

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 97-2567
AN EXEMPTION TO METRO CODE)
CHAPTER 2.04 AND AUTHORIZING A) Introduced by Councilor Ruth McFarland
CONTRACT WITH OREGON MUSEUM)
OF SCIENCE AND INDUSTRY (OMSI))

Whereas, Metro, pursuant to the 1992 Metro Charter, is authorized to exercise the function of acquiring, developing, maintaining and operating public cultural trade, convention exhibitions, sports, entertainment and spectator facilities; and

Whereas, OMSI is a cultural facility of regional significance that, while currently operated by a not-for-profit corporation, significantly contributes to the welfare of the Metro region; and

Whereas, Metro financial support of OMSI will contribute to the livability of the Metro region and help avoid the need for even greater public support from Metro and other public bodies by helping ensure OMSI's ongoing financial stability; and

Whereas, OMSI agrees to provide for public oversight and accountability to Metro in return for this assistance and will, in addition, provide increased opportunities for low income members of the public to visit OMSI; and

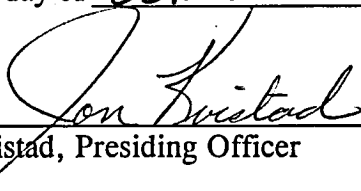
Whereas, the Metro Council has budgeted an appropriation of \$100,000 for Metro support of OMSI's activities during Fiscal Year 1997-98; and

Whereas, in order to enter into a grant agreement with OMSI, it is necessary to provide an exemption from procedural requirements in the Metro Contract Code, now, therefore,

BE IT RESOLVED THAT,

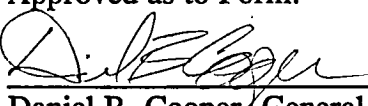
The Metro Council hereby exempts the attached contract (Exhibit "A" hereto) with OMSI from the competitive proposal requirement pursuant to Metro Code Chapter 2.04 and authorizes the Executive Officer to execute the agreement.

ADOPTED by the Metro Council this 23rd day of October 1997.



Jon Kvistad, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

AGREEMENT

This Agreement, dated as of _____, 1997, is by and between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, whose address is 600 N. E. Grand Avenue, Portland, Oregon, 97232-2736, and the Oregon Museum of Science and Industry, a nonprofit entity legally chartered under applicable federal law and state statute, whose address is 1945 SE Water Avenue, Portland, Oregon, 97214 (hereinafter referred to as "OMSI").

Witnesseth:

Whereas, Metro, pursuant to the 1992 Metro Charter, is authorized to exercise the function of acquiring, developing, maintaining and operating public cultural trade, convention exhibitions, sports, entertainment and spectator facilities; and

Whereas, OMSI is a cultural facility of regional significance that, while currently operated by a not for profit corporation, significantly contributes to the welfare of the Metro region; and

Whereas, Metro financial support of OMSI will contribute to the livability of the Metro region and help avoid the need for even greater public support from Metro and other public bodies by helping ensure OMSI's ongoing financial stability; and

Whereas, OMSI agrees to provide for public oversight and accountability to Metro in return for this assistance and will, in addition, provide increased opportunities for low income members of the public to visit OMSI; and

Whereas, The Metro Council has budgeted an appropriation of \$100,000 for Metro support of OMSI's activities during Fiscal Year 1997-98;

Now, therefore, in recognition of the mutual interests of the parties and based upon the terms and conditions contained herein, it is hereby mutually agreed that Metro shall provide grant funding to be utilized by OMSI effective July 1, 1997, through and including July 30, 1998, to pursue, execute and accomplish the projects and specific tasks described herein.

1. SCOPE OF WORK

This Agreement is exclusively for the personal services of OMSI to be utilized for the administration of the following:

WORK PLAN AND ACTIVITIES

OMSI will in 1997 - 1998 accomplish the following tasks:

1. Provide opportunity for Metro to place a mutually acceptable member of the Metro Council on the OMSI Board of Trustees.
2. Meet, as nearly as practicable, the financial goals for FY 1997-98, relating to revenue objectives and year end net income of approximately \$650,000 set out in the OMSI Fiscal 1998 Operating Budget Executive Summary, dated June 11, 1997.
3. Reach its target to pay at least \$200,000 of its own funds during FY 1997-98 toward the retirement of its capital debt.
4. Develop and implement a program, within three months of the date of execution of this contract, which enables low income residents of the Metro region to visit the OMSI facility on a regular basis without paying the admission fee.

2. RELEASE OF METRO FUNDS

In recognition that demands upon grant funding will not be evenly distributed across the grant period, Metro agrees to release 80% of the grant funds (\$80,000) to OMSI upon completion and signing of the necessary documents. The remainder of the grant funds (\$20,000) shall be released approximately one-half of the way through the grant period, on or about January, 1998.

3. REPORTING REQUIREMENTS

OMSI shall provide written program progress and financial reports quarterly to the Metro Council Regional Facilities Committee (or other appropriate body as may be determined by the Metro Council's Presiding Officer), and shall provide such other verbal and written reports as may be reasonably requested by Metro.

