

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING )  
THE EXECUTION OF A SALE )  
AGREEMENT FOR THE ACQUISITION OF )  
THE SEARS FACILITY )

RESOLUTION NO.91-1494 - C  
Introduced by Rena Cusma,  
Executive Officer

WHEREAS, in October 1990 the Council of the Metropolitan Service District approved Resolution No. 90-1338 which authorized the execution of a sale agreement for the acquisition of the Sears facility as the site for Metro's administrative offices and authorized an alternative procurement process for selected contracts; and

WHEREAS, Resolution No.90 - 1338 provided for a due diligence period which conditioned the closing of the sale agreement by a determination by Metro of the suitability of the Sears facility as the Metro headquarters facility; and

WHEREAS, upon completion of the extended due diligence efforts, Metro's Relocation Task Force informed the owners of the Sears facility that the study had shown that the Sears facility, including the adjacent garage, was not economically suitable and allowed the initial sale agreement to lapse; and

WHEREAS, an unsolicited proposal indicated the possibility of renovation of the Sears building, excluding the adjacent parking garage, as the new Metro Headquarters Building within an economically acceptable budget; and

WHEREAS, the Executive Officer and the Relocation Task Force have reviewed the proposal and recommend the execution of a sale agreement, attached as Exhibit A, and

WHEREAS, the Sears Garage Option to Purchase Agreement (Exhibit B) provides for a no-cost option between the execution of the Building Sale Agreement and December 15, 1991.

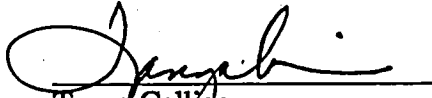
WHEREAS, Metro staff has conducted a Financial Analysis of the adjacent parking garage and determined that the acquisition of the garage is beneficial to Metro; NOW THEREFORE

BE IT RESOLVED,

1. That the Council renews its selection of the Sears facility as the site for Metro's new Headquarters Building.

2. That the Council hereby authorizes the Executive Officer to execute the the attached Sale Agreement and Promissory Note, Exhibit A, for the acquisition of the Sears facility.
3. That prior approval of the Council shall be required before the Executive Officer proceeds to closing of the Sale Agreement.
4. That prior approval of the Council shall be required before the Executive Officer executes an Option Agreement for the adjacent parking garage which would be applicable for any Option period subsequent to December 16, 1991.
5. That prior approval of the Council shall be required before the Executive Officer executes a Sale Agreement for the adjacent parking garage.

ADOPTED by the Council of the Metropolitan Service District this 10th day of October, 1991.

  
Tanya Collier  
Presiding Officer

## REGIONAL FACILITIES COMMITTEE REPORT

RESOLUTION NO. 91-1494, AUTHORIZING EXECUTION OF A SALE AGREEMENT FOR THE ACQUISITION OF THE SEARS FACILITY AND EXEMPTING THE HEADQUARTERS RFQ/RFP PROCESS FROM THE COMPETITIVE BIDDING PROCESS PURSUANT TO METRO CODE 2.04.041.

Date: September 4, 1991

Presented by: Councilor Knowles

**COMMITTEE RECOMMENDATION:** At its August 27 meeting, the Regional Facilities Committee voted 2-1 to recommend Council adoption of Resolution No. 91-1494. Councilors Knowles and McFarland voted aye, and Councilor Gardner voted no. Councilors Bauer and Buchanan were excused.

**COMMITTEE DISCUSSION/ISSUES:** The Regional Facilities Committee has considered resolutions authorizing the purchase of the Sears facility three times since June, and scheduled two other hearings on the issue which were not held because there was no sale agreement to consider. The current resolution (91-1494) replaces Resolution 91-1478, which was the earlier vehicle for the Sears purchase. Resolution No. 91-1494 differs from the earlier resolution in directing that a design/build process be undertaken following issuance of a Request for Qualifications and subsequent Request for Proposals. The new resolution also clearly states that prior approval of the Council shall be required before the Executive Officer proceeds to closing of the Sale Agreement, and it directs the Executive Officer to undertake a financial analysis of the parking garage as a basis for a Council decision on the acquisition of that facility.

At the August 27 committee meeting, Regional Facilities Director Neil Saling presented the staff report. He stated that the purpose of his report was to provide the committee with an update on the status of the process and negotiations with Pacific Development; he did not intend to summarize the entire proposal, as he had done that at a prior committee meeting.

Chair Knowles stated his opinion that the committee should move the resolution to the full Council regardless of committee members' individual views on the matter because this is an issue for the full Council to decide.

Mr. Saling reported that staff activities since the last committee meeting on August 13 had focused on preparing Request for Qualifications (RFQ) and Request for Proposals (RFP) documents, negotiating with Pacific Development (PDI), and verifying cost estimates for potential alternatives to Sears acquisition and renovation. The RFQ was available to the public, with responses due August 30. Staff would then review the responses and pick three teams to prepare proposals. The RFP is due for release on September 16.

The Sale Agreement is now in two separate pieces: a purchase agreement for the main building and an appendix providing for Metro lease of parking spaces in the parking garage should the garage remain under PDI's ownership. The issue before the committee is the purchase of the main building; consideration of the parking garage will be a separate issue.

Two issues remain on the sale agreement. The first concerns remediation of environmental hazards, i.e., asbestos removal. The second concerns payment of interest accruing between the time of the earnest money payment in mid-September and final closing in December. (Those matters were discussed in Executive Session.)

The final issue for committee discussion concerned alternative proposals for providing Metro a headquarters facility. Staff has attempted to get prices for as many buildings as possible which are available for sale or lease. They have also compared costs of new construction with the costs of Sears purchase and renovation, and staff has concluded the Sears building is the best option.

Chair Knowles convened an Executive Session to discuss the real estate transaction. Following the Executive Session, Chair Knowles moved the resolution, with the conditions that the entire cost of hazardous materials remediation be borne by the seller and not by Metro, and that Metro rejects the proposal that Metro pay interest on the sale price between September 15 and closing.

Councilor Gardner asked Mr. Saling to report on action taken since the last meeting to find out how the total cost of this proposal would compare with new construction, and to report on discussions with those who had notified the committee that they believed they could provide a headquarters facility at lesser cost. Mr. Saling discussed the letter from Mr. Bob Gerding, who thought he could develop a building at \$1.5 to \$2 million less than the Sears estimate. He met with Mr. Gerding, and agreed to provide him information on cost estimates of new construction. Mr. Saling reported that Sears renovation compared very favorably with new construction. He reported on discussions with Ron Kawamoto of the Metro E-R Commission, who thought there might be options in the Lloyd District at less cost. A specific proposal Mr. Kawamoto suggested would be too large for Metro's needs, and would cost some \$26 million. Leasing costs in the downtown commercial area for Class A office space run from \$18-\$23 per square foot, compared with first year costs at Sears of some \$16.50 per square foot. Mr. Saling concluded that there is no "better mousetrap" and Sears had other benefits in helping to revitalize the area and recycling a vacant building.

Councilor McFarland asked that we have very firm ideas of what the costs would be in the RFP responses, adding that she might not support spending \$250,000 in earnest money if we don't know what the bids were going to be. Chair Knowles pointed out that



the bids will not be available at the time Council considers this resolution; he asked that staff provide the available cost estimates to the Council prior to their consideration of the resolution.

Councilor Van Bergen asked Mr. Short to write a memo to Mr. Saling asking for elaboration on any of his earlier questions that he felt were inadequately answered. He also asked whether any loss by PDI would be reflected in the rates of Pacific Power & Light, as both are subsidiaries of the same parent company, Pacificorp.

Councilor Gardner said he still had serious questions, including the costs of renovation, whether the seller would accept Metro's terms on hazardous materials remediation and interest payments, and the relative cost of this renovation versus new construction or purchase of another building. For those reasons, he was unwilling to support the resolution at this point.

Committee staff Casey Short pointed out the committee would need to review the RFP, and Council would have to approve it at its next meeting, if we are to meet the timeline we have been following. He further added that Council would be involved in the Sears purchase with its consideration of Resolution 91-1494, with its approval of the RFP, with the award of the construction contract, and with approval of issuance of the bonds to pay for the project. To the last point, Council should be briefed prior to approval of the bond issuance on the alternatives for the structure of the debt service. He and Regional Facilities staff Berit Stevenson added that approval of this resolution would commit Metro to expenditure of \$250,000 in non-refundable earnest money, plus \$25,000 honoraria to each of the three bidders.

The committee then voted on the resolution, and subsequently tabled Resolution 91-1478.

COMMERCIAL - INDUSTRIAL  
SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY  
THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE.



A. Received of METROPOLITAN SERVICE DISTRICT Portland, Oregon, 1991

hereinafter called "purchaser," in the form of XXXXX \$ 250,000 as earnest money and part payment for the purchase of the following described real estate situated in the City of Portland, County of Multnomah and State of Oregon, to-wit:

See the attached Exhibit A

together with the following described personal property:

which we have this day sold to the said purchaser, subject to the approval of the seller,

for the sum of See attached Addendum Dollars (\$ \_\_\_\_\_)

on the following terms, to-wit: The sum, hereinabove recited for, of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

on Owner's acceptance and delivery of deed or contract, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

The balance XX payable as follows: See the attached Addendum, incorporated herein by this reference

SPECIAL CONDITIONS:

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

In addition to purchase price, Purchaser to pay any required assumption fees and reimburse seller for sums held in reserve accounts on any indebtedness assumed in this transaction. Parties acknowledge that property may be subject to City, County or State Smoke Detector requirements.

Unless otherwise herein provided, the property is to be conveyed by warranty deed free and clear of all liens and encumbrances except zoning ordinances, building and use restrictions, reservations in Federal patents, utility easements of record which benefit the property or area in which the property is located, and the permitted exceptions shown on the attached Exhibit A and any other exceptions approved in writing\*

Seller shall furnish to Purchaser a title insurance policy in the amount of the purchase price for the real property from a title insurance company showing good and marketable title. Prior to closing the transaction seller, upon request, will furnish to purchaser a preliminary title report made by a title insurance company showing the condition of the title to the property.

If seller does not approve the sale, or cannot furnish marketable title within thirty days after notice containing a written statement of defects is delivered to seller, or, having approved the sale, fails to consummate it, the earnest money herein recited for shall be refunded, but the acceptance by purchaser of the refund does not constitute a waiver of other remedies available to him; but, if seller approves the sale and title is marketable and purchaser fails to complete the purchase as herein provided the earnest money herein recited for and any additional earnest money paid or agreed to be paid shall be paid to seller and this contract thereupon shall be of no further binding effect, it being the intent of the parties that if purchaser fails to complete the purchase purchaser shall pay the earnest money and be free of any further obligations under this agreement.

All built-in appliances, wall-to-wall carpeting, drapery and curtain rods, window and door screens, storm doors and windows, irrigation, plumbing, ventilating, cooling and heating fixtures and equipment (including stoker and oil tanks but excluding detached fireplace equipment), water heaters, attached electric light and bathroom fixtures, light bulbs, fluorescent lamps, venetian blinds, awnings, attached floor covering, attached television antennae, all planted shrubs, plants, and trees and all fixtures are to be left upon the premises as part of the property purchased XXXXX

\*by Purchaser prior to closing

The following fixtures are not owned by seller and are not being sold: N/A

Seller represents: That the building on the property is connected to:  A public sewer system,  A cesspool or septic tank; that he knows of no material structural defects; that all electrical wiring, heating, cooling and plumbing systems will be in good working order and that the balance of the property including yard will be in substantially its present condition, at the time purchaser is entitled to possession; that he has no notice of any liens to be assessed against the property; that he has no notice from any governmental agency of any violation of law relating to the property; except no exceptions

THE SALE  WILL  WILL NOT BE CLOSED IN ESCROW. If closed in escrow, the costs of escrow shall be shared equally between seller and purchaser. XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX Transfer tax, if any, shall be shared equally by purchaser and seller.

Pro-rates for rents, taxes, interest on assumed obligations, insurance premiums (if purchaser assumes existing policy) and other prepaid expenses attributable to the property shall be made as of (check one only)  Date purchaser is entitled to possession  \_\_\_\_\_ days after delivery of above mentioned deed or contract

On Closing Date \_\_\_\_\_, 19\_\_\_\_ Seller to pay all utility bills accrued to date purchaser is entitled to possession. On date purchaser is entitled to possession purchaser to pay seller for heating fuel then on premises; payment to be handled between purchaser and seller. XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX Closing Date \_\_\_\_\_, 19\_\_\_\_ Time is of the essence hereof. This contract is binding upon the heirs, executors, administrators, successors and assigns of buyer and seller. However, XXXXXXXXXXXXXXXXXXXX the buyer's rights herein are not assignable without written consent of seller.

XXXXX ACKNOWLEDGMENT

B. The undersigned XXXXX acknowledges receipt of earnest money from purchaser in the sum of \$ 250,000 evidenced by  cash,  check XXXXX promissory note XXXXXXXXXXXXXXXXXXXX and agrees to sell the Property to Purchaser

XXXXX Address: 825 NE Multnomah, Suite 1275 PACIFIC DEVELOPMENT (PROPERTY), INC. XXXXX

XXXXX Phone: 233-4048 XXXXX By: XXXXX

XXXXX Attn: William C. Scott

AGREEMENT TO PURCHASE

C. PURCHASER (Print) Metropolitan Service District HEREBY ACKNOWLEDGES RECEIPT OF A COMPLETELY FILLED IN COPY HEREOF WHICH PURCHASER HAS FULLY READ AND UNDERSTANDS AND ACKNOWLEDGES THAT HE HAS NOT RECEIVED OR RELIED UPON ANY STATEMENTS MADE BY SELLER OR ANY REAL ESTATE AGENT WHICH ARE NOT HEREIN EXPRESSED. DEED OR CONTRACT TO BE PREPARED IN THE NAME OF Metropolitan Service District

This offer shall automatically expire \_\_\_\_\_ days after time of purchaser's signature, if not accepted within that time.

Address \_\_\_\_\_ Date \_\_\_\_\_, 19\_\_\_\_

Zip \_\_\_\_\_ METROPOLITAN SERVICE DISTRICT Purchaser

Phone: XXX, XXXXX, XX By: XXXXX

AGREEMENT TO SELL

D.  Seller hereby rejects the foregoing offer and  makes the attached counter offer.

Seller hereby accepts the foregoing offer of purchaser on the terms and conditions specified above. Seller agrees to pay above-named Realtor, or, if this is a co-op transaction, the listing broker, the sum of \$ \_\_\_\_\_ for services rendered in this transaction. Seller authorizes Realtor or listing broker to order title insurance at Seller's expense and further authorize them and escrow to pay out of the cash proceeds of sale the expenses of furnishing title insurance, seller's closing costs and any encumbrances on the property payable by seller on or before closing. SELLER HEREBY ACKNOWLEDGES RECEIPT OF A COMPLETELY FILLED IN COPY OF THIS AGREEMENT WHICH SELLER HAS FULLY READ AND UNDERSTANDS. In the event purchaser fails to complete the sale as herein provided, forfeited earnest money shall be distributed as follows: 80% after deduction of any title insurance or escrow cancellation charges:  To Realtor, or if this is a co-op transaction, to the listing broker, to the extent of the agreed commission just as if the transaction had been consummated, with residue to seller;

Address \_\_\_\_\_ Date \_\_\_\_\_, 19\_\_\_\_ A.M. \_\_\_\_\_ P.M. \_\_\_\_\_ Seller

Zip \_\_\_\_\_ Seller

Phone: Res. \_\_\_\_\_ Bus. Mr. \_\_\_\_\_ Ms. \_\_\_\_\_ Seller

PURCHASER'S ACKNOWLEDGMENT

E. Date \_\_\_\_\_, 19\_\_\_\_ A.M. \_\_\_\_\_ P.M. Purchaser hereby acknowledges receipt of a copy of above agreement bearing acceptance of this offer by seller. \_\_\_\_\_ Purchaser \_\_\_\_\_ Seller

F. Co-op transaction between above named Realtor and \_\_\_\_\_ on basis, \_\_\_\_\_% / \_\_\_\_\_% Listing Realtor / Selling Realtor

Broker's initials \_\_\_\_\_

ATTACHMENTS TO COMMERCIAL-INDUSTRIAL  
SALE AGREEMENT AND  
RECEIPT FOR EARNEST MONEY

1. Earnest Money Note
2. Addendum to Sale Agreement
  - (a) Appendix 1 to Addendum to Sale Agreement -  
Remediation Work -- Sears Building
    - Exhibit 1 to Appendix 1 - Environmental Reports
    - Exhibit 2 to Appendix 1 - Terms of Option
  - (b) Appendix 2 to Addendum to Sale Agreement -  
Environmental Assessment Cost Sharing Agreement
3. Exhibit A to Sale Agreement - Legal Description
4. Exhibit B to Sale Agreement - Parking Supply Agreement
5. Exhibit C to Sale Agreement - Declaration of Easements and  
Covenants, Conditions and Restrictions

\$250,000

Portland, Oregon

19 91

ON DEMAND, I (or if more than one maker) we, jointly and severally, promise to pay to the order of  
PACIFIC DEVELOPMENT (PROPERTY), INC.

at 825 NE Multnomah, Suite 1275

TWO HUNDRED FIFTY THOUSAND AND NO/100 ----- DOLLARS,

with interest thereon at the rate of -0- percent per annum from ----- until paid; interest to be paid  
----- All or any portion of the principal hereof may be paid at any time. If this note is placed in the hands of  
an attorney for collection, I/we promise and agree to pay the holder's reasonable attorney's fees and collection costs, even though no suit  
or action is filed hereon; however, if a suit or an action is filed, the amount of such reasonable attorney's fees shall be fixed by the court,  
or courts in which the suit or action, including any appeal therein, is tried, heard or decided.

Earnest money for the Sear's Building  
property in Portland, Oregon. Due and  
payable as per Earnest Money Agreement  
of even date herewith.

METROPOLITAN SERVICE DISTRICT

By:

ADDENDUM  
TO  
SALE AGREEMENT

The following terms are hereby added to and incorporated within the Commercial-Industrial Sale Agreement and Receipt for Earnest Money dated as of October \_\_\_\_, 1991 with respect to the acquisition of the Sears property by Purchaser:

1. OWNER

The owner of the Sears property is Pacific Development (Property), Inc., successor in interest by merger to Pacific Development (Lloyd General I), Inc., an Oregon corporation.

2. PURCHASE PRICE; EARNEST MONEY DEPOSIT; OPTION

2.1 Purchase Price--Sears Building and Land. The total purchase price for the Sears building and related land area (the "Sears Building"), excluding the garage facility, is \$2,550,000. The exact legal description of the Sears Building, as distinct from the Sears Garage referenced in paragraph 2.3, will be prepared by the Surveyor, as described in and in accordance with the provisions of paragraph 10.1 below.

2.2 Earnest Money Deposit (Sears Building).

Purchaser has deposited with Seller, as earnest money for the purchase of the Sears Building, the sum of \$250,000, in the form of an earnest money note, which will be converted to cash

deposited with the Title Company referenced in paragraph 11.2 below not later than five (5) days after approval of this Agreement by Seller's Board and Purchaser's Council. Such earnest money will be held as a forfeitable earnest money deposit. The earnest deposit and interest accrued thereon will be applied to the purchase price due at closing of the sale. If the sale is not closed for any reason other than Seller's default, Seller's inability to deliver title or Seller's election to terminate provided for in Appendix 1, the earnest money deposit and interest accrued thereon will be handled as described in paragraph 12 below.

2.3 Option on Garage Facility. Purchaser will have the option ("Option") to purchase the Sears Garage, on the terms and conditions described in a separate agreement entitled Sears Garage Option to Purchase Agreement, provided that Purchaser closes the purchase of the Sears Building.

3. SELLER'S TITLE TO THE PROPERTY

3.1 Title Report. As soon as practicable after the execution of this Agreement, Seller shall furnish to Purchaser a preliminary title report from a reputable title insurance company selected by Seller ("Title Company") showing its willingness to issue an ALTA extended coverage owner's title insurance policy on the Property, together with full copies of all exceptions. Purchaser shall have 10 business days after receipt of the preliminary title report and exceptions within

which to notify Seller in writing of Purchaser's disapproval of any exceptions shown in the report, other than exceptions for the matters described on Exhibit A and any liens to be satisfied by Seller at closing. In the event of such disapproval, Seller shall have until the closing date to eliminate any disapproved exception. Failure of Purchaser to disapprove any exception within the 10 business day period shall be deemed an approval of the exceptions shown in the title report.

3.2 Rescission of Agreement. If Seller is unable to eliminate any disapproved exception, either party may elect to rescind this Agreement by notice to the other party. In such event, the earnest money deposit shall be refunded to Purchaser and all obligations of the parties under this Agreement shall thereafter cease, unless Purchaser notifies Seller within 10 days after such rescission that Purchaser elects to waive its prior disapproval and proceed to close the sale.

4. CLOSING DATE

The purchase of the Sears Building will be closed on a date reasonably acceptable to both parties, but not later than December 16, 1991. Purchaser will notify Seller in writing not later than 20 days prior to such date whether Purchaser is proceeding to close the purchase of the Sears Building. Notwithstanding the giving of such notice, Purchaser's sole liability for failing to close shall be the

forfeiture of the earnest money deposit as provided for in paragraph 12 and payment of costs payable by Purchaser for the environmental consultant's services (under the Environmental Assessment Cost Sharing Agreement between the parties dated August 27, 1991, a copy of which is attached hereto as Appendix 2 (the "Environmental Assessment Agreement") and pursuant to paragraphs 9.1 and 15.1 below. The closing of the conveyance of the Sears Building is referred to as the "Closing." The respective date for the Closing is referred to herein as the "Closing Date."

5. PURCHASER'S RIGHT TO ENTER AND INSPECT

Prior to the Closing Date, Purchaser may perform at reasonable times (upon reasonable advance notice to Seller and coordination as to the time of entry and nature of the test or study to be performed) reasonable tests, engineering studies, surveys, soil tests, and other inspections, studies and tests on the Property as Purchaser may deem necessary, at Purchaser's expense. Purchaser will defend, indemnify and hold Seller harmless from any claim, loss or liability in connection with any entry on the Property by Purchaser, any claim of lien or damage or activities on the Property by Purchaser, its agents, employees and independent contractors and consultants.



6. OCC TRANSPORTATION CAPITAL IMPROVEMENTS

The Sears Building will be conveyed subject to the Oregon Convention Center Transportation Capital Improvements LID and assessments thereunder, if any.

7. HAZARDOUS SUBSTANCES

7.1 Remediation Responsibility of Seller. Pursuant to the Environmental Assessment Agreement, Purchaser and Seller mutually retained Brown & Caldwell ("the Environmental Consultant") and GCS, Inc. to recommend necessary removal or remediation of Asbestos Containing Materials ("ACM") and Hazardous Substances on, under or associated with the Sears Building. The cost of retaining the Environmental Consultant and GCS, Inc. for these services is to be equally divided between the parties, whether or not this transaction closes, pursuant to the terms of the Environmental Assessment Agreement. The Environmental Consultant and GCS, Inc. submitted written reports, which are attached to Appendix 1 ("the Reports"). Seller agrees to perform or pay for all removal or remediation of ACM and Hazardous Substances to the extent and subject to the limitations described in Appendix 1.

7.2 Definitions. As used in this Agreement and in Appendix 1, the following terms shall have the following meanings:

(a) The term "Asbestos-Containing Material (ACM)" means any material containing more than one percent asbestos by weight, including particulate asbestos material.

(b) The term "Hazardous Substance" means any hazardous substance listed or defined under ORS 465.200(9), as of the date of this Agreement.

(c) The term "Environmental Laws" means the Clean Air Act (42 USC § 7401 et seq.), the Federal Water Pollution Control Act (the "Clean Water Act") (33 USC § 1251 et seq.), the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments (42 USC § 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 USC § 9601 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.) and all other applicable federal, state, county and local environmental requirements, including without limitation applicable rules, ordinances, codes, licenses, permits, judgments, writs, decrees, injunctions or orders of any governmental entity in force and effect as of the date of this Agreement and pertaining to the protection of the environment, including air, water, groundwater, soil, noise and odor.

7.3 Exclusivity of Rights. The rights and obligations of the parties under paragraph 7 and Appendix 1 of this Agreement shall be the exclusive rights and obligations of

the parties with respect to ACM and Hazardous Substances, and supersede all other rights and remedies to which a party might otherwise be entitled with respect to such ACM and Hazardous Substances, including any other rights or remedies under this Agreement, under any statute, regulation or ordinance or under any other theory of law or equity. However, this paragraph shall not be construed to limit any right or remedy that Purchaser may have against any party other than Seller. Purchaser specifically shall retain all rights and remedies it may have against any person or entity other than Seller who at any time owned or occupied the Property.

8. PARKING

8.1 Parking in Sears Garage. Commencing upon occupancy of the Sears Building with Purchaser's remodeling work completed, which the parties anticipate will be in or before December 1992, Purchaser will have the right to lease up to 100 parking spaces in the Sears Garage for use during normal business hours, pursuant to the terms and conditions set forth in the parking supply agreement attached hereto as Exhibit B (the "Parking Agreement").

8.2 Additional Parking Capacity. Pursuant to the Parking Agreement, Seller agrees to operate the Sears Garage during non-business hours for Lloyd District and Purchaser Events when requested to do so by Purchaser, subject to the terms and conditions stated in the Parking Agreement.

8.3 Grand Avenue Replacement Parking. Pursuant to the Parking Agreement, upon commencement of remodeling work to convert the Grand Avenue level to office space of the Sears Building and after 120 days' prior written notice to Seller of Purchaser's intent to exercise this option (provided, that Purchaser will rescind or firmly commit to such exercise of such option at least 30 days' prior to the effective date of the lease of the additional spaces referenced below and if so rescinded, the original notice will be treated as of no effect and will not cause any loss of entitlement under the "use or lose" provision stated below), Purchaser will have the option to lease an additional 100 parking spaces in the Sears Garage, on a "use or lose" basis, subject to the terms and conditions stated in the Parking Agreement.

8.4 Rates, Terms and Options. The parking rates, the term of the Parking Agreement and renewal options are as stated in the Parking Agreement.

9. PARTITION; EASEMENTS AND RESTRICTIONS

9.1 Partition. Upon the execution of this Agreement, Seller will cause a mutually acceptable surveyor licensed in the State of Oregon ("Surveyor") to prepare a legal description for the Sears Building and for the Sears Garage, and will cause to be prepared and filed the necessary application for governmental approvals of the partition of the Property (the costs of which will be equally divided between the parties,

whether or not this transaction closes). The parties' obligation to close is conditioned upon approval of such partition by the Closing Date (subject to extension for a reasonable time period with no further adjustment in Purchase Price, if such approval is delayed). Seller and Purchaser agree to share equally the cost of partitioning the Property (whether or not the transaction closes).

9.2 Declaration of Easements and Covenants, Conditions and Restrictions. The parties recognize that the Sears Garage and Sears Building are physically connected and functionally related and, during such time period as they are not both owned by the same party, the utilization of each property requires (or will be enhanced by) appropriate easements for access and for any common walls, common facilities or common utility lines and appropriate covenants, conditions and restrictions governing use of the respective properties. The parties have attached (or will attach) a Declaration of Easements and Covenants, Conditions and Restrictions as Exhibit C hereto, which will be executed and recorded at or before the Closing Date for the purchase of the Sears Building (the "Declaration").

## 10. CLOSING

10.1 Status of Title; Prorations. Except as otherwise described in this Agreement, Seller will be responsible for paying, at closing, all outstanding taxes,

liens and assessments affecting the Property, including, but not limited to, the 1989 convention center L.I.D. assessment and vintage trolley LID. All real property taxes will be prorated and adjusted between the parties as of the Closing Date. Seller will not, however, be required to pay, and there will be no prorate or adjustment to the purchase price for, the Oregon Convention Center Transportation Capital Improvements L.I.D. and assessments thereunder, if any, affecting the Sears Building, which will be borne by Purchaser.

10.2 Escrow and Closing. This transaction will be closed by an escrow officer of the Title Company selected pursuant to paragraph 3.1 (the "Escrow Officer") at its main offices in Portland, Oregon, or at such other place as the parties may mutually select. Closing shall take place in the manner and in accordance with the provisions set forth in this Agreement. The closing will occur in sufficient time to permit the Escrow Officer to transfer funds to Seller's account (as it may designate in writing) between 9 a.m. and 10 a.m. (Pacific Time) on the Closing Date.

10.3 Certification of Nonforeign Status. Seller warrants that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and that such warranty will be true as of date of closing. Seller shall deliver to Purchaser at closing a Certificate of Nonforeign Status, setting forth Seller's address and United

States taxpayer identification number and certifying that Seller is not a foreign person as so defined.

10.4 Events of Closing. Provided the Escrow Officer has received the sums and is in a position to cause the title insurance policy to be issued as described below, the purchase will be closed on the Closing Date as follows:

(a) The Escrow Officer will perform the prorrations described in paragraph 10.1, and the parties shall be charged and credited accordingly.

(b) On the Closing Date Purchaser shall pay to Seller the total purchase price in cash, and any Demolition Charge provided for in Appendix 1 for such demolition and remediation work as has been completed, adjusted for the charges and credits set forth in this section, less a credit for the earnest money deposit and interest accrued thereon.

(c) Any liens required by this Agreement to be paid by Seller at Closing shall be paid and satisfied of record at Seller's expense.

(d) Seller shall convey the real property to Purchaser by statutory warranty deed, subject only to the encumbrances accepted by Purchaser pursuant to this Agreement.

(e) Title Company will deliver its commitment letter committing to issue the policy described in paragraph 10.5, upon recordation of the closing documents. The title insurance premium for an ALTA extended coverage owner's title

insurance policy will be treated as a closing cost to be divided pursuant to paragraph 10.4(g) below.

(f) The Escrow Officer will record the deed and the Declaration referenced in paragraph 9.2.

(g) All costs (title insurance, escrow fees, recording fees and other customary closing costs) will be split equally between Seller and Purchaser.

10.5 Title Insurance. As soon as possible after the Closing Date, Seller shall furnish Purchaser with an owner's ALTA extended coverage policy in the amount of the total purchase price for the Property, subject only to the standard printed exceptions of the Title Company and exceptions for the matters accepted by Purchaser pursuant to this Agreement.

#### 11. DESIGN REVIEW

The Declaration will provide that Seller will have the right of reasonable prior review and approval of architectural plans, specifications and working drawings for the initial improvements and renovations to the Sears Building and Sears Garage (if purchased by Purchaser), and subsequent alternations, exterior remodeling, additions or reconstruction thereof or thereto (excluding interior tenant improvements and interior alterations), and changes to elevations of the Sears Building and Sears Garage (hereafter, "Major Work"), in accordance with the following procedures:



(a) Approval of Preliminary Development Program and Design. When prepared, but in any event prior to proceeding to finalize Purchaser's plans for the Major Work, Purchaser will submit to Seller for review and approval (which decision will be given within 10 days after receipt) a preliminary development program and design covering the Major Work. The preliminary development program and design will include: (i) the proposed site plan showing the building footprint and location of building entrances, access routes and walkways and any right-of-way improvements; (ii) preliminary development program, including the location of parking; (iii) a description of the anticipated building exterior materials and colors; (iv) architectural elevations, floor plans and finished floor elevations; and (v) summary table of the square footage of each use in the building(s) covered by the Major Work (including number of parking spaces). Seller's approval under this paragraph shall not be unreasonably withheld.

(b) Approval of Schematic Design. Not later than 15 days prior to submittal of a final schematic design to the City of Portland for design review, Purchaser will submit to Seller for review and approval (which decision will be given within 10 days after receipt) the final development program and schematic design documents (collectively, the "Approved Schematic Design"). Seller's review is limited to whether the Approved Schematic Design is consistent with the preliminary development

program and design approved by Seller under Section 12(a). The schematic design information submitted to Seller will be in such detail as is required for design review of the Major Work by the City of Portland in accordance with Chapter 33.62, Portland City Code and the requirements of this Agreement. Seller's approval under this paragraph shall not be unreasonably withheld.

(c) Review of Final Design Documents. Purchaser shall submit to Seller, when available, the final design documentation and materials consistent with that required by the City of Portland for building permits. Such documentation and materials will be submitted not later than 15 days prior to their submission to the City of Portland for final review and building permit approval. Seller's review under this Section 11(c) shall be limited to determining consistency with the Approved Schematic Design. Purchaser shall construct improvements consistent with such Approved Schematic Design and final design information and materials (the "Approved Final Project").

(d) Review Standards Generally. In exercising its reasonable right to approve (as provided in Section 11(a) and (b) above) or to review (as provided in Section 11(c) above), Seller will provide Purchaser with a written statement of any aspect of the materials reviewed that Seller did not approve or to which Seller had an objection. The purpose of exercising

rights of reasonable approval is to ensure that buildings and improvements are aesthetically and structurally compatible with the design and architecture of the improvements on the Sears Garage and other existing and planned improvements within the Lloyd District neighborhood in which the Sears Building is situated. If Seller disapproves or objects to any aspect of the materials reviewed; Seller will provide its written statement as to the reasons for such disapproval or objection within the time period specified in Section 11(a) through (c), and the parties thereafter will discuss and attempt to resolve by good faith discussions the nature of the objection(s).

