plaza Building and is financially sound. The giving of such consent in one instance shall not preclude the need for Tenant to obtain Landlord's consent to further transfers.

SECTION 19. Attorneys' Fees. In the event of any suit or action by either party to enforce any provision of this Lease, or in any other suit or action arising out of or in connection with this Lease, the prevailing party shall be entitled to recover its costs of suit or action and reasonable attorneys' fees whether at trial or appeal.

SECTION 20. Cumulative Rights and Remedies. No right or remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other rights and remedies at law or in equity.

SECTION 21. Time of the Essence. Time is of the essence of the performance of each of Tenant's obligations in this Lease.

SECTION 22. Amendments. This Lease shall not be amended or modified except by agreement in writing signed by both parties.

SECTION 23. Exhibits. Exhibit "A" and Exhibit "B" which are referred to in this Lease are attached hereto and by this reference incorporated herein.

SECTION 24. Consent of Landlord. Whenever consent, approval or direction by Landlord is required under the terms contained herein, all such consent, approval or direction must be in writing.

SECTION 25. Quiet Possession. Upon Tenant paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all provisions of this Lease.

SECTION 26. Section Headings. The section headings to the sections of this Lease are not part of the Lease and shall have no effect upon the construction or interpretation of any part of it.

SECTION 27. Complete Agreement. There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, advertising, agreements and understandings, oral or written, if any, between Landlord and Tenant or displayed by Landlord or its agents to Tenant with respect to the subject matter of this Lease, the Premises or the Plaza Building. There are no representations between Landlord and Tenant other than those contained in this Lease and all reliance with respect to any representations is solely upon representations contained in this Lease.

SECTION 28. Third Parties. Landlord and Tenant are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct,

or indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its term.

SECTION 29. Estoppel Certificates. Within seven (7) days after Landlord's written request, Tenant shall deliver a written statement stating the date to which the rent and other charges have been paid, whether the Lease is unmodified and in full force and effect, and any other matters that may reasonably be requested by Landlord.

SECTION 30. Inspection. Landlord or its authorized representatives may enter at any time to determine Tenant's compliance with this Lease, to make necessary repairs, or to show the Premises and Plaza Building to any prospective tenants or purchasers; provided, however, that, except in the case of emergency repairs, such entry will be: a) made only on at least 24 hours prior oral or written notice, b) during normal business hours, and c) with an employee or Tenant to accompany Landlord or its representatives.

SECTION 31. Representations. Tenant certifies that no representations as to the condition or repair of the Premises have been made by Landlord or its agents, and that no agreement to alter, repair, or improve said Premises has been made by Landlord, except as expressly set forth herein.

SECTION 32. Notices. Notices under this Lease shall be in writing, effective when delivered, or if mailed, effective on the second day after mailed postage prepaid to the address for the party set forth on page 1 of this Lease, or to such other address as either party may specify by notice to the other. Rent shall be payable to Landlord at the same address and in the same manner.

SECTION 33. Partial Invalidity. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and other provisions shall remain in full force and effect.

SECTION 34. Observance of Law. Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements or federal, state, county and municipal authorities, now in force or which may hereafter be in force during the term of this Lease, which shall impose any duty upon Landlord or Tenant with respect to the use, occupation or alteration of the Premises.

SECTION 35. Choice of Law. This Lease shall be governed by the laws of the State of Oregon.

Big Town Hero

Date

METRO

Mike Burton, Executive Officer

Date

Exhibit B

Tenant Improvements

1. Any HVAC improvements required by Tenant.
2. Any electrical or plumbing improvements required by Tenant. Landlord will provided separate electric and water meters..
3. Two complete, permitted and finished handicapped restrooms.
4. All other improvements required for Tenant's operation.

Landlord Work (subject to Metro Council approval)

1. All exterior work needed for ADA compliance.
2. Painting of exterior.
3. Repair and seal roof.

GOVERNMENTAL AFFAIRS COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3216, FOR THE PURPOSE OF DECLARING THE PLAZA BUILDING SURPLUS PROPERTY, EXEMPTING THE TENANT FROM PAYING EXCISE TAX, AND AUTHORIZING THE EXECUTION OF A LEASE WITH BIG TOWN HERO

Date: July 25, 2002

Presented by: Councilor Burkholder

Committee Recommendation: At its July 25, 2002, meeting, the Governmental Affairs Committee voted 2-0 to recommend Council adoption of Resolution No. 02-3216. Voting in favor: Councilors Burkholder and Bragdon.. Voting against: None. Absent: Councilor Monroe.

Background: Scott Moss, Assistant Administrative Services Director, presented the staff report. He explained that the former tenants of the Plaza Building, located on the northwest corner of Metro Regional Center, vacated the building earlier this year due to bankruptcy. A potential new lessee, Big Town Hero, a retail sandwich shop, is in the process of negotiating a lease with Metro, which requires approval by Metro Council, along with a finding that the Plaza Building is considered to be surplus (and therefore not needed for public use). The proposed lease terms include two automatic five-year renewals, scheduled rent increases at regular intervals, and a six-month delay initial payment of rent so the tenant may effect tenant-paid interior improvements to ready the building for deli use. In addition, the lease specifies that the tenant will be charged excise tax on the lease payments, rather than gross revenues.

Committee Issues/Discussion: Councilor Bragdon asked Mr. Moss if the tenant would be responsible for property taxes. Mr. Moss replied that the tenant would be, and he estimated it would be approximately \$2,600 annually. Councilor Bragdon then stated that he felt that the occupancy of the building is a great use, and would be a boon for employees of Metro as well.

Councilor Burkholder asked if there were permit fees involved, and who would pay for them. Mr. Moss responded that the tenant would be responsible for all permitting requirements and fees. Councilor Burkholder then asked why, if the expected opening date is October, the tenant would be given six-months rent-free. Mr. Moss replied that, because the facility requires restroom upgrades to comply with American Disability Act (ADA) requirements, and because the cost of these upgrades would be borne by the tenant and exceeds six-months of rent, the waiving of rent helps the tenant and saves Metro the cost of paying for the improvements. Councilor Burkholder then stated that he was glad the building would be actively used.

Key Public Testimony: There was none.

