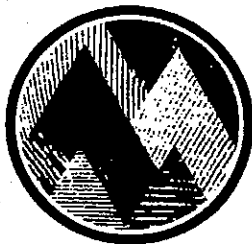


Metro
Regional Parks and
Greenspaces
Glendoveer Cellular Site Lease

October 1995

A Report by the Office of the Auditor



METRO

Alexis Dow, CPA
Metro Auditor



METRO

OFFICE OF THE AUDITOR

COPY

October 24, 1995

Mike Burton, Executive Officer
Councilor Ruth McFarland, Presiding Officer
Councilor Jon Kvistad
Councilor Patricia McCaig
Councilor Susan McLain
Councilor Rod Monroe
Councilor Don Morissette
Councilor Ed Washington

Re: Regional Parks and Greenspaces Department: Observations Relating to the
Glendoveer Cellular Site Lease

Dear Mr. Burton and Councilors:

The accompanying report covers our limited scope review of the lease agreement which allows GTE Mobilnet to operate a cellular communications transmission facility at Glendoveer Golf Course. We undertook this study in response to an inquiry by a Metro area citizen.

We reviewed a draft of the report with the Executive Officer and the Director of the Regional Parks and Greenspaces Department. The last section of this report presents the written response of Executive Officer Burton.

We would appreciate receiving a written status report from the Executive Officer, or a designee, in six months indicating what further progress has been made to address the report's recommendations.

We appreciate the cooperation and assistance provided by staff from the Regional Parks and Greenspaces Department.

Very truly yours,

A handwritten signature in cursive script that reads "Alexis Dow".

Alexis Dow, CPA

Auditor: Doug U'Ren

Table of Contents

| | |
|--|----|
| Executive Summary | 1 |
| Objectives of Review | 4 |
| Scope and Methodology | 4 |
| Background | 5 |
| Findings and Recommendations | 7 |
| Department complied with Metro approval and legal review policies and procedures | 7 |
| GTE Mobilnet and Metro have complied with lease | 7 |
| Only one party contacted to determine competitive rental rate | 8 |
| No Metro bids obtained for water tank painting | 9 |
| Metro assumed cost of painting water tank | 9 |
| Additional controls needed over contract purchases | 11 |
| Summary of Recommendations | 13 |
| Response to the Report | 15 |
| Executive Officer Mike Burton | |

Executive Summary

The Metro Office of the Auditor performed a limited scope review of the Glendoveer Cellular Site lease. Under the lease's terms, Metro granted GTE Mobilnet of Oregon Limited Partnership the right to establish a cellular communications transmission facility at Glendoveer Golf Course in exchange for \$345,000 to be received over the duration of this lease. The Metro Council authorized this lease in November 1994 and it remains in effect until January 2015.

Multnomah County owns Glendoveer Golf Course. Metro manages Glendoveer under the terms of an intergovernmental agreement that became effective January 1, 1994. Glisan Street Recreation, a private company, operates Glendoveer pursuant to a management agreement Glisan Street Recreation signed with Multnomah County in 1977.

The Regional Parks and Greenspaces Department complied with Metro approval and legal review procedures for entering into the Glendoveer Cellular Site lease. In addition, GTE Mobilnet and Metro have complied with the terms of this lease.

Metro staff contacted only one cellular site lessor before negotiating the lease terms with GTE. Although Metro receives almost three times the rent originally offered by GTE as a result of contacting this party, Parks and Greenspaces staff could have contacted additional cellular site lessors to help ensure that the rent obtained was competitive. Obtaining additional comparative rents would be consistent with Metro purchasing policies requiring three bids for public contracts over \$2,500.

Under the terms of this lease, GTE Mobilnet had the water tank at Glendoveer painted for \$19,216 and received rent credits to offset the full cost of the painting. Metro staff did not obtain any bids or quotes to ensure that GTE's painting cost was competitive. The staff stated that they relied on their memory of painting quotes solicited by Multnomah County in

1987 or 1988. We believe Metro staff should have obtained current independent bids or quotes. Additionally, we believe Metro staff should have asked Glisan Street Recreation to bear at least part of the painting cost, since Glisan Street Recreation is obligated under the management agreement it signed with Multnomah County to perform all maintenance necessary to keep Glendoveer Golf Course in first class condition. Metro Parks and Greenspaces staff disagreed with us, stating: (1) they believe Multnomah County made a commitment to paint the water tower, (2) Metro should bear the painting costs since Multnomah County had performed some capital improvement projects at Glendoveer, and (3) sections of the management agreement addressing Glendoveer maintenance are ambiguous.