(e) These rights of design review may not be transferred or assigned by Seller to any third party either as part of a transfer of the Sears Garage or other properties, except as described below. These rights of design review may be exercised only by Seller or any "Seller's Successor" (as defined below), as owner of the Sears Garage and/or other properties in the Lloyd District in Portland, Oregon. The term "Seller's Successor" means Pacific Development, Inc. ("PDI"), any company which is wholly owned by PDI or PDI's majority shareholder, or PacifiCorp or any of its subsidiaries. In addition, the right to review and approve of renovations or remodeling shall expire on the fifth anniversary of the Closing Date of the sale of the Sears Building.

## 12. HANDLING OF EARNEST MONEY DEPOSIT

The earnest money deposit will be deposited by the Title Company as escrow in certificates of deposit or an FDIC insured interest bearing account at bank, savings and loan association, or other financial institution selected by Seller, except as otherwise may be subsequently approved by the parties. Interest will be retained in the account and will accrue for the benefit of and be credited to the party entitled to receive or have credited the earnest money deposited with interest thereon at closing or upon termination, cancellation or rescission of this Agreement pursuant to its terms.

13. DISCLOSURE BY SELLER; DISCLAIMER

Seller has previously made available for Purchaser's review Seller's records relating to the Property, including the State Parking Agreement and all documents, leases and contracts, title report and easements of records relating to the Property. In addition, Seller has previously made available for Purchaser's review any plans and specifications in Seller's possession relating to renovation, evaluation of the Property and reports, documents and/or consultant analysis books in Seller's possession relating to structural, hazardous wastes, and similar matter relating to the Property. As to any reports or other materials provided or made available to Purchaser, Seller is not warranting (and will not be liable or responsible for) the accuracy, fitness or usability of such reports or materials or any recommendations or conclusions

stated therein. If Seller obtains actual knowledge prior to the Closing Date of a fact which would make any of the representations and warranties in this Agreement false, Seller will notify Purchaser of such fact. Except as specifically provided for in any other provision of this Agreement, Seller will not be liable to Purchaser on the representations and warranties in this Agreement after the Closing Date unless Seller had actual knowledge on the Closing Date that the representation or warranty was false and Seller failed to disclose to Purchaser the fact known to Seller which made the representation or warranty false.

14. NO JOINT VENTURE OR OTHER RELATIONSHIP

It is expressly acknowledged and agreed that no provision of this Agreement or the parties' conduct or activities will be construed: (i) as making either party an agent, principal, partner or joint venturer with the other party; or (ii) as making either party responsible for the payment or reimbursement of any costs incurred by the other party in pursuing this transaction, except as expressly provided for herein.

15. FAILURE TO CLOSE

15.1 Seller's Remedies. In the event that this transaction fails to close on account of Purchaser's fault or inability to close, the amount previously deposited or paid as earnest money shall be forfeited by Purchaser and retained by

Seller as liquidated damages and Purchaser will pay the costs required to be paid by it pursuant to this Agreement (including, without limitation, the costs specified in paragraph 9.1 and Appendix 1 and the Demolition Charges referenced in Appendix 1). SUCH AMOUNTS HAVE BEEN AGREED BY THE PARTIES TO BE REASONABLE COMPENSATION AND THE EXCLUSIVE REMEDY FOR PURCHASER'S DEFAULT, SINCE THE PRECISE AMOUNT OF SUCH COMPENSATION WOULD BE DIFFICULT TO DETERMINE. By initialling this page, the parties acknowledge and agree to such liquidated damages provision. Initials of Parties: Seller \_\_\_\_\_; Purchaser \_\_\_\_\_.

15.2 Purchaser's Remedies. In the event that the transaction fails to close on account of Seller's fault or Seller's inability to close, the earnest money deposit(s) plus accrued interest shall be returned to Purchaser. Purchaser shall be entitled to such remedies for breach of contract as may be available under applicable law, including (without limitation) the remedy of specific performance.

## 16. GENERAL PROVISIONS

16.1 Time of Essence. A material consideration to Seller's entering into this transaction is that Purchaser will close the purchase of the Sears Building by the Closing Date described above. Except as otherwise specifically provided in this Agreement, time is of the essence of each and every provision of this Agreement.

16.2 Prior Agreements. This Agreement supersedes and replaces all written and oral agreements previously made or existing between the parties with respect to the Sears Building (including, without limitation, the letter of intent between the parties).

16.3 Applicable Law. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon.

16.4 Survival. All restrictions and conditions which this Agreement does not require to be fully satisfied prior to the Closing Date shall survive the Closing Date and shall be fully enforceable thereafter in accordance with their terms.

16.5 Representations; Condition of Property. Seller will permit Purchaser to make its independent inspections and investigations of the Property prior to the Closing Date. Except as otherwise specifically set forth in this Agreement or in the deed to be delivered at closing, no warranties, guarantees or representations, express or implied, have been or are being made by Seller concerning the Property, Purchaser's intended use, or other matters, and Purchaser accepts the land, buildings, and all other aspects of the Property in their present condition, AS IS.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE

PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

16.6 Council and Board Approvals. This Agreement is subject to Purchaser's obtaining its Council's approval of this Agreement not later than \_\_\_\_\_, 1991, and is subject to Seller's obtaining approval by its Board of Directors.

16.7 Brokers. Purchaser (at its expense) will cause the escrow officer to pay at closing the real estate broker's commission due to Coldwell Banker Commercial Brokerage on account of this transaction. Each party will defend, indemnify, and hold the other party harmless from any claim, loss, or liability arising out of its own conduct made or imposed by any other Broker or agent claiming a commission or fee in connection with this transaction.

16.8 Costs and Attorney's Fees. In the event suit or action is instituted to interpret or enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal of such suit or action and on any petition for review.



16.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and assigns, but no interest of Purchaser under this Agreement or in the Property will, prior to the Closing Date, be assigned, subcontracted or otherwise transferred (voluntarily, involuntarily, by operation of law or otherwise), without the prior written consent of Seller. Any attempted transfer without such consent will be null and void and constitute a default by Purchaser under this Agreement.

16.10 Notices. Notices under this Agreement shall be in writing and shall be effective when actually delivered. If mailed, a notice shall be deemed effective on the third day after deposited as registered or certified mail, postage prepaid, directed to the other party at the address shown below:

To Seller:

Pacific Development  
(Property), Inc.  
825 NE Multnomah, Suite 1275  
Portland, Oregon 97232  
Attention: Mary H. Oldshue,  
Vice President

To Purchaser:

Metropolitan Service District  
2000 SW First Avenue  
Portland, Oregon 97201-5398  
Attention: Rena Cusma,  
Executive Director

With a copy to:

Pacific Development  
(Property), Inc.  
825 NE Multnomah, Suite 1275  
Portland, Oregon 97232  
Attention: Harold DeBlanc,  
Development Manager

With a copy to:

Metropolitan Service District  
2000 SW First Avenue  
Portland, Oregon 97201-5398  
Attention: Neil Saling,  
Director of  
Facilities

Either party may change its address for notices by written notice to the other.

16.11 Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

16.12 Changes in Writing. This Agreement and any of its terms may only be changed, waived, discharged or terminated by a written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

16.13 Indemnified Parties. Any indemnification contained in this Agreement for the benefit of a party shall extend to the party's officers, employees, and agents.

16.14 Counterparts. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

16.15 Invalidity of Provisions. In the event any provision of this Agreement is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

16.16 Legal Effect. THIS IS A LEGALLY BINDING CONTRACT. ALL PARTIES SHOULD SEEK ADVICE OF COUNSEL BEFORE EXECUTING THIS AGREEMENT.

16.17 Confidential Information. Purchaser shall, to the extent permitted by the Oregon Public Records Act, respect and observe the confidential nature of environmental and other reports and information obtained from Seller concerning the Property and (if this transaction does not close) return such written reports (including any copies thereof) to Seller. If this transaction closes, all documents furnished by Seller to Purchaser shall be considered public records.

AGREED to, subject to necessary Council and board approval, as stated above, as of the date(s) shown below.

SELLER:

PACIFIC DEVELOPMENT  
(PROPERTY), INC.

By: \_\_\_\_\_  
William C. Scott,  
President

Dated: October \_\_, 1991

PURCHASER:

METROPOLITAN SERVICE  
DISTRICT

By: \_\_\_\_\_

Dated: October \_\_, 1991

APPENDIX 1

REMEDIATION WORK--SEARS BUILDING

1. Seller Obligations to Remove or Remedy ACM and Hazardous Substances. Seller agrees to remove or remedy: (1) all ACM and Hazardous Substances on, under or associated with the Sears Building as recommended in the September 3, 1991 Report Review and the September 30, 1991 Supplemental Sampling and Site Visit report prepared by Brown & Caldwell and the September 3, 1991 Revised Report and the September 12, 1991 Revised Cost Estimate prepared by GCS, Inc. (with respect to the GCS, Inc. reports, Seller agrees to remedy consistent with the September 12, 1991 revised cost estimates on "Option #2" items), which are attached as Exhibit 1 hereto (the "Reports"); and (2) all ACM or Hazardous Substances on, under or associated with the Sears Building that are discovered by Purchaser within one year of Closing that must be removed or remedied in order to achieve compliance with Environmental Laws (taking into account the intended use of the building by Purchaser). Purchaser agrees that, immediately upon its discovery of any ACM or Hazardous Substances on, under or associated with the Sears Building, it will provide written notice to Seller describing the nature and known scope of such ACM or Hazardous Substance. Seller's obligations under this Appendix 1 are subject to the exceptions described in paragraph 2 below, subject to the limitations set forth in paragraph 3 below and pursuant to the procedures established hereunder.

2. Exceptions. Seller's obligations are subject to the following exceptions:

a. Roofing materials. Seller is not obligated to either remove or repair the roof. Seller is obligated, however, to obtain bids which will allow determination of the additional costs that will be incurred by Purchaser when the roof is removed that are due to the asbestos content of the roof (e.g., wetting, bagging, disposal costs). Purchaser will be credited at Closing with the amount of those costs.

b. PCB-containing light ballasts. Seller is not obligated to either remove or replace PCB-containing light ballasts. Seller is obligated, however, to obtain bids on the cost of disposal of all such light ballasts. Purchaser will be credited at Closing with the amount of such disposal costs.

c. Mutually agreed upon exceptions. Purchaser and Seller understand that certain remediation elements identified in the Reports may not be necessary based on the renovation plans ultimately adopted by Purchaser. The parties may, therefore, by mutual consent, agree to excuse Seller from performing removal or remediation with respect to any items identified in the Reports.

3. Limitations.

a. Demolition costs borne by Purchaser. Seller agrees to bear the costs incurred to remove or remedy the presence of ACM or Hazardous Substances as described above. Purchaser is not to be relieved, however, of the costs it would

ordinarily incur in its demolition and renovation activities. Thus, to the extent that Purchaser obtains a benefit (i.e., demolition) through the remediation or removal work undertaken by Seller, Purchaser is responsible for the direct costs incurred by Seller for that work, together with a 15 percent construction management fee ("Demolition Charges"). However, Purchaser shall not be responsible for any consultant fees incurred by Seller associated with removal of ACM or remediation of Hazardous Substances. For example, with respect to Vinyl Asbestos Tile ("VAT"), Purchaser will pay the cost it would have incurred to remove non-asbestos containing tile and Seller will pay all costs incurred because of the asbestos content of the VAT. Purchaser agrees to pay the Demolition Charges, including the construction management fee, as the work is performed. Seller shall submit invoices to Purchaser for the work performed to date and Purchaser will pay within 20 days after receipt thereof. In the event of a dispute as to what costs are part of the Demolition Charges, the parties will accept the decision of Brown & Caldwell, whose decision will be conclusive and final and binding on the parties.

b. Process for obtaining bids. Seller will perform some removal or remedial work, as described in paragraph 4 below, prior to Closing. With respect to all work identified in the Reports but not performed prior to Closing, Seller will obtain firm bids on the cost of such work. In each case where Purchaser will realize a demolition benefit from the work,

Seller will obtain bids that permit the parties to determine separately the costs strictly associated with removal or remediation of ACM or Hazardous Substances and those associated with the demolition or other activity that would be required of Purchaser whether or not the material was hazardous or contained ACM.

c. Seller Right to Terminate or Repurchase.

(1) Prior to Closing. If Seller determines prior to Closing that the "Environmental Costs Identified Pre-Closing" (defined below) will exceed \$250,000, Seller shall have the right to rescind this Agreement by notice to Purchaser. As used in this Agreement, "Environmental Costs Identified Pre-Closing" means total costs of removal and remediation work performed prior to Closing plus the credits established under paragraphs 2.a. and 2.b. above plus the firm bids for removal and remedial work to be performed after Closing (not counting Demolition Charges). In such event, the earnest money deposit shall be refunded to Purchaser and Seller agrees to pay Purchaser the full cost of design team honorariums incurred by Purchaser as of that date (limited to \$75,000 total) and all obligations of the parties under this Agreement shall thereafter cease, unless Purchaser notifies Seller within 10 days after a notification by the Seller of an intent to rescind that Purchaser (1) elects to waive Seller's obligations to perform remedial work or (2) elects to itself

fund all remediation above \$250,000 and elects to proceed to close the sale.

(2) After Closing. Seller's obligations under this Appendix 1 shall expire in their entirety one year after Closing. In addition, Seller shall have a limited right to repurchase the Sears Building and/or the Sears Garage (or to terminate Purchaser's option to purchase the Sears Garage, if such option exists) in lieu of pursuing removal or remediation otherwise required by this Appendix 1. Subject to the limitations described below, Seller has the right to repurchase both the Sears Building and the Sears Garage. Further, with the consent of Purchaser, Seller may elect to repurchase solely the Sears Building. Any right of Seller to repurchase solely the Sears Garage shall be governed by the terms of the Sears Garage Option to Purchase Agreement. Seller's right to repurchase is subject to the following terms: (a) Seller shall have no right to repurchase unless its removal and remediation expenditures are projected, based on firm bids, to exceed by \$250,000 the Environmental Costs Identified Pre-Closing; (b) Seller must provide written notice to Purchaser of its interest in repurchasing, including documentation of the firm bids described in subparagraph (a) above, and specify a closing date within 30 days of such notice; (c) Within 15 days of receiving such notice, Purchaser shall provide written proof to Seller of Purchaser's costs to date as described in subparagraphs (f) and (g) immediately below; (d) Within two days of receiving such



documentation, Seller shall advise Purchaser in writing whether it intends to proceed with the repurchase and shall confirm the date for closing; (e) At closing of the repurchase, Seller will pay Purchaser a repurchase price equal to the purchase prices paid by Purchaser for the Sears Building and for the Sears Garage (if the closing of the purchase of the Sears Garage has occurred); (f) At the closing of the repurchase, Seller will reimburse Purchaser for the interest costs actually incurred by Purchaser (up until the date of closing of the repurchase) in financing the initial purchase of the Sears Building and the operating deficits (interest costs plus customary operating expenses less revenues), if any, incurred by Purchaser with respect to the Sears Garage (up until date of closing the repurchase); (g) At the closing of the repurchase, Seller will reimburse Purchaser: (i) all of the external (i.e., not Purchaser's staff) development costs or expenses up to \$500,000 that Purchaser incurred or irrevocably committed to incur from the date of execution of this Agreement for design and renovation of the Sears Building and the Sears Garage as of the date of Seller's notice of intent to repurchase less remediation expenditures up to \$250,000 that Seller actually incurred or irrevocably committed to incur as of the same date in excess of the Environmental Costs Identified Pre-Closing plus (ii) one-half of all such external development costs or expenses not fully reimbursed under (i) ; (h) Such repurchase shall be accomplished in accordance with the general provisions

set forth in Exhibit 2 hereto; (i) Seller will have no right to repurchase if Purchaser notifies Seller within 15 days after receiving the notice described in subparagraph (a) above that Purchaser elects to waive Seller's obligations to perform any additional removal or remedial work beyond the \$250,000 in work referred to in that subparagraph; and (j) In the event that Seller exercises its right to repurchase the Sears Garage, the Parking Supply Agreement will automatically be restored to full force and effect as if the purchase of the Sears Garage had not occurred.

4. Performance of Work. Subject to the condition that this Agreement is executed by October 14, 1991, Seller shall commence removal or decommissioning of the underground storage tank and removal of solvent containers prior to Closing. With respect to all other work identified in the Reports, Seller shall commence such work immediately after Closing and (provided that Closing occurs not later than December 16, 1991) shall complete it by March 31, 1992, subject only to delays caused by force majeure (as defined below). Seller shall have the right of entry and access to the Property after Closing for the purpose of completing the work. Purchaser and Seller will mutually agree upon a means of coordinating Seller's removal and remediation work with Purchaser's demolition and renovation work. Upon completion of the work, Seller will provide Purchaser with a certification by Brown & Caldwell or a mutually agreed upon environmental consultant that such

remediation work has been completed and that to the best of the consultant's knowledge no further hazard to construction workers or the subsequent Purchaser's occupants exists. The cost of this update will be equally divided between Seller and Purchaser. As used in this Agreement, "force majeure" means labor disputes, shortages of materials, governmental orders, regulations, embargoes, acts of God, unusually inclement weather, fire, flood, or other casualty, governmental delays in processing permits, or other events beyond the reasonable control of Seller which delay the work.

EXHIBIT 1

ENVIRONMENTAL REPORTS

[Attached]



# GCS, INC.

(503) 650-8341  
Pager # 243-8358  
FAX (503) 650-0820

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Building Surveys • Risk Assessments • Plans & Specs • Project Management

September 3, 1991

Joan Snyder  
STOVES RIVES BOLEY  
JONES & GREY  
Attorneys At Law  
Standard Insurance Center  
900 SW Fifth Avenue  
Portland, Oregon 97204-1268

RE: REVISED REPORT ON SEARS BUILDING AT 524 N.E. GRAND,  
PORTLAND, OREGON.

OPTION # 1

If the building and basement are occupied in their present condition with the intent to utilize all four floors for office use. The following remediation of asbestos materials would have to be done to bring it into compliance with existing Oregon Asbestos Regulations. (1) re-clean fittings, pipe runs, and fireproof decking area at a cost of \$ 6,000.00 dollars. (2) repair the roof at a estimated cost of \$ 25,000.00 dollars; and (3) remove a minimal quantity of friable VAT from all the floors at a cost of approximately \$ 10,000.00 dollars.

Under Option #2 I conclude that the VAT and mastic are all friable and thus require removal by a licensed Asbestos Contractor. The reason this statement was made is because their are areas that the VAT and mastic, "if they were to be removed" would become friable due to the fact that it would be at best difficult if not impossible to remove asbestos floor tiles without breakage.

On the other hand the asbestos-containing mastic as a whole is in a tacky condition, but their are areas throughout the floors that the mastic has become brittle and if disturb would become friable.

A General Contractor or an Asbestos Contractor would have a difficult time in estimating the removal cost with the above conditions. It would be better to assume that the VAT would become friable, than a General Contractor could remove the mastic as long as it was kept wet during the removal, (and on-going air monitoring) to keep it from becoming friable.

If no remodeling took place the removal of the pipe insulation throughout the building would not be required because the 347 L.F. (per Dames & Moore report) is still in place is either in good repair or has been properly sealed in place.

The leveling compound would not have to be removed from the second floor if this floor is used for office space only and the material is not disturbed during the remodeling of this floor.

The purpose for the soffit removal is to remove the fireproofing under the corrugated decking. If there was no renovation of this area, removal would not be necessary.

## OPTION #2

### BASEMENT/SEARS GARAGE

There is approximately 47,550 sq. ft. of VAT/MASTIC located on the basement/garage floor area. The removal cost would be approximately \$71,325.00 dollars @ \$ 1.50/sq.ft. as per Dames & Moore report.

There are 92 asbestos hard fittings behind the walls of the men's and women's restrooms. The removal cost would be \$ 1,840.00 dollars at \$ 20.00/fitting.

It would be necessary to demo 3 walls in the men's and 2 walls in the women's restroom, the removal cost would be \$3,399.00 dollars.

### 1ST FLOOR

There is approximately 25,785 sq. ft. of VAT/MASTIC located on the first floor at a removal cost of \$38,678.00 dollars @ \$1.50/sq. ft. There is 15,625 sq. ft. of Leveling Compound on the 2nd floor at a removal cost of \$ 15,625.00 dollars @ \$1.00/sq. ft. as per Dames & Moore report.

### 2ND FLOOR

There are 53 hard fittings behind the walls of the men's and women's restrooms. The removal cost would be \$ 1,060.00 dollars at \$ 20.00 per fitting. Demolition of 2 walls in the men's restrooms and 2 walls in the women's restrooms. The demolition cost is estimated to be \$ 2,719.00 dollars.

### NORTH ELEVATION EXTERIOR SOFFIT

There is 800 sq. ft. of soffit that would have to be demo in order to abate the asbestos fireproofing located under the corrugated decking. The removal cost would be \$ 1,700.00 dollars.

### ROOF, SEAR'S BUILDING

Certain areas of the roofing material are in a friable condition it is required by APPLICABLE LAWS that these areas be patched and repaired. total removal would not be required under present regulations. The estimated cost for patch and repair would be \$25,000.00 dollars. roof would need to be checked out with a moisture meter to find the bad spots.

The estimated costs for removal of all the existing roofing material in order to install a replacement roof would cost between \$ 55,000.00 and \$ 65,000.00 dollars. Please see proposals from Roofing Contractors.

It is the roofing Contractors opinion that the useful life of the existing Sear's building roof would be 6 months to 1 year because it is a State of dis-repair. Due to the fact, that the main roof area is concrete and is finished with a Built-up asphalt material. Their is very little likelihood of water leaking into the main building.

OPTION #1

Asbestos abatement cost estimate

	<u>Location</u>	<u>Estimated Cost</u>
(1) Re-clean fitting pipe runs, & fire proof decking area	All floors	\$ 6,000.00
(2) Roofing material	Roof	\$25,000.00
(3) VAT	All floors	\$ 10,000.00
<b>SUB-TOTAL</b>		<hr/> <b>\$ 41,000.00</b>
(4) Disposal fees will vary & may be charged by the ton or cubic yard		\$ 500.00
(5) Permit to remove asbestos		\$ 500.00
(6) Contractor Personnel air sampling		\$ 600.00
(7) Consulting fee, 20% of total		\$ 8,520.00
<b>GRAND TOTAL</b>		<hr/> <b>\$ 51,120.00</b>



OPTION #2

Asbestos abatement cost estimate

	<u>Location</u>	<u>Quantity</u>	<u>Estimated Cost</u>	<u>UNIT Cost</u>
1. VAT/Mastic	1st floor	25,785 sq. ft.	\$38,678.00	\$ 1.50 *
2. Leveling Compound	2nd floor	15,625 sq. ft.	15,625.00	1.00 *
3. Hard fittings	2nd floor	53	1,060.00	20.00
4. Pipe insulation	all floors	347 L.F.	3,470.00	10.00 /L.F.
SUB-TOTAL			<u>\$58,833.00</u>	
5. VAT/Mastic	basement	45,550 sq. ft.	68,325.00	1.50
6. Hard fittings	basement	92	1,840.00	20.00
7. Spray on fireproofing		1,050 sq. ft.	10,500.00	10.00
SUB-TOTAL			<u>\$80,665.00</u>	
8. Demolition Cost: North Elevations Exterior Soffit			1,700.00	
9. Basement/garage walls men's/womens restrooms			3,339.00	
10. 2nd floor, walls men's/women's restrooms			2,719.00	
SUB-TOTAL			<u>\$ 7,758.00</u>	
11. Disposal fees			2,500.00	
12. Permit to remove asbestos			500.00	
13. Contractor Personnel air sampling			2,490.00	30.00
SUB TOTAL			<u>\$ 152,746.00</u>	
14. Consulting fee 20% of total			30,549.00	
TOTAL ABATEMENT COST ESTIMATE			<u>\$ 183,295.00</u>	

\*\* UNIT COST ARE BASED ON THE DAMES & MOORE REPORT.

GCS, INC.

September 12, 1991

Revised Cost Estimate

OPTION #2

ASBESTOS ABATEMENT COST ESTIMATE

1. VAT/Mastic	1st floor	25,785 sq. ft.	\$ 38,678.00	1.50 *
1-A Ceiling tile	1st floor Northeast corner area	400 sq. ft.	600.00	1.50 *
2. Leveling Compound	2nd floor	15,625.00 sq. ft.	15,625.00	1.00 *
2-A Debris within walls in old cafe	2nd floor	UNABLE TO QUANTIFY		
2-B Transite pipe	2nd floor	UNABLE TO QUANTIFY		
		DEQ only requires that during removal the piping does not become friable.		
2-C Debris within r/r water wall— Will be cleaned up when the 53 hard fittings are removed. Cost is included in the removal of the 53 fittings.	2nd floor			
3. VAT	2nd floor	15,625 sq. ft.	23,437.00	1.50 *
4. Hard fittings	2nd floor	53 sq. ft.	1,060.00	20.00 *
4-A VAT	3rd floor	3,000 sq. ft.	4,500.00	1.50 *
4-B Transite pipe	3rd floor	UNABLE TO QUANTIFY		
		DEQ requires only that piping does not become friable during removal.		
5. Pipe insulation	all floors	347 L.F.	3,470.00	10.00/LF
SUB-TOTAL			<u>\$ 87,370.00</u>	
6. VAT/Mastic	basement	45,550 sq. ft.	68,325.00	1.50
7. Hard fittings	basement	92	1,840.00	20.00
7-A Firebric (Boilers)	basement	2	7,500.00	
7-B Raised floor	basement	Not included in the Dames & Moore estimate		
7-C Sheet linoleum	basement	Included in VAT overall removal cost		
8. Spray on fireproofing		1,050 sq. ft.	10,500.00	10.00
SUB-TOTAL			<u>\$ 88,165.00</u>	

9. Demolition Cost: North Elevations Exterior Scoffit	1,700.00
10. Basement/garage walls men's/women's restrooms	3,339.00
11. 2nd floor, walls men's/women's restrooms	2,719.00
<b>SUB-TOTAL</b>	<u><u>\$ 7,758.00</u></u>
12. Disposal fees	2,500.00
13. Permit to remove asbestos	500.00
14. Contractor Personnel air sampling	2,490.00
<b>SUB-TOTAL</b>	<u><u>\$5,490.00</u></u>
<b>TOTAL</b>	\$ 188,783.00
15. Consulting fee 20% of total	<u><u>37,757.00</u></u>
<b>GRAND TOTAL ABATEMENT COST ESTIMATE</b>	<u><u>\$ 226,540.00</u></u>

\*\* UNIT COST ARE BASED ON THE DAMES & MOORE REPORT.



9620 Southwest Barber Blvd.  
Suite 200  
Portland  
Oregon 97219-6341  
(503) 244-7005  
FAX (503) 244-9055

September 3, 1991

Mr. David Jordan  
Pacific Development Inc.  
825 Northeast Multnomah, Suite 1275  
Portland, Oregon 97232

13-2201

Subject: Report Review  
Sears Department Store Building Site

Dear Mr. Jordan:

At your request, Brown and Caldwell Consultants, Inc. (BCC) has reviewed a Preliminary Site Assessment (dated December 3, 1990) and a Magnetometer and Soil Gas Survey (dated January 31, 1991) that were prepared by Dames & Moore for the Sears Department Store building site that is located at 524 Northeast Grand in Portland, Oregon. Our scope of work requires BCC to review the two above mentioned reports with respect to potential hazardous substances that may exist at the site and make recommendations with regard to remediation that must be accomplished to achieve compliance with existing environmental laws.

After discussions with both Pacific Development and your legal council, it is our belief that any review and recommendations concerning either asbestos containing material or the integrity and life expectancy of the roof will be covered by other contractors.

#### Site Visit

On August 31, 1991, a site visit was conducted by Mr. Timothy O'Gara. Mr. Jordan provided access and was present during the entire visit. All of the areas on the property which were described in the Dames & Moore reports as potentially having underground storage tanks were inspected, as well as several locations that were reported to house solvent or lubricant containers. At that time, Mr. Jordan provided BCC with a copy of a permit and photographs of an 8,000-gallon heating oil tank that was installed in 1946. It is believed that this tank is still present outside of the building near the shipping area loading dock. This permit was not reported in the Dames & Moore Phase 1 records search, but the suspected tank was located and discussed. A sealed manhole in the boiler room, which was also located in the earlier report was inspected, as was the

Mr. David Jordan  
September 3, 1991  
Page 2

55-gallon drum of fuel located by the emergency generator. The sump in the boiler room that was reported to contain a bright green liquid appearing to be anti-freeze was checked also. The liquid had the color associated with the corrosion of copper piping. It did not have the odor of anti-freeze.

#### Report Review

The stated purpose of the December 3, 1990, Dames & Moore report was to "evaluate, on the basis of readily available information, the potential presence of hazardous substances at the site due to past or current land use practices and site operations and the potential occurrence of soil and/or groundwater contamination resulting from these practices." Reports of this type are expected to be based solely on the records and photographs from public agencies and observations from the site visit. No physical samples are collected or analyzed. It appears that a diligent search was performed. The report documents the review of historic air photos, historic land use maps and appropriate data bases provided by the county, state, and the USEPA. Additionally, Dames & Moore personnel visited the Multnomah County Assessment and Taxation Office, the Bureau of Planning Permit Center, and the Fire Bureau, all in the City of Portland, to review selected files on the subject property.

A site visit, performed by Dames & Moore personnel appears to have been thorough, and numerous potentially hazardous materials (mainly cans of solvents and cleaning fluids) in various storage areas throughout the building were identified. Three potential underground storage tanks were identified, one in the sidewalk at about mid-block on Northeast Grand Avenue and possibly two more in the lower loading dock area that is adjacent to the southeast corner of the building. Several sumps and manholes were also located in the boiler room area that may be of concern. Due to the nonintrusive nature of this type of survey, no further actions were taken to determine if the tanks or sumps had caused environmental contamination, or were still in existence. The report recommended that a soil gas survey be performed to assess the potential impacts of the suspected underground storage tanks.

Based on the recommendations of the December 3, 1990, report, a limited geophysical and soil gas survey was performed in suspect areas at the site. The report of this survey, dated January 31, 1991, was also reviewed as a part of the BCC scope of work. The geophysical survey concluded that the metal plate that was thought to cover a tank in the sidewalk on Northeast Grand Avenue was really the cover for an old gas line valve. The survey did confirm that there is at least one underground storage tank in the lower loading dock area. This tank

Brown and Caldwell  
Consultants

appears to be the 8,000-gallon tank that was installed in 1946. Mr. Jordan has provided BCC with photo copies of photographs taken in the tank pit after the two manhole covers were removed. No other underground storage tanks were found on the property at this time.

The soil gas survey that was run as part of this investigation was reported to be attempting to detect "volatile organic compounds associated with gasoline." The report states that "diesel fuel would not readily be detected" by the instrumentation used for the survey. Since the tank that was being investigated in the loading dock area was suspected of holding fuel oil for the boilers, which has very few volatile components and is heavier than diesel, it appears that the survey instrumentation was not appropriate for this application. The fact that no contamination was detected does not mean that none exists. It simply means that if it did exist, it could not be detected with that instrument. Soil gas surveys are rarely effective when the contaminant is heavy oil. They are designed to locate volatile components in the soil that are associated with motor fuels and solvents.

#### Conclusions

The Dames & Moore Preliminary Site Assessment survey, as reported in the December 3, 1990, document, appears to be very complete and well done. Based on the stated limitations of this type of survey it accurately describes the conditions at the site and the records search was thorough. Several areas of potential contamination were discovered through the records search and the site visit.

The Dames & Moore Magnetometer and Soil Gas Surveys, as reported in the January 31, 1991, document are of limited usefulness. The geophysical work identified the presence of the 8,000-gallon heating oil tank, and confirmed the absence of the tank on Grand Avenue, although it could not be determined whether one or two tanks had been present at that location. This is acceptable due to the limitations of the equipment and the abundance of buried metallic objects in the area.

The soil gas survey was not able to accurately determine if there was contamination associated with the tank in the loading dock area because the Organic Vapor Meter used as a detector was not designed to detect the contaminant that may be present. Due to the age of the tank installation, there is a significant chance that there is heavy oil contamination of the soils associated

Mr. David Jordan  
September 3, 1991  
Page 4

with the tank or the piping going into the boiler room. Additionally, the manhole cover that was located in the boiler room should be opened and investigated.

The solvents and cleaning fluid that are located at various points around the building do not, at this time, pose a significant hazard if they are removed and disposed of properly. The 55-gallon drum of fuel next to the emergency generator has approximately 15 gallons of fuel in it, and it should also be disposed of properly.

#### Remediation Costs

Regardless of the option chosen for future occupancy of the Sears Building, certain measures must be taken to bring the site into compliance. Since the underground tank on site is apparently out of service, it must be decommissioned in place or removed.

The 8,000-gallon tank located in the loading dock area is in a vault below grade. It has access through the two manhole covers in the pavement. Pictures provided by Mr. Jordan, which were taken after the covers of the manholes were removed, show numerous pipes associated with this installation. The estimated cost for removal of the tank and piping up to the foundation of the building is \$25,000. Since the soil gas survey was inconclusive, and there have been no soil borings to check subsurface conditions, it is unknown at this time if there is any contamination associated with the tank or piping costs associated with remediation in the area are also unknown at this time. However, based on our prior experience with similar sites, these costs could be significant.