STAFF REPORT

FOR THE PURPOSE OF DECLARING THE PLAZA BUILDING SURPLUS PROPERTY,
EXEMPTING THE TENANT FROM PAYING EXCISE TAX, AND AUTHORIZING THE
EXECUTION OF A LEASE WITH BIG TOWN HERO

Date: July 25, 2002

Prepared by: Scott Moss

BACKGROUND

On the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), is a self-contained space situated in the northwest corner of the Metro Regional Center and containing 1,600 square feet, referred to as the "Plaza Building".

Since 1995, Business Properties Investment (BPI), a property management firm has leased the Plaza Building. Recently, BPI vacated the Plaza Building due to bankruptcy. Staff contacted several potential clients and advertised the facility as "For Lease". Representatives of Big Town Hero contacted staff with interest in leasing the Plaza Building. Staff and Big Town Hero have negotiated a five-year lease with two automatic extensions.

Big Town Hero retails sub-sandwiches and soup for lunch and dinner. They bake bread on site but no other cooking is done. It will seat about 20 people inside and will use a small portion of the portion of the Plaza as weather permits.

ANALYSIS/INFORMATION

1. **Known Opposition:** None
2. **Legal Antecedents**

Metro Code section 2.04.026 requires Metro Council approval for any contract to lease any real property owned by Metro.

ORS Chapter 279.826 allows public agencies to lease real or personal property not needed for public use.

Metro Code section 7.01.020 provides for users of Metro facilities to pay excise tax.

3. **Anticipated Effects**

A sandwich shop/deli is an excellent use of the Plaza Building. A deli will provide the neighborhood with a low cost lunch and dinner option. It will promote a positive image for Metro in revitalizing the neighborhood, and bringing people together. This use is consistent with the original vision for this space as retail use.

Rent: The rent is \$16.50 annually per square foot, which is above average for this unique space and neighborhood. The lease calls for two five-year automatic renewals. Rent increases are scheduled for 2005, 2007, 2010, 2012, and 2015.

Rent Starting Date: Metro is allowing a six month delay in starting rent for the following reasons: 1) Big Town Hero is making a number of landlord and tenant improvements, resulting in significant financial savings to Metro, 2) Big Town Hero opening date will be delayed while obtaining permits and making improvements, delay in rent allows them to not pay rent when not earning income, it is in Metro's best interest to see that Big Town Hero is successful, and 3) it is common practice in long term leases.

Improvements: Big Town Hero is responsible for all tenant improvements in the Plaza Building. Improvements include two ADA compliant restrooms, improved HVAC and lighting as needed, food preparation area, carpeting, interior walls, and seating. These improvements are estimated at \$25,000 to \$35,000. Metro will be responsible for any improvement required to the building exterior, except signage. No such needs are known or expected.

Plaza: Metro will designate a portion of the Plaza for seating when weather permits.

Signage: Metro must approve the signage used.

Utilities, insurance, taxes and other expenses: Big Town Hero is responsible for utilities, taxes, insurance, security, janitorial, and landscaping.

Excise taxes: Excise tax will be paid on the lease payments from Big Town Hero to Metro. Staff requests an exemption from charging excise tax on the gross revenues of Big Town Hero. This is not industry practice and will exclude leasing out the facility to a deli or any other retail operation.

Surplus Property: In accordance with state law, the Council must find the Plaza Building is not needed for public use in order to execute the lease.

4. Budget Impacts

Lease payments for the first year will provide a total \$13,200 of revenue to Metro. Payments thereafter will total \$26,400 annually with automatic rate increases. Excise tax estimate at \$2000 annually will be paid on all lease payments.

RECOMMENDED ACTION

The Executive Officer recommends approval of Resolution No. 02-3216 by the Metro Council.

Metro Web Program – New Web Site
 Presentation to Metro Council
 September 5, 2002

Mike Burton's comments

Show 1995 home page, 1997 home page, 2002 home page

Sue Gemmell's preview tour of new site

Mission: To guide visitors as quickly as possible to information that answers their questions, and provide the opportunity to easily learn more. We did user testing and a survey to ask visitors: Why are you here? How do you use the site? What could be better? We surveyed needs of Metro programs. Hired consultant to show us best practices.

What's most impressive about the site can't be seen by the visitors– it's the automation and the way information is added, stored and displayed.

Home page:

New layout, web conventions: logo in upper left, navigation at top and sides, new graphics

Link to prominent issue (Let's talk)

Link to "Get involved" – citizen involvement - example of dynamic page.

Other dynamic pages: 2002 news releases, Grants, Volunteer opportunities, and for Kids and Schools

Summary – to enhance usability, visitor on "scent" of information

What Metro does, Inside Metro (not departmental structure)

(show Transportation planning)

more on this topic, related pages, other web sites

Dynamic library – for that area

Highlights – dynamic

Content – no coding needed

Breadcrumb links - help visitors visualize where they are in the site

Text links – fast loading

Standard navigation appears on every page,

- "QuickLinks" shortcuts to pages deeper in the site (show growth boundary, back)
- Text version (demonstrate), access keys, no mouse needed
- a virtual library for finding documents easily
- dynamic site map; index of every page (demonstrate)
- advanced search (demo with MTIP)
- a simple search field demo with "councilor"

Who is my councilor?"

Visitor can enter an address and see who the councilor is, as well as the councilor's email and phone number. Demo with 600 ne grand

Go to home page, see "Store" show e-commerce.

Content Management System

Show inbox, details page

This is internal use only!

This CMS was custom built by Metro staff with assistance from a consulting firm.

Recognition of team, county

Happy to answer questions now and in the future.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DECLARING THE)	RESOLUTION NO. 02-3216A
PLAZA BUILDING SURPLUS PROPERTY,)	
EXEMPTING THE TENANT FROM PAYING)	Introduced by Mike Burton
EXCISE TAX, AND AUTHORIZING THE)	Executive Officer
EXECUTION OF A LEASE WITH BIG TOWN		
HERO		

WHEREAS, Metro owns and occupies the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), and a self contained space situated in the northwest corner of the Metro Regional Center hereinafter referred to as the "Plaza Building" including use of a Patio for outdoor dining (collectively, the "Premises").

WHEREAS, Metro currently does not use the Plaza Building for its operations and has leased the Plaza Building to tenants in the past, and

WHEREAS, Metro has budgeted revenue in anticipation of leasing the Plaza Building and will receive excise tax on the lease payments, and

WHEREAS, the tenant provides Metro with a lease payment and is not providing a Metro good or service and is not willing to pay Metro excise tax on tenants gross revenues, and

WHEREAS, Home Town Hero desires to lease the Premises from Metro at market rates, conditioned on an exemption from Metro excise tax; now therefore

BE IT RESOLVED:

That the Metro Council,

1. Declares the Plaza Building as surplus property, and
2. Exempts Big Town Hero from Metro excise tax on operators and users of Metro facilities, (excise tax will be received on lease payments to Metro), and
3. Authorizes the Executive Office to enter in a lease agreement substantially similar to the lease agreement attached as Exhibit A with Big Town Hero.