The Glendoveer Cellular Site Lease includes a provision which permits the Regional Parks and Greenspaces Department Operations and Maintenance Supervisor to purchase services from GTE. The purchasing procedure contained in the contract creates the possibility that the Supervisor could exceed his existing purchasing limit when buying from GTE. We suggest enhancing existing controls to reduce the additional exposure their contract creates. This can be accomplished by requesting that US West send all quotes and invoices for services to the Parks and Greenspaces Director instead of to the Operations and Maintenance Supervisor. GTE and US West exchanged cellular communication territories in June 1995. As a result, US West is now the lessee in the Glendoveer Cellular Site lease.

Based on our findings, we recommend that Metro adopt procedures to ensure the following:

1. When negotiating future leases, Metro departments should obtain sufficient information to ensure that the proposed lease revenue compensates Metro at a competitive rate for the use of its property.

2. When negotiating future leases which require the lessee to perform maintenance or construction services that will be paid by Metro, the departments should obtain their own current quotations or bids to make sure that Metro does not pay more than necessary for the services.
3. When changes affecting the Glisan Street Recreation contract or the golf course occur, the Regional Parks and Greenspaces Department staff should critically evaluate benefits and costs. If Glisan Street Recreation benefits, then Metro should try to ensure that Glisan Street Recreation pays a proportionate share of costs to the extent achievable under the terms of the contract. Similarly, other contracts containing comparable provisions should be enforced to the extent achievable.
4. Metro's Executive Officer or his designee should request that US West send all quotes and invoices for services to the Parks and Greenspaces Director instead of to the Operations and Maintenance Supervisor.

Objectives of Review

The objectives of our limited scope review were to:

- identify the major provisions of the Glendoveer Cellular Site lease;
- determine if the contracting process complied with policies and procedures required by Metro Code Section 2.04;
- determine if GTE and Metro have complied with the Glendoveer Cellular Site lease; and
- evaluate whether the contracting process ensured that Metro received fair market value consideration in exchange for granting GTE the right to use Glendoveer's water tank and land.

Scope and Methodology

We conducted our limited scope review in accordance with generally accepted government auditing standards. We performed the following field work:

- interviewed employees from the Regional Parks and Greenspaces Department and the General Counsel's Office who played key roles in developing the Glendoveer Cellular Site lease and presenting it to the Metro Council;
- conducted a phone interview of a GTE representative;
- read copies of the Glendoveer Cellular Site lease and the Glendoveer management agreement with Glisan Street Recreation, which operates Glendoveer Golf Course pursuant to a 1977 agreement originally signed by Multnomah County;
- read other documents pertaining to the formation of the Glendoveer Cellular Site lease, including correspondence

between GTE and Metro, staff reports and Council meeting minutes;

- inventoried 15 phones that Regional Parks and Greenspaces Department employees said were provided to Metro under the terms of the Glendoveer Cellular Site lease; and
- visited the Glendoveer Golf Course to ascertain whether a water tank had been painted in accordance with the terms of the lease.

Background

Multnomah County owns Glendoveer Golf Course. Metro manages the course under the terms of an intergovernmental agreement with Multnomah County. Glisan Street Recreation, a private company, operates Glendoveer pursuant to a management agreement Glisan Street Recreation signed with Multnomah County in 1977.

Under the terms of the Glendoveer Cellular Site lease, Metro granted GTE Mobilnet of Oregon Limited Partnership a nonexclusive right to erect cellular transmission antennas atop a water tank at Glendoveer Golf Course and to build an equipment shelter near the water tank. In exchange, GTE pays Metro \$1,441 rent monthly, with annual changes based on the Consumer Price Index. In addition to the monthly rent, GTE also gave Metro 15 cellular phones and GTE agreed to arrange for the water tank to be painted at Metro's expense. Metro provided GTE with an allowance to have the water tank painted.

The Metro Council approved the Glendoveer Cellular Site lease on November 22, 1994, and the Executive Officer signed it on January 23, 1995. The lease runs for a 20 year period ending in January 2015, and GTE (or its successor) may renew it for an additional 10 years.