The manhole in the boiler room should be opened for inspection, and possibly sampled. If contamination exists, it should be remediated during the building renovation if Option 2 is chosen. Because no contamination has been documented at this location and there are no specific regulations dealing with sumps of this type, we are not associating any costs with this feature.

The various solvent and cleaning fluid containers that are located throughout the building should be collected and removed off site to solvent recyclers. Based on the site visit, and the volumes reported in the Preliminary Site Assessment report, this could be accomplished for under \$10,000.

The cost to remediate those contaminants identified by the Dames & Moore assessment and the BCC site visit and review total approximately \$35,000. Assuming no contamination is discovered in the soils surrounding the



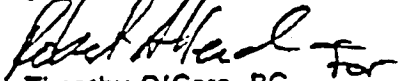
Mr. David Jordan  
September 3, 1991  
Page 5

underground storage tank on site and that the boiler room sump is not addressed, these costs are realistic. If, however, contamination in the soil is identified, remediation costs could increase to the \$50,000 to \$100,000 range or more.

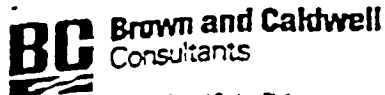
Thank you for the opportunity to provide you with this report review. If you have any questions regarding this report please contact me at (503) 244-7005.

Very truly yours,

BROWN AND CALDWELL

  
Timothy O'Gara, RG  
Principal Hydrogeologist

TOG:ljw.lew



9620 Southwest Barber Blvd.  
Suite 200  
Portland  
Oregon 97219-6501  
503.244-7005  
FAX 503.244-9795

September 30, 1991

Mr. David Jordan  
Pacific Development Incorporated  
825 Northeast Multnomah, Suite 1275  
Portland, Oregon 97232

13-6303-01

Subject: Supplemental Sampling and Site Visit  
Sears Department Store Site

Dear Mr. Jordan:

This letter report is intended as a supplement to our report of September 3, 1991, concerning the report review for the Sears Building Phase I. It documents additional work that was requested at our meeting of September 6, 1991. At that meeting, we were requested to inspect the possible sump in the garage area, collect and analyze one sample from the "manhole" located in the boiler room of the Sears building, and collect cost estimates for removing the 8,000-gallon heating oil tank located in the loading area of the building.

On September 19, 1991, Mr. Cliff Herman of Brown and Caldwell met with a representative of Pacific Development at the site to collect a sample of the sediment that was found in the bottom of the sump below the manhole. The manhole cover, which had been spot welded in place, was opened earlier by Pacific Development personnel. The sediment that was reported to be in the sump was actually an uneven cement bottom, and no sediment was found. Because there was no sediment, a sample of the thin layer of water that was in the sump was collected. The sample was analyzed for Total Petroleum Hydrocarbons according to EPA Method 418.1 by Pacific Environmental Laboratory in Beaverton, Oregon. Only 12 ppm of TPH was detected in the sample. The chain-of-custody form and the sample analysis are enclosed with this report.

While Mr. Herman was at the site, he also inspected the sump that was reported in the garage area of the building. The water in the sump showed no sheen or indication of petroleum products and appeared to be associated with the storm drain. Based on observations at the site, and on lab data, we do not expect any environmental problems associated with either the boiler room or the garage sumps.

Mr. David Jordan  
September 30, 1991  
Page 2

On September 20, 1991, estimated costs for both removing the heating oil tank and abandoning it in place were received from Orbrist Construction and PEMCO. The costs do not include sampling under the tanks or writing the closure reports. Due to the complexities of abandoning the tank in place, both companies quoted higher costs for in-place abandonment than for removal. The costs for removal and disposal of the tank ranged from \$6,000 to \$10,000, and the companies wanted \$13,000 to \$14,000 for in-place decommissioning. These costs do not include sampling, reporting, or analytical costs, which we estimate at \$3,000 to \$4,000. This brings the total cost for tank removal to \$14,000 and in-place decommissioning to about \$18,000. This estimate assumes that the tank removal is contracted directly through Pacific Development to avoid any subcontractor markup and that the soil beneath the tank is found to be clean.

Please call me at 244-7005 if you have any questions regarding this report.

Very truly yours,

BROWN AND CALDWELL



Timothy O'Gara, RG  
Project Manager

TOG:ljw  
Enclosure

Brown and Caldwell  
Consultants



PACIFIC  
ENVIRONMENTAL  
LABORATORY INC

8405 S.W. Nimbus Ave. Beaverton, OR 97005 (503) 644-0660  
FAX # (503) 644-2202

September 27, 1991

Brown & Caldwell  
9620 S.W. Barbur Blvd.  
Suite 200  
Portland, OR 97219

Attn: Tim O'Gara

Re: JOB #6303  
PROJECT - Sears SUMP  
PEL #91-2855

Enclosed is the lab report for your sample which was received on September 19, 1991.

**I. Sample Description**

One Water Sample

The sample was received under a chain of custody.

The sample was received in a container consistent with EPA protocol.

**II. Quality Control**

No project specific QC was requested. In-house QC data is available upon request.

**III. Analytical Results**

Test methods may include minor modifications of published methods such as detection limits or parameter lists. Solid and waste samples are reported on an "as received" basis unless otherwise noted.

Compounds not detected are listed under results as ND.

Sincerely,

Howard Holmes  
Lab Manager

Howard Boorse  
QA/QC Manager



PEL REPORT NUMBER: 91-2855  
 CLIENT: Brown & Caldwell  
 JOB REFERENCE: 6303  
 PROJECT: Sears Sump  
 DATE: September 27, 1991  
 ITEM: One Water Sample

**METHOD:** Total Petroleum Hydrocarbons 418.1  
 Results in mg/L (ppm)

<u>Sample I.D.</u>	<u>TPH</u>
S-1	12
Lab Blank	ND
Detection Limit	0.5



**PACIFIC ENVIRONMENTAL LABORATORY INC.**

9405 S.W. Nimbus Ave.  
Beaverton, OR 97005  
(503) 644-0560  
Fax (503) 644-2202

CHAIN OF CUSTODY RECORD

COMPANY Brown & Caldwell PROJECT NAME SEARS SUMP LAB PROJECT NUMBER PI-2855  
 PROJECT MANAGER TIM O'GARA PROJECT NUMBER 12303  
 COLLECTED BY Cliff Herman P.O. NUMBER \_\_\_\_\_ RUSH  YES  NO 2nd Day

COMMENTS \_\_\_\_\_ SAMPLES RECEIVED AT 4°C  YES  NO PROVIDE VERBAL RESULTS  YES  NO  
 SAMPLES IN APPROPRIATE CONTAINERS  YES  NO PROVIDE PRELIMINARY FAX RESULTS  YES  NO  
 PROVIDE FINAL FAX RESULTS  YES  NO

PEL NO	SAMPLE ID	DATE	TIME	SAMPLE DESCRIPTION	MATRIX			ANALYSES TO BE PERFORMED	REMARKS
					SOIL	WATER	OTHER		
	S-1	9/19/91	1400		<i>✓</i>	<i>✓</i>	<i>✓</i>	TPH - HClO 00A/00G	
								TPH - Glucose 00A/00G	
								TPH - Diesel 00A/00G	
								TPH - 4181 Modified 00A/00G	
								HClO - Fuel Scan 00A/00G	
								TPH - 4181 00A/00G	
								BTEX 603/6070	
								Polynuclear Hydrocarbons 801/8010	
								Volatiles 82A/82A0	
								Semivolatiles 82C/8270	
								PCBs 80A/800	
								Chlorinated Paraffins 10A/1000	
								TCDF (1) 10/1000	

TOTAL P. 06

RELINQUISHED BY	COMPANY	DATE/TIME	RECEIVED BY	COMPANY
RELINQUISHED BY	COMPANY	DATE/TIME	RECEIVED BY	COMPANY
RELINQUISHED BY <u>Cliff Herman</u>	COMPANY <u>Brown &amp; Caldwell</u>	DATE/TIME <u>9/19/91 1500</u>	RECEIVED BY <u>Kate</u>	COMPANY <u>P.E.L.</u>

SEP-23-1991 15:14 FROM BROWN AND CALDWELL TO 2202480 P. 05

PARCEL 60 SOUTH OF LLOYD CENTER

Legal Description:

A tract of land in the City of Portland, County of Multnomah and State of Oregon, being all that portion of the following described property lying Northwesterly and Westerly of the Northwesterly and Westerly right of way line of the parcel conveyed to the City of Portland for street purposes by instrument recorded October 13, 1959 in Deed Book 1978, Page 698, Records of Multnomah County, Oregon to-wit:

Fractional Block 7, HEIPLE ADDITION TO EAST PORTLAND; Blocks 7 and 8, WHEELER'S ADDITION TO EAST PORTLAND; Blocks 85 and 86, HOLLADAY'S ADDITION TO EAST PORTLAND; together with those portions of vacated N.E. Hoyt Street, N.E. 6th Avenue and N.E. Lloyd Boulevard inuring to the above mentioned parcels by City of Portland vacation Ordinances No. 55844 and No. 110439; EXCEPTING THEREFROM the West 10 feet of the above described property lying within the limits of S.E. Grand Avenue (formerly East 5th Street).

Order No. E59300 / 12-12200

PARCEL 60 SPECIAL EXCEPTIONS:

7. Easement for existing public utilities in vacated street area and the conditions imposed thereby.  
Reserved by Ordinance No. 55844  
Entered: JANUARY 18, 1929
8. Easement for existing public utilities in vacated street area and the conditions imposed thereby.  
Reserved by Ordinance No. 110439.  
Entered: JULY 23, 1959
9. Covenants, conditions, restrictions and easements, but omitting restrictions, if any, based on race, color, religion or national origin, as contained in Ordinance No. 110439  
Recorded: JULY 23, 1959

## EXHIBIT 2

### TERMS OF OPTION

#### 1. DEFINITIONS.

As used in this Exhibit, the "Owner" is the Purchaser under the Sale Agreement and Receipt for Earnest Money ("Agreement") to which this Exhibit is attached, the "Optionee" is the Seller under such Agreement, and the "Property" is the parcel of the Property deeded to Owner thereunder. This Exhibit details the terms relating to obligations of the parties after the Closing of the sale of the Property to Owner in the event, which the parties do not believe is likely or probable, that unexpected environmental remediation is required which results in a repurchase of the Property pursuant to paragraph 3(c)(2) of Appendix 1 to such Agreement. The option provided pursuant to this Exhibit (the "Option") will arise as of the Closing of the sale of the Property to Owner and terminate automatically upon expiration of Optionee's obligations under Appendix 1 to such Agreement.

#### 2. STATUS OF THE PROPERTY AND TITLE.

2.1 Access to the Property. During the option period, Owner shall permit Optionee or its authorized or designated representatives or agents to enter upon the Property at reasonable times for the purpose of examining the Property.

2.2 Conduct Until Closing. From the date of this Option until the closing date, Owner will maintain the Property and shall pay all liens or property taxes and assessments imposed on the Property.

2.3 Outstanding Agreements. Owner will not enter into any leases, occupancy agreements or other agreements affecting the operation or use of the Property which will be binding on Optionee after the closing of purchase if the Option is exercised, except as may be reasonably approved in writing by Optionee during the option period.

2.4 Title Report. As soon as practicable after exercise (if any) of the Option, the parties will cause to be furnished to Optionee a preliminary title report (with full copies of any exceptions) from the Title Company specified in the Agreement showing its willingness to issue title insurance on the Property.



2.5 Rescission of Agreement. If the title report described in Section 2.4 shows any exceptions other than those in the title insurance policy provided to Owner pursuant to the Agreement on the original Closing Date in connection with Owner's acquisition of the Property, Owner is responsible for obtaining a release or discharge of such matters at or before the closing of the repurchase. If Owner is unable to eliminate any disapproved exception, either party (except as otherwise provided in Section 6 below) may elect, at its option, to rescind this Option by notice to the other party. In such event, all obligations of the parties under this Option shall thereafter cease, unless Optionee notifies Owner within 10 days after such rescission that Optionee elects to waive its prior disapproval of the exception.

### 3. CLOSING PROCEDURE.

3.1 Date of Closing. This transaction shall be closed on a date selected by Optionee and reasonably acceptable to Owner, within 30 days after exercise of the Option (the "Closing Date").

3.2 Prorations. At closing, property taxes and assessments ("Expenses") shall be prorated and adjusted between the parties as of the Closing Date.

3.3 Manner and Place of Closing. This transaction shall be closed in escrow by an officer of the Title Company at its main office in Portland, Oregon, or as otherwise mutually agreed by the parties. Closing shall take place in the manner specified in this Option.

3.4 Closing. On the Closing Date, this transaction will be closed as follows:

(a) The prorations described in Section 3.2 will be made and the parties shall be charged and credited accordingly.

(b) Owner will convey the Property to Optionee by statutory special warranty deed subject to no liens or encumbrances, other than those permitted under Section 2.4. Owner will execute, upon request, a "non-foreign person" FIRPTA affidavit, in form reasonably acceptable to Optionee.

(c) Optionee shall pay to Owner in cash the total purchase price for the Property, adjusted for the charges and credits set forth above, and shall reimburse Owner for the sums referenced in paragraph 3(c)(2) of Appendix 1 of the Agreement.

(d) The Title Company shall have delivered a commitment letter committing to issue the policy described in Section 3.5, upon recordation of the closing documents.

(e) Owner shall be charged the amount required to obtain release of liens (if any). Optionee shall be charged the recording fees for the deed, the premium for the owner's title insurance policy, and any escrow fee.

3.5 Title Insurance. As soon as practicable after the Closing Date, the Title Company shall furnish Optionee at its expense with an owner's standard coverage policy of title insurance in the amount of the total purchase price for the Property, subject only to the standard printed exceptions of the Title Company, and exceptions for the matters under Section 2.4.

3.6 Possession. Owner will deliver vacant possession of the Property to Optionee on the Closing Date.

4. TERMINATION.

This Option shall expire at the end of the option period specified in Section 1 above, if the Option has not been previously exercised. In the event Owner should fail to close this transaction (other than as a result of Optionee's failure to exercise the Option or perform Optionee's obligations under this Option), Optionee shall be entitled to a refund upon demand of any moneys deposited with Title Company in connection with the Option, and Optionee shall be entitled to all remedies allowed at law and equity for breach of contract, including the right to enforce specific performance of this Option.

5. FAILURE TO EXERCISE OPTION.

In the event Optionee does not exercise the Option with the option period specified in the Appendix 1 of the Agreement, Optionee shall, upon Owner's request, execute such documents as Owner may provide and reasonably require to evidence the expiration or termination of this Option.

6. GENERAL PROVISIONS.

6.1 Binding Effect. This Option shall be binding upon and inure to the benefit of the parties, their successors and assigns.

6.2 Brokers. Each party will defend, indemnify and hold the other party harmless from any claim, loss or liability made or imposed by any party claiming a commission or fee in connection with this transaction and arising out of its own conduct.

6.3 Prior Agreements. This document is the entire, final and complete agreement of the parties with respect to the Option to purchase the Property and supersedes and replaces all written and oral agreements previously made or existing between the parties or their representatives with respect to this Option.

6.4 Other General Provisions. The terms of this Option include the following General Provisions contained in the Agreement: paragraphs 16.1 through 16.5, 16.8 and 16.10 through 16.16 of the Agreement.

6.5 Memorandum of Option. Upon Optionee's request, Owner will execute a memorandum of option in recordable form which will be delivered to, and may be recorded by, Optionee.

7. FURTHER ENCUMBRANCING.

Owner represents and warrants that Owner will not further encumber the Property after the date of this Agreement until after the Option expires, except as otherwise noted below or approved in writing by Optionee. The Property may be included as collateral for new financing for the development of the Property so long as such financing is prepayable in the event the Option is exercised.

Owner may not rescind this Option pursuant to Section 2.5 because of an exception relating to a lien or encumbrance which violates Owner's obligations, representations or warranties under Section 2.2, 2.3 or 7 of this Exhibit.

APPENDIX 2

TO

ADDENDUM TO SALE AGREEMENT

Environmental Assessment Cost Sharing Agreement

ENVIRONMENTAL ASSESSMENT  
COST SHARING AGREEMENT

DATED: August \_\_\_\_, 1991

BY AND  
BETWEEN: Metropolitan Service District ("Buyer")

AND: Pacific Development (Property), Inc. ("Seller")

RECITALS

A. On June 26, 1991, Buyer and Seller executed a letter of intent regarding the Buyer's purchase of improvements and property known as the Sears Building and option to purchase improvements and property known as the Sears Garage (collectively referred to as "the Sears Property").

B. Buyer and Seller continue to negotiate the purchase/sale agreement for the contemplated transaction.

C. Both Buyer and Seller desire to initiate immediately an environmental assessment of the Sears Property.

OPERATIVE TERMS

1. Definitions

1.1 The term "Hazardous Substance" means any hazardous substance listed or defined under ORS 465.200(9), as of the date of this agreement, and shall specifically include Asbestos-Containing Materials ("ACM").

1.2 The term "Environmental Laws" means all applicable federal, state, county and local environmental requirements in force and effect as of the date of this agreement and pertaining to the protection of the environment, including air, water, groundwater, soil, noise and odor, and including regulations pertaining to employee exposure to hazardous substances.

2. Choice of Consultant

2.1 Buyer and Seller have mutually selected Brown & Caldwell for the task of conducting an environmental assessment of the Sears Property ("the Consultant").

3. Scope of Work/Reporting Obligations of Consultant

3.1 Consultant will perform the environmental assessment under the direction of Seller pursuant to the agreed Scope of Work, which is attached as Exhibit A. Consultant will rely primarily on the reports previously prepared by Dames & Moore dated December 3, 1990 and January 31, 1991, but will conduct

such further testing as it determines necessary, subject to the approval of Buyer and Seller. Buyer and Seller agree that they will not unreasonably withhold such approval, subject to paragraph 4 below. Consultant will provide all reports, including drafts, to both Buyer and Seller. Seller will advise Buyer of all significant meetings with the Consultant and provide Buyer an opportunity to participate, if Buyer so desires.

4. Cost Sharing

4.1 Buyer and Seller agree to mutually share in the cost of the Consultant, whether or not the purchase/sale transaction closes, but agree that the Consultant shall be directed not to perform more than \$10,000 in work without the approval of both Buyer and Seller.

SELLER:

PACIFIC DEVELOPMENT (PROPERTY),  
INC.

By: 

PURCHASER:

METROPOLITAN SERVICE  
DISTRICT

By: 

EXHIBIT A

Scope of Work

1. Buyer and Seller shall provide to Consultant, as soon as Consultant is retained, all environmental assessments of the Sears Property completed to date which are in the possession and control of the parties, including the Preliminary Site Assessment dated December 3, 1990 and the Magnetometer and Soil Gas Survey dated January 31, 1991 prepared for Buyer by Dames & Moore ("the Dames & Moore Reports").

2. Consultant shall review all such reports and, with respect to all Hazardous Substances on the Sears Property identified in the Dames & Moore Reports, make two recommendations as to what remediation must be accomplished to achieve compliance with the following standards:

- (a) Option #1--Such remediation as is necessary to place the building and garage in compliance with all applicable existing Environmental Laws as those laws would be enforced by any authorized governmental agency, on the basis and assumption that a party takes possession and occupancy of the building and garage in their present condition with the intent to utilize all four floors for office use. Consultant should assume that the least expensive method of remediating any problem, consistent with the standard stated above, will be selected.
- (b) Option #2--Such remediation as is necessary to place the building and garage in compliance with all applicable existing Environmental Laws as those laws would be enforced by any authorized governmental agency, on the basis and assumption that the building and garage are being renovated as described on the attachments hereto and that the use of the building and garage after the renovation work is completed will be as described on such attachments. This option shall include an estimate of the cost of removal of all VAT located on the first and second floors regardless of whether it is consultant's opinion that such removal is required by existing applicable law. Consultant shall also state its opinion as to whether such removal of VAT is required by applicable law.

With respect to each remediation recommendation, Consultant shall provide an estimate of the cost to complete such work. Remediation work to the Sears Garage (if any) should be separately stated, compared to remediation work to the Sears

building. The Consultant shall assume that the remediation will be completed prior to execution of Buyer's renovation plans. The Consultant shall, however, state those costs directly associated with the remediation separately from those costs associated with the demolition required in order to conduct the remediation work.

3. Consultant shall provide an estimate of the useful life of the existing Sears Building roof. Consultant shall state its opinion as to whether encapsulation or removal of ACM in the roof material is required by applicable law, for the roof in its present condition. Furthermore, Consultant shall state whether, in connection with installation of a replacement roof, encapsulation or removal of ACM in the roof material is required by applicable law. Consultant shall provide an estimate of the cost of any encapsulation or removal of ACM in the roof material required by applicable law. Furthermore, Consultant shall provide an estimate of the cost of removal of all existing roof material in order to install a replacement roof. The estimated cost of removal of all the existing roof material shall include a separate cost estimate of all costs attributable to removal and disposal of ACM contained in the roof material.

4. Consultant is to rely primarily on the Dames & Moore reports. To the extent Consultant determines it needs to undertake further testing in order to make the recommendations required in paragraph 2, Consultant shall propose what specific testing it believes to be necessary. Consultant shall not proceed with that testing without the approval of Buyer and Seller.

5. Consultant is to complete its work and provide remediation recommendations in report form, simultaneously to both parties, by August 30, 1991.



EXHIBIT A

The legal description of the Sears Building and Sears Garage is set forth on the attached page. Separate legal descriptions of these parcels, after partitioning, will be attached by the parties.

PARCEL 60 SOUTH OF LLOYD CENTER

Legal Description:

A tract of land in the City of Portland, County of Multnomah and State of Oregon, being all that portion of the following described property lying Northwesterly and Westerly of the Northwesterly and Westerly right of way line of the parcel conveyed to the City of Portland for street purposes by instrument recorded October 13, 1959 in Deed Book 1978, Page 698, Records of Multnomah County, Oregon to-wit:

Fractional Block 7, HEIPLE ADDITION TO EAST PORTLAND; Blocks 7 and 8, WHEELER'S ADDITION TO EAST PORTLAND; Blocks 85 and 86, HOLLADAY'S ADDITION TO EAST PORTLAND; together with those portions of vacated N.E. Hoyt Street, N.E. 6th Avenue and N.E. Lloyd Boulevard inuring to the above mentioned parcels by City of Portland vacation Ordinances No. 55844 and No. 110439; EXCEPTING THEREFROM the West 10 feet of the above described property lying within the limits of S.E. Grand Avenue (formerly East 5th Street).

Order No. E59300 / 12-12200

PARCEL 60 SPECIAL EXCEPTIONS:

7. Easement for existing public utilities in vacated street area and the conditions imposed thereby,  
Reserved by Ordinance No. 55844  
Entered: JANUARY 18, 1929
8. Easement for existing public utilities in vacated street area and the conditions imposed thereby,  
Reserved by Ordinance No. 110439.  
Entered: JULY 23, 1959
9. Covenants, conditions, restrictions and easements, but omitting restrictions, if any, based on race, color, religion or national origin, as contained in Ordinance No. 110439  
Recorded: JULY 23, 1959

EXHIBIT B

PARKING SUPPLY AGREEMENT

(Sears Property)

Dated: \_\_\_\_\_

Between: PACIFIC DEVELOPMENT (PROPERTY), INC.,  
an Oregon corporation SELLER

AND METROPOLITAN SERVICE DISTRICT METRO

1. SUPPLY COMMITMENT.

1.1 Basic Parking Commitment. Seller agrees with Metro, for the term and subject to the agreements, conditions and provisions hereinafter set forth, to provide the right to lease from Seller parking rights to park up to 100 vehicles in the Sears garage facility ("Sears Garage") located adjacent to the Sears building property ("Sears Building") for Authorized Users (as defined in Section 8 below). The parking rights under this Section 1.1 will commence upon occupancy of the Sears Building with Metro's remodeling work completed (the "Start Date"), which the parties anticipate will be on or before December 1992. Parking rights under this Section 1.1 are not on a "use or lose" basis. Metro will provide to Seller not less than 90 days' notice of the amount (if less than for 100 vehicles) of parking which Metro will require for any month.

1.2 Additional Parking Capacity. During the term of this Agreement and any renewal thereof, Seller will cause the

Sears Garage to remain open for public use on a first-come first-use basis at market rates during non-Business Hours when requested to do so by Metro, subject to the terms and conditions stated below. Such requests will be made upon at least 30 days' notice as to the time periods and date on which Metro requests that the Sears Garage remain open, which notice will include Metro's estimate of the estimated usage during such time periods. To further Seller's planning for such events, Metro will submit to and maintain with Seller Metro's calendar of events for the upcoming 90-day period, which will be revised and updated as necessary. Parking under this Section 1.2 will be on an "as available" basis and Seller will not be required to make such parking first available for the public for any Metro events. Seller will not be expected or required to open the Sears Garage pursuant to this Section 1.2 if the costs of so doing are not profitable in light of the revenues which may reasonably be expected to be achieved. The parties will conduct a semi-annual review, upon Seller's request, of the revenue and costs in opening the Sears Garage at Metro's request pursuant to this Section 1.2. The parties will adjust the program under this Section 1.2 if the costs of opening under this Section 1.2 are not profitable to Seller (or Metro may elect, in its discretion, to subsidize the costs of opening the Sears Garage under this Section 1.2 for occasions on which such opening is not profitable but during which Metro desires nevertheless to have the Sears Garage opened).

1.3 Grand Avenue Replacement Parking. Upon commencement of remodeling work on the Grand Avenue level of the Sears Building to convert the planned for parking contemplated on such level to office use and after 120 days' prior written notice to Seller of Metro's intent to exercise of this option (provided, that Metro will rescind or firmly commit to such exercise of such option at least 30 days' prior to the effective date of the lease of the additional spaces referenced below and if so rescinded, the original notice will be treated as of no effect and will not cause any loss of entitlement under the "use or lose" provision stated below), or if Metro elects to initially utilize the Grand Avenue level for office use upon the Start Date, Metro will have the option to lease from Seller parking rights to park up to an additional 100 vehicles for Authorized Users during normal Business Hours as described in Section 5.2 below, on a "use or lose" basis, subject to the terms and conditions stated herein.

The number of spaces which Seller shall be required to make available under this Section, at any time, shall not exceed the LID. The LID shall be determined as follows:

For the period from commencement of the fourth month after initial obligation to provide parking pursuant to this section through the last day of the term of this Agreement, the LID for a particular calendar month shall be highest number of parking spaces actually leased pursuant to this Agreement during the immediately preceding 90-day period on a monthly

paid basis by Metro minus 100, but such LID shall not exceed the lowest of any LID established for any prior month. Under this section, the LID may only go down, and never up. In calculating the LID the Parties assume that Metro will be using all of the 100 spaces provided for in Section 1.1 of this Agreement. Therefore, Seller's furnishing of parking space pursuant to this Section is applicable only for spaces utilized by Metro in excess of the 100 spaces provided for in Section 1.1. If Metro is using 100 spaces or less, then the LID will be reduced to zero and Metro shall have no further right to parking pursuant to this Section 1.3. Metro shall, however, retain its rights to lease 100 spaces pursuant to Section 1.1.

Upon written request from time to time, but not more frequently than monthly, Seller shall provide Metro the following information on or before the end of the month following such request:

- (i) The LID for the previous month,
- (ii) The High Count for the previous month, and
- (iii) The actual number of spaces under lease on the last day of the previous month.

Notwithstanding the LID established at any particular time, if within sixth (60) days following Seller's delivery of notice to Metro of any change in the LID for a particular calendar month, Metro can demonstrate to Seller for a particular month (the "Reviewed Month") that the failure to lease all spaces for the applicable Reviewed Month is due

3. LOCATION OF PARKING. During the term of this Agreement, and any renewals thereof, the parking rights provided hereunder will be supplied within the Sears Garage. The location of parking may be temporarily relocated at any time in connection with renovation and construction, to the extent necessary. Furthermore, the location of parking may be permanently relocated (and subsequently relocated from time to time) at any time, within a six-block radius of the corners of the Sears Building, if the Sears Garage site or Sears Garage itself is redeveloped for uses other than the exclusive parking garage operation presently conducted thereon, subject to the following qualifications. If the Sears Garage is demolished in connection with a redevelopment of the Sears Garage site, the parking may be permanently relocated (and subsequently relocated) as provided above. If the Sears Garage is not demolished but portions of it are redeveloped for uses other than parking, the amount of parking provided to Metro within the Sears Garage will be reduced (but provided within the six-block radius referenced above) on a pro rata basis, as described below. If and to the extent that the redevelopment of the Sears Garage requires Seller to commit on-site parking within the Sears Garage to such new use(s) and user(s) (but not to exceed 2 parking spaces per 1,000 square feet of gross building area committed to such new use), and/or to the extent that the redevelopment displaces and reduces the total number of parking spaces within the Sears Garage, the number of parking spaces remaining after such commitment and such

redevelopment will be the "Reduced Total Parking Capacity." Metro shall, with respect to the parking within the Sears Garage, retain the rights to the same percentage of the Reduced Total Parking Capacity that Metro had as a percentage of the total parking within the Sears Garage immediately prior to the effective date of the redevelopment for uses other than exclusive parking, and the remainder of the parking to which Metro is entitled hereunder will be provided within the six-block radius referenced above. In the event of such temporary or permanent relocation(s), Seller will provide specific locational assignments (or modifications thereto and re-assignments) upon at least seven (7) days' written notice to Metro.

Metro's right of use shall be non-exclusive, and Seller may make parking areas available for users other than Metro's on a non-exclusive basis during the hours of Metro's permitted use, but Seller will not overburden parking so as to interfere with Metro's right of use of the number of spaces which Seller commits will be available hereunder.

4. TERM.

4.1 Original Term. The original term of this Agreement shall commence as of the Start Date described in Section 1.1, and expire on the 3rd anniversary of such date (the "Expiration Date"), unless extended as described in Section 4.2 below or unless sooner terminated as set forth in Section 4.3 below.



Metro may cancel this Agreement at any time, upon 30 days' prior written notice to Seller. Cancellation shall be final and perpetual.

4.2 Renewal Option. The Expiration Date of this Agreement may be extended by written notice to Seller prior to the Expiration Date specified in Section 4.1 in the event Metro does not exercise its option to purchase the Sears Garage, as described in the Commercial-Industrial Sale Agreement and Receipt for Earnest Money dated September \_\_, 1991 ("Sale Agreement"). The initial renewal option term will be for seven years (84 months). Thereafter, provided that Metro has exercised the preceding renewal option and Metro is not in default hereunder, Metro will have three additional consecutive renewal options for terms of five years (60 months) each. Each renewal option must be exercised by written notice to Seller not later than 120 days before expiration of the current term. During the renewal terms, the monthly parking charges will be the fair market rental for such parking rights, to be specified and adjusted from time to time by Seller (and are not limited by any annual cap, or any requirement that changes only occur once a year as of October 1). From time to time, Seller will discuss with Metro the basis used by Seller to determine any such adjustments to the monthly parking charges.

4.3 Termination for Certain Events. This Agreement shall terminate prior to the Expiration Date upon the following dates:

a. The last day of any year in which Metro or affiliated agencies or public entities fails to continue to occupy at least 50,000 square feet of gross rentable area within the Sears Building for office purposes for its employees for a continuous period of 120 days or more for any reason except damage or destruction of the Sears Building rendering it unusable for such purposes; or

b. The Sears Building is damaged or destroyed and Metro does not complete restoration or reconstruction and resume occupation of the Sears Building as office space for employees within 18 months thereafter, then on the last day of such 18th month.

5. TERMS OF USE. Parking areas, sub-areas and spaces may be used only solely at the times described below and subject to the following:

5.1 Payment of Monthly Charges. Metro will pay to Seller on a monthly basis the monthly parking charge for the rights to use such parking areas, sub-areas and/or spaces. Payment of such amounts is a requirement for a continuation of Metro's rights to such parking.

5.2 Hours of Use. Spaces supplied under this Agreement may only be used between 6:00 a.m. and 5:30 p.m. Monday through Friday, except national holidays. Seller reserves use of the spaces on Saturday and Sunday, national holidays, and at all other hours except those listed in the preceding sentence ("After Hours Periods"). In order to

facilitate employees working during After Hours Period (e.g., employees working overtime or on flexible time schedules), 20 percent of the spaces supplied under this Agreement shall be made available for use by Authorized Users during the After Hours Periods ("After Hours Spaces"), provided the Seller may impose reasonable regulations on use during After Hours Periods including, but not limited to:

5.2.1 Segregating up to 50 percent of After Hours Spaces in specified areas;

5.2.2 Requiring cars parking pursuant to this Agreement to bear identifying stickers;

5.2.3 Requiring persons who need to only occasionally use a parking space during the After Hours Period to telephone Seller prior to the end of normal hours of use to give their name, license number and space number or location and obtain authorization for use during the After Hours Period; and

5.2.4 Reserving the right to tow vehicles violating normal hour limitations without complying with PDI regulations, provided Seller has given Department or the employee at least 24 hours advance notice by letter, flyer posted on vehicle, phone or other means selected by Seller; if Seller gives such notice, Seller may thereafter tow such vehicle if it continues to violate normal hour limitations without complying with PDI regulations and will have no further

obligation to give notices of proposed towing with respect to such vehicle for a period of 90 days.