ADOPTED by the Metro Council this _____ day of _____, 2002.

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

Contract No.

PLAZA BUILDING LEASE

THIS LEASE made as of this _____ day of _____ 2002, between METRO, hereinafter referred to as "Landlord," whose address is 600 N.E. Grand Avenue, Portland, OR 97232-2736, and Peter Haglund, 7640 SE 28th, Portland, OR 97202, hereinafter referred to as "Tenant."

RECITALS

1. Landlord owns and occupies the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), and desires to lease to Tenant a self contained space situated in the northwest corner of the Metro Regional Center and containing 1,600 square feet, located at 600 N.E. Grand Avenue and further described in Exhibit "A" "Partial Floor Plan" and hereinafter referred to as the "Plaza Building" including use of a Patio for outdoor dining (collectively, the "Premises").
2. Tenant desires to lease the Premises from Landlord.
3. The parties desire to enter into the below set forth agreement defining the terms of the Lease.

In consideration of the mutual covenants contained herein, the parties agree as follows:

SECTION 1. Premises: Tenant leases from Landlord the Plaza Building as depicted in Exhibit "A", including the rights to shared use of the common area (hereafter, the "Patio") (collectively, the "Premises") with Landlord its officers, employees, and contractors and the public, subject to the terms set forth herein.

SECTION 2. Term; Possession:

2.1 **Term**. The Lease Term shall commence upon execution of the lease or as soon thereafter as Landlord shall notify Tenant in writing that the Premises is available for Tenant to commence its improvements, whichever shall occur later (the "Commencement Date"), and continue for 60 months (hereafter, the "Initial Term"), unless sooner terminated pursuant to the terms hereof. A "Lease Year," as such term is used herein, shall run from the Commencement Date or its anniversary ("Anniversary") until the day immediately preceding the next Anniversary

2.2 **Delivery of Possession**. Land lord will deliver possession of the Premises to Tenant (the "Possession Date") on the Commencement Date. Tenant's obligation to pay Base Rent hereunder begins six months after the Possession Date. Tenant shall not have the right to terminate this Lease because of delay in the delivery of possession for any reason, unless possession is delayed beyond January 1, 2003; provided that Tenant shall have no right to terminate if said delay is caused by the direct action or inaction of Tenant. In order to exercise the limited right to terminate provided for by the previous sentence, Tenant shall, at its option, give written notice to Landlord of the termination prior to the delivery of possession to Tenant, thereby terminating its future obligations under this Lease; provided, however, that Landlord shall not be liable to Tenant for any damages, but shall be required to return Tenant's security deposit and prepaid rent. Tenant shall also have the right to terminate this lease if Tenant cannot obtain, upon reasonable attempts, permits to construct and operate a Big Town Hero sandwich restaurant within the Premises, by the city of Portland and Multnomah County. Additionally, if changes are required to be made to the exterior walkways, doorways and/or approaches to the

building to comply with City, County or other handicap and ADA requirements and the Metro Council does not authorize and pay for such changes, Tenant may immediately terminate the lease. In order to exercise the limited rights to terminate provided in this paragraph, Tenant shall, at its option, give written notice to Landlord of its intent to terminate, thereby terminating any and all of its future obligations under this lease; provided however, that Landlord shall not be liable to Tenant for any damages, but shall be required to return Tenant's security deposit and prepaid rent within ten (10) days and without offset. Notwithstanding the above, if possession is not delivered to Tenant on or before the Commencement Date, Tenant's obligation to pay Base Rent will be delayed for a period of time equivalent to said delay in delivery..

2.3 Tenant's Work. On the Possession Date, Landlord will notify Tenant that the Plaza Building is ready for Tenant to begin work and installation of Tenant's improvements, personal property and performance of other work. Tenant will apprise Landlord of the date when the Premises are then expected to be ready for occupancy; however, Tenant acknowledges the advisability of commencing space planning, fixture construction and other activities well in advance of the expected date the Premises are to be ready for Tenant's work, but in no case prior to Landlord approval of the lease in its final form. Tenant will promptly perform the work after receiving permits from the City of Portland and the Multnomah County Health Department, if any, for Tenant's possession and use, in accordance with the terms attached as Exhibit "B." Landlord shall be required to perform only such work to ready the Premises for Tenant's occupancy as is set forth in Exhibit "B. "

SECTION 3. Rent. Tenant shall pay to Landlord the Base Rent monthly for the Premises and any additional rent provided herein without deduction or offset. Rent for any partial month during the term shall be prorated to reflect the number of days during the month the Tenant occupies the Premises. " Additional Rent" means amounts determined under Paragraph 4 of this Lease.

3.1 Initial Term Base Rent. The Initial Term Base Rent is based upon an initial fair market rate of \$16.50 per square foot per year for comparable ground floor, storefront retail space on 1,600 square feet of leased space. Base Rent for the first six (6) months of the first Lease Year of the Initial Term shall be zero. Base Rent for the remaining six (6) months of the first Lease Year of the Initial Term shall be the amount of \$13,200.00, or \$2,200.00 per month. Base Rent for the Second and Third Lease Year of the Initial Term shall be the amount of \$26,400.00, or \$2,200.00 per month. Tenant acknowledges that the Base Rent for the first Lease Year of the Initial Term, as well as rent for all subsequent years of the Lease, is computed based on the square footage of the Plaza Building.

3.2 Rent Escalator. The Base Rent shall be increased at the inception of the Fourth Lease Year of the Initial Term, and again at the inception of the ninth and fourteenth Lease Years if Tenant renews the Lease as provided in Section 7 below. Said escalated Base Rent shall be determined by the following method of computation:

a) Using the Consumer Price Index published by the United States Department of Labor for the Portland, Oregon metropolitan area for All Urban consumers, or if such index is no longer published, the nearest comparable data on changes in the cost of living for the Portland metropolitan area as selected by Landlord ("CPI"), compute the percentage increase, if any, between the most recently published CPI as of the current Anniversary and that most recently published as of 2002;

b) Multiply the Base Rent for the immediately preceding Lease Year by said percentage; provided, however, that, at the minimum, the Base Rent shall be increased by 8 percent of the preceding Lease Year's Base Rent, and

c) Add the product so obtained to the Base Rent for the immediately preceding year, with the sum to be the Base Rent for the current year.

