


BEFORE THE METRO COUNCIL

| | | |
|---------------------------------|---|---------------------------|
| FOR THE PURPOSE OF AUTHORIZING |) | RESOLUTION NO. 94-2035 |
| AN AMENDMENT TO THE PARKING LOT |) | |
| AGREEMENT FOR THE WASHINGTON |) | Introduced by Rena Cusma, |
| PARK PARKING LOT BETWEEN OMSI, |) | Executive Officer |
| WORLD FORESTRY CENTER, AND |) | |
| METRO |) | |

THE METRO COUNCIL RESOLVES THAT:

The Executive Officer is authorized to execute the 1994 Parking Lot Operating Agreement in a form substantially similar to attached Exhibit "A."

ADOPTED by the Metro Council this 13th day of October, 1994.



Judy Wyers, Presiding Officer

1994 PARKING LOT OPERATING AGREEMENT

THIS 1994 PARKING LOT OPERATING AGREEMENT, dated this _____ day of _____, 199__, ("1994 Operating Agreement") is between the OREGON MUSEUM OF SCIENCE AND INDUSTRY, an Oregon nonprofit corporation ("OMSI"), WORLD FORESTRY CENTER, an Oregon nonprofit corporation ("WFC"), and METRO, an Oregon municipal corporation ("METRO").

W I T N E S S E T H:

WHEREAS, METRO, a municipal corporation, operates the Metro Washington Park Zoo ("Zoo"), adjacent to certain property owned by the CITY OF PORTLAND ("City") that is leased to OMSI and WFC; and

WHEREAS, OMSI is duly chartered to assist in accumulating, preserving and disseminating knowledge of science and industry in Oregon, has heretofore leased from the City certain City-owned property adjacent to the Zoo and WFC, and has heretofore built and maintained a museum and other improvements upon said leased property; and

WHEREAS, WFC is duly chartered to establish, build and operate a modern science and technological forest and wood products center for the use, education, enjoyment and benefit of the general public, has heretofore leased from the City certain City-owned property adjacent to the Zoo and OMSI, and has heretofore built and maintained said center upon said leased property; and

WHEREAS, Pursuant to a lease entered into in 1979 ("Parking Lot Lease"), the City leases to METRO, OMSI, and WFC a parking lot adjacent to the Zoo, OMSI, and WFC, as particularly described in Exhibit A attached hereto and by this reference made a part hereof ("Parking Lot"); and

WHEREAS, The Parking Lot is used by the Zoo, OMSI, WFC and the public attending their facilities; and

WHEREAS, It is in the public interest for METRO, OMSI, and WFC to share the responsibility for the maintenance of the Parking Lot; and

WHEREAS, METRO, OMSI, and WFC entered into an Operating Agreement dated April 10, 1979 ("1979 Operating Agreement"), which governed the use and maintenance of the Parking Lot by the parties; and

WHEREAS, Article 17 of the 1979 Operating Agreement provided that it may be amended by a written instrument signed by all the parties; and

WHEREAS, Article 12 of the 1979 Operating Agreement provided that alterations, improvements, or additions to the Parking Lot, or charges for parking in the lot, may occur only with the prior written approval of the governing bodies of each of the parties; and

WHEREAS, Tri-Met, with the consent of the parties, intends to construct and operate a light rail station at the Parking Lot; and

WHEREAS, METRO has agreed to issue debt instruments in order to pay toward the construction of the light rail station at the Parking Lot and construction of Parking Lot improvements; and

WHEREAS, It is necessary to institute parking fees at the Parking Lot once the light rail station is operational, in order to discourage use of the Parking Lot as a park-and-ride facility, and to generate revenues to pay interest and principal on METRO's debt instruments;

NOW, THEREFORE, the parties agree that the 1979 Operating Agreement is amended to read as follows:

1. Term of Agreement. The 1979 Operating Agreement commenced on April 10, 1979, and shall remain in effect and was not amended until this 1994 Operating Agreement commenced. This 1994 Operating Agreement shall commence as of the date hereof and shall continue for the term of the Parking Lot Lease (35 years from April 10, 1979), plus any extensions of the Parking Lot Lease as provided therein.

2. Termination. Except as may be otherwise mutually agreed by the parties, this 1994 Operating Agreement shall terminate automatically upon termination of the Parking Lot Lease. In the event that a party ceases its operations adjacent to the Parking Lot, such party's obligations, rights, and duties under this 1994 Operating Agreement shall terminate. In the event of a cessation of operations adjacent to the Parking Lot by a party, any remaining parties shall immediately meet to negotiate in good faith for any changes to this 1994 Operating Agreement made necessary by the departure.

3. Use. The function and purpose of the Parking Lot shall not be altered except as unanimously agreed by the parties.

4. Maintenance. The parties agree to jointly clean, care for, and maintain the Parking Lot in good repair and in a clean and orderly fashion, and to jointly manage and control the Parking Lot, all as provided herein.

5. Contributions to Cost Until Fee Commencement. Until collection of fees for parking in the Parking Lot commences ("Fee Commencement"), each party shall

contribute 33-1/3 percent of the costs and expenses necessary for maintaining and operating the Parking Lot.