These hours may be adjusted by written agreement of the parties to accommodate flex-time hours or to alleviate traffic congestion in the vicinity of the Sears Building. The intent of this section is that persons may utilize the "After Hours" privilege for purposes of performing their official Metro duties and not for their own personal benefit or convenience.

6. PAYMENT. Monthly charges shall be payable in advance on the first day of each month. The charges for any partial month shall be one-thirtieth (1/30) of the full monthly charge multiplied by the number of days in such partial month. Parking charges pursuant to this Agreement which are not paid in full within 30 days after the due date for payment will be assessed a late charge of 5 cents per dollar, to defray administrative costs, and will be subject to Seller's right to charge interest from the due date until payment is made at the rate of 12 percent per annum.

7. RESTRICTIONS ON TRANSFER. The parking rights supplied under Sections 1.1 and 1.3 of this Agreement may be used only by Authorized Users. Parking supplied pursuant to this Agreement may not be assigned, subleased, licensed or sublicensed or otherwise transferred or used by third parties, other than to a "Metro Successor" (as defined below). Metro shall not assign, sublease, license or sublicense or otherwise

transfer any rights under this Agreement (whether voluntarily, involuntarily, by operation of law, or otherwise), other than to a "Metro Successor" (as defined below). The term "Metro Successor" means any governmental entity with regional authority which results from a merger or reorganization of Metro and which acquires all or substantially all of Metro's assets and responsibilities.

8. ADMINISTRATION OF AGREEMENT. All use of parking covered by this Agreement shall be expressly subject to this Agreement (including without limitation Seller's right to relocate parking areas, sub-areas and spaces) and will require Metro and Authorized Users to comply with such reasonable rules and regulations as from time to time may be adopted and generally applied by Seller to promote safety, good order, maintenance, security and enforcement of hours of use of the parking area, including without limitation regulations which require Metro to enforce such regulations against its Authorized Users and to require cars to bear identifying permits. Upon request, Metro will provide Seller with such information as Seller may reasonably require from time to time to administer this Agreement. For the purpose of this Agreement, "Authorized Users" shall mean Metro employees working in the Sears Building, Council members, and others performing official functions on behalf of Metro that require their attendance at the Metro offices located in the Sears

Building, and employees of tenants of the Sears Building who are working in the Sears Building.

9. ENFORCEMENT OF TIMES OF USE. Among other remedies, Seller reserves the right to cause the towing of vehicles violating use and other limitations described above.

10. DEFAULTS. The following shall be events of default:

10.1 Default by Metro. With respect to defaults of Metro:

a. Metro fails to pay the parking supply fees and charges required by this Agreement within thirty 30 days after written notice of the amounts due;

b. Metro makes any unpermitted transfer as described under Section 7.

c. Metro fails to perform under the terms of this Agreement within 30 days after receipt of notice of default from Seller, or if the default is of a nature that cannot reasonably be cured within such 30-day period, then failure to commence curative action within such 30-day period and pursue it thereafter with diligence to completion.

10.2 Default by Seller. With respect to defaults of Seller:

a. Seller fails to perform under the terms of this Agreement within 30 days after receipt of notice of default from Metro, or if the default is of a nature that cannot reasonably be cured within such 30 day period, then

failure to commence curative action within such 30 day period and pursue it thereafter with diligence to completion.

11. REMEDIES ON DEFAULT. Upon default, by either party, the other party may terminate this Agreement, and/or exercise any other remedy available under applicable law.

12. GENERAL PROVISIONS.

12.1 Time of Essence. Time is of the essence for performance of obligations under this Agreement.

12.2 Modifications. This Agreement may not be modified except by endorsement in writing attached to this Agreement, dated and signed by the parties.

12.3 Nonwaiver. Waiver of performance of any provision of this Agreement shall not be a waiver of nor prejudice a party's right otherwise to require performance of the same provision or any other provision.

12.4 Succession. Seller shall assign its rights and obligations under this Agreement to any third party that purchases the Sears Garage.

12.5 Recognition. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or trust deed made by covering land on which parking areas, sub-areas and/or spaces are provided, Metro shall attorn to or recognize the purchaser upon any such foreclosure or sale and recognize such purchaser as supplier under this Agreement and such purchaser shall be obligated to fulfill Seller's obligations to Metro hereunder,

subject to the terms of a subordination, nondisturbance and attornment agreement in form approved by the parties contemporaneously herewith (subject to such changes in such form of agreement that Seller's lender may reasonably require from time to time).

12.6 Subordination to Mortgages and Master Leases.

This Agreement, at Seller's option, shall be subordinate to the lien of any trust deed or mortgage subsequently placed upon the Sears Garage or other property, and to any and all advances made on the security thereof, and to the terms of any master lease between Seller and a third party (if Seller enters into a sale and leaseback transaction), and to all renewals, modifications, consolidations, replacements, and extensions thereof; provided, however, that as to the lien of any such trust deed or mortgage or such master lease, Metro's right to parking hereunder shall not be disturbed if Metro is not in default and so long as Metro pays the parking charges and observes and performs all of the provisions of this Agreement, unless this Agreement is otherwise terminated pursuant to its terms.

If any such lender elects to have this Agreement prior to the lien of its mortgage or trust deed, and shall give written notice thereof to Metro, this Agreement shall be deemed prior to such mortgage or trust deed, whether this Agreement is dated prior or subsequent to the date of said mortgage or trust deed or the date of recording thereof.



12.7 Estoppel Certificates. Within 10 days after receipt of written request from Seller, Metro shall deliver a written statement to Seller or a third person designated by Seller, stating the amount of parking being supplied hereunder, whether the Agreement is unmodified and in full force and effect, and any other matters that may reasonably be requested by the other party.

12.8 Notices. Notices under this Agreement 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 stated in this Agreement, or to such other address as either party may specify by notice to the other. Seller's address shall be Suite 1275 Lloyd Center Tower, 825 NE Multnomah Street, Portland, Oregon 97232, Attention: Virgil Ovall, Manager, Parking and Transportation. Metro's address shall be 2000 S.W. First Avenue, Portland, Oregon 97201-5398, Attention: Rena Cusma, Executive Director.

12.9 Attorneys' Fees. In the event suit or action is instituted to interpret or enforce terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on appeal and on any petition for review, in addition to all other sums provided by law.

12.10 Applicable Law. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon.

12.11 Prior Agreements. This Agreement (including any exhibits attached to this Agreement, which are incorporated in this Agreement by this reference as though fully set forth in this Agreement) is the entire, final, and complete agreement of the parties with respect to the matters set forth in this Agreement, and supersedes and replaces all prior written and oral agreements between the parties or their representatives with respect to such matters.

12.12 Validity of Provisions. If any provision in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.

12.13 Change in Governmental Requirements or Impositions. In the event any governmental order or any change in governmental regulations, ordinances or statutes occurs during the term of this Agreement such that additional charges or costs are imposed on parking provided hereunder or such that the parking that can be provided hereunder is limited, then the monthly parking charges may be adjusted to reflect such additional charges or costs (without requiring Seller to wait until October 1) and the parking rights provided hereunder will be limited as required by any such governmental order, regulation, ordinance or statute. However, if such an order or change limits the number of parking spaces allowed to be used in the Sears Garage, Metro shall only lose any parking rights under this Agreement on a pro rata basis so that Metro shall

retain the rights to the same percentage of spaces as it was entitled to prior to the effective date of the limitation.

13. LIMITATIONS. This is not intended to be a third party beneficiary contract; no member, staff or invitee of Metro shall have any right against Seller or to enforce this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER:

PACIFIC DEVELOPMENT  
(PROPERTY), INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

METRO:

METROPOLITAN SERVICE DISTRICT

By \_\_\_\_\_

SEARS GARAGE OPTION TO PURCHASE AGREEMENT

(Sears Garage, Portland, Oregon)

DATED: \_\_\_\_\_, 1991

BETWEEN: PACIFIC DEVELOPMENT (PROPERTY), INC.,  
an Oregon corporation  
825 NE Multnomah, Suite 1275  
Portland, Oregon 97232  
Taxpayer I.D. No.: \_\_\_\_\_

OWNER

AND: METROPOLITAN SERVICE DISTRICT  
2000 SW First Avenue  
Portland, Oregon 97201-5398  
Taxpayer I.D. No.: \_\_\_\_\_

OPTIONEE

Owner is the fee owner of certain real property located in the City of Portland, County of Multnomah and State of Oregon, described on the attached Exhibit A, commonly known as the Sears Garage property (the "Sears Garage").

NOW, THEREFORE, for value received and in consideration of the mutual promises of the parties set forth in this Option Agreement (the "Agreement"), the parties agree as follows:

1. GRANT OF OPTION

Effective (and conditioned) upon the closing of the purchase by Optionee of the Sears Building property ("Sears Building") pursuant to the terms of the Commercial-Industrial Sale Agreement and Receipt for Earnest Money dated October \_\_\_\_\_, 1991 (the "Sale Agreement") referenced in paragraph 2.8 below, Owner hereby grants to Optionee the sole, exclusive and irrevocable option to purchase the Sears Garage (the "Option") at or at any time after the closing of the purchase by Optionee of the Sears Building until the end of the Option Period(s) provided in paragraphs 2.3 and 2.4.

2. TERMS OF OPTION

2.1 Purchase Price. The total purchase price for the Sears Garage property, provided that Optionee closes the purchase of the Sears Building, is as follows, based upon the time period in which the closing of the purchase of the Sears Garage occurs:

<u>Option Period</u>	<u>Closing Date for Sears Garage Purchase</u>	<u>Purchase Price</u>
Pre-option	On or before December 16, 1991	\$2,600,000
First	December 17, 1991 - June 15, 1992	\$2,730,000
Second	June 16, 1992 - December 15, 1992	\$2,866,500
Third	December 16, 1992 - June 15, 1993	\$3,009,800
Fourth	June 16, 1993 - December 15, 1993	\$3,160,300
Fifth	December 16, 1993 - June 15, 1994	\$3,318,300
Sixth	June 16, 1994 - December 15, 1994	\$3,484,200

2.2 Legal Description. The exact legal description of the Sears Garage, as distinct from the Sears Building, will be prepared by the Surveyor, as described in and in accordance with the provisions of paragraph 9.1 below.

2.3 Option Consideration; Option Periods. Unless Optionee exercises its Option and closes the purchase of the Sears Garage on or before December 16, 1991, the consideration for the Option to purchase the Sears Garage is that Optionee will pay to Owner \$50,000 in option consideration in cash not later than the first day of each of the six option periods referenced in paragraph 2.1 (the "Option Period(s)"). If such payment is not made to Owner by the first day of each Option Period, the Option shall automatically expire and terminate. The Option consideration paid by Optionee is nonrefundable but will be credited against the purchase price for the Sears Garage if Optionee exercises the Option and closes the purchase as provided herein.

2.4 Time of Exercise. The Option may be exercised by Optionee at any time after the date of this Agreement but not later than 11.59 p.m. (Pacific time) on December 15, 1991, subject to Optionee's right to extend as provided in paragraph 2.3 for up to six additional Option Periods by payment of the option consideration provided therein, at the end of which time period the Option will terminate unless previously exercised as provided below.

2.5 Manner of Exercise. The Option may be exercised, if at all, by written notice given by Optionee to Owner at any time before December 16, 1991 or (if Optionee pays the Option consideration by the date it is due) during any Option Period, which notice shall specify that Optionee has elected to exercise this Agreement.

2.6 Failure to Exercise Option. If Optionee fails for any reason to exercise this Agreement in the manner and within the time period set forth above, Optionee shall have no further claim against or interest in the Sears Garage or in any of the Option consideration previously paid, and all of such money shall remain the property of Owner who shall have no

further obligation to Optionee under this Agreement. Further, in the event of such failure to exercise, Optionee will cooperate in providing Owner with any instruments which Owner may reasonably deem necessary or advisable for the purpose of removing from the public record any cloud on Owner's title to the Sears Garage which is attributable in any manner to the grant or existence of this Agreement.

2.7 Binding Obligation. Upon exercise of the Option, Optionee shall be obligated to purchase the Sears Garage from Owner, and Owner shall be obligated to sell the Sears Garage to Optionee, for the price and in the manner set forth in this Agreement. In such event, if either party shall fail or refuse to carry out any provision hereof, the other party shall be entitled to such remedy or remedies for breach of contract as may be available under applicable law, including (without limitation) the remedy of specific performance.

2.8 Condition to Optionee's Rights. Notwithstanding any other provisions of this Agreement, Owner's obligations hereunder and the Option are conditioned upon the closing of the purchase of the Sears Building under the Sale Agreement. Optionee may exercise its Option only after (or contemporaneously with) the closing of the purchase of the Sears Building under the Sale Agreement.

### 3. OWNER'S TITLE TO THE SEARS GARAGE

3.1 Title Report. As soon as practicable after the execution of this Agreement, Owner shall furnish to Optionee a preliminary title report from a reputable title insurance company selected by Owner ("Title Company") showing its willingness to issue an ALTA extended coverage owner's title insurance policy on the Sears Garage (or both the Sears Garage and Sears Building, if the parcels have not yet been partitioned), together with full copies of all exceptions. Optionee shall have 10 business days after receipt of the preliminary title report and exceptions within which to notify Owner in writing of Optionee's disapproval of any exceptions shown in the report, other than exceptions for the matters described on Exhibit A and any liens to be satisfied by Owner at closing. In the event of such disapproval, Owner shall have until the closing date to eliminate any disapproved exception. Failure of Optionee to disapprove any exception within the 10 business day period shall be deemed an approval of the exceptions shown in the title report.

3.2 Rescission of Agreement. If Owner is unable to eliminate any disapproved exception, either party may elect to rescind this Agreement by notice to the other party. In such event, Owner will promptly refund to Optionee the option consideration previously paid to Owner, and all obligations of

the parties under this Agreement shall thereafter cease, unless Optionee notifies Owner within 10 days after such rescission that Optionee elects to waive its prior disapproval.

4. CLOSING DATE

If Optionee exercises the Option, the purchase of the Sears Garage will be closed on a date reasonably acceptable to both parties, but not later than 20 days after exercise of the Option. Notwithstanding the giving of such notice, Optionee's sole liability for failing to close shall be the forfeiture of the option consideration payable to Owner and payment of costs payable by Optionee for the environmental consultant's services (pursuant to paragraph 7.1(a)) and under the Environmental Assessment Cost Sharing Agreement between the parties dated August 27, 1991, a copy of which is attached hereto as Appendix 2 (the "Environmental Assessment Agreement") and pursuant to paragraphs 9.1 and 15.1 below. The closing of the conveyance of the Sears Garage is referred to as the "Closing." The date for the Closing is referred to herein as the "Closing Date."

5. OPTIONEE'S RIGHT TO ENTER AND INSPECT

Prior to the Closing Date, Optionee may perform at reasonable times (upon reasonable advance notice to Owner and coordination as to the time of entry and nature of the test or study to be performed) reasonable tests, engineering studies, surveys, soil tests, and other inspections, studies and tests on the Sears Garage as Optionee may deem necessary, at Optionee's expense. Optionee will defend, indemnify and hold Owner harmless from any claim, loss or liability in connection with any entry on the Sears Garage by Optionee, any claim of lien or damage or activities on the Sears Garage by Optionee, its agents, employees and independent contractors and consultants.

6. OCC TRANSPORTATION CAPITAL IMPROVEMENTS

The Sears Garage will be conveyed subject to the Oregon Convention Center Transportation Capital Improvements LID and assessments thereunder, if any.

7. HAZARDOUS SUBSTANCES

7.1 Remediation Responsibility of Owner. Pursuant to the Environmental Assessment Agreement, Optionee and Owner mutually retained Brown & Caldwell ("the Environmental Consultant") and GCS, Inc. to recommend necessary removal or remediation of Asbestos Containing Materials ("ACM") and Hazardous Substances on, under or associated with the Sears Garage. The cost of retaining the Environmental Consultant and

GCS, Inc. for these services will be equally divided between the parties, whether or not this transaction closes, pursuant to the terms of the Environmental Assessment Agreement. The Environmental Consultant and GCS, Inc. submitted written reports, which are attached to Appendix 1 ("the Reports"). Owner agrees to perform or pay for all removal or remediation of ACM and Hazardous Substances to the extent and subject to the limitations described in Appendix 1.

7.2 Definitions. As used in this Agreement and in Appendix 1, the following terms shall have the following meanings:

(a) The term "Asbestos-Containing Material (ACM)" means any material containing more than one percent asbestos by weight, including particulate asbestos material.

(b) The term "Hazardous Substance" means any hazardous substance listed or defined under ORS 465.200(9), as of the date of this Agreement.

(c) The term "Environmental Laws" means the Clean Air Act (42 USC § 7401 et seq.), the Federal Water Pollution Control Act (the "Clean Water Act") (33 USC § 1251 et seq.), the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments (42 USC § 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 USC § 9601 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.) and all other applicable federal, state, county and local environmental requirements, including without limitation applicable rules, ordinances, codes, licenses, permits, judgments, writs, decrees, injunctions or orders of any governmental entity in force and effect as of the date of this Agreement and pertaining to the protection of the environment, including air, water, groundwater, soil, noise and odor.

7.3 Exclusivity of Rights. The rights and obligations of the parties under paragraph 7 and Appendix 1 of this Agreement shall be the exclusive rights and obligations of the parties with respect to ACM and Hazardous Substances, and supersede all other rights and remedies to which a party might otherwise be entitled with respect to such ACM and Hazardous Substances, including any other rights or remedies under this Agreement, under any statute, regulation or ordinance or under any other theory of law or equity. However, this paragraph shall not be construed to limit any right or remedy that Optionee may have against any party other than Owner. Optionee specifically shall retain all rights and remedies it may have against any person or entity other than Owner who at any time owned or occupied the Sears Garage.



8. STATE PARKING OBLIGATION

Owner and Pacific Development, Inc. ("PDI") will cooperate in efforts to obtain a new parking agreement directly between the State of Oregon ("State") and Optionee, in replacement of the existing Parking Supply Agreement between PDI and State. State and Optionee will execute the new parking agreement effective as of the Closing Date (or other date as Owner and Optionee may mutually approve), and the existing Parking Supply Agreement will be thereby superseded and terminated. If State requires that the parties assign the existing Parking Supply Agreement, Optionee will assume PDI's obligations and PDI will be released or held harmless from liability. This matter shall be resolved prior to the Closing Date for the sale of the Sears Building pursuant to the Sale Agreement.

9. PARTITION; EASEMENTS AND RESTRICTIONS

9.1 Partition. Upon the execution of this Agreement, Owner will cause a mutually acceptable surveyor licensed in the State of Oregon ("Surveyor") to prepare a legal description for the Sears Building and for the Sears Garage, and will cause to be prepared and filed the necessary application for governmental approvals of the partition of the Sears Garage (the costs of which will be equally divided between the parties, whether or not this transaction closes). The parties' obligation to close is conditioned upon approval of such partition by December 16, 1991 (subject to extension for a reasonable time period, if both parties mutually agree in writing to such extension, if such approval is delayed). Owner and Optionee agree to share equally the cost of partitioning the Sears Garage and Sears Building parcels (whether or not the transaction closes).

9.2 Declaration of Easements and Covenants, Conditions and Restrictions. The parties have attached (or will attach) a Declaration of Easements and Covenants, Conditions and Restrictions as Exhibit C hereto, which will be executed and recorded at or before the closing of the purchase of the Sears Building (the "Declaration"). By attachment hereto, the parties shall have approved the form of such Declaration, and Optionee shall have approved such Declaration as a permitted exception to title.

10. CLOSING

10.1 Status of Title; Prorations. Except as otherwise described in this Agreement, Owner will be responsible for paying, at closing, all outstanding taxes,

liens and assessments affecting the Sears Garage, including, but not limited to, the 1989 convention center L.I.D. assessment and vintage trolley LID. All real property taxes and all items of income and expense under the Parking Supply Agreement between the parties will be prorated and adjusted between the parties as of the Closing Date. Owner will not, however, be required to pay, and there will be no prorate or adjustment to the purchase price for, the Oregon Convention Center Transportation Capital Improvements L.I.D. and assessments thereunder, if any, affecting the Sears Building, which will be borne by Optionee.

10.2 Escrow and Closing. This transaction will be closed by an escrow officer of the Title Company selected pursuant to paragraph 3.1 (the "Escrow Officer") at its main offices in Portland, Oregon, or at such other place as the parties may mutually select. Closing shall take place in the manner and in accordance with the provisions set forth in this Agreement. The Closing will occur in sufficient time to permit the Escrow Officer to transfer funds to Owner's account (as it may designate in writing) between 9 a.m. and 10 a.m. (Pacific Time) on the Closing Date.

10.3 Certification of Nonforeign Status. Owner warrants that Owner is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and that such warranty will be true as of date of closing. Owner shall deliver to Optionee at closing a Certificate of Nonforeign Status, setting forth Owner's address and United States taxpayer identification number and certifying that Owner is not a foreign person as so defined.

10.4 Events of Closing. Provided the Escrow Officer has received the sums and is in a position to cause the title insurance policy to be issued as described below, the purchase will be closed on the Closing Date as follows:

(a) The Escrow Officer will perform the prora-tions described in paragraph 10.1, and the parties shall be charged and credited accordingly.

(b) On the Closing Date Optionee shall pay to Owner the total purchase price in cash, adjusted for the charges and credits set forth in this section.

(c) Any liens required by this Agreement to be paid by Owner at closing shall be paid and satisfied of record at Owner's expense.

(d) Owner shall convey the real property to Optionee by statutory warranty deed, subject only to the encumbrances accepted by Optionee pursuant to this Agreement.

(e) Title Company will deliver its commitment letter committing to issue the policy described in paragraph 10.5, upon recordation of the closing documents. The title insurance premium for an ALTA extended coverage owner's title insurance policy will be treated as a closing cost to be divided pursuant to paragraph 10.4(g) below.

(f) The Escrow Officer will record the deed and the Declaration referenced in paragraph 9.2.

(g) All costs (title insurance, escrow fees, recording fees and other customary closing costs) will be split equally between Owner and Optionee.

10.5 Title Insurance. As soon as possible after the Closing Date, Owner shall furnish Optionee with an owner's ALTA extended coverage policy in the amount of the total purchase price for the Sears Garage, subject only to the standard printed exceptions of the Title Company and exceptions for the matters accepted by Optionee pursuant to this Agreement.

#### 11. DESIGN REVIEW

The Declaration provides that Owner will have the right of reasonable prior review and approval of architectural plans, specifications and working drawings for the initial improvements and renovations to the Sears Building and Sears Garage, and subsequent alterations, exterior remodeling, additions or reconstruction thereof or thereto (excluding interior tenant improvements and interior alterations), and changes to elevations of the Sears Building and Sears Garage (hereafter, "Major Work"), in accordance with the procedures, terms and conditions stated therein. The design review rights will not be terminated or impaired by closing of the purchase of the Sears Garage and will survive the Closing Date.

These rights of design review may not be transferred or assigned by Owner to any third party either as part of a transfer of the Sears Garage or other properties, except as described below. These rights of design review may be exercised only by Owner or any "Owner's Successor" (as defined below), as owner of properties in the Lloyd District in Portland, Oregon. The term "Owner's Successor" means PDI any company which is wholly owned by PDI or PDI's majority shareholder, or PacifiCorp or any of its subsidiaries. In addition, the design review rights under the Declaration shall expire on the fifth anniversary of the Closing Date of the sale of the Sears Building to Optionee.

12. HANDLING OF OPTION PAYMENTS

Option payments will be paid directly to Owner in immediately available federal funds by the due date of the Option payment.

13. DISCLOSURE BY OWNER; DISCLAIMER

Owner has previously made available for Optionee's review Owner's records relating to the Sears Garage, including the State Parking Agreement and all documents, leases and contracts, title report and easements of records relating to the Sears Garage. In addition, Owner has previously made available for Optionee's review any plans and specifications in Owner's possession relating to renovation, evaluation of the Sears Garage and reports, documents and/or consultant analysis books in Owner's possession relating to structural, hazardous wastes, and similar matter relating to the Sears Garage. As to any reports or other materials provided or made available to Optionee, Owner is not warranting (and will not be liable or responsible for) the accuracy, fitness or usability of such reports or materials or any recommendations or conclusions stated therein. If Owner obtains actual knowledge prior to the Closing Date of a fact which would make any of the representations and warranties in this Agreement false, Owner will notify Optionee of such fact. Except as specifically provided for in any other provision of this Agreement, Owner will not be liable to Optionee on the representations and warranties in this Agreement after the Closing Date unless Owner had actual knowledge on the Closing Date that the representation or warranty was false and Owner failed to disclose to Optionee the fact known to Owner which made the representation or warranty false.

14. NO JOINT VENTURE OR OTHER RELATIONSHIP

It is expressly acknowledged and agreed that no provision of this Agreement or the parties' conduct or activities will be construed: (i) as making either party an agent, principal, partner or joint venturer with the other party; or (ii) as making either party responsible for the payment or reimbursement of any costs incurred by the other party in pursuing this transaction, except as expressly provided for herein.

15. FAILURE TO CLOSE AFTER OPTION EXERCISE

15.1 Owner's Remedies. In the event Optionee exercises the Option but this transaction fails to close on account of Optionee's fault or inability to close, the amount(s) previously paid or payable to Owner as option

consideration shall be forfeited by Optionee and retained by Owner as liquidated damages and Optionee will pay the costs required to be paid by it pursuant to this Agreement (including, without limitation, the costs specified in paragraphs 7.1(a) and 9.1 and the Demolition and Additional Remediation Charges referenced in paragraph 7.1(d) above) and one-half of the costs for remediation work specified in Appendix 1 which has been performed (if any). SUCH AMOUNTS HAVE BEEN AGREED BY THE PARTIES TO BE REASONABLE COMPENSATION AND THE EXCLUSIVE REMEDY FOR OPTIONEE'S DEFAULT, SINCE THE PRECISE AMOUNT OF SUCH COMPENSATION WOULD BE DIFFICULT TO DETERMINE. By initialling this page, the parties acknowledge and agree to such liquidated damages provision. Initials of Parties: Owner \_\_\_\_\_; Optionee \_\_\_\_\_.

15.2 Optionee's Remedies. In the event Optionee exercises the Option but this transaction fails to close on account of Owner's fault or Owner's inability to close, Owner will promptly refund to Optionee the option consideration previously paid to Owner, and Optionee shall be entitled to such remedies for breach of contract as may be available under applicable law, including (without limitation) the remedy of specific performance.

## 16. GENERAL PROVISIONS

16.1 Time of Essence. A material consideration to Owner's entering into this transaction is that, if Optionee exercises the Option, Optionee will close the purchase of the Sears Garage by the Closing Date described above. Except as otherwise specifically provided in this Agreement, time is of the essence of each and every provision of this Agreement.

16.2 Prior Agreements. This Agreement supersedes and replaces all written and oral agreements previously made or existing between the parties with respect to the Sears Building (including, without limitation, the letter of intent between the parties).

16.3 Applicable Law. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon.

16.4 Survival. All restrictions and conditions which this Agreement does not require to be fully satisfied prior to the Closing Date shall survive the Closing Date and shall be fully enforceable thereafter in accordance with their terms.

16.5 Representations; Condition of Sears Garage. Owner will permit Optionee to make its independent inspections and investigations of the Sears Garage prior to the Closing

Date. Except as otherwise specifically set forth in this Agreement or in the deed to be delivered at closing, no warranties, guarantees or representations, express or implied, have been or are being made by Owner concerning the Sears Garage, Optionee's intended use, or other matters, and Optionee accepts the land, buildings, and all other aspects of the Sears Garage in their present condition, AS IS.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

16.6 Council and Board Approvals. This Agreement is subject to Optionee's obtaining its Council's approval of this Agreement not later than \_\_\_\_\_, 1991, and is subject to Owner's obtaining approval by its Board of Directors.

16.7 Brokers. Optionee (at its expense) will cause the escrow officer to pay at closing the real estate broker's commission due to Coldwell Banker Commercial Brokerage on account of this transaction. Each party will defend, indemnify, and hold the other party harmless from any claim, loss, or liability arising out of its own conduct made or imposed by any other broker or agent claiming a commission or fee in connection with this transaction.

16.8 Costs and Attorney's Fees. In the event suit or action is instituted to interpret or enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal of such suit or action and on any petition for review.

16.9 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors, and assigns, but no interest of Optionee under this Agreement or in the Sears Garage will, prior to the Closing Date, be assigned, subcontracted or otherwise transferred (voluntarily, involuntarily, by operation of law or otherwise), without the prior written consent of Owner. Any attempted transfer without such consent will be null and void and constitute a default by Optionee under this Agreement.

16.10 Notices. Notices under this Agreement shall be in writing and shall be effective when actually delivered.

If mailed, a notice shall be deemed effective on the third day after deposited as registered or certified mail, postage pre-paid, directed to the other party at the address shown below:

To Owner:

Pacific Development  
(Property), Inc.  
825 NE Multnomah, Suite 1275  
Portland, Oregon 97232  
Attention: Mary H. Oldshue,  
Vice President

To Optionee:

Metropolitan Service District  
2000 SW First Avenue  
Portland, Oregon 97201-5398  
Attention: Rena Cusma,  
Executive Director

With a copy to:

Pacific Development  
(Property), Inc.  
825 NE Multnomah, Suite 1275  
Portland, Oregon 97232  
Attention: Harold DeBlanc,  
Development Manager

With a copy to:

Metropolitan Service District  
2000 SW First Avenue  
Portland, Oregon 97201-5398  
Attention: Neil Saling,  
Director of  
Facilities

Either party may change its address for notices by written notice to the other.

16.11 Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

16.12 Changes in Writing. This Agreement and any of its terms may only be changed, waived, discharged or terminated by a written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

16.13 Indemnified Parties. Any indemnification contained in this Agreement for the benefit of a party shall extend to the party's officers, employees, and agents.

16.14 Counterparts. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

16.15 Invalidity of Provisions. In the event any provision of this Agreement is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

16.16 Legal Effect. THIS IS A LEGALLY BINDING CONTRACT. ALL PARTIES SHOULD SEEK ADVICE OF COUNSEL BEFORE EXECUTING THIS AGREEMENT.

16.17 Confidential Information. Optionee shall, to the extent permitted by the Oregon Public Records Act, respect and observe the confidential nature of environmental and other reports and information obtained from Owner concerning the Sears Garage and (if this transaction does not close) return such written reports (including any copies thereof) to Owner. If this transaction closes, all documents furnished by Owner to Optionee shall be considered public records.

AGREED to, subject to necessary Council and board approval, as stated above, as of the date(s) shown below.

OWNER:

PACIFIC DEVELOPMENT  
(PROPERTY), INC.

By: \_\_\_\_\_

William C. Scott,  
President

Dated: October \_\_, 1991

OPTIONEE:

METROPOLITAN SERVICE  
DISTRICT

By: \_\_\_\_\_

Dated: October \_\_, 1991



EXHIBIT A

The legal description of the Sears Building and Sears Garage is set forth on the attached page. Separate legal descriptions of these parcels, after partitioning, will be attached by the parties.

## APPENDIX 1

### REMEDIATION WORK--SEARS GARAGE

1. Owner Obligations to Remove or Remedy ACM and Hazardous Substances. Owner agrees to remove or remedy all ACM or Hazardous Substances on, under or associated with the Sears Garage that are discovered by Optionee within one year of the Closing Date that must be removed or remedied in order to achieve compliance with Environmental Laws (taking into account the intended use of the garage by Optionee). Optionee agrees that, immediately upon its discovery of any ACM or Hazardous Substances on, under or associated with the Sears Garage, it will provide written notice to Owner describing the nature and known scope of such ACM or Hazardous Substance. Owner's obligations under this Appendix 1 are subject to the exceptions described in paragraph 2 below, subject to the limitations set forth in paragraph 3 below and pursuant to the procedures established hereunder.

2. Exceptions. Owner's obligations are subject to the following exceptions:

a. PCB-containing light ballasts. Owner is not obligated to either remove or replace PCB-containing light ballasts. Owner is obligated, however, to obtain bids on the cost of disposal of all such light ballasts. Optionee will be credited at Closing with the amount of such disposal costs.

b. Mutually agreed upon exceptions. Optionee and Owner understand that certain remediation elements identified

in the Reports may not be necessary based on the renovation plans ultimately adopted by Optionee. The parties may, therefore, by mutual consent, agree to excuse Owner from performing removal or remediation with respect to any items identified in the Reports.