3.3 Time and Place of Payment. Base Rent and Common Area Charges, as set forth below, will be paid in advance on the first day of each month at the address for Landlord set forth in this Lease. Rent and Common Area Charges are uniformly apportionable day to day.

SECTION 4. Utilities, Taxes, Other Charges. This is a "triple net" Lease and Tenant shall pay as additional rent the items set forth below.

4.1 Utilities. Tenant shall pay all utilities and services for the Premises including electricity, sewer and water, garbage and recycling haul services. Tenant's dumpster and recycling containers will be allowed in the southwest corner, first floor of the Metro garage.

4.2 Real Property Taxes. Tenant shall pay all real property taxes on the Premises. Landlord is a tax exempt entity and has no responsibility for payment of real property taxes.

4.3 Common Area Maintenance ("CAM") Charges. Tenant shall pay CAM Charges at a rate of \$2 per square foot per year, or \$3,200.00 annually, in monthly installments of \$266.66; to cover Landlord's insurance, maintenance, security, landscaping, and operation of the Common Areas. Specifically, then, Tenant shall not be responsible for any of the charges, costs or expenses of the parking area.

4.4 Extraordinary Costs. Tenant's ordinary business hours shall not exceed 8:00 am to 10:00 pm Sunday through Saturday of each week. Use of the Patio during these hours and within the area defined on Exhibit "C" of the lease shall not be considered extraordinary. Any use of the Plaza Building beyond these hours and the Patio beyond the designated area shall be on a per event basis and shall be pre-arranged basis with the Landlord. Tenant agrees to pay Landlord for any extraordinary use of the Premises and/or Patio on a per event basis, not to exceed \$250.00 per day. Tenant agrees to pay as additional rent the above-named fees within forty-five days of demand by Landlord.

SECTION 5. Permitted Use. Tenant shall use the Premises for retail and wholesale vending, for on and off premises consumption of deli, submarine and other sandwiches and related foods and products. No other uses shall be allowed. Tenant shall conform to all applicable laws and regulations of any public authority affecting the Premises and the use, and promptly correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance, unless such changes are required because of Tenant's specific use. Tenant shall not annoy, obstruct, or interfere with the rights of other Metro Regional Center Campus occupants.

5.1 Patio. Landlord shall designate a portion of the Plaza (the "Patio") allowed to be used by Tenant and its patrons for outdoor dining, along with rules and restrictions for Tenant use. Tenant shall keep that portion of the Patio indicated in Exhibit "C" clean and free of debris.

5.2 Exclusivity. With the exception of existing vending machines, catered events, and the periodic fundraising activities of Landlord's employees, Landlord grants Tenant exclusive right to sell deli, submarine style and other sandwiches on the Metro Regional Center Campus property and agrees not to sell, lease, let or permit to be used on the Metro Regional Center Campus property, any entity in competition with the sandwich business of the Tenant.

5.3 Continuous Operation. Tenant shall occupy the Premises continuously for the purpose stated in this lease and carry on business during the hours customary in comparable businesses similarly situated with adequate inventory and personnel. This shall not prevent Tenant from closing for brief periods when reasonably necessary for inventory, repairs, remodeling (when specifically permitted by landlord in writing), or other legitimate purpose related to the business carried on, or other factors not within Tenant's control.

SECTION 6. Security Deposit. Upon execution of this lease, Tenant shall pay to Landlord the sum of - \$4,400, equivalent to two month's Initial Term Base Rent, as security for the full and faithful performance by Tenant of all of the covenants and terms of this lease required to be performed by Tenant.

6.1 Offset. Landlord shall have the right to offset against the Security Deposit any sums owing from Tenant to Landlord and not paid when due, any damages caused by Tenant's default, the cost of curing any default by Tenant should Landlord elect to do so, and the cost of performing any repair or cleanup that is Tenant's responsibility under this lease. Offset against the deposit shall not be an exclusive remedy in any of the above cases, but may be invoked by Landlord, at its option, in addition to any other remedy provided by law or this lease for Tenant's nonperformance. Landlord shall give notice to Tenant each time an offset is claimed against the deposit, and, unless the lease is terminated, Tenant shall within 10 days after such notice deposit with Landlord a sum equal to the amount of the offset so that the total deposit amount, net of offset, shall remain constant throughout the lease term. An interest penalty of 1.5 percent per month shall be assessed beginning on the eleventh day after notice for late payment, but not in any event at a rate greater than the maximum rate of interest permitted by law.

6.2 Last Month's Rent. Additionally, Landlord at its option, may apply the Security Deposit to satisfy Tenant's obligation to pay the last month's rental due hereunder. If not applied to pay the last month's rental due hereunder, the Security Deposit shall be returned to Tenant after the expiration of this lease, provided Tenant has fully and faithfully carried out all of its terms, including the payment of all amounts due to Landlord hereunder and the surrender of the premises to Landlord in the condition required herein. The Security Deposit may be commingled with other funds of Landlord and shall bear no interest. In the event of a sale of the Premises described in Exhibit A subject to this Lease, Landlord shall have the right to transfer the Security Deposit to the purchaser to be held under the terms of this lease, and Landlord shall thereupon be released from all liability for the return of the Security Deposit; Tenant agrees to look solely to the new Landlord for the return of the Security Deposit.

6.3 Personal Guarantee. Tenant agrees to the \$5,000 personal guarantee attached as Exhibit "E".

SECTION 7. Option to Renew Lease. Landlord agrees to allow Tenant to renew this lease at the expiration of the Initial Term for a period of five (5) additional years (the "First Renewal Term") under the same terms and conditions and as those set forth herein, provided Tenant and Landlord sign a lease renewal at least one (1) year prior to the expiration of the Initial Term. Furthermore, if the lease is renewed as per the aforementioned option, then Landlord agrees to allow Tenant an option to further renew the lease at the expiration of the First Renewal Term for a period of (5) additional years (the "Second Renewal Term") under the same terms and conditions as the first renewal lease and those provided herein, providing Tenant and Landlord sign a second lease renewal at least one (1) year prior to the expiration of First Renewal Term.