Prior to entering the 20-year cellular site lease, Metro allowed GTE to establish a temporary cellular transmission facility at Glendoveer under a short-term lease approved by the Metro Council on August 8, 1994, and signed on or after August 25, 1994.

GTE and US West exchanged cellular communication territories in June 1995. As a result, US West is now the lessee in the Glendoveer Cellular Site lease.

Findings and Recommendations

**Department
complied with
Metro approval
and legal review
policies and
procedures**

All Metro policies pertaining to the review and approval of contracts were followed in developing the Glendoveer Cellular Site lease. Metro's General Counsel drafted this lease based on a City of Portland cellular site lease. The Metro Council Regional Facilities Committee approved it. The Metro Council voted 12-0 on November 22, 1994, to authorize the Executive Officer to execute the contract with GTE, and Executive Officer Burton signed the lease on January 23, 1995. Metro's Code requires competitive bidding of procurement contracts under certain circumstances, but we do not believe these requirements applied to the Glendoveer Cellular Site lease because the primary objective of this contract was to enable GTE to place equipment and cables on Glendoveer land and facilities.

**GTE Mobilnet
and Metro have
complied with
lease.**

Between October 1, 1994, and February 15, 1995, Metro received payments totaling \$8,484 from GTE under the short-term agreement that enabled GTE to establish a temporary cellular transmission site at Glendoveer. No payments have been made since then due to a provision in an amendment to the Cellular Site lease that allowed GTE to begin offsetting the estimated cost of painting the water tank against rent payments immediately after the permanent lease was signed.

GTE has placed antennas atop the water tank at Glendoveer Golf Course and has constructed an equipment building near the water tank.

Regional Parks and Greenspaces Department employees told us that the water tank painting was completed in June 1995 and sent us a copy of a memo from the general contractor, indicating that the cost was \$19,216. A site visit by the auditor confirmed that the water tank and tower appear to have been recently painted.

Regional Parks and Greenspaces Department employees showed us 15 cellular phones they said had been received from GTE pursuant to the Glendoveer Cellular Site lease. We

could not confirm the phones were delivered in conjunction with the Cellular Site lease because neither GTE nor the Metro Parks Department could locate a packing slip or other sufficient documentation that clearly establishes when the phones were received and where they came from.

Only one party contacted to determine competitive rental rate

Staff from the Regional Parks and Greenspaces Department and the General Counsel's Office said the City of Portland was the only local government they directly contacted to determine a competitive rent rate to charge GTE for the right to set up a cellular communications facility at Glendoveer. In fact, the City of Portland's lease of its "Patton" water tank site to GTE was adapted by the Metro General Counsel's Office in developing the Glendoveer Cellular Site lease. Acquiring a copy of Portland's lease enabled a Metro Senior Assistant General Counsel to successfully negotiate an increase in the rent from \$500 a month, which was GTE's original proposal, to \$1,441 per month, which equaled the amount Portland received from GTE under the Patton lease. When the Senior Assistant General Counsel contacted Portland, they told him a representative of the City of Seattle had recently called them and told them Seattle was receiving only about half the rent from its cellular site leases as Portland was getting from GTE.

Given the 20 year duration of the Glendoveer Cellular Site lease and the \$345,000 minimum aggregate amount of the payments that will be made by GTE over that period, the Regional Parks and Greenspaces Department should have attempted to identify and contact other local governments and private landowners that had similar lease agreements with a cellular phone company. The total compensation GTE provided to Metro may have been competitive, but this cannot be confirmed with certainty from the limited comparative information that was developed by Metro staff prior to entering the contract.

When negotiating future leases, Metro departments should obtain sufficient information to ensure that the proposed lease

revenue compensates Metro at a competitive rate for the use of its property.

**No Metro bids
obtained for
water tank
painting**

Under the terms of the Glendoveer Cellular Site lease, Metro provided GTE an allowance to paint the water tank and its support structure. The water tank was painted for \$19,216 by a contractor hired by GTE. Regional Parks and Greenspaces Department staff said they did not believe they needed to obtain additional paint quotes, since they remembered Multnomah County had obtained quotes in 1987 or 1988 and they believe GTE's bid was within the same cost range as the County's quotes. We believe the Department should have obtained at least two independent, updated bids to provide assurance that the bid submitted by GTE's paint contractor offered a competitive price and reasonable set of specifications. The Metro Code requires staff to obtain at least three competitive quotations for public contracts over \$2,500.