3. Limitations.

a. Demolition costs borne by Optionee. Owner agrees to bear the costs incurred to remove or remedy the presence of ACM or Hazardous Substances as described above. Optionee is not to be relieved, however, of the costs it would ordinarily incur in its demolition and renovation activities. Thus, to the extent that Optionee obtains a benefit (i.e., demolition) through the remediation or removal work undertaken by Owner, Optionee is responsible for the direct costs incurred by Owner for that work, together with a 15 percent construction management fee ("Demolition Charges"). However, Optionee shall not be responsible for any consultant fees incurred by Owner associated with removal of ACM or remediation of Hazardous Substances. Optionee agrees to pay the Demolition Charges, including the construction management fee, as the work is performed. Owner shall submit invoices to Optionee for the work performed to date and Optionee will pay within 20 days after receipt thereof. In the event of a dispute as to what costs are part of the Demolition Charges, the parties will accept the decision of Brown & Caldwell, whose decision will be conclusive and final and binding on the parties.

b. Process for obtaining bids. To the extent that Optionee identifies ACM or Hazardous Substances that require removal or remediation pursuant to this Appendix 1, Owner will obtain firm bids with respect to all removal and remedial work so identified. In each case where Optionee will realize a demolition benefit from the work, Owner will obtain bids that permit the parties to determine separately the costs strictly associated with removal or remediation of ACM or Hazardous Substances and those associated with the demolition or other activity that would be required of Optionee whether or not the material was hazardous or contained ACM.

c. Owner Right to Terminate or Repurchase.

(1) Prior to Closing. If Owner determines prior to Closing that the Environmental Costs Identified Pre-Closing (defined below) will exceed \$100,000, Owner shall have the right to rescind this Agreement by notice to Optionee. As used in this Agreement, "Environmental Costs Identified Pre-Closing" means total costs of removal and remedial work performed prior to Closing, if any, plus the credits established under paragraph 2.a. above plus any firm bids for removal or remedial work to be performed after Closing obtained pursuant to paragraph 3.b. above, but not including Demolition Charges. In such event, all option consideration paid to date shall be refunded to Optionee and all obligations of the parties under this Agreement shall thereafter cease, unless Optionee notifies Owner within 10 days after a notification by

the Owner of an intent to rescind that Optionee (1) elects to waive Owner's obligations to perform remedial work or (2) elects to itself fund all remediation above \$100,000 and elects to proceed to close the sale.

(2) After Closing. Owner's obligations under this Appendix 1 shall expire in their entirety one year after the Closing Date. In addition, Owner shall have a limited right to repurchase the Sears Garage in lieu of pursuing removal or remediation otherwise required by this Appendix 1. Owner's right to repurchase is subject to the following terms:

(a) Owner shall have no right to repurchase unless its total removal and remediation expenditures (including the Environmental Costs Identified Pre-Closing) are projected, based on firm bids, to exceed \$100,000; (b) Owner must provide written notice to Optionee of its interest in repurchasing, including documentation of the firm bids described in subparagraph (a) above, and specify a closing date within 30 days of such notice; (c) Within 15 days of receiving such notice, Optionee shall provide written proof to Owner of Optionee's costs to date as described in subparagraph (f) immediately below; (d) Within two days of receiving such documentation, Owner shall advise Optionee in writing whether it intends to proceed with the repurchase and shall confirm the date for closing; (e) At closing of the repurchase, Owner will pay Optionee a repurchase price equal to the purchase price paid by Optionee for the Sears Garage; (f) At the closing of

the repurchase, Owner will reimburse Optionee for the operating deficits (interest costs plus customary operating expenses less revenues), if any, incurred by Optionee (from date of closing on the Sears Garage up until the closing of the repurchase); (g) Such repurchase shall be accomplished in accordance with the general provisions set forth in Exhibit 1 hereto; (h) Owner will have no right to repurchase if Optionee notifies Owner within 15 days after receiving the notice described in subparagraph (a) above that Optionee elects to waive Owner's obligations to perform any additional removal or remedial work beyond the \$100,000 of work referred to in that subparagraph; and (i) Upon closing of the repurchase, the Parking Supply Agreement will automatically be restored to full force and effect as if the purchase of the Sears Garage had not occurred.

4. Performance of Work. Owner may, but shall not be required to, perform any removal or remedial work prior to Closing. Owner shall have the right of entry and access to the Property after Closing for the purpose of completing the work. Owner and Optionee will mutually agree upon a means of coordinating Owner's removal and remediation work with Optionee's demolition and renovation work. Upon completion of the work, Owner will provide Optionee with a certification by Brown & Caldwell or a mutually agreed upon environmental consultant that such removal or remediation work has been completed and that to the best of the consultant's knowledge no further hazard to construction workers or the Optionee's

subsequent occupants exists. The cost of this update will be equally divided between Owner and Optionee.

APPENDIX 2

TO

ADDENDUM TO SALE AGREEMENT

Environmental Assessment Cost Sharing Agreement



ENVIRONMENTAL ASSESSMENT  
COST SHARING AGREEMENT

DATED: August \_\_\_\_, 1991

BY AND  
BETWEEN: Metropolitan Service District ("Buyer")

AND: Pacific Development (Property), Inc. ("Seller")

RECITALS.

A. On June 26, 1991, Buyer and Seller executed a letter of intent regarding the Buyer's purchase of improvements and property known as the Sears Building and option to purchase improvements and property known as the Sears Garage (collectively referred to as "the Sears Property").

B. Buyer and Seller continue to negotiate the purchase/sale agreement for the contemplated transaction.

C. Both Buyer and Seller desire to initiate immediately an environmental assessment of the Sears Property.

OPERATIVE TERMS

1. Definitions

1.1 The term "Hazardous Substance" means any hazardous substance listed or defined under ORS 465.200(9), as of the date of this agreement, and shall specifically include Asbestos-Containing Materials ("ACM").

1.2 The term "Environmental Laws" means all applicable federal, state, county and local environmental requirements in force and effect as of the date of this agreement and pertaining to the protection of the environment, including air, water, groundwater, soil, noise and odor, and including regulations pertaining to employee exposure to hazardous substances.

2. Choice of Consultant

2.1 Buyer and Seller have mutually selected Brown & Caldwell for the task of conducting an environmental assessment of the Sears Property ("the Consultant").

3. Scope of Work/Reporting Obligations of Consultant

3.1 Consultant will perform the environmental assessment under the direction of Seller pursuant to the agreed Scope of Work, which is attached as Exhibit A. Consultant will rely primarily on the reports previously prepared by Dames & Moore dated December 3, 1990 and January 31, 1991, but will conduct

such further testing as it determines necessary, subject to the approval of Buyer and Seller. Buyer and Seller agree that they will not unreasonably withhold such approval, subject to paragraph 4 below. Consultant will provide all reports, including drafts, to both Buyer and Seller. Seller will advise Buyer of all significant meetings with the Consultant and provide Buyer an opportunity to participate, if Buyer so desires.

4. Cost Sharing

4.1 Buyer and Seller agree to mutually share in the cost of the Consultant, whether or not the purchase/sale transaction closes, but agree that the Consultant shall be directed not to perform more than \$10,000 in work without the approval of both Buyer and Seller.

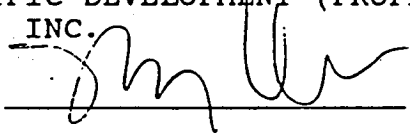
SELLER:

PURCHASER:

PACIFIC DEVELOPMENT (PROPERTY),  
INC.

METROPOLITAN SERVICE  
DISTRICT

By: \_\_\_\_\_



By: \_\_\_\_\_



## EXHIBIT A

### Scope of Work

1. Buyer and Seller shall provide to Consultant, as soon as Consultant is retained, all environmental assessments of the Sears Property completed to date which are in the possession and control of the parties, including the Preliminary Site Assessment dated December 3, 1990 and the Magnetometer and Soil Gas Survey dated January 31, 1991 prepared for Buyer by Dames & Moore ("the Dames & Moore Reports").

2. Consultant shall review all such reports and, with respect to all Hazardous Substances on the Sears Property identified in the Dames & Moore Reports, make two recommendations as to what remediation must be accomplished to achieve compliance with the following standards:

- (a) Option #1--Such remediation as is necessary to place the building and garage in compliance with all applicable existing Environmental Laws as those laws would be enforced by any authorized governmental agency, on the basis and assumption that a party takes possession and occupancy of the building and garage in their present condition with the intent to utilize all four floors for office use. Consultant should assume that the least expensive method of remediating any problem, consistent with the standard stated above, will be selected.
- (b) Option #2--Such remediation as is necessary to place the building and garage in compliance with all applicable existing Environmental Laws as those laws would be enforced by any authorized governmental agency, on the basis and assumption that the building and garage are being renovated as described on the attachments hereto and that the use of the building and garage after the renovation work is completed will be as described on such attachments. This option shall include an estimate of the cost of removal of all VAT located on the first and second floors regardless of whether it is consultant's opinion that such removal is required by existing applicable law. Consultant shall also state its opinion as to whether such removal of VAT is required by applicable law.

With respect to each remediation recommendation, Consultant shall provide an estimate of the cost to complete such work. Remediation work to the Sears Garage (if any) should be separately stated, compared to remediation work to the Sears

building. The Consultant shall assume that the remediation will be completed prior to execution of Buyer's renovation plans. The Consultant shall, however, state those costs directly associated with the remediation separately from those costs associated with the demolition required in order to conduct the remediation work.

3. Consultant shall provide an estimate of the useful life of the existing Sears Building roof. Consultant shall state its opinion as to whether encapsulation or removal of ACM in the roof material is required by applicable law, for the roof in its present condition. Furthermore, Consultant shall state whether, in connection with installation of a replacement roof, encapsulation or removal of ACM in the roof material is required by applicable law. Consultant shall provide an estimate of the cost of any encapsulation or removal of ACM in the roof material required by applicable law. Furthermore, Consultant shall provide an estimate of the cost of removal of all existing roof material in order to install a replacement roof. The estimated cost of removal of all the existing roof material shall include a separate cost estimate of all costs attributable to removal and disposal of ACM contained in the roof material.

4. Consultant is to rely primarily on the Dames & Moore reports. To the extent Consultant determines it needs to undertake further testing in order to make the recommendations required in paragraph 2, Consultant shall propose what specific testing it believes to be necessary. Consultant shall not proceed with that testing without the approval of Buyer and Seller.

5. Consultant is to complete its work and provide remediation recommendations in report form, simultaneously to both parties, by August 30, 1991.

EXHIBIT B

Intentionally omitted

(there is no Exhibit B to the  
Sears Garage Option to Purchase Agreement)

EXHIBIT C

DECLARATION OF EASEMENTS  
AND  
COVENANTS, CONDITIONS AND RESTRICTIONS

[To be attached when approved]

PDI will fund all remediation costs for asbestos containing materials (ACM) and other hazardous wastes while Metro will fund the corresponding demolition costs which would be a part of the renovation process. PDI has placed a limit on its post-closing remediation liabilities by a repurchase clause which may be exercised in the face of extreme remediation costs.

The Relocation Task Force has recommended the renegotiation of a suitable purchase option with PDI which includes an independent element for the garage facility and the simultaneous preparation by Metro staff of a RFQ/RFP for the design/build renovation services. The RFQ/RFP procurement method for design/build services is a innovative procurement method which has been used successfully by several local governments in recent years. The design/build competition is a two-step process which results in a team approach to design and construction.

The first step is the advertised RFQ [~~in which~~] whereby Metro [~~would solicit~~] has solicited statements of qualifications from [any] interested design/build teams. The design/build team will include members from the fields of architectural design, construction and construction management. From the responses, Metro [will] has selected three qualified teams to continue participating in the RFP stage of the competition. These teams are Hoffman Construction and TVA/Cole, BOOR/A and Anderson Construction , and H. Naito, SERA and P & C Construction.

The RFP will include a basic space concept for the new Metro headquarters building and performance specifications for the mechanical, electrical and systems of the building. In addition, the RFP will identify the maximum funds available for the design and renovation of the building. The three teams are given one month to prepare their proposals. They are required to submit a base proposal based on the stated space concept and performance specifications; the teams may also submit additive or deductive alternates for any element of the building.

The analyses of the proposals by Metro will include a technical evaluation along with design review. Upon completion of this analysis, the jury will select the most appropriate proposal for contract award. Each of the three design/build teams which submit a proposal in accordance with the RFP will receive a \$25,000 honorarium. For the two unsuccessful teams, the honorarium is intended to assist in covering the costs of preparing their proposal and for the successful team the honorarium is deemed an initial progress payment. Honorariums are typical in this type of design competition and is intended to result in a higher degree of design skill.

Metro Code section 2.04.041 allows the Contract Review Board to exempt the headquarters design/build RFQ/RFP from competitive bidding process if it finds this alternative approach is unlikely to encourage favoritism or substantially diminishes competition and that it is likely to result in substantial cost savings to the agency. This exemption is the subject of proposed Resolution No. 91-1507.

The three selected design/build teams will submit proposals which will be judged against the identified Metro budget for the work. Price will be a significant evaluation criteria and it is expected that each proposer will aggressively solicit and receive sub-bids from the local contracting community, thereby maintaining the usual degree of competition at the subcontractor level. In addition, the RFP includes an allowance for the tenant improvements (roughly 26% of the work). This allowance will require the successful design/build team to solicit and receive at least three bids for all elements of the tenant improvement work; to conduct all bid openings with a Metro representative present; and to award subcontracts to the bidder whose bid reflects the best value at the lowest cost, thus maintaining the usual level of competition for the tenant improvement work.

The design/build process is a "fast track" method which compresses the typical project schedule by simultaneously selecting design and construction services and by allowing the design/build contractor to commence initial elements of the project (demolition, ordering/fabrication of long-lead items) while the design process of other items is underway. The construction cost savings associated with a "fast track" project equate to approximately 5% per year. The design/build process also reduces costs with fewer change orders because the responsibility of faulty design is shifted to the design/build contractor.

The garage purchase element provides for six 6-month options beginning in December 1991 at an option price of \$50,000 per option plus a no-cost option on or before December 16, 1991. The purchase price of the garage begins at \$2,600,000 and escalates at 5% per six-month period after December 16, 1991. The sum of the initial garage purchase price (\$2.6 million excluding option price of \$50,000) and the Sears building (\$2.55 million) purchase price are equal to the previous sale agreement combined purchase price of \$5,150,000.

While acquisition of the parking garage is not a requirement for the functioning of the new Metro headquarters in the renovated Sears facility, purchase of the garage [may] has been determined by staff to be highly beneficial to Metro from (1) long term parking revenues, and (2) parking asset in support of the Convention Center and other MERC facilities. The Sale Agreement contains provisions for Metro's acquisition of the parking garage at a subsequent date. Staff [is-not] has prepared [at this time to present] an analysis to support a purchase decision. (See Exhibit B) [~~However, such an analysis should be prepared and an early decision~~



reached on the purchase of the parking garage.] The Executive Officer proposes to notify PDI upon signing of the Sale Agreement that Metro wishes to execute the first no-cost option. Renewal of the option or purchase of the adjacent garage will be subject to Council approval.

RECOMMENDATION:

The Executive Officer and the Relocation Task Force recommend approval of Resolution No. 91-1494 - C by the Metro Council [~~and the Contract Review Board~~].

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING )  
THE EXECUTION OF A SALE )  
AGREEMENT FOR THE ACQUISITION OF )  
THE SEARS FACILITY [AND EXEMPTING )  
THE HEADQUARTERS RFQ/RFP PROCESS )  
FROM COMPETITIVE BIDDING PROCESS )  
PURSUANT TO METRO CODE 2.04.041] )

RESOLUTION NO. 91-1494 - C  
Introduced by Rena Cusma,  
Executive Officer

WHEREAS, in October 1990 the Council of the Metropolitan Service District approved Resolution No. 90-1338 which authorized the execution of a sale agreement for the acquisition of the Sears facility as the site for Metro's administrative offices and authorized an alternative procurement process for selected contracts; and

WHEREAS, Resolution No. 90 - 1338 provided for a due diligence period which conditioned the closing of the sale agreement by a determination by Metro of the suitability of the Sears facility as the Metro headquarters facility; and

WHEREAS, upon completion of the extended due diligence efforts, Metro's Relocation Task Force informed the owners of the Sears facility that the study had shown that the Sears facility, including the adjacent garage, was not economically suitable and allowed the initial sale agreement to lapse; and

WHEREAS, an unsolicited proposal indicated the possibility of renovation of the Sears building, excluding the adjacent parking garage, as the new Metro Headquarters Building within an economically acceptable budget; and

WHEREAS, the Executive Officer and the Relocation Task Force have reviewed the proposal and recommend the execution of a sale agreement, attached as Exhibit A, [~~which provides for the closing of the sale of the Sears facility upon the satisfactory receipt and acceptance by Metro of a proposal to renovate the Sears building into Metro headquarters and for an independent series of options to purchase the adjacent garage facility;~~] and

WHEREAS, the Sears Garage Option to Purchase Agreement (Exhibit B) provides for a no-cost option between the execution of the Building Sale Agreement and December 15, 1991.

WHEREAS, Metro staff has conducted a Financial Analysis of the adjacent parking garage and determined that the acquisition of the garage is beneficial to Metro; NOW THEREFORE

~~[WHEREAS, Metro staff, at the direction of the Relocation Task Force, commenced the preparation of a two step design/build procurement (RFQ/RFP) process for the renovation of the Sears building; and]~~

~~[WHEREAS, the RFQ phase of such procurement process has been completed with the selection of three highly qualified design/build teams who would compete at the proposed RFP phase of the design/build procurement process; and]~~

~~[WHEREAS, the alternative design/build RFQ/RFP process will enable Metro to procure a renovated Headquarters building of high quality at reduced costs and will not encourage favoritism or substantially diminish competition; and]~~

~~[WHEREAS, the design/build procurement method has been employed successfully by other governments and is recognized as a modern and innovative contracting method;]~~

~~[WHEREAS, adequate time for a full "lowest bid" bid process is not available prior to the Sears facility Owners' stated deadline for the closing of the Sale Agreement.]~~

~~[WHEREAS, Resolution No. 91-1505 acts simultaneous with this Resolution to authorized the issuance of the design/build RFP and to ratify the previous issuance of the design/build RFQ and the selection of three highly qualified teams to continue in the design/build competition.]~~

BE IT RESOLVED,

1. That the Council renews its selection of the Sears facility as the site for Metro's new Headquarters Building.
2. That the Council hereby authorizes the Executive Officer to execute the the attached Sale Agreement and Promissory Note, Exhibit A, for the acquisition of the Sears facility.
3. That prior approval of the Council shall be required before the Executive Officer proceeds to closing of the Sale Agreement.
4. ~~[That the Council hereby directs the Executive Officer to undertake a financial analysis of the adjacent parking garage as a basis for a Council decision on the acquisition of that facility].~~ That prior approval of the Council shall be required before the Executive Officer executes an Option Agreement for the adjacent parking garage which would be applicable for any Option period subsequent to December 16, 1991.
5. That prior approval of the Council shall be required before the Executive

[~~BE IT FURTHER RESOLVED,~~

1. ~~That the Council, acting as the Contract Review Board of the Metropolitan Service District, adopts the finds attached as Exhibit B.~~

2. ~~That the Contract Review Board hereby exempts the Headquarters project design/build RFQ/RFP from competitive bidding process pursuant to Metro Code 2.04.041.]~~

ADOPTED by the Council of the Metropolitan Service District this \_\_\_\_ day of October, 1991.

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Tanya Collier  
Presiding Officer

## REGIONAL FACILITIES COMMITTEE REPORT

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RESOLUTION NO. 91-1494C, AUTHORIZING THE EXECUTION OF A SALE AGREEMENT FOR THE ACQUISITION OF THE SEARS FACILITY.

---

Date: October 10, 1991

Presented by: Councilor Knowles

**COMMITTEE RECOMMENDATION:** At its October 8, 1991 meeting the Regional Facilities Committee voted 3-1 to recommend Council adoption of Resolution No. 91-1494C. Voting aye were Councilors Bauer, Buchanan, and McFarland. Councilor Gardner voted no. Councilor Knowles was excused.

**COMMITTEE DISCUSSION/ISSUES:** The Regional Facilities Committee has considered resolutions to authorize a sale agreement for the Sears facility at each of its meetings since July. It passed out Resolution No. 91-1494B for Council consideration at the September 12 Council meeting. Prior to that meeting, asbestos was found in the building facade and the resolution was returned to committee.

At the October 8 meeting, Regional Facilities Director Neil Saling reported that Metro staff and Pacific Development had reached an agreement on the terms of a sale. PDI had dropped its insistence on the payment of interest for the period between execution of the sale agreement and closing of the sale, in exchange for Metro's agreement that closing would occur no later than December 16, 1991. The other major issue that had been resolved dealt with responsibility for building cleanup and remediation of hazardous substances.

PDI agrees to be responsible for cleanup up to \$250,000; estimates of the cost of the cleanup are now in the \$225,000-\$230,000 range. If asbestos or other hazardous substances are found within one year of the closing, PDI will pay up to \$250,000 above the original cleanup costs. If the cost exceeds that cap, PDI may elect to repurchase the property and pay back Metro's earnest money and the honoraria paid to the design/build teams, our project costs up to another \$500,000, and 50% of project costs above that amount. They will subtract from this amount the post-closing cleanup costs they have paid. Metro could elect to waive PDI's responsibility for cleanup and do the work ourselves.

Mr. Saling added that the asbestos found just before the earlier Council meeting had turned out not to be present, after all.

Councilor Bauer asked about standards for asbestos removal, and asked who would be liable if asbestos migrated to adjoining properties during the removal process. Mr. Saling said that the DEQ standard is 1% asbestos by weight, and PDI would be liable in case of any error. He added that the removal process requires wetting and bagging of the asbestos, which limits the chance of error such as Councilor Bauer outlined. If a Metro contractor working on the building roof allowed the material to migrate, we

would be responsible, but Dan Cooper added that we include insurance requirements in contracts in order to cover such possibilities.

Mr. Saling said he expected the remediation to be complete by early February; the contract calls for it to be complete no later than March 31.

Councilor McFarland asked Mr. Saling to list the hazardous substances we expected to have to deal with. Mr. Saling listed the storage tank, pipes with asbestos wrap, some fireproofing, and vinyl asbestos tile in the floor. PDI has agreed to remediate all those things. The only area Metro contractors would deal with is the roof, and PDI will reimburse us for the remediation costs of the roof. The method to calculate the costs will be by asking for bids for demolition only (Metro's responsibility) and demolition with hazardous materials remediation; the difference is PDI's responsibility.

Councilor Van Bergen referred to a meeting he attended in the spring when staff recommended to the Building Relocation Task Force that we discontinue negotiations to buy the Sears Building. He wanted to know when the determination was made that the new scheme was practical. Mr. Saling referred to the Finance staff's August analysis. He cited the figure of \$18.5 million for the current building purchase versus \$26 million for the original proposal. The difference is in the scheme and the risk level of the two proposals. The goal was to purchase a building with costs per square foot of around \$15. Staff has prepared three alternative financing plans, with varying costs.

Councilors Van Bergen and Knowles discussed actions that had been taken since the determination not to proceed with the earlier proposal. Mr. Saling compared the two proposals, saying the earlier proposal was some \$26 million. In the meantime, a proposal arose calling for development of two floors of office space and two floors of parking, which is estimated to cost \$18.5 million. Councilor Van Bergen asked to be provided with a copy of the financial analysis staff had prepared. He then asked to be provided a copy of any analysis of this proposal against other proposals to furnish Metro a headquarters building.

Councilor Wyers asked how this project would affect other Metro programs. Mr. Saling referred to the financial analysis, which shows some of the impact on departments, in terms of transfers and excise tax increases required to pay the debt service. Councilor Wyers said her perspective was as a member of the Finance Committee concerned about use of the excise tax and funding for future programs; she wanted to know the effect of the Sears project on the entire agency. Mr. Saling noted that Metro's current building provides 60% of the space needs identified in the space plan; with Transportation's move, we are now at 75%. His point is that cost increases attributable to the Sears move are driven primarily by added space, rather than cost per square foot.

Councilor Knowles asked staff to reassemble information on the agency's finances, space needs, and the relationship between financing for this program and financing for programs. Councilor Wyers said she would appreciate seeing that information, citing the juxtaposition of Metro's buying an \$18 million building right after raising Zoo fees.

Councilor Hansen said we would not be able to find a comparable building in a location so close to the Convention Center. Her question is: Do we want to have a Metro headquarters in this location, and if so, does the money justify the move? She believes so, trusting in the work of the staff and committee.

Councilor Bauer asked to have the real estate consultant who prepared the analysis of the earlier Sears proposal do an analysis of the current proposal, to determine whether we were paying fair market value. He explained that his purpose in making this request was primarily to substantiate the appropriateness of our costs, in order to justify the expense to obtain financing. Mr. Saling said he had comparisons of lease and purchase rates; he believes the Sears rate is acceptable and comparable to alternatives.

Council Administrator Don Carlson asked Mr. Saling what was the basis for his reference to a cost in the range of \$16 per square foot. Mr. Saling explained that Finance staff has developed three alternative financing proposals, and the "ramped" debt service provides the lowest initial rate (at approximately \$16 per square foot in the first year) but that it is more expensive in the long run than the other two.

Councilor Van Bergen asked what it would cost to get out of the agreement prior to the December closing date. Mr. Cooper and Casey Short said it would cost \$250,000 in forfeited earnest money, plus \$75,000 in design/build team honoraria. In response to Councilor Van Bergen's follow-up question, Mr. Cooper said that Metro would not be forced to buy the building under a specific performance clause.

Mr. Saling pointed out that the resolution provides for Metro to have a two-month option on the garage at no additional cost; this is a material change in the resolution from the "B" version.



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

DATE: October 8, 1991  
TO: Metro Councilors  
FROM: Casey Short, <sup>CS</sup> Council Analyst  
RE: Information on Proposed Sears Building Purchase

Attached you will find a series of memos and a financial analysis relating to Metro's proposed purchase of the Sears Building. This information was included in packets distributed to the Regional Facilities Committee earlier in the summer, but was not included in the packet for the October 8 meeting. Councilors Van Bergen and Wyers attended tonight's committee meeting and asked to be provided with this information. They specifically asked for the financial analysis in order to assess the impact the purchase would have on the ability to fund Metro programs.

Included in the attached information are two July memos from me to the Regional Facilities Committee and Neil Saling, and Mr. Saling's responses to the questions I raised in the memos; the financial analysis prepared by Finance & Management Information staff in August; and two September memos from me, with responses from Neil Saling and Chris Scherer. In the interest of addressing the issues raised by Councilors Van Bergen and Wyers, please refer to Exhibits 7-9 in the financial analysis, which are attached to Mr. Scherer's September 11 memo.

You will notice that the July memos refer to Resolution No. 91-1478. This was the earlier version of the Sears agreement, later replaced by Resolution 91-1494; the latter is on the October 10 Council agenda.





**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503.221-1646

# Memorandum

**DATE:** September 11, 1991

**TO:** Neil Saling, Director of Regional Facilities

**FROM:** Chris Scherer, Financial Planning Manager

**RE:** RESPONSE TO FINANCIAL ISSUES RAISED IN CASEY  
SHORT'S SEPTEMBER 4, 1991, MEMORANDUM REGARDING  
THE SEARS PURCHASE AGREEMENT

As requested, we are providing information related to the captioned memo from Casey Short.

**Issue:** Should the Council commit to a program of purchase and renovation without knowing what the project is going to cost?

Project costs have been estimated by Metro staff and are included in the August 13, 1991, Financial Analysis of Headquarters Building Purchase and Renovation (the Report) prepared by the Finance and Management Information Department. Although these estimates are subject to modification, they have been prepared on the basis of analysis performed by Metro's architectural and construction consultants and provide an "order of magnitude" benchmark on cost information. Although we would expect that the actual costs of the Project would be somewhat different from those currently estimated, we are confident that the estimates provide sufficient information for analysis and decision-making. The Report contains the following breakdown of costs:

Cost of the Project:	\$15,321,000
Cost of the Project with Financing Costs:	\$18,568,000
Total Bond Size:	\$17,441,000

**Issue:** What are the financial effects of the increased costs related to the headquarters building purchase and renovation on Metro departments?

Mr. Short's memo states that the Report does not include specific figures on the annual costs to Metro departments or information on the effects of these increased costs on department operations. Exhibits 7A, 8A, and 9A specifically show estimated transfers to

Neil Saling  
September 11, 1991  
Page 2

Metro departments resulting from the headquarters building purchase and renovation. Exhibits 7B, 8B, and 9B attempt to illustrate the effect of these increased transfers on Metro's various revenue sources. We have attached these Exhibits for reference.

**Issue:** Is it appropriate to increase central costs to departments which already have financial problems, and do these increases affect our ability to find long-term solutions to their problems?

We have provided a fact-based report for the Executive Officer and the Council to use in their decision-making process. We will, however, point out that Metro's growth has resulted in the need for additional space. Satisfying this need will inevitably result in increased central costs to departments regardless of the location of such space. Any long-term solution to Metro's funding problems must take Metro's growth pattern and space requirements into consideration.

**Issue:** How should the debt service be structured?

The Report contained information relating to three alternatives for structuring debt service--level debt service, variable debt service, and "ramped" debt service. The purpose of showing these alternatives was to inform the Council and Executive Officer of the various options for financing currently under consideration by staff and Metro's financial consultants. Other options that are also under consideration include interest rate swaps, a different style of ramped debt service, and other innovative debt instruments currently available. The decision as to which financing method is ultimately selected for implementation is subject to current financial market conditions, the appropriateness of each alternative relative to Metro's existing debt, and the advice of Metro's financial consultants.

It is inappropriate at this time for the Finance and Management Information Department to provide a recommendation on financing structure. When all relevant information is available, we will evaluate the alternatives in consultation with our advisors and select that alternative that is most appropriate in light of the considerations listed above. The Council will have the final determination on financing structure when it approves the master and supplemental ordinances related to the financing prior to execution of the bond purchase agreement.

Issue: Mr. Short asked that information related to the annual cost and total cost of each financing alternative be provided. They are as follows:

Annual Cost (thousands)

	<u>Level</u>	<u>Variable</u>	<u>Ramped</u>
1994-95	1,345	1,206	861
1995-96	1,345	1,206	891
1996-97	1,345	1,206	921
1997-98	1,345	1,206	953
1998-99	1,345	1,206	986
1999-00	1,345	1,275	1,149
2000-01	1,345	1,275	1,188
2001-02	1,345	1,275	1,229
2002-03	1,345	1,275	1,272
2003-04	1,345	1,275	1,316
2004-05	1,345	1,345	1,361
2005-06	1,345	1,345	1,408
2006-07	1,345	1,345	1,456
2007-08	1,345	1,345	1,507
2008-09	1,345	1,345	1,559
2009-10	1,345	1,416	1,612
2010-11	1,345	1,416	1,668
2011-12	1,345	1,416	1,726
2012-13	1,345	1,416	1,785
2013-14	1,345	1,416	1,847
2014-15	1,345	1,488	1,910
2015-16	1,345	1,488	1,976
2016-17	1,345	1,488	2,045
2017-18	1,345	1,488	2,115
2018-19	1,345	1,488	2,188
2019-20	1,345	1,562	2,263
2020-21	1,345	1,562	2,342
2021-22	1,345	1,562	2,422
2022-23	<u>1,345</u>	<u>1,562</u>	<u>2,506</u>
Total cost	39,005	39,894	46,461
Present value	16,193	15,800	16,174

Neil Saling  
September 11, 1991  
Page 4

**Issue: Why are projected maintenance costs lower than the costs for our current building?**

Projected operating costs are not lower than the costs for our current building. The operating cost per square foot use in the Report was calculated on the basis of actual costs for FY 1989-90 (\$4.34 per square foot) adjusted for inflation. It is likely that the maintenance costs for the new building will be lower because of new and more efficient building systems. Therefore, we believe the costs shown in the Report are sufficiently conservative.

Exhibit 7A

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

**Alternative 1: Level Debt Service**

**Transfer to Building Management Fund (a)**

	Budget	Fiscal Years						
	1991-92	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Solid Waste	271,507	458,000	486,000	516,000	553,000	601,000	662,000	740,000
General Government	68,208	286,000	305,000	323,000	346,000	376,000	415,000	463,000
Transportation Planning	165,728	284,000	301,000	320,000	343,000	373,000	410,000	459,000
Planning and Developme	93,520	182,000	194,000	206,000	220,000	240,000	264,000	295,000
MERC	33,245	199,000	212,000	224,000	241,000	262,000	288,000	322,000
Zoo	37,675	85,000	90,000	96,000	103,000	112,000	123,000	137,000
	.....	.....	.....	.....	.....	.....	.....	.....
	669,883	1,494,000	1,588,000	1,685,000	1,806,000	1,964,000	2,162,000	2,416,000

a includes allocable Support Service costs.