7.1 Lease Renewal Terms. Upon the inception of the First Renewal Term, the rent shall be adjusted to market or 15 percent higher than the Initial Term's escalated Fifth Lease Year Base Rent, whichever is higher. Upon the inception of the Second Renewal Term, the rent shall be adjusted to market or 15 percent higher than the First Renewal Term's escalated Fifth Lease Year Base Rent, whichever is higher.

SECTION 8. Maintenance and Alterations.

8.1 **Tenant's Obligations.** Tenant hereby agrees to maintain and keep the Premises, including all interior doors, heating, ventilating, and cooling systems, interior wiring, plumbing and drains, in as good repair, operating condition, working order, and appearance, and as clean and safe during the entire term of this Lease as they were as of the Possession Date, at Tenant's own cost and expense. In this regard, Tenant shall, as necessary: a) replace equipment and fixtures, b) replace broken or damaged interior and exterior glass in the windows and doors of the Premises with glass of as good or better quality as that now in use, and c) paint the interior of the Premises. Finally, Tenant hereby agrees to be responsible and pay for the repair or replacement of any part of the Plaza Building damaged as a result of the action or inaction of Tenant or its agents, independent contractors, employees, suppliers or invitees normal wear and tear excepted.

8.2 **Landlord's Obligations; Representations.** Landlord shall not be required to make any repairs, alterations, additions or improvements to or upon the Premises or Plaza Building during the term of this Lease, except only those specifically hereinafter provided. Landlord agrees to maintain in good order and repair during the term of this Lease the exterior walls, roof, gutters, downspouts, structural systems and foundation of the Plaza Building. It is understood and agreed that Landlord reserves and at any and all times shall have the right to repair or improve the Plaza Building or to add thereto, and, for that purpose, at any time may erect scaffolding and other necessary structures about and upon the Plaza Building and Premises. In such event, Landlord and Landlord's representatives and contractors, with 24 hour written notice to Tenant, may enter in or about the Building and Premises with such materials as landlord may deem necessary therefore. Tenant waives any claim against Landlord for damages, including disruptions of business resulting therefrom, caused by third parties not in Landlord's control, unless such third parties are under contract to or being paid for services by Landlord." To the best of Landlord's knowledge, the Premises as delivered to Tenant on the Delivery Date will be in compliance with the structural requirements of the Americans with Disabilities Act ("ADA"). To the extent the Premises are not so compliant, Landlord will be responsible for compliance. (This shall not reduce Tenant's obligation itself to comply with the requirements of the ADA with respect to its own leasehold improvements). Except in the case of emergency, Landlord repairs will be made subject to the capital improvements and budgetary approval of the Metro Council.

8.3 **Alterations.** Except for initial Tenant Improvement work which is described in Exhibit "B" and alterations to the interior of the Plaza Building under \$5,000, Tenant shall not alter, add to or improve the Premises, Plaza Building or install additional electrical equipment, machinery or any signs without Landlord's prior written consent. All alterations shall be made in a good and workmanlike manner, and any alterations and fixtures, including partitions, plumbing, electrical wiring and other additions and improvements, installed by Tenant (other than trade fixtures and equipment) shall become part of the Plaza Building and belong to Landlord.

8.4 **Signs.** Tenant's plans for signage to be placed by Tenant on or about the Plaza Building façade are attached as Exhibit "D" hereto and are hereby deemed approved by Landlord. Landlord's prior written approval of the proposed placement and design of all other Tenant signage is required prior to installation of Tenant signage. All Tenant signage shall be in conformance with the sign code, shall not damage the Plaza Building's exterior. In any event, the signage and its installation shall be at the sole cost and expense of Tenant.

SECTION 9. Liens. Tenant shall pay as due all claims for work done on or for services rendered or material furnished to the Premises or, on its behalf, to the Plaza Building, and shall keep the Premises and the Plaza Building free from any liens other than liens created by Landlord or other tenants; provided, however, that, so long as Tenant escrows cash with Landlord or provides a surety bond sufficient to pay the claim or lien, Tenant shall not be required to pay a claim or lien which it is validly contesting and the non-payment of which does not

constitute a default by Landlord under any financing against the Plaza Building. If Tenant fails to pay such claim or to discharge any lien created or suffered by Tenant, Landlord may do so and set such amount off against the Security Deposit or collect such amount as additional rent. Amounts so paid by Landlord shall bear interest and be repaid by Tenant as provided in paragraphs 6 or 10.1. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

SECTION 10. Default by Tenant. The following shall be events of default by Tenant:

10.1 Payment Default. Failure of Tenant to make any rent or other payment under this Lease within ten (10) days after it is due; provided, however, that Landlord shall give Tenant notice and five (5) business days following such notice to cure such default so long as Landlord has not previously given Tenant notice of a failure to make the same type of payment twice in the last twelve (12) months. An interest penalty of \$75 per month shall be assessed from the beginning of the month for late payments to reimburse Landlord for administration expenses related to late notices.

10.2 Unauthorized Transfer. Tenant makes any transfer without Landlord's prior written consent as required under paragraph 18.

10.3 Abandonment of Plaza Building. Tenant abandons the Plaza Building, for which purpose "abandons" means a failure by Tenant to occupy and use the Plaza Building for the purposes permitted under this Lease for a total of seven (7) business days or more during the Lease Term, unless such failure is allowed under other provisions of this Lease.

10.4 Default in Other Covenants. Failure of Tenant to comply with any other term or conditions or to fulfill any other obligations of this Lease within thirty (30) days after written notice by Landlord specifying the nature of the default with reasonable particularity

SECTION 11. Default by Landlord. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time. However, Landlord shall perform its obligations within thirty (30) days after receiving written notice from Tenant specifying where and how Landlord has failed to perform its obligations. However, if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

SECTION 12. Remedies on Default. Upon default, Landlord may terminate this Lease and exercise any one or more of the following remedies, as well as any other remedy available under applicable law:

12.1 Retake Possession. Landlord may reenter and retake possession of the Premises either by summary proceedings, force, any other applicable action or proceeding, or otherwise, all without notice to Tenant except as may be required by law. Landlord may use the Premises for Landlord's own purposes or relet it upon any reasonable terms without prejudice to any other remedies that Landlord may have by reason of Tenant's default. None of these actions will be deemed an acceptance of surrender by Tenant.