4. INDEMNIFICATION

The parties hereby agree that OMSI is an independent organization, and that the activities of OMSI, its officers, agents, and employees, shall not constitute actions of Metro for any purpose. Therefore, OMSI hereby agrees to indemnify, hold harmless, and defend Metro, and its respective officers, commissioners, agents, and employees from and against any and all liabilities, damages, actions, costs, losses, claims and expenses (including attorneys' fees) arising out of the activities of OMSI, its officers, agents, employees, contractors, and invitees.

5. TERMINATION

Metro may terminate this Agreement upon giving OMSI seven (7) days written notice. In the event of termination, OMSI shall be entitled to payment for work performed to the date of

termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro will not waive any claim or remedies it may have against OMSI.

6. SITUS

The situs of this Agreement is Portland, Oregon, and any litigation related hereto shall be governed by the laws of the state of Oregon and conducted in the state circuit court for Multnomah County.

7. NONTRANSFERABILITY

This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party.

8. CONTRACTS

The Manager of this grant for Metro shall be (until such time as the Executive Officer may name a replacement):

Jennifer Sims
Administrative Services
Metro
600 NE Grand Avenue
Portland, OR 97232
Telephone: (503) 797-1626

And all correspondence and reports shall be addressed to the Manager.

The Manager of this grant for OMSI shall be:

Pat LaCrosse
OMSI
1945 SE Water Avenue
Portland, OR 97214
Telephone: (503) 797-4000

And all correspondence and payments shall be addressed to the Manager.

10. ENTIRE AGREEMENT

Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s) signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter indicated and as follows:

OMSI

METRO

By: _____

By: _____

Print Name _____

Print Name _____

Title: _____

Title: _____

Date: _____

Date: _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 97-2567, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO METRO CODE CHAPTER 2.04 AND AUTHORIZING A CONTRACT WITH OREGON MUSEUM OF SCIENCE AND INDUSTRY (OMSI).

Date: September 30, 1997

Prepared by Michael Morrissey

Background: In June, 1997, the Metro Council approved a special appropriation to the General Fund of the 1997-98 adopted budget, of \$100,000 to the Oregon Museum of Science and Industry (OMSI). This action was taken in response to an OMSI plan for restructuring its debt (Financial Need 1/15/97). The financial need document identified amounts that state and local governments were proposed to contribute to the effort; Metro's amount being identified as \$100,000 annually.

The state of Oregon and City of Portland have since approved allocations to OMSI. Additionally, representatives of regional lodging, arts and tourism communities have recently "committed to raising up to \$200,000 of the (Multnomah) county's funding share as proposed by OMSI."

Proposed Action: Resolution 97-2567 exempts OMSI from Metro's competitive bid requirements, and authorizes the Metro Executive Officer to execute the \$100,000 contract, which is attachment A to the resolution. No specific use is identified to which the funds will be applied, however OMSI agrees to implement specified objectives relating to public oversight, meeting fiscal targets and implement a program assisting low-income citizens to attend OMSI.

REGIONAL FACILITIES COMMITTEE REPORT

97-2567, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO METRO CODE CHAPTER 2.04 AND AUTHORIZING A CONTRACT WITH OREGON MUSEUM OF SCIENCE AND INDUSTRY ((OMSI).

Date: October 15, 1997

Presented by Councilor McFarland

Committee Action: At its October 7, 1997 meeting, the Regional Facilities Committee voted 2-1 to recommend Council adoption of Resolution 97-2567. Voting in favor: Councilors Naito and McFarland. Voting no: Councilor McCaig.

Committee Issues/Discussion: This resolution was introduced at the request of Councilor McFarland. Chair McFarland opened a public hearing and an OMSI board member spoke in favor of the resolution and stated that conditions in the agreement (for example, placing a Metro Councilor on the OMSI board) were acceptable to OMSI.

Councilor Naito wondered whether a conflict of interest would exist when a Metro Councilor sat on the board of an organization with which it had a contract? Dan Cooper, Metro General Counsel said one would not exist, since OMSI was a not-for-profit organization, and the Board positions were unpaid.

Councilor McCaig raised several points, saying that she could not support this resolution as a matter of public policy, and wanted to clarify that the conditions which she felt had been set by the council for release of these funds to OMSI had not been met. She objected to the staff report not stating clearly what those conditions were, i.e. that the city of Portland and Multnomah County would approve specific sums of money for OMSI, and that those funding actions would take place by October 1, 1997. The county had not fulfilled that obligation, and she did not feel that a business/arts/tourism group agreeing to raise the county's identified sum fulfilled Metro's own condition.

Chair McFarland agreed that the committee would work with staff to produce a committee report reflecting councilor McCaig's comments. Councilor Naito agreed that original conditions had not been met and that the record should reflect that the committee was making a new decision.

Councilor McCaig then moved to amend Resolution No. 97-2567 to state that Metro would not disburse its contribution until the matching \$200,000 had been raised (by the business group in fulfillment of the county share). The motion failed, 1-2.

A vote to approve the original motion by Councilor Naito then passed 2-1.