Exhibit 7B

BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL  
 FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
 METROPOLITAN SERVICE DISTRICT

Alternative 1: Level Debt Service

Effect on Enterprise Revenues and Excise Tax

	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
<b>SOLID WASTE TIPPING FEES</b>								
Estimated tonnage	1,200,000							
Increased building costs (a)		228,000	261,000	297,000	342,000	399,000	472,000	565,000
Increase in tipping fees		\$0.19	\$0.22	\$0.25	\$0.29	\$0.33	\$0.39	\$0.47
<b>MERC REVENUES</b>								
Budgeted revenues (1991-92)	16,447,000							
Estimated revenues (b)		17,972,000	20,835,000	24,153,000	28,000,000	32,460,000	37,630,000	39,921,000
Increased building costs		166,000	179,000	191,000	208,000	229,000	255,000	289,000
Increase as a percentage of revenues		0.92%	0.86%	0.79%	0.74%	0.71%	0.68%	0.72%
<b>ZOO REVENUES</b>								
Budgeted revenues	11,973,793							
Estimated revenues (b)		13,084,000	15,168,000	17,584,000	20,385,000	23,631,000	27,395,000	29,064,000
Increased building costs		47,000	52,000	58,000	65,000	74,000	85,000	99,000
Increase as a percentage of revenues		0.36%	0.34%	0.33%	0.32%	0.31%	0.31%	0.34%
<b>EXCISE TAX</b>								
Increased building costs (c)		268,000	292,000	318,000	349,000	391,000	443,000	510,000
Increase in Excise Tax revenue		23,000	26,000	28,000	32,000	37,000	42,000	50,000
Net increase in Excise Tax requirement		245,000	266,000	290,000	317,000	354,000	401,000	460,000
Increase in Excise Tax percentage		0.32%	0.34%	0.38%	0.41%	0.46%	0.52%	0.60%

a Includes increased Solid Waste costs and allocable portions of Transportation Planning and Planning and Development costs.

b Assuming revenues increase at 3% per year.

c Includes increased costs for general government and allocable portions of Transportation Planning and Planning and Development costs

Exhibit 8A

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

**Alternative 2: Variable Debt Service**

**Transfer to Building Management Fund (a)**

	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Solid Waste	271,507	415,000	465,000	516,000	575,000	645,000	729,000	806,000
General Government	68,208	260,000	291,000	323,000	360,000	404,000	456,000	505,000
Transportation Planning	165,728	257,000	288,000	320,000	356,000	400,000	452,000	500,000
Planning and Developme	93,520	165,000	185,000	206,000	229,000	257,000	290,000	321,000
MERC	33,245	181,000	202,000	224,000	250,000	281,000	317,000	351,000
Zoo	37,675	77,000	86,000	96,000	107,000	120,000	135,000	150,000
	.....	.....	.....	.....	.....	.....	.....	.....
	669,883	1,355,000	1,517,000	1,685,000	1,877,000	2,107,000	2,379,000	2,633,000

Exhibit 8B

BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL  
 FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
 METROPOLITAN SERVICE DISTRICT

Alternative 2: Variable Debt Service

Effect on Enterprise Revenues and Excise Tax

	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
<b>SOLID WASTE TIPPING FEES</b>								
Estimated tonnage	1,200,000							
Increased building costs (a)		176,000	236,000	298,000	368,000	452,000	553,000	645,000
Increase in tipping fees		\$0.15	\$0.20	\$0.25	\$0.31	\$0.38	\$0.46	\$0.50
<b>MERC REVENUES</b>								
Budgeted revenues (1991-92)	16,447,000							
Estimated revenues (b)		17,972,000	20,835,000	24,153,000	28,000,000	32,460,000	37,630,000	39,921,000
Increased building costs		148,000	169,000	191,000	217,000	248,000	284,000	316,000
Increase as a percentage of revenues		0.82%	0.81%	0.79%	0.78%	0.76%	0.75%	0.79%
<b>ZOO REVENUES</b>								
Budgeted revenues	11,973,793							
Estimated revenues (b)		13,084,000	15,168,000	17,584,000	20,385,000	23,631,000	27,395,000	29,064,000
Increased building costs		39,000	48,000	58,000	69,000	82,000	97,000	112,000
Increase as a percentage of revenues		0.30%	0.32%	0.33%	0.34%	0.35%	0.35%	0.38%
<b>EXCISE TAX</b>								
Increased building costs (c)		239,000	282,000	326,000	376,000	436,000	508,000	575,000
Increase in Excise Tax revenue		19,000	24,000	28,000	34,000	41,000	49,000	56,000
Net increase in Excise Tax requirement		220,000	258,000	298,000	342,000	395,000	459,000	519,000
Increase in Excise Tax percentage		0.28%	0.33%	0.39%	0.44%	0.51%	0.59%	0.63%

- a. Includes increased Solid Waste costs and allocable portions of Transportation Planning and Planning and Development costs.
- b. Assuming revenues increase at 3% per year.
- c. Includes increased costs for general government and allocable portions of Transportation Planning and Planning and Development cost.



Exhibit 9A

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

**Alternative 3: Ramped Debt Service**

**Transfer to Building Management Fund (a)**

	Budget	Fiscal Years						
	1991-92	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Solid Waste	271,507	341,000	458,000	553,000	667,000	806,000	975,000	1,127,000
General Government	68,208	214,000	287,000	346,000	417,000	505,000	611,000	706,000
Transportation Planning	165,728	211,000	284,000	343,000	413,000	500,000	604,000	699,000
Planning and Development	93,520	136,000	183,000	220,000	266,000	321,000	389,000	449,000
MERC	33,245	148,000	199,000	240,000	290,000	351,000	424,000	490,000
Zoo	37,675	63,000	85,000	103,000	124,000	150,000	181,000	209,000
	669,883	1,113,000	1,496,000	1,805,000	2,177,000	2,633,000	3,184,000	3,680,000

a. Includes allocable Support Service costs.

Exhibit 9B

BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL  
 FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
 METROPOLITAN SERVICE DISTRICT

Alternative 3: Escalated Debt Service

Effect on Enterprise Revenues and Excise Tax

	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
<b>SOLID WASTE TIPPING FEES</b>								
Estimated tonnage	1,200,000							
Increased building costs (a)		88,000	228,000	342,000	479,000	645,000	848,000	1,030,000
Increase in tipping fees		\$0.07	\$0.19	\$0.29	\$0.40	\$0.54	\$0.71	\$0.85
<b>MERC REVENUES</b>								
Budgeted revenues (1991-92)	16,447,000							
Estimated revenues (b)		17,972,000	20,835,000	24,153,000	28,000,000	32,460,000	37,630,000	39,921,000
Increased building costs		115,000	166,000	207,000	257,000	318,000	391,000	457,000
Increase as a percentage of revenues		0.64%	0.80%	0.86%	0.92%	0.98%	1.04%	1.14%
<b>ZOO REVENUES</b>								
Budgeted revenues	11,973,793							
Estimated revenues (b)		13,084,000	15,168,000	17,584,000	20,385,000	23,631,000	27,395,000	29,064,000
Increased building costs		25,000	47,000	65,000	86,000	112,000	143,000	171,000
Increase as a percentage of revenues		0.19%	0.31%	0.37%	0.42%	0.47%	0.52%	0.59%
<b>EXCISE TAX</b>								
Increased building costs (c)		168,000	251,000	313,000	396,000	497,000	620,000	723,000
Increase in Excise Tax revenue		12,000	23,000	32,000	43,000	56,000	72,000	85,000
Net increase in Excise Tax requirement		156,000	228,000	281,000	353,000	441,000	548,000	637,000
Increase in Excise Tax percentage		0.20%	0.30%	0.36%	0.46%	0.57%	0.71%	0.82%

- a. Includes increased Solid Waste costs and allocable portions of Transportation Planning and Planning and Development costs.
- b. Assuming revenues increase at 3% per year.
- c. Includes increased costs for general government and allocable portions of Transportation Planning and Planning and Development cost

STAFF REPORT - AMENDED

CONSIDERATION OF RESOLUTION 91-1494 - C FOR THE PURPOSES OF AUTHORIZING EXECUTION OF A SALE AGREEMENT FOR THE ACQUISITION OF THE SEARS FACILITY. [~~AND EXEMPTING THE HEADQUARTERS RFQ/RFP PROCESS FROM THE COMPETITIVE BIDDING PROCESS PURSUANT TO METRO CODE 2.04.041~~]

---

Date: October 3, 1991.

Presented by: Neil Saling

FACTUAL BACKGROUND AND ANALYSIS

At its October 11, 1990 meeting, the Metro Council approved Resolution No. 90-1338 authorizing the Executive Officer to execute a sale agreement for the Sears facility and the adjacent parking structure. The sale agreement provided for a due diligence period during which Metro employed various consultants to study the suitability of the Sears facility as the new Metro headquarters location. Upon the conclusion of the initial 67 day due diligence period, three areas of potential risk were identified. These were: (1) excess space to be leased at the renovated Sears facility and the present Metro Center, (2) uncertain financing climate, and (3) higher than anticipated project costs. Staff recommended extending the due diligence period.

By Resolution No. 90-1357, the Council authorized the amendment of the sale agreement by extending the due diligence period until April 30, 1991. The purpose of the extension was to allow time to more fully review the potential risks and to allow a more informed decision. A final report, made to the Relocation Task Force on March 22, 1991, indicated that progress were made in two of three areas of concern. Specifically, significant advances had been made in regards to the pre-leasing activity at both the renovated Sears facility and at Metro Center and the financial market had become more stable. However, project costs had not been lowered significantly.

The Relocation Task Force determined that the estimated project costs were too great to justify continuing with the proposed development scheme and allowed the April 30, 1991 deadline of the sale agreement to lapse.

An unsolicited proposal from Bill Naito identified a development scheme which has the potential to reduce the Metro headquarters project costs significantly. The modified development scheme would reconfigure the lower two levels of the Sears facility for parking and would make acquisition of the adjacent garage an



METRO

# Memorandum

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

DATE: July 5, 1991  
TO: Neil Saling  
FROM: Casey Short *CS*  
RE: Resolution No. 91-1478 - Sears Agreement

I have several questions to ask regarding the proposal to purchase the Sears facility, for which Resolution No. 91-1478 would commit \$250,000 in non-refundable earnest money. Some of these are included in my July 3 memo to the Regional Facilities Committee, but there are others that I did not have time to include in that memo. Please do what you can to be prepared to discuss the questions in both memos at the July 9 committee meeting.

### Questions from the Staff Report

1. What is the breakdown of costs used to arrive at the estimated project costs of \$14.5 to \$15.2 million?
2. What is included in the \$16.50 per square foot rate cited in the staff report? Does it include the semi-annual \$50,000 option payment for the garage? If the annual cost calculation included these option payments and operating costs which were equal to our current (Metro Center) operating costs, how would these affect the rate per square foot?
3. Please clarify the garage purchase element referred to on page 3. As I understand it, the escalating purchase price for the garage would translate to the following effective purchase prices for each six month period (please confirm accuracy):

10/15/91 - 4/14/92:	\$2,600,000
4/15/92 - 10/14/92:	\$2,730,000
10/15/92 - 4/14/93:	\$2,866,500
4/15/93 - 10/14/93:	\$3,009,825
10/15/93 - 4/14/94:	\$3,160,286
4/15/94 - 10/14/94:	\$3,318,300

Regarding the \$50,000 semi-annual option fee, is any of this money refundable if Metro decides not to buy the parking garage? What will be the Council's role in determining whether to continue the option payments, buy the garage, or terminate the option - will Council authorization be required every six months?

Questions from the Letter of Intent

Option 1: Sears Building and Land \$2,550,000

4. Close: Why was the date for payment of the \$2.3 million balance moved from December 15 to October 15?

5. Hazardous Waste: This section needs further clarification. What are "direct" costs for removing any hazardous waste, and what are "indirect" costs? If the costs exceed \$250,000, what are Metro's alternatives? If PDI terminates the offer because the direct costs of removing the waste exceed \$250,000, will Metro's earnest money be refunded? Is the \$250,000 ceiling for the entire facility - including the garage - or is there a \$250,000 ceiling for each part of the facility? At what point would Metro have to make a final decision whether to cover direct costs above \$250,000: when costs exceeded that amount (even though final costs were not yet known); when the final costs had been determined; when an estimate is made; or at some other time? Who defines "hazardous waste" or "hazardous materials?" (Both are used in the letter.)

6. Parking: My reading of the parking agreement leads me to the following understanding (please confirm or correct):

Metro will construct some 220 stalls in the main building as part of the building renovation. In addition, Metro may lease up to 100 stalls in the garage at any time following our occupancy of the building. (The rate shall begin at \$56/month/stall, with a 10% annual limit on rate increases for 3 years.) If Metro does not buy the garage, we may lease up to 100 stalls for an additional 7 years, with three five-year options. If we remodel the Grand Ave. parking area, we may add another 100 stalls in the garage at the same monthly rate.

How would the parking rate for the 7-year extension be determined? Would the stalls in the garage be used for employee parking, visitor parking, or other? Would Metro receive revenue from this parking? Who would set the rate for the end user, and how would that rate be determined?

Option 2: Garage Facility

7. State Parking Requirement: Please explain why there is a variance of \$5 per stall, "depending on management."

8. Supplemental Questions: How many parking stalls are in the garage? What is PDI's arrangement with the State for parking? What are the revenue projections for the garage? Is Metro expected to make money on the garage if purchased?

Questions from the Addendum

9. State Parking Obligation: Please explain the nature of the obligation, and Metro's potential obligations, liabilities, and revenues under the arrangement.

10. OCC Transportation Capital Improvements: What is the cost of assuming the applicable portion of the LID (annual cost and term)? Have those costs been included in the estimate of annual costs for the facility?

11. Hazardous Waste: PDI "may elect to decommission underground tanks in place." Will Metro have any binding voice in this decision? Why will Metro share the cost of environmental testing, if for any reason other than to ensure the objectivity of the tests? How much is such testing estimated to cost?

Please clarify the statement, "The parties will approve before closing, based on the testing and bids obtained by Seller, a specific scope of work and charge to Seller for any such remediation work" (emphasis added). Does this effectively limit PDI's obligation to pay for the complete remediation work? What happens if there is more remediation required than was originally anticipated - who is responsible to pay for it, and what are Metro's options?

Does the handwritten amendment, "The deposit shall be refunded to Purchaser if the transaction terminates pursuant to the foregoing" refer to the \$250,000 earnest money?

Other Questions

12. Do you anticipate MERC moving its offices to the Sears facility? If so, what will be the cost to MERC, and how will the vacated office space at the Convention Center be used? How would costs to Metro's other departments be affected with MERC in or out of the Sears facility? In any case, has the matter been presented to/discussed with the MERC Commission?

13. At the June 7 meeting of the Building Relocation Task Force, there was mention of Metro contributing to a "gateway" project which would mark entrance to the Lloyd district. There is no mention of this in the materials submitted. What is the status of this, and what would the cost be?

14. How is the project proposed to be financed? Will any adjustments to the 91-92 budget be required, and if so, what will they be?

15. Is it possible to provide drawings of the proposed renovation for the committee and Council?

Sears Purchase Issues  
July 5, 1991  
Page 4

16. After renovation, what will be the building's capacity to withstand an earthquake?

17. Earlier discussions of the proposal included provision for a day care center. Is this included in the latest plan?

18. Have we received appraisals of the Sears building and land, and the parking garage? If so, how do they relate to the \$2,550,000 and \$2,600,000 prices for the facilities?

cc: Metro Council  
Executive Officer  
Don Carlson  
Berit Stevenson  
Jennifer Sims

**FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING  
PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

**Prepared by:  
Finance and Management Information  
Regional Facilities  
August 13, 1991**



Executive Summary

Background

The Metro Executive Officer has been in negotiations with Pacific Development Inc., (PDI) for the purchase of the former Sears department store building in northeast Portland. It is intended that the building be renovated and converted to a new Metro headquarters. An agreement in principal has been reached on a Sales Agreement (Current Proposal). This Sales Agreement and the planned renovation program is significantly altered from the agreement and renovation contemplated earlier in 1991 (the Initial Proposal). The table below shows the key differences.

Item	Initial Proposal	Current Proposal
Rentable square feet	140,000	76,000
Usable square feet	129,000	69,100
Parking spaces	580	220
Parking/1000 sf	2.4	3.4
Total project cost w/o financing	\$21.3 million	\$15.3 million
Bond amount w/financing and reserves	\$25.8 million	\$17.4 million
Real estate cost	\$5.15 million	\$2.55 million
	Building & Garage	Building only
Rate - level (1st yr.)	\$28/sq. ft.	\$21.88/sq. ft.
Rate - ramped (1st yr.)	\$23/sq. ft.	\$16.50/sq. ft.

Sales Agreement

As stated above, the sales price for the building (not including the parking garage) is \$2.55 million. The anticipated closing date is December 1, 1991. The Sales Agreement includes an option to purchase the adjacent parking garage for \$2.60. This option can be renewed each six month periods for a payment of \$50,000 per period. At each renewal period, the price for the garage will increase by 5.0%.

The Project

The renovation program will convert the top two floors of the building into 76,000 square feet of office space. The basement and ground floor of the building would be used for parking and provide approximately 220 spaces. Long-term Metro growth beyond 76,000 square feet could be accommodated by converting the ground floor to office space. The current Metro headquarters contains 43,000 of office space and includes 117 parking spaces for employees, tenant, visitors, loading and fleet requirements.

Total Project costs are estimated at \$15,321,000. Of this total, it is currently assumed that \$14,701,000 would be financed through the sale of revenue bonds and that \$620,000 would be financed through Metro cash flow. Metro intends to develop a Request for Proposal to construct the Project. It is assumed that the Project would be complete approximately one year after awarding the design build contract.

# FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING

## Financing and Debt Service

It is assumed that Metro would issue General Revenue Bonds to finance the majority of the Project. These bonds would be secured by departmental interfund transfers related to the occupancy of space in the new headquarters facility. The total bonding amount of \$17,441,000 provides for \$15.3 million in real estate purchase and construction costs, and \$3,247,000 in financing costs (including \$1,449,000 deposit as a reserve for debt service) net of \$507,000 in interest earnings on bond proceeds during the period of construction.

Three alternative financing alternatives are under study; (1) an alternative using level annual debt service; (2) an alternative using variable debt service; and (3) an alternative in which debt service payments are purposely ramped each year to simulate a rate of inflation. Under these alternatives, it is estimated that the first year's debt service would range from \$861,000 to \$1,345,000 and the final year's debt service would range from \$1,345,000 to \$2,506,000. Final determination on financing alternatives will be made by the financing team comprised of Bond Counsel, General Counsel, Metro Financial Planning staff, the underwriters, and Metro's Financial Advisors.

## Operating Costs

Operating and maintenance expenses for the new building have been projected on the basis of our actual experience in the current Metro Center. Our current cost per square foot is approximately \$5.00. This amount has been adjusted for inflation and somewhat modified in anticipation of lower maintenance costs related to new building systems and utilities.

Capital outlays are assumed to average \$25,000 per year adjusted for inflation. Contingency is set at 5% per year during FY 1994-95 (the first full year of occupancy) and 1.5% in the remaining years.

## Space Program

The space program for the new headquarters building has been developed, in consultation with Metro Regional Facilities staff, by BOOR/A. Department plans have been developed on the basis of current and anticipated growth in personnel over the next several years. The programmed usable square feet allow approximately 7,000 square feet for future growth.

## Rates Per Square Foot

Rates per square foot for selected years for each of the three financing alternatives are as follows:

	FY 94/95	FY 99/00	FY 09/10	FY 23/24
Alternative 1 (Level debt service)	\$21.88	\$21.42	\$24.58	\$33.42
Alternative 2 (Variable debt service)	\$19.87	\$20.49	\$25.52	\$36.30
Alternative 3 (Ramped debt service)	\$16.50	\$20.32	\$29.64	\$50.38

## FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING

Because costs associated with purchase and installation of furnitures and fixtures are typically not used in calculating rental rates in leasing situations these costs have not been included in the calculation of the rates shown above.

### Affordability

Increases in building costs above Metro's current payments will affect both required enterprise revenues and excise taxes. Under each of the three financing alternatives, first year costs will increase as follows: Alternative 1 - \$630,000; Alternative 2 - \$503,000; Alternative 3 - \$290,000.

Approximately \$254,000 of the increases in costs is attributable to increases in space. The amounts attributable to increases in the rate per square foot range from \$36,000 to \$376,000.

The affect of these increases in building costs on enterprise revenues and excise taxes can be approximated within certain limitations. Generally, the increased costs would comprise less than one percent of the enterprise revenues of the Zoo or MERC, require as low as a \$0.01 and as high as a \$0.05 increase in Solid Waste tipping fees in the first year of occupancy, and an increase in excise taxes ranging from \$71,000 to \$226,000 in the first year of occupancy. The required increases could be somewhat less depending on increases in enterprise activity (tons of solid waste delivered, numbers of Zoo visitors, numbers of MERC events).

# FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING

## CAPITAL COSTS

- Exhibit 1: Estimated Project Costs
- Exhibit 2: Estimated Financing Plan
- Exhibit 3: Estimated Annual Debt Service

### Key Assumptions:

Project costs - Costs to be financed include real estate costs, project management costs, the costs of construction, and other costs, including furniture and fixtures and art. Non-financed costs include broker fees relating to leasing of 2000 SW First Avenue, Metro project administration, and due diligence costs. A portion of these costs may be eligible for reimbursement financing. Proceeds related to reimbursement of previous expenditures could be used to fund certain required reserve accounts. This issue is undergoing evaluation by Bond Counsel.

Costs for furniture and fixtures (\$1,200,000) are included in this analysis. These costs have not been included in previous analyses presented to the Council or Relocation Task Force.

Financing Plan - It is assumed for the purposes of this analysis that Metro funds will be used for non-financed costs. Assumptions for interest rates, capitalized interest period, and bond amortization period are included on Exhibit 2.

Annual Debt Service - Three financing options are under consideration by the Finance and Management Information Department. These options are under review by Metro's bond counsel and financial advisors.

Alternative 1: It is assumed that debt service would be level throughout the 29 year amortization period.

Alternative 2: It is assumed that bonds are issued at a variable rate. The effective rate (including letter of credit and related costs) is assumed to be 1% lower than the financing rate (7.2%). It is further assumed that the interest rate increases .5% every five years.

Alternative 3: It is assumed that the bond maturities have been structured to provide lower debt service in the first fifteen years of the amortization period and increasing amounts during the remaining years.

Exhibit 1

**ESTIMATED PROJECT COSTS  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

**Estimated costs to be financed through revenue bonds**

Real estate	2,550,000
Purchase of land and building	188,000
Brokers fee	_____
	2,738,000
Project management	460,000
Design services	30,000
Hook-up charges	110,000
Permits	15,000
Printing	90,000
Utilities	80,000
Taxes	500,000
Owner's contingency	_____
	1,285,000
Construction	6,800,000
Renovation/new construction	1,800,000
Tenant improvements	680,000
Contingency	130,000
Telephone/data wiring	_____
	9,410,000
Other	1,200,000
Furniture and Fixtures	68,000
Art (1% of construction)	_____
	1,268,000
	_____
<b>Total to be financed</b>	<b>14,701,000</b>
<b>Estimated costs not included in bond financing</b>	
Brokers fees related to leasing of 2000 SW 1st Avenue	130,000
Project administration (Metro)	340,000
Due diligence	150,000
	_____
<b>Total not included in bond financing</b>	<b>620,000</b>
	_____
<b>Total Project costs</b>	<b>15,321,000</b>

8/13/91

Exhibit 2

**ESTIMATED FINANCING PLAN  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

Sources

Revenue bonds	17,441,000
Metro funds	620,000
Interest income	336,000
Construction Account	104,000
Reserve Account	67,000
Debt Service Account (for capitalized interest)	507,000
	<hr/>
	18,568,000

Uses

Total "Project" costs	15,321,000
Reserve Account deposit	1,449,000
Capitalized interest	1,449,000
Issuance costs	349,000
	<hr/>
	18,568,000

Assumptions:

Interest rates	
Short-term	6.20%
Long-term	7.20%
Period of construction	1 year
Amortization period	29
Issuance costs	2.00% of total bonds

Exhibit 3

**ESTIMATED ANNUAL DEBT SERVICE  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

	Fiscal Years						
	1994-95 (a)	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
ALTERNATIVE 1: (level debt service)	\$1,345,000	\$1,345,000	\$1,345,000	\$1,345,000	\$1,345,000	\$1,345,000	\$1,345,000
ALTERNATIVE 2: (variable interest rate) (b)	\$1,206,000	\$1,275,000	\$1,345,000	\$1,416,000	\$1,488,000	\$1,562,000	\$1,562,000
ALTERNATIVE 3: (ramped debt service) (c)	\$861,000	\$1,149,000	\$1,361,000	\$1,612,000	\$1,910,000	\$2,263,000	\$2,506,000

Note: Debt service amounts are net of interest earned on Reserve Account balances.

a. First full year of debt service.

b. Assuming the following effective rate:

Years 1 through 5:	6.20%
Years 6 through 10:	6.70%
Years 11 through 15:	7.20%
Years 16 through 20:	7.70%
Years 21 through 25:	8.20%
Years 26 through 29:	8.70%

c. Debt service carries a basic interest rate, but principal payment is delayed to provide escalating debt service payments that are estimated to generally track inflation.

OPERATING COSTS

Exhibit 4: Operating and Maintenance Expenses  
Capital outlays  
Contingencies

Key Assumptions:

Operation Maintenance Expenses - The operation and maintenance expenses per square foot has been calculated on the basis the total building costs during the most recent fiscal year for which there is complete available data (FY 1989-90). This amount has been escalated at 5% per year during each year shown in the analysis.

Capital outlays - It is assumed that capital outlays would average \$25,000 per year. The amounts shown on Exhibit 4 have been adjusted for 5% inflation.

Contingencies - Contingency is set at 5% during FY 1994-95 and 1.5% in the remaining years.



Exhibit 4

**OPERATING COSTS AND REVENUES  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

	Fiscal Years						
	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Operating costs							
Operation and maintenance expenses (a)	334,000	466,000	595,000	759,000	969,000	1,237,000	1,579,000
Capital outlays (b)	25,000	32,000	41,000	52,000	66,000	84,000	107,000
Contingencies (c)	18,000	7,000	10,000	12,000	16,000	20,000	25,000
Total	377,000	505,000	646,000	823,000	1,051,000	1,341,000	1,711,000
Operating revenues-parking (d)	124,000	158,000	202,000	258,000	329,000	420,000	536,000

a. Calculated on the basis of most recent Fiscal Year cost per square foot inflated at 5% per year.

b. Assuming 5% annual inflation.

c. Assuming 5% of expenses and capital outlays in first year and 1.5% thereafter.

d. Assuming 175 revenue-generating spaces. Charges would be \$60 per month subject to 5% annual inflation.

# FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING

## SPACE PROGRAM

Exhibit 5: Current space  
Department request  
Allocation of common area

### Key Assumptions:

The space program was prepared by BOOR/A (Metro's architect) in consultation with Metro Headquarters Project staff. Current department requests have been made on the basis of current and anticipated growth in personnel over the next few years. Usable square feet in the headquarters building will total approximately 70,000, thereby allowing 7,000 feet for further growth.

Exhibit 5

**SPACE PROGRAM  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

	Current space	Proposed space		Total
		Department request	Allocation of common area	
<b>General government</b>				
Executive management	1,104	2,285	878	3,163
Council	1,032	1,456	559	2,015
Council Chamber	1,296	2,000	768	2,768
Facilities development/construction	1,044	1,735	667	2,402
	<u>4,476</u>	<u>7,476</u>	<u>2,872</u>	<u>10,348</u>
<b>Transportation Planning</b>	9,100	7,085	2,722	9,807
Planning and Development	3,528	4,410	1,694	6,104
Solid Waste	7,394	6,250	2,401	8,651
MERC	0	3,795	1,458	5,253
	<u>20,022</u>	<u>21,540</u>	<u>8,276</u>	<u>29,816</u>
<b>Support Services</b>				
Legal	1,440	1,695	651	2,346
Public Affairs	2,472	3,980	1,529	5,509
Personnel	1,584	1,250	480	1,730
Financial Planning/Office Services	2,844	3,175	1,220	4,395
Accounting	2,041	3,235	1,243	4,478
Information Systems	1,575	2,355	905	3,260
Procurement	558	560	215	775
Facilities Management	1,456	425	163	588
	<u>13,970</u>	<u>16,675</u>	<u>6,407</u>	<u>23,082</u>
<b>Common area</b>				
Shared space	5,227	10,220		
Day care		4,035		
Building services	344	900		
General storage	396	2,400		
Archives	216	--		
Circulation	3,312	--		
	<u>9,495</u>	<u>17,555</u>		
Common Subtotal	9,495	17,555		
<b>Total</b>	<u>47,963</u>	<u>63,246</u>	<u>17,555</u>	<u>63,246</u>

## RATES AND AFFORDABILITY

Exhibit 6: Rate per Square Foot  
 Exhibit 7A, 8A, 9A: Building Management Fund Transfers  
 Exhibit 7B, 8B, 9B: Effect on Enterprise Revenues/Excise Tax  
 Graph 1: Components of Building Cost Increase  
 Graph 2: Comparison of Rates

## Key Assumptions:

Rate per Square Foot - Estimated rates per square foot for the headquarters building are shown for each of the three financing alternatives on Exhibit 6. Rate requirements include operating costs and debt service. These costs are netted against parking revenues to determine the net requirement. This amount is divided by the occupied square feet in the building to determine the rate per square foot paid by departments for occupancy.

Transfers to Building Management Fund - Exhibits 7A, 8A, and 9A show the transfers to the Building Management Fund required by each operating department under each financing option. The amounts shown include Support Service building costs allocated on the same basis as that shown in the FY 1991-92 Approved Budget.

Effect on Enterprise Revenues and Excise Tax - Exhibits 7B, 8B, 9B show the effect of the increased building costs on certain enterprise revenues and Metro-excise tax. The calculation of Solid Waste tipping fees provides for increased building costs related to Solid Waste occupancy of space and the allocable costs of Transportation Planning and Planning and Development. The calculation of excise tax provides for increased building costs related to increases in General Government occupancy of space and the allocable costs of Transportation Planning and Planning and Development.

## Limitations of the analysis:

- The increase in tipping fees has been calculated on the basis of currently budgeted tons of solid waste. It can be assumed that this amount will increase in the future.
- MERC and Zoo revenues are projected to increase at 3% per year. No attempt has been made to accommodate possible changes in MERC revenues related to construction of the new arena, revenue measures implemented to fund deficits at the Civic Stadium and the Portland Center for the Performing Arts. Similarly no attempt has been made to anticipate any revenue adjustments related Zoo revenue increases to alleviate potential future shortfalls in funding.
- The amount of excise tax revenues collected is dependent on revenues of other departments. This analysis holds other department revenues constant except to the extent that increased revenue requirements related to increased building costs affect department earnings. Growth in department earnings would lessen the effect of increases in excise tax shown on the Exhibits.

Exhibit 6

RATE PER SQUARE FOOT  
 FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
 METROPOLITAN SERVICE DISTRICT

	Fiscal Years						
	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
<b>ALTERNATIVE 1 (LEVEL DEBT SERVICE)</b>							
Requirements							
Operating costs	377,000	505,000	646,000	823,000	1,051,000	1,341,000	1,711,000
Debt service	1,235,000	1,235,000	1,235,000	1,235,000	1,235,000	1,235,000	1,235,000
	<u>1,612,000</u>	<u>1,740,000</u>	<u>1,881,000</u>	<u>2,058,000</u>	<u>2,286,000</u>	<u>2,576,000</u>	<u>2,946,000</u>
Revenue							
Parking	124,000	158,000	202,000	258,000	329,000	420,000	536,000
Interest on Reserve Account	104,000	104,000	104,000	104,000	104,000	104,000	104,000
	<u>1,384,000</u>	<u>1,478,000</u>	<u>1,575,000</u>	<u>1,696,000</u>	<u>1,853,000</u>	<u>2,052,000</u>	<u>2,306,000</u>
Net requirements	63,246	69,000	69,000	69,000	69,000	69,000	69,000
Occupied square footage (a)							
Base rate per square foot	\$21.88	\$21.42	\$22.83	\$24.58	\$26.86	\$29.74	\$33.42
Furniture and fixture rate (b)	\$1.74	\$1.59	\$1.59	\$1.59	\$1.59	\$1.59	\$1.59
<b>ALTERNATIVE 2 (VARIABLE INTEREST RATE)</b>							
Requirements							
Operating costs	377,000	505,000	646,000	823,000	1,051,000	1,341,000	1,711,000
Debt service	1,108,000	1,171,000	1,235,000	1,300,000	1,367,000	1,434,000	1,434,000
	<u>1,485,000</u>	<u>1,676,000</u>	<u>1,881,000</u>	<u>2,123,000</u>	<u>2,418,000</u>	<u>2,775,000</u>	<u>3,145,000</u>
Revenue							
Parking	124,000	158,000	202,000	258,000	329,000	420,000	536,000
Interest on Reserve Account	104,000	104,000	104,000	104,000	104,000	104,000	104,000
	<u>1,257,000</u>	<u>1,414,000</u>	<u>1,575,000</u>	<u>1,761,000</u>	<u>1,985,000</u>	<u>2,251,000</u>	<u>2,505,000</u>
Net requirements	63,246	69,000	69,000	69,000	69,000	69,000	69,000
Occupied square footage (a)							
Rate per square foot	\$19.87	\$20.49	\$22.83	\$25.52	\$28.77	\$32.62	\$36.30
Furniture and fixture rate (b)	\$1.55	\$1.51	\$1.59	\$1.68	\$1.75	\$1.86	\$1.86

Exhibit 6 (page 2 of 2)

**RATE PER SQUARE FOOT  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

	Fiscal Years						
	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
<b>ALTERNATIVE 3 (ESCALATED DEBT SERVICE)</b>							
Requirements							
Operating costs	377,000	505,000	646,000	823,000	1,051,000	1,341,000	1,711,000
Debt service	791,000	1,055,000	1,250,000	1,480,000	1,754,000	2,078,000	2,301,000
	<u>1,168,000</u>	<u>1,560,000</u>	<u>1,896,000</u>	<u>2,303,000</u>	<u>2,805,000</u>	<u>3,419,000</u>	<u>4,012,000</u>
Revenue							
Parking	124,000	158,000	202,000	258,000	329,000	420,000	536,000
	<u>1,044,000</u>	<u>1,402,000</u>	<u>1,694,000</u>	<u>2,045,000</u>	<u>2,476,000</u>	<u>2,999,000</u>	<u>3,476,000</u>
Net requirements	63,246	69,000	69,000	69,000	69,000	69,000	69,000
Occupied square footage (a)							
Rate per square foot	\$16.50	\$20.32	\$24.55	\$29.64	\$35.88	\$43.46	\$50.38
Furniture and fixture rate (b)	\$1.11	\$1.36	\$1.61	\$1.91	\$2.26	\$2.68	\$2.96

a. Assuming full occupancy in FY 1999-2000

b. Furniture and fixture rate is calculated by dividing the debt service allocable to furniture and fixtures by the number of occupied square feet.