12.2 Damages for Default. Whether or not Landlord retakes possession or relets the Premises, Landlord may recover all damages caused by the default (including but not limited to unpaid rent, reasonable attorneys' fees relating to the default, and reasonable costs of reletting). Landlord may sue periodically to recover damages as they accrue during the remainder of the Lease Term without barring a later action for further damages. Landlord may at any time bring an action for accrued damages plus damages for the remaining Lease Term. However, Landlord shall have an affirmative duty to mitigate all such damages.

12.3 Cure of Tenant's Default. Without prejudice to any other remedy for default, Landlord may perform any obligation or make any payment required to cure a default by Tenant. The cost of performance, including reasonable attorneys' fees and all disbursements, may be set off against the Security Deposit or be collected from Tenant upon demand, together with interest from the date of expenditure until fully paid at the rate of 1.5 percent per month, but not in any event at a rate greater than the maximum rate of interest permitted by law.

SECTION 13. Surrender & Expiration.

13.1 Condition of Plaza Building. Upon expiration of the Lease Term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition. Depreciation and wear from ordinary use for the purpose for which the Plaza Building was let need not be restored, but all repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender.

13.2 Fixtures. Tenant shall promptly remove all of its furnishings, furniture, and trade fixtures that remain the property of Tenant and reasonably restore all damage caused by such removal. If Tenant fails to effect such a removal within twenty (20) days after Landlord's notice in writing and request for removal, this failure shall constitute an abandonment of the property and Landlord may retain the property and all rights of Tenant with respect to it shall cease. In the alternative, by notice in writing given to Tenant within twenty (20) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, restoration, transportation to storage, and storage, with interest on all such expenses as provided in paragraph 12.3 above.

13.3 Holdover. If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month- to-month, subject to all of the provisions of this Lease (except that the term will be month to month and the initial Base Rent will be 115 percent of the amount of Base Rent being paid by Tenant at the termination or expiration of the Lease), or to eject Tenant from the Premises and recover damages caused by wrongful holdover.

13.4 For Sale and For Rent Signs. During the period of one hundred (100) days prior to the date above provided for the termination of this Lease, Landlord may post on the Plaza Building thereof signs notifying the public that the Premises are "for sale" or "for lease;" provided, however, that any signs shall not be located on the Premises.

SECTION 14. Damage and Destruction.

14.1 Partial Damage. If the Premises are partly damaged and Section 14.2 does not apply, the Premises shall be repaired by Tenant at Tenant's expense. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Tenant, and shall be performed in accordance with the provisions of Section 8.1.

14.2 Destruction. If the Premises are destroyed or damaged such that the cost of repair exceeds 50% of the value of the structure before the damage, Landlord may elect to terminate the lease as of the date of the damage or destruction by notice given to Tenant in writing not more than 45 days following the date of damage. In such event, Tenant shall tender to Landlord that portion of Tenant's all-risk insurance proceeds applicable to the loss and damage to the Plaza Building, and the obligations of the parties shall thereafter cease

as of the date of termination. Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term. If Landlord does not elect to terminate, Tenant shall proceed to restore the Premises to the same form as prior to the damage or destruction, in accordance with Section 8.1, or some other form approved in writing by Landlord. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Landlord's reasonable control.

14.3 Rent Abatement. Rent shall be abated during the repair of any damage to the extent the Premises are untenable except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant, its officers, employees, agents, invitees and assigns.

14.4 Damage Late in Term. If damage or destruction to which Section 14.2 would apply occurs within one year before the end of the then-current lease term, and the damage did not occur as the result of the fault of Tenant, Tenant may elect to terminate the lease by written notice to Landlord given within 30 days after the date of the damage.

SECTION 15. Hazardous Substances. Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 5. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions. In addition to all other indemnities provided for by this Lease or by law, Lessee shall be solely responsible for and agrees to defend (using legal counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord from and against all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties which may be imposed upon or claimed against Landlord and which, in whole or in part, directly or indirectly, arise from or are in any way connected with Hazardous Substances used, stored or released, by Seller, its employees, agents or assigns on the Premises. This indemnification shall require Lessee to reimburse Landlord for any diminution in value of the Property or other adjacent or nearby property of Landlord, caused by Hazardous Substances, including damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, or any other property of Landlord, including damages arising from any adverse impact on marketing of land or buildings in or near the Property, including other property of Landlord.

SECTION 16. Indemnity and Insurance. The Tenant shall hold and save harmless Metro, and indemnify, and defend its elected officials, employees, and agents from actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties which may be imposed upon or claimed against Landlord and which, in whole or in part, directly or indirectly, arise from or are in any way connected acts or omissions of Tenant, Tenant employees, agents, and visitors in accordance with the Oregon Tort Claims Act, ORS chapter 30. Tenant shall provide a certificate of insurance to the Landlord with the following coverages:

The Tenant shall maintain comprehensive general liability insurance program which provides coverage for injury and property damage in accordance with limits at a minimum of \$2,000,000.

The Tenant shall maintain "all risk" property insurance and shall be responsible for Tenant's improvements and Tenant's property.

SECTION 17. Waiver of Rights. Each party hereby releases the other from any and all liability or responsibility to the other (or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to the Premises, the Plaza Building, or property thereon caused by peril which would be covered by a standard "all risks" property insurance policy and water damage, whether or not such insurance is in force or is collectible, even if such loss or damage shall have been caused by the fault or negligence of the party, or anyone for whom such party may be responsible.

Tenant shall be responsible for the first \$5,000 as a deductible of the Landlords property insurance, if it is determined that the damage was a result of the Tenant's intentional acts or negligence.

SECTION 18. Assignment and Subletting. Tenant shall not assign this Lease or further sublet all or part of the Premises without the prior written consent of Landlord. Landlord shall not unreasonably withhold consent to any assignment or subletting provided the proposed tenant is compatible with Landlord's standards for the Plaza Building and is financially sound. The giving of such consent in one instance shall not preclude the need for Tenant to obtain Landlord's consent to further transfers.

SECTION 19. Attorneys' Fees. In the event of any suit or action by either party to enforce any provision of this Lease, or in any other suit or action arising out of or in connection with this Lease, the prevailing party shall be entitled to recover its costs of suit or action and reasonable attorneys' fees whether at trial or appeal.

SECTION 20. Cumulative Rights and Remedies. No right or remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other rights and remedies at law or in equity.

SECTION 21. Time of the Essence. Time is of the essence of the performance of each of Tenant's obligations in this Lease.

SECTION 22. Amendments. This Lease shall not be amended or modified except by agreement in writing signed by both parties.