When negotiating future leases which require the lessee to perform maintenance or construction services that will be paid by Metro, the departments should obtain their own quotations or bids to make sure that Metro does not pay more than necessary for the services.

**Metro assumed
cost of painting
water tank**

Section 4 of the Glendoveer Golf Course Management Agreement states in part:

"GSR agrees to accept the following responsibilities:

... (c) The making of such capital repairs, alterations, improvements, and decorations on the Golf Course and related facilities thereon as GSR may deem reasonably necessary to the proper maintenance and operation thereof. . .," and

"(d) GSR shall upgrade and maintain the golf course as a first-class 36-hole golf course to a standard at least equal to that set forth in the 'Golf Course Maintenance Standards' attached hereto as Exhibit 'B'

The water tank contains well water that is used to irrigate the golf course when needed. Since the golf course could not be maintained in first class condition without the water tank, and the tank needs to be painted periodically to preserve its useful life, we believe Glisan Street Recreation had a contractual obligation to bear at least part of the cost of painting it.

Additionally, from 1977 to 1994, Glisan Street Recreation received substantial benefits from the tank. Until September 1994 when Metro entered into the Glendoveer Cellular Site lease with GTE, no other party used the water tank. The lease created a revenue stream from the tank that did not previously exist but it did not reduce the benefit that Glisan Street Recreation receives from the tank.

Regional Parks and Greenspaces Department staff said they did not consider asking Glisan Street Recreation to pay a share of the painting cost since Multnomah County had paid the cost of a number of capital improvements at Glendoveer during the late 1980s, and they believe Multnomah County had agreed to paint the water tower. In addition, Regional Parks and Greenspaces Department staff stated that some terms in the management agreement Multnomah County signed with Glisan Street Recreation in 1977 are ambiguous, including the terms that address maintenance.

We believe Metro should have asked Glisan Street Recreation to assume at least part of the painting cost, based on the terms of the Glendoveer Golf Course Management Agreement. Also, in our opinion Glisan Street Recreation has derived much of the benefit provided by the water tank.

When changes affecting the Glisan Street Recreation contract or the golf course occur, the Regional Parks and Greenspaces Department staff should evaluate if Glisan Street Recreation benefits. If it does, then Metro should try to ensure that Glisan Street Recreation pays a proportionate share of the costs to the extent achievable under the terms of the contract.

**Additional
controls needed
over contract
purchases**

Paragraph 3(a) of the Glendoveer Cellular Site lease, entitled "Payment Provisions," states in part,

"Lessor may request, and Lessee agrees to provide, cellular phones and/or related electronic items, together with set-up installation, and other peripheral services, in lieu of any portion of the monthly rental amount; provided, however, that requests for such phones and other items and services may be accepted by the Lessee only if in writing, only if bearing the approval of the Operations and Maintenance Supervisor of the Lessor, and only if attached to any such approved request is a written estimate from the Lessee itemizing the individual costs for the phones and/or other items and services to be provided to Lessor by Lessee."

In essence, this clause allows the Regional Parks and Greenspaces Department Operations and Maintenance Supervisor to purchase services from GTE and offset the cost against current and future lease revenue. It was modeled after a clause contained in the City of Portland's lease of its "Patton" water tank to GTE.

Although this provision requires purchases under the contract to be well documented, it creates the possibility that the Operations and Maintenance Supervisor could order and receive services from GTE that cost more than \$2,500, which is the Supervisor's normal purchasing limit. The period of risk is greatest when GTE is not making any lease payments to Metro due to rent credits from prior purchases. The Supervisor told us that the Glendoveer water tank painting is the only purchase that has been made under the Glendoveer Cellular Site Lease so far.

We believe that the Metro Executive Officer or his designee should contact US West and ask them to forward quotes, invoices and any other information provided by US West under Paragraph 3(a) to the Parks and Greenspaces Director instead of the Operations & Maintenance Supervisor. To

ensure proper accounting for expenses and liabilities that arise from purchases, copies of all invoices or equivalent documentation received from US West should be forwarded to the Parks and Greenspaces Senior Administrative Service Analyst.