Exhibit 7A

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

**Alternative 1: Level Debt Service**

Transfer to Building Management Fund (a)

	Budget	Fiscal Years						
	1991-92	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Solid Waste	271,507	458,000	486,000	516,000	553,000	601,000	662,000	740,000
General Government	68,208	286,000	305,000	323,000	346,000	376,000	415,000	463,000
Transportation Planning	165,728	284,000	301,000	320,000	343,000	373,000	410,000	459,000
Planning and Developme	93,520	182,000	194,000	206,000	220,000	240,000	264,000	295,000
MERC	33,245	199,000	212,000	224,000	241,000	262,000	288,000	322,000
Zoo	37,675	85,000	90,000	96,000	103,000	112,000	123,000	137,000
	669,883	1,494,000	1,588,000	1,685,000	1,806,000	1,964,000	2,162,000	2,416,000

a. Includes allocable Support Service costs.

Exhibit 7B

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

**Alternative 1: Level Debt Service**

**Effect on Enterprise Revenues and Excise Tax**

	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
<b>SOLID WASTE TIPPING FEES</b>								
Estimated tonnage	1,200,000							
Increased building costs (a)		228,000	261,000	297,000	342,000	399,000	472,000	565,000
Increase in tipping fees		\$0.19	\$0.22	\$0.25	\$0.29	\$0.33	\$0.39	\$0.47
<b>MERC REVENUES</b>								
Budgeted revenues (1991-92)	16,447,000							
Estimated revenues (b)		17,972,000	20,835,000	24,153,000	28,000,000	32,460,000	37,630,000	39,921,000
Increased building costs		166,000	179,000	191,000	208,000	229,000	255,000	289,000
Increase as a percentage of revenues		0.92%	0.86%	0.79%	0.74%	0.71%	0.68%	0.72%
<b>ZOO REVENUES</b>								
Budgeted revenues	11,973,793							
Estimated revenues (b)		13,084,000	15,168,000	17,584,000	20,385,000	23,631,000	27,395,000	29,064,000
Increased building costs		47,000	52,000	58,000	65,000	74,000	85,000	99,000
Increase as a percentage of revenues		0.36%	0.34%	0.33%	0.32%	0.31%	0.31%	0.34%
<b>EXCISE TAX</b>								
Increased building costs (c)		268,000	292,000	318,000	349,000	391,000	443,000	510,000
Increase in Excise Tax revenue		23,000	26,000	28,000	32,000	37,000	42,000	50,000
Net increase in Excise Tax requirement		245,000	266,000	290,000	317,000	354,000	401,000	460,000
Increase in Excise Tax percentage		0.32%	0.34%	0.38%	0.41%	0.46%	0.52%	0.60%

a. Includes increased Solid Waste costs and allocable portions of Transportation Planning and Planning and Development costs.

b. Assuming revenues increase at 3% per year.

c. Includes increased costs for general government and allocable portions of Transportation Planning and Planning and Development costs.



Exhibit 8A

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

**Alternative 2: Variable Debt Service**

Transfer to Building Management Fund (a)

	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Solid Waste	271,507	415,000	465,000	516,000	575,000	645,000	729,000	806,000
General Government	68,208	260,000	291,000	323,000	360,000	404,000	456,000	505,000
Transportation Planning	165,728	257,000	288,000	320,000	356,000	400,000	452,000	500,000
Planning and Developme	93,520	165,000	185,000	206,000	229,000	257,000	290,000	321,000
MERC	33,245	181,000	202,000	224,000	250,000	281,000	317,000	351,000
Zoo	37,675	77,000	86,000	96,000	107,000	120,000	135,000	150,000
	669,883	1,355,000	1,517,000	1,685,000	1,877,000	2,107,000	2,379,000	2,633,000

Exhibit 8B

BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL  
 FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
 METROPOLITAN SERVICE DISTRICT

**Alternative 2: Variable Debt Service**

Effect on Enterprise Revenues and Excise Tax

	Budget	Fiscal Years						
	1991-92	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
<b>SOLID WASTE TIPPING FEES</b>								
Estimated tonnage	1,200,000							
Increased building costs (a)		176,000	236,000	298,000	368,000	452,000	553,000	645,000
Increase in tipping fees		\$0.15	\$0.20	\$0.25	\$0.31	\$0.38	\$0.46	\$0.54
<b>MERC REVENUES</b>								
Budgeted revenues (1991-92)	16,447,000							
Estimated revenues (b)		17,972,000	20,835,000	24,153,000	28,000,000	32,460,000	37,630,000	39,921,000
Increased building costs		148,000	169,000	191,000	217,000	248,000	284,000	318,000
Increase as a percentage of revenues		0.82%	0.81%	0.79%	0.78%	0.76%	0.75%	0.80%
<b>ZOO REVENUES</b>								
Budgeted revenues	11,973,793							
Estimated revenues (b)		13,084,000	15,168,000	17,584,000	20,385,000	23,631,000	27,395,000	29,064,000
Increased building costs		39,000	48,000	58,000	69,000	82,000	97,000	112,000
Increase as a percentage of revenues		0.30%	0.32%	0.33%	0.34%	0.35%	0.35%	0.39%
<b>EXCISE TAX</b>								
Increased building costs (c)		239,000	282,000	326,000	376,000	436,000	508,000	575,000
Increase in Excise Tax revenue		19,000	24,000	28,000	34,000	41,000	49,000	56,000
Net increase in Excise Tax requirement		220,000	258,000	298,000	342,000	395,000	459,000	519,000
Increase in Excise Tax percentage		0.28%	0.33%	0.39%	0.44%	0.51%	0.59%	0.67%

- a. Includes increased Solid Waste costs and allocable portions of Transportation Planning and Planning and Development costs.
- b. Assuming revenues increase at 3% per year.
- c. Includes increased costs for general government and allocable portions of Transportation Planning and Planning and Development cost.

Exhibit 9A

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

**Alternative 3: Ramped Debt Service**

**Transfer to Building Management Fund (a)**

	Budget	Fiscal Years						
	1991-92	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Solid Waste	271,507	341,000	458,000	553,000	667,000	806,000	975,000	1,127,000
General Government	68,208	214,000	287,000	346,000	417,000	505,000	611,000	706,000
Transportation Planning	165,728	211,000	284,000	343,000	413,000	500,000	604,000	699,000
Planning and Development	93,520	136,000	183,000	220,000	266,000	321,000	389,000	449,000
MERC	33,245	148,000	199,000	240,000	290,000	351,000	424,000	490,000
Zoo	37,675	63,000	85,000	103,000	124,000	150,000	181,000	209,000
	669,883	1,113,000	1,496,000	1,805,000	2,177,000	2,633,000	3,184,000	3,680,000

a. Includes allocable Support Service costs.

Exhibit 9B

BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL  
 FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
 METROPOLITAN SERVICE DISTRICT

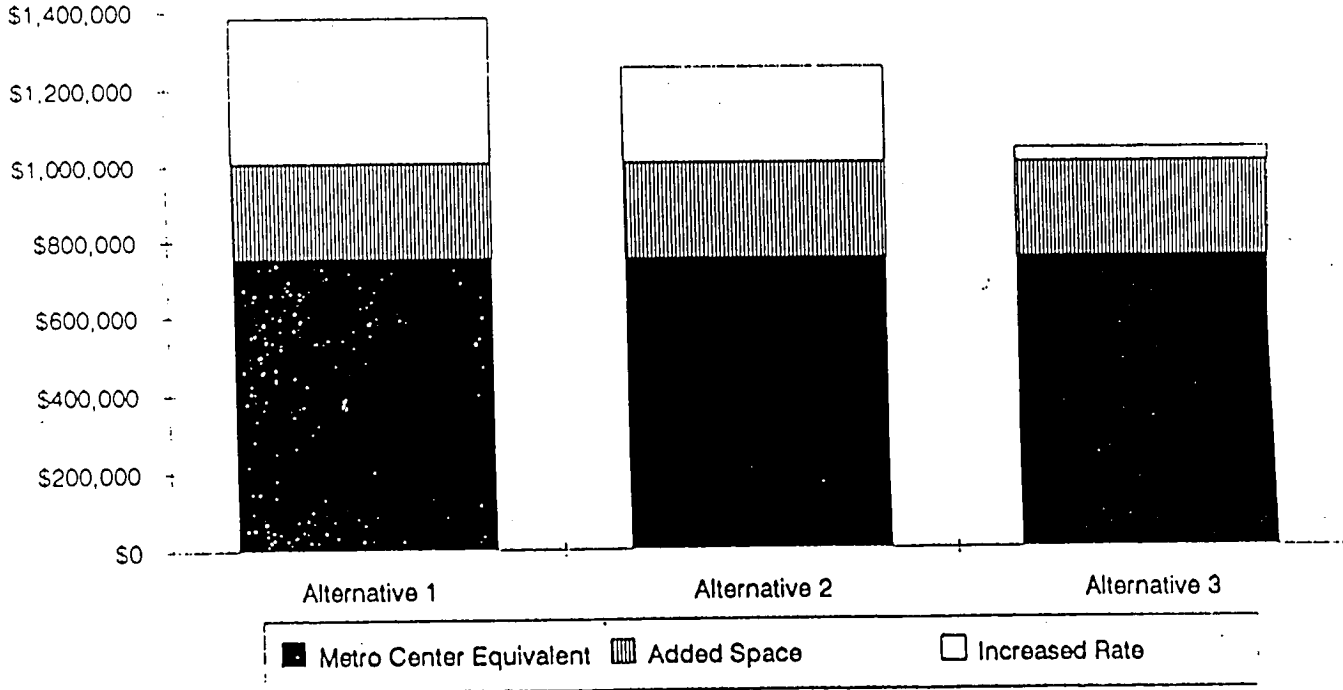
**Alternative 3: Escalated Debt Service**

Effect on Enterprise Revenues and Excise Tax

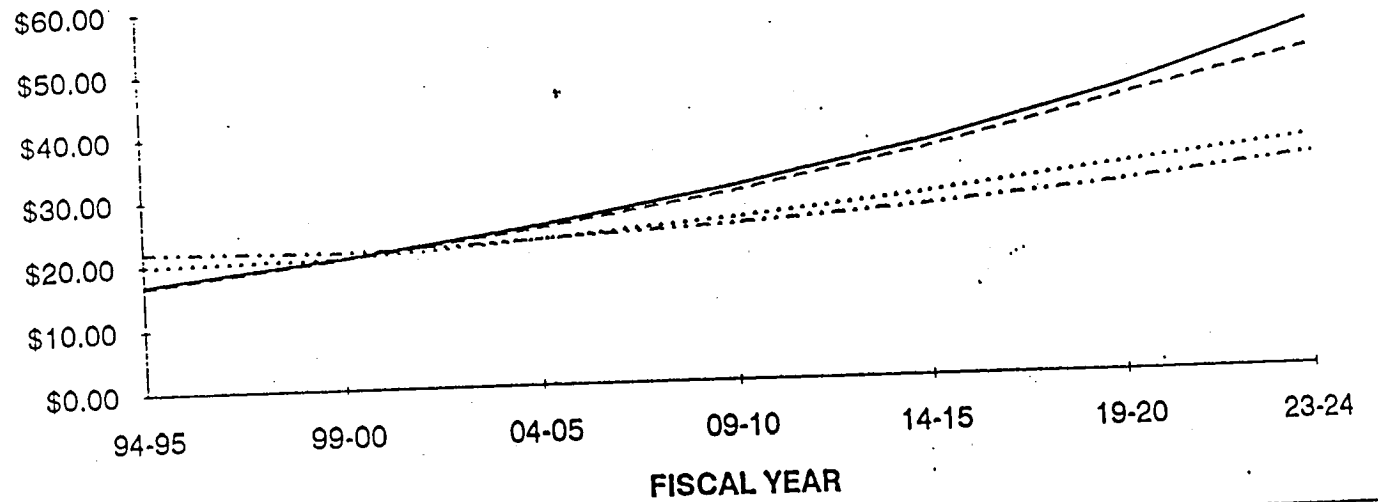
	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
<b>SOLID WASTE TIPPING FEES</b>								
Estimated tonnage	1,200,000							
Increased building costs (a)		88,000	228,000	342,000	479,000	645,000	848,000	1,030,000
Increase in tipping fees		\$0.07	\$0.19	\$0.29	\$0.40	\$0.54	\$0.71	\$0.86
<b>MERC REVENUES</b>								
Budgeted revenues (1991-92)	16,447,000							
Estimated revenues (b)		17,972,000	20,835,000	24,153,000	28,000,000	32,460,000	37,630,000	39,921,000
Increased building costs		115,000	166,000	207,000	257,000	318,000	391,000	457,000
Increase as a percentage of revenues		0.64%	0.80%	0.86%	0.92%	0.98%	1.04%	1.14%
<b>ZOO REVENUES</b>								
Budgeted revenues	11,973,793							
Estimated revenues (b)		13,084,000	15,168,000	17,584,000	20,385,000	23,631,000	27,395,000	29,064,000
Increased building costs		25,000	47,000	65,000	86,000	112,000	143,000	171,000
Increase as a percentage of revenues		0.19%	0.31%	0.37%	0.42%	0.47%	0.52%	0.59%
<b>EXCISE TAX</b>								
Increased building costs (c)		168,000	251,000	313,000	396,000	497,000	620,000	723,000
Increase in Excise Tax revenue		12,000	23,000	32,000	43,000	56,000	72,000	86,000
Net increase in Excise Tax requirement		156,000	228,000	281,000	353,000	441,000	548,000	637,000
Increase in Excise Tax percentage		0.20%	0.30%	0.36%	0.46%	0.57%	0.71%	0.82%

- a. Includes increased Solid Waste costs and allocable portions of Transportation Planning and Planning and Development costs.
- b. Assuming revenues increase at 3% per year.
- c. Includes increased costs for general government and allocable portions of Transportation Planning and Planning and Development cost.

**GRAPH 1**  
**CURRENT FACILITY COSTS PLUS**  
**INCREASED SPACE AND INCREASED RATE**



**GRAPH 2  
ANNUAL PER SQUARE FOOT COSTS  
EXCLUDES FURNITURE**



— New Lease      -·-·-· Level Int Sears      ····· Variable Int Sears      - - - Ramp Int Sears



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

## DRAFT

DATE: July 31, 1991

TO: Casey Short, Council Analyst

FROM: Neil Saling, Director, Regional Facilities

SUBJECT: Analysis of Resolution No. 91-1478

Your July 3, 1991 memorandum to the Regional Facilities Committee summarizes succinctly the most recent proposal for purchase of the old Sears facility by Metro. As the draft Sale Agreement is taking final form, I would recommend you familiarize yourself with the changes which have evolved.

Your policy questions provide a thoughtful basis for Council deliberations. I can only provide comment and offer my assistance as the Council wrestles with the issues. Staff believes that, given the criteria which were established by the Relocation Task Force, and the evaluation of other possible Headquarters alternatives, the Executive Officer's recommendation is well founded. We have not found an alternative that is clearly "better".

The Financial Analysis of Headquarters Purchase and Renovation now appended to the Staff Report should provide a clear picture of the financial implications. However, there is no simple formula for establishing affordability and the Finance Department will make every effort to assure that the Council understands the financial issues and analyses.

Our real estate consultant, CB Commercial, believes that our risks in leasing space at the current Metro Center have been minimized. Moreover, informal discussions with the Lessor indicate a potential for release from our lease should a solid replacement firm be identified. Finance Department is preparing estimates of the impact should the worst case be realized.

On your specific question regarding operating costs in the new building, we have relied on our real estate consultant's estimates. These estimates are based on averages for new office areas in Portland.

Please call me if you have any further questions or observations on this proposed major action.

cc: Dick Engstrom  
Jennifer Sims



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

**DATE:** July 3, 1991

**TO:** Regional Facilities Committee

**FROM:** Casey Short, Council Analyst *CS*

**RE:** Analysis of Resolution No. 91-1478, Purchase of the Sears Building for Development as Metro Headquarters

Resolution No. 91-1478 would authorize execution of a sales agreement and payment of \$250,000 in earnest money to Pacific Development, Inc. (PDI) for Metro's purchase of the Sears Building. It would also authorize preparation of a Request For Proposals for renovation of the building, with the intention of awarding a contract for renovation and completing the sales agreement by mid-October, 1991. This memo is the Council staff's analysis of the proposal.

## BACKGROUND

In May, 1990 a Building Relocation Task Force was formed to investigate alternatives for housing Metro's administrative offices. The Task Force, consisting of Presiding Officer Collier, Councilors DeJardin and Bauer, Executive Officer Cusma, and staff members, agreed to a set of Objectives and Criteria (Attachment A) that included a preference for siting a Metro Headquarters facility near the Oregon Convention Center on Portland's east side. The Task Force received comparative information on 22 potential sites, selected seven of these for further investigation, and chose the Sears building as the facility that most closely met the objectives and criteria. (It should be noted that the information gathered in this process was obtained on an informal basis, not on the basis of actual proposals.)

Council approved Resolution No. 90-1338 in September 1990, authorizing a sales agreement for acquisition of the Sears facility, and directing the staff to perform due diligence activities to determine the suitability and affordability of the facility. \$65,000 was allocated for the due diligence activities. The due diligence period was to last until December 17, 1990, but was extended to April 30, 1991 under the provisions of Resolution No. 90-1357A and with the agreement of Pacific Development. Council subsequently approved Resolution No. 91-1393 in February 1991, authorizing an additional \$85,000 for due diligence work.



Staff and consultants presented a report to the Building Relocation Task Force in March, 1991. That report estimated the cost of the project to be approximately \$26 million. The conclusion was that the Sears project was not affordable and staff recommended Metro inform PDI that we would not be pursuing the project any further. The Task Force concurred with the recommendation.

#### CURRENT STATUS

The current proposal is a modification of one submitted by H. Naito Properties. The original Naito proposal called for the Naito company to buy and renovate the Sears building, and sell it to Metro. Legal counsel advised that this proposal was not legal because the renovation would have to be publicly bid. The revised proposal calls for Metro to buy the building from PDI and issue an RFP for the renovation.

Based on the Naito proposal, staff estimates the total cost of the building project to be in the neighborhood of \$15-16 million. The principal differences between the latest proposal and the original proposal that was deemed too expensive are that the current proposal includes only an option on the parking structure rather than its purchase; development of only the upper two floors as office space and the lower two floors as parking; and consequent absence of surplus space that the original proposal would have required Metro to lease, generally at a loss.

Usable space in the top two floors of the Sears building will be approximately 76,000 square feet. Metro uses 34,000 square feet in its current location, and the space plan prepared as part of the due diligence process outlined needs for 67,000 square feet. (The 34,000 figure is low, given the planned move of the Transportation Department to occupy 6,000+ square feet of nearby space.)

#### ISSUES

There seems to be consensus that Metro's current office space is inadequate and we should move to larger quarters. Expansion in any form will cost the departments more money - this includes not only the occupants of Metro Center but also the satellite departments such as MERC and the Zoo who will pay higher transfers. If we accept the need to expand to roughly double our current space, there are a few issues to resolve before going forward on the Sears project.

1. Is the Sears facility clearly the best alternative for a new Metro headquarters?

This issue breaks down into several separate issues. First is the simple question of geography. The May 31, 1990 Objectives and Criteria to which the Task Force agreed establish a clear preference for an eastside Portland location near the Convention Center. These criteria have not been formally reviewed nor adopted by the Council, yet have served as a basis for work done to date in investigating alternatives. Is it the Council's conclusion that the siting criteria are appropriate, and that an inner eastside location is preferable? Would such a location be preferable if another site were identified that was less expensive, in a central location such as the central business district?

Second, is it Council's conclusion that the Sears facility should be considered at the exclusion of any other proposals? Following the expiration of the due diligence period and the decision to drop Sears from consideration (at least temporarily), staff was approached about the possibility of considering other proposals for developing a Metro headquarters facility on the west side. The focus of Metro's efforts for the past several months has been exclusively on the Sears facility - are we ignoring the potential of a more attractive offer by limiting our research to that facility? Do we want to open the process now to evaluate our options before making a final decision?

Third is the question of renovation versus new construction. A strong argument has been made in favor of renovating Sears in order to bring activity to the Lloyd District in a building that has stood vacant for several years. The value to the area of restoring that building cannot be denied. New construction, however, was estimated to be considerably cheaper than the first Sears proposal and would likely be of comparable or lower cost than the current proposal. If Metro could build a new facility at less cost than the Sears renovation, would the prudent expenditure of public dollars be as compelling an argument in favor of new construction as restoring the Sears building is in favor of renovation?

The questions surrounding the proposal to buy and renovate the Sears building can be distilled into one basic question: Has our research clearly identified the Sears facility as the best alternative for Metro? The proposal before you addresses Metro's current space needs, and provides the capacity for future expansion. It does not, however, clearly demonstrate that purchase and renovation of that facility is the best available opportunity: it may be, but in the absence of a full analysis of

other alternatives, the Council cannot be certain. Your policy decision is to determine whether to commit to the Sears alternative as an acceptable - or even preferable - solution to Metro's space problems, or take action necessary to find what can be demonstrated to be the best solution. If the Council determines that the process should be expanded, one approach would be to issue an RFP to meet the agency's needs as defined by the Council.

2. Is the Sears Building affordable?

In the analysis leading to rejection of the original Sears proposal, information was generated showing the proposal's financial impact on Metro's departments. Comparable information is not included with the materials submitted for committee review. Is such information available? If so, what are the effects on the departments? In a broader sense, what criteria are used to determine affordability, and does this proposal meet those criteria?

3. Regardless of the option chosen, how should the debt service be structured?

Attachment B shows two alternatives for structuring debt service. Finance staff is recommending the "ramped debt service" alternative, which would be lower cost (both in total and per square foot) in the first five years but higher in the out years. Debt service payments under this alternative would begin at approximately \$800,000 and increase at roughly a 4% rate each year, reaching a level of \$1.9 million in year 24. (Estimated net annual costs for debt service, operations, capital and contingency would correspondingly range from \$1.1 million to \$2.9 million.) The flat debt service alternative would have constant debt service payments each year, at an estimated level of \$1.125 million. (Total annual costs under this alternative range from \$1.4 million to \$2.1 million.)

Total debt service payments under the ramped approach are estimated at \$34.2 million, with a net present value of \$13.7 million. Under the flat approach the total debt service is estimated at \$28.1 million, with a net present value of \$12.8 million.

The argument for ramped debt service is that it is cheaper in the early years, and increases with inflation; Metro's costs per square foot would remain comparable with estimated market costs. Early year costs are an issue for Metro's departments, because they will be absorbing significantly higher costs in any case due to the increase in space: even under this alternative,

the costs will jump in the first year from \$645,000 (91-92 budget) to \$1.1 million. The down side to this alternative is the long range cost. Under the more typical flat rate alternative, which is similar to a fixed-rate home mortgage, total costs are lower, passing the break-even point in total expenditures in year 14.

The policy question here is how does the Council want to structure the building payments? The ramped alternative provides an easier entry into the building, but at the cost of higher payments over the course of the financing agreement. The flat rate alternative represents lower overall costs, but imposes a serious financial strain on the operations of the District at the outset, which is exacerbated by the current financial problems at MERC and the Zoo.

**4. What assurances or contingencies are proposed for leasing the space at the current Metro Center?**

In the deliberations surrounding the first Sears proposal, there was a good deal of discussion regarding the alternatives for sub-leasing the space at 2000 SW First. Our lease runs to 1996, and the proposed date of moving to Sears is December 1992. Arrangements need to be made to find tenants for this building, preferably with PDI's assistance as a way to facilitate the sale of their property. If no arrangements have been made, estimates of the increased costs required to uphold our lease agreement should be included in the projections of the early year costs.

**5. Why are the operating costs for the Sears Building projected to be lower than those for Metro's current building?**

The FY 91-92 budget for Metro Center in the Building Management Fund is \$685,483. If we subtract from that the lease payment (\$290,760) and property taxes (\$16,600) the resulting budget for operations is \$378,123, including \$40,000 for capital.

The Finance Department has prepared a space cost analysis that includes an estimate of Operating Costs for the Sears Building. That operating cost estimate is \$240,657, plus \$25,000 in capital and \$13,283 in contingency, for a total operating budget of \$278,940. Why are the operating costs so much lower for the Sears Building, especially for a building that is considerably larger than the current Metro Center?

Attachment A

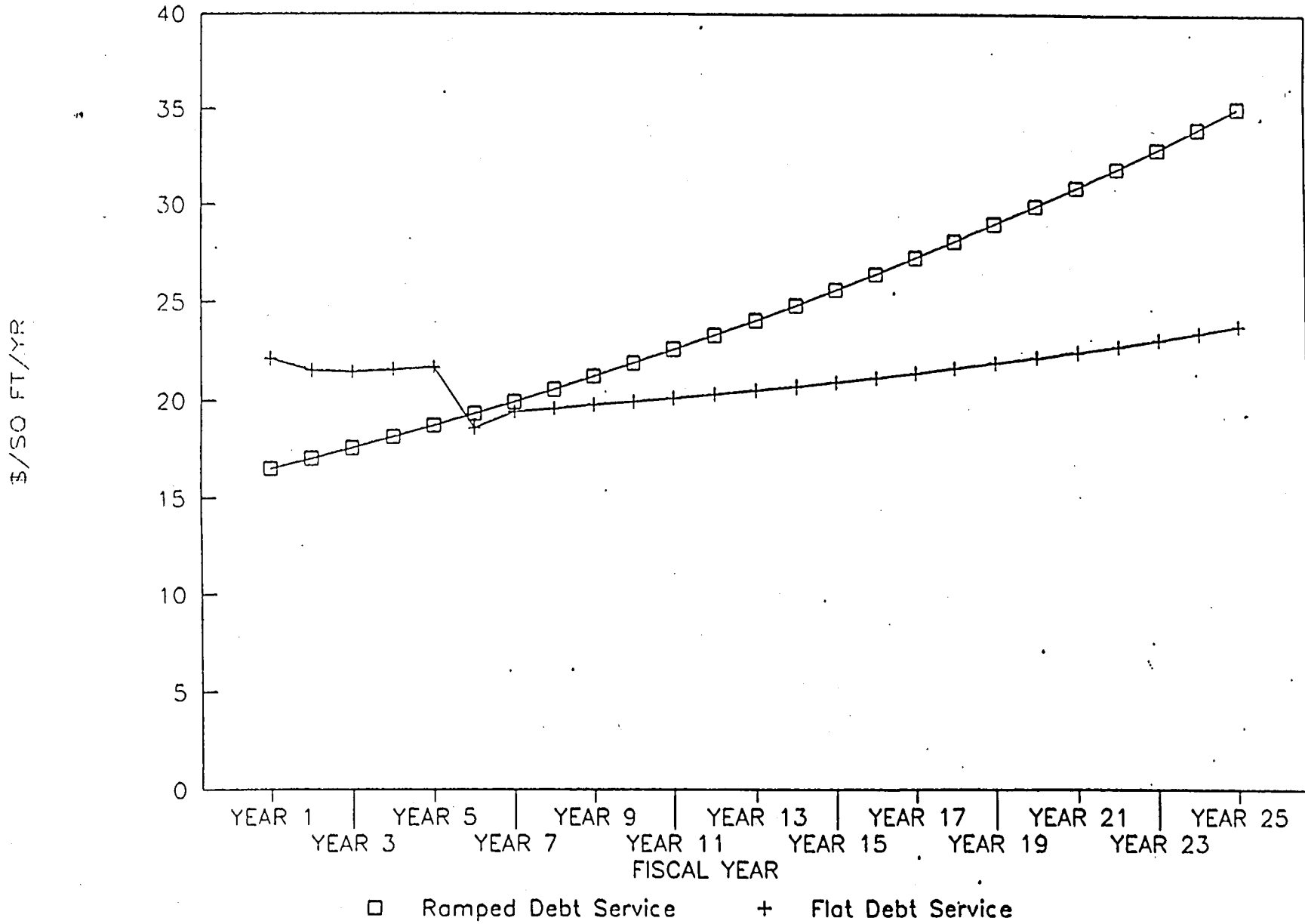
METRO CENTER RELOCATION TASK FORCE  
OBJECTIVES AND CRITERIA

May 31, 1990

- A. Establish a stronger regional identity for Metro.
- Location preferably near the Convention Center site.
  - Quality of space appropriate for government offices.
  - Easily accessible from all parts of the region.
- B. Support public policies promoting eastside development.
- Promote redevelopment sparked by the Oregon Convention Center.
- C. Serve as an environmentally and socially concerned model office.
- Location on or near mass transit routes.
  - Complete recycling facilities.
  - Attention to health considerations (e.g., lighting, HVAC, noise, etc.).
  - Day care facilities.
  - Energy efficient building.
  - Fitness facilities (showers and workout areas).
  - Fully handicapped accessible.
- D. Provide adequate space and parking to meet current and future needs.
- Provide opportunity for sharing offices with Metro ERC.
  - Provide overflow parking for the Oregon Convention Center.
  - Provide free parking for Metro visitors.
  - Provide contiguous space on preferably two floors, maximum three.
  - Provide option to expand space.
  - Provide a minimum 50,000 sq. ft. of office, meeting and storage space for immediate needs.
  - Provide up to 45,000 sq. ft. of office, meeting and storage space for long-term needs.
  - Provide for Metro ownership.
- E. Minimize the disruption and cost impacts of an office move.
- Package must address Metro's lease obligations at current location.
  - Costs similar to Metro Center at about \$12.00 per sq. ft.

# COST FOR BUILDING SPACE

USING TOP TWO FLOORS OF SEARS BUILDING





**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

DATE: August 20, 1991

TO: Casey Short, Council Analyst

FROM: Neil Saling

SUBJECT: Resolution No. 91-1478 - Responses to Questions

---

The following represents the Metro staff responses to the questions posed in your July 5, 1991 memorandum to me regarding the proposed Sale Agreement for the Sears Facility and updates my July 31, 1991 response. Changes to the Staff Report and Concept Agreement which have taken place since your memorandum are noted.

Q1. What is the breakdown of costs used to arrive at the estimate project costs of \$14.5 to \$15.2 million?

A1. The presently estimated total project cost is \$18.5 million. A general breakdown of costs is shown below. Note that \$1.4 million of the financing costs is a recoverable reserve.

Construction	\$ 9,410,000
FF&E plus Art	1,268,000
Purchase Price	2,550,000
Project Management	1,775,000
Financing Costs	3,247,000
Broker Fees	<u>318,000</u>
	\$ 18,568,000

Q2. What is included in the \$16.50 per square foot rate cited in the staff report? Does it include the semi-annual \$50,000 option payment for the garage? If the annual cost calculation included these option payments and operating costs which were equal to our current (Metro Center) operating costs, how would these affect the rate per square foot?

A2. Included in the \$16.50 per square foot initial costs are operating costs and debt service offset by parking revenues. The cost of FF&E is \$1.11 per square foot and is not included. The option costs for the parking garage are not included. Inclusion of option payments of \$100,000 annually and operating costs equivalent to the current Metro Center could raise the initial per square foot cost to approximately \$19.20.

Q3. Please clarify the garage purchase element referred to on page 3. As I understand it, the escalating purchase price for the garage would translate to the following effective purchase prices for each six month period (please confirm accuracy):

10/15/91 - 4/14/92:	\$2,600,000
4/15/92 - 10/14/92:	2,730,000
10/15/92 - 4/14/93:	2,866,500
4/15/93 - 10/14/93:	3,009,825
10/15/93 - 4/14/94:	3,160,286
4/15/94 - 10/14/94:	3,318,300

Regarding the \$50,000 semi-annual option fee, is any of this money refundable if Metro decides not to buy the parking garage? What will be the Council's role in determining whether to continue option payments, buy the garage, or terminate the option - will Council authorization be required every six months?