SECTION 23. Exhibits. Exhibit "A", Exhibit "B", Exhibit "C", Exhibit "D" and Exhibit "E", which are referred to in this Lease are attached hereto and by this reference incorporated herein.

SECTION 24. Consent of Landlord. Whenever consent, approval or direction by Landlord is required under the terms contained herein, all such consent, approval or direction must be timely, in writing and shall not be unreasonably withheld.

SECTION 25. Quiet Possession. Upon Tenant paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all provisions of this Lease.

SECTION 26. Section Headings. The section headings to the sections of this Lease are not part of the Lease and shall have no effect upon the construction or interpretation of any part of it.

SECTION 27. Complete Agreement. There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, advertising, agreements and understandings, oral or written, if any, between Landlord and Tenant or displayed by Landlord or its agents to Tenant with respect to the subject matter of this Lease, the Premises or the Plaza Building. There are no representations between Landlord and Tenant other than those contained in this Lease and all reliance with respect to any representations is solely upon representations contained in this Lease.

SECTION 28. Third Parties. Landlord and Tenant are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, or indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its term.

SECTION 29. Estoppel Certificates. Within seven (7) days after Landlord's written request, Tenant shall deliver a written statement stating the date to which the rent and other charges have been paid, whether the Lease is unmodified and in full force and effect, and any other matters that may reasonably be requested by Landlord on forms provided by the Landlord.

SECTION 30. Inspection. Landlord or its authorized representatives may enter at any time to determine Tenant's compliance with this Lease, to make necessary repairs, or to show the Premises and Plaza Building to any prospective tenants or purchasers; provided, however, that, except in the case of emergency repairs, such entry will be: a) made only on at least 24 hours prior oral or written notice, b) during normal business hours, and c) with an employee or Tenant to accompany Landlord or its representatives.

SECTION 31. Representations. Tenant certifies that no representations as to the condition or repair of the Premises have been made by Landlord or its agents, and that no agreement to alter, repair, or improve said Premises has been made by Landlord, except as expressly set forth herein.

SECTION 32. Notices. Notices under this Lease shall be in writing, effective when delivered, or if mailed, effective on the second day after mailed postage prepaid to the address for the party set forth on page 1 of this Lease, or to such other address as either party may specify by notice to the other. Rent shall be payable to Landlord at the same address and in the same manner.

Copies of all notices sent to Tenant shall be sent to the franchisor.

HERO SYSTEMS, INC.

Attn: Franchise Administrator

912 SW Third Ave.

Portland, OR 97204

SECTION 33. Partial Invalidity. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and other provisions shall remain in full force and effect.

SECTION 34. Observance of Law. Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force during the term of this Lease, which shall impose any duty upon Landlord or Tenant with respect to the use, occupation or alteration of the Premises.

SECTION 35. Choice of Law. This Lease shall be governed by the laws of the State of Oregon.

SECTION 36.

Notwithstanding anything contained in the Lease to the contrary, the following shall prevail.

HAZARDOUS MATERIALS.

In the event that the municipality in which the "Premises" are located passes an ordinance requiring the removal of hazardous or asbestos related materials from the "Premises" or building of which it forms apart, it will be the Landlord's responsibility to remove the offensive material. In the event that the Landlord does not comply with the ordinance within thirty (30) days after written notice from the Tenant, the Tenant may have the material removed on behalf of and for the account of the Landlord and Landlord will immediately pay costs incurred by Tenant for such repairs. If said material is removed from an area that lies below the building or parking lot, Landlord shall immediately repair any and all damage to either the parking lot or the building itself. Likewise, if any such hazardous material has been placed upon the site by Tenant, it shall be Tenant's responsibility to remove it and perform any required remediation.

TRADE FIXTURES AND PERSONAL PROPERTY.

If the equipment to be used for the operation of Tenant's business in the demised "Premises" is financed and used as security for such a loan the Landlord agrees to execute documents required and provided by the lending institution warranting to the lender that the Lease is in full force and effect, there has been no default, and that the Lease has not been assigned to a third party, including a covenant to simultaneously serve to lender all notices required under the Lease to be given to Tenant.

ASSIGNMENT OR SUBLETTING:

Tenant may not sublease or assign all or any part of its rights to the leased premises, or extend the term of or renew the lease, without the prior written consent of the Franchisor. Tenant may assign the Lease to Hero Systems, Inc. or a bona-fide Big Town Hero Franchise Owner without obtaining Landlord's consent and without paying any additional fees or charges provided that Tenant gives Landlord written notice of such assignment and Tenant remains primarily liable under the lease. In the event of such an assignment, Landlord shall give Tenant a copy of any notice given to the new tenant under the Lease. Landlord and Tenant recognize that Hero Systems, Inc. is a third party beneficiary to this lease and as such has certain rights in this lease.

TENANT'S DEFAULT:

Landlord grants to Hero Systems, Inc. the right to enter the leased premises to cure any default under the Lease or to make any modifications necessary to protect the trade names, service marks and trademarks licensed by the Franchisor to Tenant. Upon Tenants default or termination under the Lease or under its Franchise Agreement with the Franchisor, then the Franchisor shall have the right, but shall not be required, to assume Tenants rights to the leased premises for all or any part of the remaining term of the Lease.

Peter Haglund

Date: _____

METRO

Mike Burton, Executive Officer

Date: _____

Exhibit B

Tenant Improvements

1. Any HVAC improvements required by Tenant.
2. Any electrical or plumbing improvements required by Tenant. Landlord will provided separate electric and water meters..
3. Two complete, permitted and finished handicapped restrooms.
4. All other improvements required for Tenant's operation.

Landlord Work (subject to Metro Council approval)

1. All exterior work needed for ADA compliance.
2. Painting of exterior.
3. Repair and seal roof.

GOVERNMENTAL AFFAIRS COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3216, FOR THE PURPOSE OF DECLARING THE PLAZA BUILDING SURPLUS PROPERTY, EXEMPTING THE TENANT FROM PAYING EXCISE TAX, AND AUTHORIZING THE EXECUTION OF A LEASE WITH BIG TOWN HERO

Date: July 25, 2002

Presented by: Councilor Burkholder

Committee Recommendation: At its July 25, 2002, meeting, the Governmental Affairs Committee voted 2-0 to recommend Council adoption of Resolution No. 02-3216. Voting in favor: Councilors Burkholder and Bragdon.. Voting against: None. Absent: Councilor Monroe.