Summary of Recommendations

We recommend that Metro adopt procedures to ensure the following:

1. When negotiating future leases, Metro departments should obtain sufficient information to ensure that the proposed lease revenue compensates Metro at a competitive rate for the use of its property.
2. When negotiating future leases which require the lessee to perform maintenance or construction services that will be paid by Metro, the departments should obtain their own quotations or bids to make sure that Metro does not pay more than necessary for the services.
3. When changes affecting the Glisan Street Recreation contract or the golf course occur, Metro staff should critically evaluate the benefits and costs. If Glisan Street Recreation benefits, then Metro should try to ensure that Glisan Street Recreation pays a proportionate share of costs to the extent achievable under the terms of the contract. Similarly, other contracts containing comparable provisions should be enforced to the extent achievable.
4. Metro's Executive Officer or his designee should contact US West and request that they send all quotes and invoices for services to the Parks and Greenspaces Director instead of to the Operations and Maintenance Supervisor.

This page intentionally left blank.

Response to the Report

**METRO**

Date: October 17, 1995
To: Alexis Dow, CPA, Metro Auditor
From: Mike Burton, Executive Officer
Subject: Response - Glendoveer Cellular Site Lease Report, October 1995

Thank you for the opportunity to review and formally respond to the above referenced report. Your findings and recommendations are organized in six categories. My response is similarly organized.

Finding 1, pg. 7: "Department complied with Metro approval and legal review policies and procedures".

Response: I concur with your finding.

Finding 2, pg. 7: "GTE Mobilenet and Metro have complied with lease".

Response: I concur with your finding

Finding 3, pg. 8: "Only one party contracted to determine adequate rental rate".

Response: The narrative in this section raises a question as to whether Metro obtained sufficient information to ensure lease revenue is competitive.

The Department determined, through General Counsel research, that the same compensation received for six (6) other sites in the City of Portland and regulated by the City was an appropriate reflection of the local market and a competitive rate. You noted on page 6 of your report that the final lease rate was nearly three times the original amount offered and that Seattle's compensation was significantly less. Considering these facts, I believe there was "sufficient information" available in this case to provide the basis for an informed decision.

Finding 4, pg. 9: "No Metro bids obtained for water tank painting".

Response: I believe staff were conscientious about the cost of the paint project and "in line" with the spirit and intent of Metro purchasing policies. I am advised that you were provided documentation of a Multnomah County budget request for \$22,500 which was based on the estimates received in 1987/1988. Staff indicate that specifications were reviewed for consistency with the earlier estimates and it was concluded that the 1994 GTE bid and 1995 contract amounts were competitive and additional staff work redundant. If GTE bids had not fallen within the previously established range (i.e., \$18,000 - \$22,000) staff indicate they would have either required GTE to solicit additional bids or solicited additional bids directly.

Notwithstanding the above, I do concur with your general finding and recommendation and will explore appropriate clarification to Metro purchasing policies.

Finding 5, pg. 9: "Metro assumed cost of painting the tower".

Response: I believe it was appropriate for Metro (on behalf of Multnomah County) to pay for painting the water tower at Glendoveer Golf Course. As a partner in the golf course, forty-four percent (44%) of the gross green fees are passed through to Metro to support a myriad of park facilities and programs. Through the Cellular Site Lease, we were able to contribute to a capital maintenance need without impacting other revenue streams essential to the day to day operation of the parks.

As noted on page 10 of your report, "staff believes some terms in the Management Agreement with Multnomah County, signed by GSR in 1977 are ambiguous, including terms that address maintenance". The provisions cited in your report may fall into the "ambiguous" category in regards to maintenance of the water tower. It should be noted, however, that GSR has made and continues to make significant investments in capital maintenance and improvement projects. In 1987, the Multnomah County Auditor was critical of Multnomah County for not investing in any portion of the Glendoveer facilities capital needs. The water tower painting in part, addresses these needs. Nonetheless, because contract language is vague in some areas, I will recommend that terms be clarified and improved if the contract is renewed.

Finding 6, pg. 11: "Additional controls needed over contract purchases".

Response: I concur with your recommendation and will direct staff to contact U.S. West to request the specified amendment to the contract.

Again, thank you for the opportunity to submit comments related to this report.

cc: Charles Ciecko
Dan Kromer

glnres.let