A3. The six month options would begin December 1, 1991 (12/1/91). The escalating purchase price would be as follows:

<u>Option Period</u>	<u>Closing Date</u>	<u>Price</u>
0	Before 12/1/91	\$2,600,000
1	12/2/91 to 5/31/92	2,730,000
2	6/1/92 to 12/1/92	2,866,500
3	12/2/92 to 5/31/93	3,009,800
4	6/1/93 to 12/1/93	3,106,300
5	12/2/93 to 5/31/94	3,318,300
6	6/1/94 to 12/1/94	3,484,200

The semi-annual option fee is not refundable if Metro chooses not to purchase the parking garage. Council will be asked to make a decision on purchase of the parking garage prior to December 1, 1991.

Q4. Why was the date for payment of the \$2.3 million balance moved from December 15 to October 15?



A4. The date was moved at the request of Pacific Development, Inc. (PDI) based upon an estimated early completion of contractor selection. The latest version of the Sale Agreement returns the closing to December 15, 1991.

Q5. Hazardous Waste: This section needs further clarification. What are "direct" costs for removing any hazardous waste, and what are "indirect" costs? If the costs exceed \$250,000, what are Metro's alternatives? If PDI terminates the offer because the direct costs of removing the waste exceed \$250,000, will Metro's earnest money be refunded? Is the \$250,000 ceiling for the entire facility--including the garage--or is there a \$250,000 ceiling for each part of the facility? At what point would Metro have to make a final decision whether to cover direct costs above \$250,000: when costs exceeded that amount (even though final costs were not yet known); when the final costs had been determined; when an estimate is made; or at some other time? Who defines "hazardous waste" or "hazardous materials?" (Both are used in the letter.)

A5. Direct costs include the costs of the remediation effort to adhere to applicable Environmental Laws plus any monitoring; indirect costs are not stipulated, but would refer to PDI supervisory and overhead costs. The proposed Sale Agreement now calls for an agreed PDI role in remediation based upon the consultant's report and estimate of costs. The consultant (Brown & Caldwell) will determine what remediation is required by "applicable Environmental Law" based upon the projected building use. The terminology for the hazardous materials is now "asbestos containing materials" (ACM) and "Hazardous Substances".

Q6. Parking: My reading of the parking agreement leads me to the following understanding (please confirm or correct):

Metro will construct some 220 stalls in the main building as part of the building renovation. In addition, Metro may lease up to 100 stalls in the garage at any time following our occupancy of the building. (The rate shall begin at \$56/month/stall, with a 10% annual limit on rate increases for 3 years.) If Metro does not buy the garage, we may lease up to 100 stalls for an additional 7 years, with 3 five-year options. If we remodel the Grand Avenue parking area, we may add another 100 stalls in the garage at the same monthly rate.

How would the parking rate for the 7-year extension be determined? Would the stalls in the garage be used for employee parking, visitor parking, or other? Would Metro receive revenue from this parking? Who would set the rate for the end use, and how would that rate be determined?

A6. In the absence of a Metro purchase of the garage, the Parking Supply Agreement governs the Metro lease alternatives. The first alternative is to lease up to 100 spaces at a starting rate of \$56.00. This rate would escalate to the market rate or to the limit of an annual 10% cap in October of each year. After the first three years there are three consecutive renewal options of seven, five and five years respectively. In addition, Metro may lease up to 100 spaces on a "use or lose" basis upon conversion of Grand Avenue parking space to office space. Payment for parking is similar to the first 100 space increment.

Q7. State Parking Requirement: Please explain why there is a variance of \$5 per stall, "depending on management".

A7. The \$5 per stall difference pays for the management of the garage by PDI instead of Metro.

Q8. How many parking stalls are in the garage? What is PDI's arrangement with the State for parking? What are the revenue projections for the garage? Is Metro expected to make money on the garage if purchased?

A8. As presently striped, the parking garage has 477 stalls. The State/PDI parking arrangement is somewhat complex, but it basically provides that PDI will provide 346 parking stalls in close proximity to the new State Office Building at an escalating charge over a 30 year period. Preparation of the financial projections for the Parking Garage are a part of the proposed Resolution.

Q9. State Parking Obligation: Please explain the nature of the obligation, and Metro's potential obligations, liabilities, and revenues under the arrangement.

A9. PDI and the State of Oregon have entered into an agreement whereby PDI furnishes the State 346 parking spaces within a six-block radius of the new State Office Building. Should Metro purchase the parking garage, all 346 spaces would be demanded in the parking garage. While this provides a desirable revenue stream, the contracted price may fall below the market in the future. The analysis recommended as a part of the proposed Resolution will define Metro's options in detail.

Q10. OCC Transportation Capital Improvements: What is the cost of assuming the applicable portion of the LID (annual cost and term)? Have those costs been included in the estimate of annual costs for the facility?

A10. The cost to Metro of the OCC Transportation Capital Improvement LID payment is estimated to be \$73,000 for the entire facility. This amount is included in the "Notice to Lien" and could change at the actual assessment stage. This amount is included in the project cost estimate.

Q11. Hazardous Waste: PDI "may elect to decommission underground tanks in place." Will Metro have any binding voice in this decision? Why will Metro share the cost of environmental testing, if for any reason other than to ensure the objectivity of the tests? How much is such testing estimated to cost?

Please clarify the statement, "The parties will approve before closing, based on the testing and bids obtained by the Seller, a specific scope of work and charge to Seller for any such remediation work" (emphasis added). Does this effectively limit PDI's obligation to pay for the complete remediation work? What happens if there is more remediation required than was originally anticipated - who is responsible to pay for it, and what are Metro's options?

Does this handwritten amendment, "The deposit shall be refunded to Purchaser if the transaction terminates pursuant to the foregoing" refer to the \$250,000 earnest money?

A11. Metro will not permit decommissioning of underground storage tanks (UST) in locations planned for construction of building components. Metro agreed to share in the environmental surveys as a negotiation issue. Based on the surveys already accomplished, Metro anticipates a charge not to exceed \$20,000. PDI anticipates paying for all remediation required to bring the building into compliance with applicable Environmental Laws. Please see the revised draft Sales Agreement for the concept for remediation. (See also A5.)

Q12. Do you anticipate MERC moving its offices to the Sears facility? If so, what will be the cost to MERC, and how will the vacated office space at the Convention Center be used? How would costs to Metro's other departments be affected with MERC in or out of the Sears facility? In any case, has the matter been presented to/discussed with the MERC Commission?

A12. The space planning for the new Metro Headquarters includes the MERC management pool plus other selected staff for a total office of 21 employees. Upon the MERC move, the Oregon Convention Center space will revert to its designed purpose of housing OCC staff. MERC will be charged for space on the same basis as other Metro departments. Charges to other Metro departments would increase over planned levels should MERC not occupy space in the new Metro Headquarters. The MERC Commission has received an informational briefing on Metro planning for the new facility.

Q13. At the June 7 meeting of the Building Relocation Task Force, there was mention of Metro contributing to a "gateway" project which would mark entrance to the Lloyd district. There is no mention of this in the materials submitted. What is the status of this, and what would the cost be?

A13. There has been an implicit request for Metro to participate, if not fully fund, some structure signifying entry into the Lloyd district. The design would be provided by the successful design/build team and funding has been included in the estimated project costs.

Q14. How is the project proposed to be financed? Will any adjustments to the 91/92 budget be required, and if so, what will they be?

A14. Please see the Financial Analysis of Headquarters Purchase and Renovation included with the Staff Report. Fund sources include Revenue Bonds (\$17,441,000), Metro funds (\$620,000) and Interest Income (\$507,000).

Q15. Is it possible to provide drawings of the proposed renovation for the committee and Council?

A15. Not at this time. The proposed renovation scheme will be a consultant product.

Q16. After renovation, what will be the building's capacity to withstand an earthquake?

A16. Metro will ask that the building be renovated to Zone 3 standards.

Q17. Earlier discussions of the proposal included provision for a day care center. Is this included in the latest plan?

A17. A day care center is included in the Metro space program.

Q18. Have we received appraisals of the Sears building and land, and the parking garage? If so, how do they relate to the \$2,550,000 and \$2,600,000 prices for the facilities?

A18. We have received one "as is" appraisal which valued the parking structure at \$1,980,000 and the Sears Building at \$2,029,000 and the "whole property" at \$4,000,000. We have also received an "as proposed" appraisal which was based on the original renovation plan and valued the property after renovation at \$21,500,000.



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

## DRAFT

DATE: July 31, 1991

TO: Casey Short, Council Analyst

FROM: Neil Saling

SUBJECT: Resolution No. 91-1478 - Responses to Questions

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Q2. What is included in the \$16.50 per square foot rate cited in the staff report? Does it include the semi-annual \$50,000 option payment for the garage? If the annual cost calculation included these option payments and operating costs which were equal to our current (Metro Center) operating costs, how would these affect the rate per square foot?

A2. Included in the \$16.50 per square foot initial costs are operating costs and debt service offset by parking revenues. The cost of FF&E is \$1.11 per square foot and is not included. The option costs for the parking garage are not included. Inclusion of option payments of \$100,000 annually and operating costs equivalent to the current Metro Center could raise the initial per square foot cost to approximately \$19.20.

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The semi-annual option fee is not refundable if Metro chooses not to purchase the parking garage. Council will be asked to make a decision on purchase of the parking garage prior to December 1, 1991.

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A4. The date was moved at the request of Pacific Development, Inc. (PDI) based upon an estimated early completion of contractor selection. This date is now December 1, 1991.

Q5. Hazardous Waste: This section needs further clarification. What are "direct" costs for removing any hazardous waste, and what are "indirect" costs? If the costs exceed \$250,000, what are Metro's alternatives? If PDI terminates the offer because the direct costs of removing the waste exceed

\$250,000, will Metro's earnest money be refunded? Is the \$250,000 ceiling for the entire facility--including the garage-- or is there a \$250,000 ceiling for each part of the facility? At what point would Metro have to make a final decision whether to cover direct costs above \$250,000: when costs exceeded that amount (even though final costs were not yet known); when the final costs had been determined; when an estimate is made; or at some other time? Who defines "hazardous waste" or "hazardous materials?" (Both are used in the letter.)

A5. Direct costs include the costs of the remediation effort to adhere to applicable Environmental Laws plus any monitoring; indirect costs are not stipulated, but would refer to PDI supervisory and overhead costs. If the \$250,000 remediation cost were exceeded, Metro could choose to pay the excess and continue or ask PDI to pay the excess. If PDI chose not to pay, they are in default and the Metro earnest money is refunded. The \$250,000 ceiling is for the entire property. Metro could make a decision on paying for any excess as early as the consultants' estimate; however, the contract calls for payment based on costs incurred. The terminology for the hazardous materials is now "asbestos containing materials" (ACM) and "Hazardous Substances".

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A6. The parking arrangements in the absence of a Metro purchase of the garage have been changed to coincide more closely with the State/PDI Parking Agreement. The agreement to lease Metro 100 stalls may be extended through notification for up to 22 years. Should Metro exercise its option to 100 spaces, the charges will be at fair market value. The end use for these 100 stalls cannot be determined at this time. It is anticipated that Metro would institute some schedule of charges for these stalls, but would be liable for the total monthly charge by the facility operator.

Q7. State Parking Requirement: Please explain why there is a variance of \$5 per stall, "depending on management".

A7. The \$5 per stall difference pays for the management of the garage by PDI instead of Metro.

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Q13. At the June 7 meeting of the Building Relocation Task Force, there was mention of Metro contributing to a "gateway" project which would mark entrance to the Lloyd district. There is no mention of this in the materials submitted. What is the status of this, and what would the cost be?

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A18. We have received one "as is" appraisal which valued the parking structure at \$1,980,000 and the Sears Building at \$2,029,000 and the "whole property" at \$4,000,000. We have also received an "as proposed" appraisal which was based on the original renovation plan and valued the property after renovation at \$21,500,000.

independent purchase option. This scheme allows for adequate parking capacity (approximately 220 spaces) for Metro's needs within the Sears facility itself without relying on parking availability in the adjacent garage. The upper two levels of the facility, which cover approximately 76,000 square feet, would be renovated for Metro's office requirements, allowing for approximately 5,000 square feet of future expansion space on those floors. In the event long range future expansion required more than the immediately available 5,000 square feet, Grand Avenue level parking could be displaced to accommodate the added office space requirements. It is anticipated that this displacement of Grand Avenue parking could be done in two blocks of 30,000 square feet each as needed. A commitment by the Owner to replace this Grand Avenue parking with parking in the adjacent garage ~~would be negotiated with the property owner should Metro choose to forego acquisition of the parking garage~~ is a part of the Sale Agreement.

Staff has estimated the Metro headquarters project costs, including FF&E and financing costs, of the modified development scheme (excluding the garage) to approximate \$18.4 million. See attached Exhibits 1 and 2 of the attached Financial Analysis of Headquarters Purchase and Renovation. These project costs equate to an initial square foot rates (excluding FF&E costs) which range between \$16.50 and \$21.88 depending on financing method employed. These rates, although higher than the approximate \$15 per square foot current rate occasioned at Metro Center, are significantly reduced from the projected \$23 to \$28 per square foot rates under the initial Sears facility development scenario.

Based on significantly reduced project costs, project staff has negotiated a sale agreement with the owner, Pacific Development, Inc. (PDI). The primary distinctions from the initial sale agreement are (1) the deposit requirement, (2) the hazardous waste remediation funding [cap] algorithm, and (3) the garage purchase option. The sale agreement is structured to allow for the receipt by Metro of a design/build proposals including a detailed cost estimate for the renovation of the building prior to the scheduled closing on or before December 16, 1991.

The deposit requirement would necessitate the payment of \$250,000 by Metro upon execution of the sale agreement which would be non-refundable, except if PDI terminates the agreement. In the event the sale is closed, the \$250,000 deposit would be applied to the purchase price of \$2,550,000. The previous sale agreement did not require a non-refundable deposit of this magnitude.

The Sale Agreement provides for PDI remediation of hazardous materials at the facility. Upon completion of a comprehensive report by a mutually selected consultant, Metro and PDI will agree on the necessary level of abatement activities. ~~[This provision differs from the original agreement in that PDI had proposed to remove all hazardous waste from the facility at their own expense. The firm of Dames & Moore estimates the cost of total removal of all hazardous materials (underground storage tanks and asbestos) to approximate \$350,000.]~~ In general,



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

DATE: September 10, 1991

TO: Casey Short, Council Analyst

FROM: Neil Salings, Director, Regional Facilities

SUBJECT: Resolution No. 91-1494 - Sears Purchase Agreement

---

This memorandum responds to your September 4, 1991 memo, subject as above. The majority of the questions you pose relate to financing the project and are answered in the attached response from the Finance and Management Information staff.

• Issues from July 3 memo

- Affordability: See attached. Note that generally a significant portion of the cost increase which must be borne by each department is a function of the demand for additional space.
- Best Alternative: Based upon the criteria originally established, staff believes the Sears facility provides the most desirable alternative for a new Metro headquarters. We believe that the purchase and renovation option recommended is competitive in price to other options available and provides the qualitative features unavailable from other options. No algorithm exists which can "clearly" show a "best" alternative.
- Debt Service Structure: See attached. It is anticipated that the Council will select the format for debt service at the time it approves the issuance of bonds for the renovation of the facility.
- Metro Center Lease: Self explanatory. CB Commercial believes that a potential replacement tenant has been identified.
- Maintenance Costs: See attached. Metro's real estate consultant, CB Commercial, initially identified \$4.00 per square foot as a planning factor for initial maintenance costs in a new or newly renovated office facility. However, the subsequent financial analysis used actual historical costs from the present Metro headquarters.

• Issues from July 5 memo

- Breakdown of Costs: The breakdown of costs, extracted from the Financial Analysis of Headquarters Building Purchase and Renovation, dated August 13, 1991, is attached. "Scheme B" for furniture, fixtures and equipment envisions retaining the maximum level of existing furniture from the present Metro Center. The Correy-Hiebert line is the standard furniture for the agency.
- Financial Impacts on Departments: See attached. A breakout of projected departmental transfers is contained in the above referenced financial analysis.

With regard to the questions raised in your September 3, 1991 memo to the Council, staff has continued to work toward a new facility utilizing the established criteria. Based upon previous Council actions, it would appear that there exists a reasonable level of comfort with the criteria. Staff has extended its examination of costs to alternatives outside the Lloyd Center area to determine the sensitivity of the criterion for locale.

Staff believes the Sears facility provides an affordable solution to housing our growing work force. While other alternatives may exist, staff does not believe that any one has the potential for displaying significant advantages over the Sears facility proposal.

cc: Dan Cooper  
David Knowles  
Berit Stevenson

Enclosures

Exhibit 1

**ESTIMATED PROJECT COSTS  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

**Estimated costs to be financed through revenue bonds**

Real estate	2,550,000
Purchase of land and building	188,000
Brokers fee	-----
	2,738,000
Project management	460,000
Design services	30,000
Hook-up charges	110,000
Permits	15,000
Printing	90,000
Utilities	80,000
Taxes	500,000
Owner's contingency	-----
	1,285,000
Construction	6,800,000
Renovation/new construction	1,800,000
Tenant improvements	680,000
Contingency (10%)	130,000
Telephone/data wiring	-----
	9,410,000
Other	1,200,000
Furniture and Fixtures	68,000
Art (1% of construction)	-----
	1,268,000
	-----
<b>Total to be financed</b>	<b>14,701,000</b>
<b>Estimated costs not included in bond financing</b>	
Brokers fees related to leasing of 2000 SW 1st Avenue	130,000
Project administration (Metro)	340,000
Due diligence	150,000
	-----
<b>Total not included in bond financing</b>	<b>620,000</b>
	-----
<b>Total Project costs</b>	<b>15,321,000</b>

Exhibit 2

**ESTIMATED FINANCING PLAN  
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION  
METROPOLITAN SERVICE DISTRICT**

Sources

Revenue bonds	17,441,000
Metro funds	620,000
Interest income	
Construction Account	336,000
Reserve Account	104,000
Debt Service Account (for capitalized interest)	67,000
	-----
	507,000
	-----
	18,568,000

Uses

Total "Project" costs	15,321,000
Reserve Account deposit	1,449,000
Capitalized interest	1,449,000
Issuance costs	349,000
	-----
	18,568,000

Assumptions:

Interest rates	
Short-term	6.20%
Long-term	7.20%
Period of construction	1 year
Amortization period	29
Issuance costs	2.00% of total bonds

## PRELIMINARY FURNITURE BUDGET SUMMARY

### SCHEME "B"

Reception	\$31,900
Council Chamber	249,500
Panels Only	455,598
Conference Rooms	143,300
Department Lobbies	26,600
Telephones and AV	<u>145,000</u>
Subtotal	1,051,898
Plus 15 Percent Contingency	<u>157,785</u>
<b>TOTAL</b>	<b>\$1,209,683</b>





**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

DATE: September 4, 1991  
TO: Neil Saling  
FROM: Casey Short *CS*  
RE: Resolution No. 91-1494 - Sears Purchase Agreement

At last week's Regional Facilities Committee meeting, Councilor Van Bergen asked me to request clarification from you on any questions regarding the Sears building purchase which remained following your July 31 responses to my July 3 and July 5 questions. This memo is in response to Councilor Van Bergen's request. I expect that the questions related to finance and debt service will have to be answered by Finance & Management Information staff.

### Issues from July 3 memo

Questions 1 and 2 dealt with the issues of affordability and whether the Sears building was clearly Metro's best alternative for a headquarters. I have discussed those issues in the attached memorandum to the Council.

Question 3 asked, "Regardless of the option chosen, how should the debt service be structured?"

The financial analysis prepared by the Finance & Management Information Department outlines three options for structuring the debt service to pay for the purchase and renovation of Sears. The analysis does not break down the costs of the three alternatives by annual cost and total cost; it only provides a breakdown in five-year increments. Will you please see that the information outlining annual costs and total costs of each of the three options is made available to the Council before they consider Resolution No. 91-1494?

In a related issue, what will be the Council's role in determining how the debt service is to be structured, and when will Council be involved in reviewing the debt service alternatives?

Question 4 asked about the potential for leasing the Metro Center. I understand a potential tenant is interested in leasing this building, which should resolve this issue. I'll refrain from going into more detail in the interests of preserving the rights of the potential tenant.

Sears Purchase Issues - Neil Saling  
September 4, 1991  
Page 2

Question 5 asked why the projected maintenance costs for the Sears Building are lower than the costs for our current building. You have discussed this with me, but the Council has not received any such information in writing. Will you please provide that information for the Council?

Issues from July 5 memo

Question 1 asked, "What is the breakdown of costs used to arrive at the estimated project costs of \$14.5 to \$15.2 million?" (Now projected at \$18.2 million). Your response and the financial analysis break those costs down to their component parts, but I still have a question about what is involved in the \$1.2 million for Furniture, Fixtures, and Equipment. Will you please provide a breakdown of these costs? To what extent does this include replacement of current office furniture and equipment?

The remainder of the questions from the July 5 memo are satisfactorily answered. The issue of the parking garage will be analyzed and alternatives presented to the Council prior to their making a decision on its purchase or the payment of the semi-annual \$50,000 option.

The only issue I would still like to raise concerns the financial effects of the Sears Building purchase on Metro's departments, which I alluded to in the attached memo to the Council. Any information you could provide to the Council prior to their consideration of Resolution No. 91-1494 would be appreciated.

Thank you.

cc: Metro Council  
Jennifer Sims  
Chris Scherer  
Don Carlson  
Berit Stevenson  
Dick Engstrom



**METRO**

# Memorandum

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503.221-1646

**DATE:** September 3, 1991  
**TO:** Metro Council  
**FROM:** Casey Short, Council Analyst  
**RE:** Resolution No. 91-1494 - Sears Building Purchase

In reviewing the Executive Officer's proposal to purchase and remodel the Sears Building for use as Metro's administrative headquarters, I prepared two series of questions for Neil Saling. Those questions are contained in memos dated July 3 and July 5, 1991; Mr. Saling's responses came in two memos dated July 31. (Questions and responses are included in the August 13 Regional Facilities Committee agenda packet.) At the August 27 Regional Facilities Committee meeting, Councilor Van Bergen asked whether I was satisfied with Mr. Saling's responses, and requested that I ask Mr. Saling in writing for further information on any answers that I thought needed elaboration or clarification.

The purpose of this memo is to advise the Council of policy questions the Sears Building purchase raises, which I asked in my July 3 memo. I am also attaching a memo to Neil Saling which asks for clarification of some of his earlier responses, in accordance with Councilor Van Bergen's request.

1. Is the Sears facility clearly the best alternative for a new Metro headquarters?

In my July 3 memo, I identified three sets of questions around this broad theme. Those questions asked whether the siting criteria of the Relocation Task Force were appropriate in limiting potential headquarters sites to the Lloyd Center - Convention Center area in inner Northeast Portland; whether the Sears facility should be considered to the exclusion of any other formal proposals; and whether renovation of the Sears facility would be preferable to new construction if new construction were cheaper than Sears renovation. I summarized the above questions by asking whether our research clearly identified the Sears facility as the best alternative for Metro. Mr. Saling's response correctly identified the basic question as a policy issue for Council to consider, adding that staff has not found an alternative that is clearly better.

SEARS PURCHASE ISSUES

September 3, 1991

Page 2

My contention over the course of the summer, when this issue has been intermittently before the Regional Facilities committee, is that the Council cannot make a truly informed decision without investigating the full range of possibilities. Those possibilities include renovation of Sears or another building; purchase of another existing building; and new construction. Possible sites for these alternatives include the inner east side, the central business district, or a location outside the urban core. It is Council's decision whether to accept the siting criteria of the Relocation Task Force, which point to the area of the inner east side of Portland in the neighborhood of the Oregon Convention Center as the preferred site, but the Council is not bound by these criteria since you have never formally reviewed or approved those criteria.

If the Council accepts the siting criteria as acceptable - either on their own merits or by virtue of their having gone unchallenged since their approval by the task force in May 1990 - the alternatives to the renovation of the Sears building have not been adequately investigated. We cannot know whether a less expensive alternative which meets Metro's needs exists - under the criteria that dictate an inner east side location or otherwise - unless we provide an opportunity for prospective proposers to develop formal proposals for a Metro headquarters in which cost is a critical factor. Such a process would require us to develop a list of requirements we would have for a headquarters facility, and allow developers to put together packages that met those requirements while allowing Metro to determine the mix of costs, building amenities, and other criteria that best suited our needs.

The current proposal does not give us the chance to determine whether the Sears renovation is the best deal for the agency and the taxpayers of the region. It identifies a proposal that meets certain important criteria, but does not give the Council the flexibility to determine whether these are the only criteria it should consider in making a significant long-range policy decision with fiscal implications that run into millions of dollars.

## 2. Is the Sears Building affordable?

My July 3 memo asked this question, which is inextricably tied to the policy question discussed above. The response from Mr. Saling included Finance & Management Information staff's financial analysis of the Sears proposal for review by Council and Council staff, and concluded by saying that there is no simple formula for establishing affordability. That

SEARS PURCHASE ISSUES

September 3, 1991

Page 3

determination is ultimately a policy question for Council to resolve.

There are three issues surrounding the affordability question that should be resolved before Council determines whether it considers the Sears proposal to be affordable. The first issue concerns the annual and total costs of purchasing and renovating the Sears facility, to which I will ask more detailed questions in the attached memo. In a nutshell, the issue is whether the Council is willing to commit to a program of purchase and renovation without knowing what the project is going to cost. Finance & Management Information staff have proposed three alternatives for financing the project, but their analysis provides neither total cost figures nor a recommendation from among the alternatives. Does the Council want to know the costs of the alternatives and determine how to structure the debt, before committing to purchase?

The second issue concerns the financial effects of the Sears project on Metro's departments. The financial analysis does not include specific figures on the annual costs to Metro departments, nor is there an analysis of the effects that building-related cost increases will have on the departments' operations. Of particular concern are the effects on enterprise departments such as MERC and the Zoo (which already face financial difficulties without additional transfers to the Building Management Fund), and the effects that excise tax increases related to debt service on the building will have on General Fund programs. Is it appropriate to increase central costs to departments which already have financial problems, and might these increases affect our ability to find long-term solutions to their problems?

The final issue is perhaps of greater significance than the simple increase in departmental requirements, and concerns the need to coordinate increased requirements with efforts to raise money to resolve existing fiscal problems and fund new initiatives. Currently in various stages of development are proposals to fund MERC operations; the Greenspaces program; Zoo operations and long-term capital needs; and regional arts programs. How would Metro's purchase of the Sears building affect our ability to implement these new revenue programs? The issue here is primarily one of public credibility. Most, if not all, of the ideas for raising program revenues will require a vote of the people. If Metro buys a headquarters building, particularly one that is not clearly demonstrated to be the most affordable, will that have a negative effect on public perceptions of the agency as it tries to raise more funds or pass a charter? Should we be considering this building purchase in

SEARS PURCHASE ISSUES

September 3, 1991

Page 4

the context of other agency priorities, and have the Council establish its priority in relation to support of programs?

CONCLUSION

Council's approval of Resolution No 91-1494 will commit Metro to spending \$325,000, at a minimum. It commits the agency to a \$250,000 earnest money payment to Pacific Development, and \$25,000 to each of the three qualifying design/build teams for their work in preparing responses to the RFP. This is a lot of money to spend for a proposal that still has as many questions surrounding it as the purchase of the Sears building has. I would like to suggest two alternatives for your consideration before you commit to proceeding on Sears.

First, the Council could direct its negotiators to return to Pacific Development with the instruction that the \$250,000 earnest money payment be refundable if Metro decides not to proceed with the purchase of the Sears building. This would allow us to review the proposals we will be receiving in the fall to determine whether any of them meets our needs at a price we can afford to pay.

Second, the Council could reject the resolution, and instead direct staff to modify the RFP to open it to any and all qualified proposers. Council could then determine whether the criteria of the Relocation Task Force were consistent with Council's criteria and assessment of the agency's needs. This would give us the opportunity to open the building acquisition process to determine conclusively what our options are in terms of site, type of property (new, remodel, or existing building), and cost. Such a process would ensure that we got the best deal for the public's dollar, which is an assurance I don't believe we can make now.

## REGIONAL FACILITIES COMMITTEE REPORT

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### RESOLUTION NO. 91-1494B, AUTHORIZING THE EXECUTION OF A SALE AGREEMENT FOR THE ACQUISITION OF THE SEARS FACILITY

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Date: September 12, 1991

Presented by: Councilor Knowles

**COMMITTEE RECOMMENDATION:** At its September 10, 1991 meeting the Regional Facilities Committee voted 4-1 to recommend Council approval of Resolution No. 91-1494B. Voting aye were Councilors Knowles, Bauer, Buchanan, and McFarland. Councilor Gardner voted no.

**COMMITTEE DISCUSSION/ISSUES:** Chair Knowles explained that Resolution No. 91-1494B was substantially the same as the version of the resolution the committee had approved earlier, with the deletion of the exemption of the design/build RFQ/RFP process from competitive bidding requirements.

Councilor Buchanan asked for clarification of the contents of Resolution No. 91-1494B. Committee staff Casey Short explained that the committee had approved the "A" version of Resolution No. 91-1494 at its August 27 meeting. That earlier version authorized the Executive Officer to execute a sale agreement for purchase of the Sears facility, and exempted the RFQ/RFP process from competitive bidding requirements. Subsequent to that approval, counsel had recommended the two parts of the resolution be separated. Just prior to consideration of 91-1494B, the committee approved Resolution No. 91-1507, which authorized the exemption. The amended, "B" version of 91-1494 now contains only the authorization to execute the sale agreement, as well as other provisions relating to Council approval of the sale closing and analysis of the parking garage option.

Councilor Gardner announced his intention to vote no on the resolution because of his doubts regarding the basic sale itself, which he had discussed at the August 27 meeting.

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING )  
THE EXECUTION OF A SALE )  
AGREEMENT FOR THE ACQUISITION OF )  
THE SEARS FACILITY [AND EXEMPTING )  
THE HEADQUARTERS RFQ/RFP PROCESS )  
FROM COMPETITIVE BIDDING PROCESS )  
PURSUANT TO METRO CODE 2.04.041 ]

RESOLUTION NO. 91-1494 - B  
Introduced by Rena Cusma,  
Executive Officer

WHEREAS, in October 1990 the Council of the Metropolitan Service District approved Resolution No. 90-1338 which authorized the execution of a sale agreement for the acquisition of the Sears facility as the site for Metro's administrative offices and authorized an alternative procurement process for selected contracts; and

WHEREAS, Resolution No.90 - 1338 provided for a due diligence period which conditioned the closing of the sale agreement by a determination by Metro of the suitability of the Sears facility as the Metro headquarters facility; and

WHEREAS, upon completion of the extended due diligence efforts, Metro's Relocation Task Force informed the owners of the Sears facility that the study had shown that the Sears facility, including the adjacent garage, was not economically suitable and allowed the initial sale agreement to lapse; and

WHEREAS, an unsolicited proposal indicated the possibility of renovation of the Sears building, excluding the adjacent parking garage, as the new Metro Headquarters Building within an economically acceptable budget; and

WHEREAS, the Executive Officer and the Relocation Task Force have reviewed the proposal and recommend the execution of a sale agreement, attached as Exhibit A, which provides for the closing of the sale of the Sears facility upon the satisfactory receipt and acceptance by Metro of a proposal to renovate the Sears building into Metro headquarters and for an independent series of options to purchase the adjacent garage facility; and

~~[WHEREAS, Metro staff, at the direction of the Relocation Task Force, commenced the preparation of a two-step design/build procurement (RFQ/RFP) process for the renovation of the Sears building; and]~~

~~[WHEREAS, the RFQ phase of such procurement process has been completed with the selection of three highly qualified design/build teams who would compete at the proposed RFP phase of the design/build procurement process; and]~~



~~[WHEREAS, the alternative design/build RFQ/RFP process will enable Metro to procure a renovated Headquarters building of high quality at reduced costs and will not encourage favoritism or substantially diminish competition; and]~~

~~[WHEREAS, the design/build procurement method has been employed successfully by other governments and is recognized as a modern and innovative contracting method;]~~

~~[WHEREAS, adequate time for a full "lowest bid" bid process is not available prior to the Sears facility Owners' stated deadline for the closing of the Sale Agreement.]~~

~~[WHEREAS, Resolution No. 91-1505 acts simultaneous with this Resolution to authorized the issuance of the design/build RFP and to ratify the previous issuance of the design/build RFO and the selection of three highly qualified teams to continue in the design/build competition.]~~

BE IT RESOLVED,

1. That the Council renews its selection of the Sears facility as the site for Metro's new Headquarters Building.
2. That the Council hereby authorizes the Executive Officer to execute the the attached sale agreement and promissory note, Exhibit A, for the acquisition of the Sears facility.
3. That prior approval of the Council shall be required before the Executive Officer proceeds to closing of the Sale Agreement.
4. That the Council hereby directs the Executive Officer to undertake a financial analysis of the adjacent parking garage as a basis for a Council decision on the acquisition of that facility.

~~[BE IT FURTHER RESOLVED,~~

- ~~1. That the Council, acting as the Contract Review Board of the Metropolitan Service District, adopts the finds attached as Exhibit B.~~
- ~~2. That the Contract Review Board hereby exempts the Headquarters project design/build RFQ/RFP from competitive bidding process pursuant to Metro Code 2.04.041.]~~

ADOPTED by the Council of the Metropolitan Service District this \_\_\_\_ day of September, 1991.

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Tanya Collier  
Presiding Officer