Background: Scott Moss, Assistant Administrative Services Director, presented the staff report. He explained that the former tenants of the Plaza Building, located on the northwest corner of Metro Regional Center, vacated the building earlier this year due to bankruptcy. A potential new lessee, Big Town Hero, a retail sandwich shop, is in the process of negotiating a lease with Metro, which requires approval by Metro Council, along with a finding that the Plaza Building is considered to be surplus (and therefore not needed for public use). The proposed lease terms include two automatic five-year renewals, scheduled rent increases at regular intervals, and a six-month delay initial payment of rent so the tenant may effect tenant-paid interior improvements to ready the building for deli use. In addition, the lease specifies that the tenant will be charged excise tax on the lease payments, rather than gross revenues.

Committee Issues/Discussion: Councilor Bragdon asked Mr. Moss if the tenant would be responsible for property taxes. Mr. Moss replied that the tenant would be, and he estimated it would be approximately \$2,600 annually. Councilor Bragdon then stated that he felt that the occupancy of the building is a great use, and would be a boon for employees of Metro as well.

Councilor Burkholder asked if there were permit fees involved, and who would pay for them. Mr. Moss responded that the tenant would be responsible for all permitting requirements and fees. Councilor Burkholder that asked why, if the expected opening date is October, the tenant would be given six-months rent-free. Mr. Moss replied that, because the facility requires restroom upgrades to comply with American Disability Act (ADA) requirements, and because the cost of these upgrades would be borne by the tenant and exceeds six-months of rent, the waiving of rent helps the tenant and saves Metro the cost of paying for the improvements. Councilor Burkholder then stated that he was glad the building would be actively used.

Key Public Testimony: There was none.

STAFF REPORT

RESOLUTION NO. 02-3216, FOR THE PURPOSE OF DECLARING THE PLAZA BUILDING SURPLUS PROPERTY, EXEMPTING THE TENANT FROM PAYING EXCISE TAX, AND AUTHORIZING THE EXECUTION OF A LEASE WITH BIG TOWN HERO

Date: July 25, 2002

Prepared by: Scott Moss

BACKGROUND

On the Metro Regional Center campus, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 (the "Metro Regional Center Campus"), is a self-contained space situated in the northwest corner of the Metro Regional Center and containing 1,600 square feet, referred to as the "Plaza Building".

Since 1995, Business Properties Investment (BPI), a property management firm has leased the Plaza Building. Recently, BPI vacated the Plaza Building due to bankruptcy. Staff contacted several potential clients and advertised the facility as "For Lease". Representatives of Big Town Hero contacted staff with interest in leasing the Plaza Building. Staff and Big Town Hero have negotiated a five-year lease with two automatic extensions.

Big Town Hero retails sub-sandwiches and soup for lunch and dinner. They bake bread on site but no other cooking is done. It will seat about 20 people inside and will use a small portion of the portion of the Plaza as weather permits.

ANALYSIS/INFORMATION

1. **Known Opposition:** None
2. **Legal Antecedents**

Metro Code section 2.04.026 requires Metro Council approval for any contract to lease any real property owned by Metro.

ORS Chapter 279.826-271.320 provides that a political subdivision may lease real property it owns whenever said real property is not needed for public use or public interest may be furthered thereby.
~~allows public agencies to lease real or personal property not needed for public use.~~

Metro Code section 7.01.020 provides for users of Metro facilities to pay excise tax, unless exempted as provided therein.

3. **Anticipated Effects**

A sandwich shop/deli is an excellent use of the Plaza Building. A deli will provide the neighborhood with a low cost lunch and dinner option. It will promote a positive image for Metro in revitalizing the

neighborhood, and bringing people together. This use is consistent with the original vision for this space as retail use.

Rent: The rent is \$16.50 annually per square foot, which is above average for this unique space and neighborhood. The lease calls for two five-year automatic renewals. Rent increases are scheduled for 2005, 2007, 2010, 2012, and 2015.

Rent Starting Date: ~~Metro is allowing a six month delay in starting rent. The proposed lease provides the tenant with rent-free occupancy for the first six months of the lease for the following reasons: 1) Big Town Hero is making a number of landlord and tenant improvements, resulting in significant financial savings to Metro, 2) Big Town Hero opening date will be delayed while obtaining permits and making improvements, delay in rent allows them to not pay rent when not earning income, it is in Metro's best interest to see that Big Town Hero is successful, and 3) it is common practice in long term leases that require significant tenant improvements.~~

Improvements: Big Town Hero is responsible for all landlord and tenant improvements in the Plaza Building. Improvements include two ADA compliant restrooms, improved HVAC and lighting as needed, food preparation area, carpeting, interior walls, and seating. These improvements are estimated at \$25,000 to \$35,000. Metro will be responsible for any improvement required to the building exterior, except signage. No such needs are known or expected.

Plaza: Metro will designate a portion of the Plaza for ~~seating when weather permits~~ open-air dining.

Signage: Only Metro must approved the signage may be used.

Utilities, insurance, taxes and other expenses: Big Town Hero is responsible for utilities, taxes, insurance, security, janitorial, and landscaping.

Excise taxes: Big Town Hero desires to lease the Plaza Building from Metro at market rental rates, conditioned on an exemption from Metro excise tax. Imposing the Metro excise tax would be inconsistent with customary food service industry practice and would preclude leasing the Plaza Building to a deli or any other retail operation. Consequently, Staff requests an exemption to the Metro excise tax for Big Town Hero. A portion of the each rent payment equivalent to the excise tax revenue lost as a result of the exemption will be allocated to the general fund as if it were excise tax revenue. Excise tax will be paid on the lease payments from Big Town Hero to Metro. Staff requests an exemption from charging excise tax on the gross revenues of Big Town Hero. This is not industry practice and will exclude leasing out the facility to a deli or any other retail operation.

Surplus Property: ~~In accordance with state law, the Council must find the Plaza Building is not needed for public use in order to execute the lease.~~

Public Benefit: In accordance with Oregon law, in order to execute the lease, the Metro Council need find that the Plaza Building is not needed for public use or that the public interest may be furthered by entering into the lease with Big Town Hero.

4. Budget Impacts

Lease payments for the first year will provide a total \$13,200 of revenue to Metro. Payments thereafter will total \$26,400 annually with automatic rate increases. Excise tax estimate at \$2000 annually will be paid on all lease payments.

RECOMMENDED ACTION

The Executive Officer recommends approval of Resolution No. 02-3216 by the Metro Council.