6. Parking Lot Committee. A Parking Lot Committee ("Committee") is hereby created. The Committee shall consist of the Zoo Director, the OMSI President, and the WFC President, or alternates appointed by the respective parties. Members on the Parking Lot Committee shall serve until replaced, and without compensation. Except as otherwise provided for herein, a majority vote of the members shall be necessary for all Committee decisions. The Committee shall choose one of its members as Chairperson, who shall be responsible for calling meetings and may vote on and discuss all matters coming before the Committee. The chair shall be responsible for keeping minutes of meetings, which shall be distributed within 14 days of each meeting to Committee members. The Committee shall prepare and transmit to METRO, OMSI, and the WFC a comprehensive annual report of its activities and finances. Any member may call for a meeting. In any event, meetings shall be held at least quarterly.

7. Powers of Committee. Except as limited or modified by Sections 11-13 hereof, the Committee is directed and authorized to maintain and operate the Parking Lot in a manner consistent with this 1994 Operating Agreement and with the view to achieve the maximum use and enjoyment of the three facilities by the public. Except as provided in Sections 11-13 hereof, the Committee shall maintain and operate the Parking Lot on behalf of METRO, OMSI, and WFC. Execution of the 1994 Operating Agreement shall be deemed a delegation of the necessary administrative authority by the parties to the Committee. The Committee's responsibilities for the Parking Lot shall include, but are not limited to, landscaping; signage; security; repair; maintenance; lighting; sweeping; cleaning; snow removal; insurance; restricting or prohibiting parking by persons who are not authorized to park in the lot; controlling overflow parking; and resolving conflicting uses of the Parking Lot. The Committee is authorized to negotiate and enter into agreements with third parties required for the Parking Lot, provided, however, that any final agreement that exceeds the annual budget authorized pursuant to Paragraph 8 hereof, must be approved by the governing bodies of each party. The Committee shall have no authority over matters concerning the separate facilities of the parties.

8. Committee Budget. The Committee shall each year, by January 1, prepare and submit to the governing bodies of METRO, OMSI, and WFC a proposed budget for the Parking Lot for the ensuing fiscal year (July 1 to June 30). The governing body of each party shall review the proposed budget and either approve it or reject it with specific recommendations regarding its revision, and shall report back to the Committee by March 15, which shall adjust the budget and obtain the final approval thereof by each party, if necessary. The expenditure allowances in the budget as approved by the Committee and the governing bodies of the parties shall control the year's spending program. The Committee shall not itself borrow money, nor shall it approve any claims or incur any obligations for expenditures in excess of amounts approved within the budget.

9. Committee Finances. Metro intends to have all revenues and expenditures budgeted within METRO's annual budget and audited as part of METRO's financial statements. The Committee shall approve invoices, which will be paid by the party invoiced within 30 working days of receipt. To the extent permitted by law, and subject to specific approval of the Committee, each party may directly or through agents perform work elements authorized in the budget and upon submission of invoices and documentation be reimbursed for any direct costs incurred on behalf of the Committee.

10. Prior Approval. The Committee shall not make any alterations, improvements, or additions to the Parking Lot, restrict or prohibit parking by patrons of the parties (other than to accommodate emergencies or special, short-term events) unless authorized by the annual budget or approved by the governing bodies of each of the parties.

11. Schedule of Fees for Parking.

Effective no later than the operational date of the light rail station, the Committee shall impose a schedule of fees for parking at the Parking Lot. The fee schedule shall be set by the Committee, subject to the provisions of Sections 12 and 13 hereof.

12. Financing of Parking Lot Improvements and Light Rail Contribution.

A. METRO will enter into an agreement with Tri-Met to provide for the reconfiguration of the Parking Lot, which agreement is subject to the prior approval of OMSI and WFC. In carrying out the Parking Lot reconfiguration, METRO's Project Manager shall report regularly to and act at the direction of the Committee. In addition, the parties will cooperate as necessary to obtain City of Portland land use permits as needed to convert the Parking Lot to a pay for parking facility ("Paid Parking") and to construct or otherwise install necessary gates, cross arms, and other devices as necessary to convert the Parking Lot to Paid Parking. METRO has by separate agreement dated September 10, 1992, also obligated itself to pay Tri-Met \$2,000,000 as a contribution to the costs of constructing the Westside Light Rail System including a Washington Park Station.

B. The parties will work with METRO in an effort to generate sufficient Parking Lot revenues to ensure METRO adequate revenues to issue its bonds to finance all out-of-pocket costs incurred by METRO to convert the Parking Lot to Paid Parking and to finance METRO'S \$2,000,000 contribution to Tri-Met.

C. METRO shall issue its General Revenue Bonds ("the Bonds") in an amount sufficient to finance all such costs and the cost of issuance of the Bonds and any required reserve accounts, not to exceed \$5.5 million. The financing shall be accomplished by METRO consistent with Metro Code Chapter 8.01 and Ordinance No. 91-439. METRO agrees that it shall not look to the Committee or to the other parties to this 1994 Operating Agreement to pay such costs.

D. The Committee shall manage the Parking Lot and establish the Schedule of Fees for parking to generate sufficient revenues to pay interest and principal on the Bonds and necessary amounts for rebate of arbitrage earnings; operations and maintenance expenses, including but not limited to paving; striping; landscaping; contract and management fees or operational costs related to Parking Lot operations; collections; sweeping; cleaning; snow/ice removal; security; lighting; restricting or prohibiting parking by persons who are not patrons of one of the parties; shuttle service between the Parking Lot and any off-site designated shuttle locations; controlling overflow parking; and any risks associated with any of these areas; and also including all taxes, liens and assessments, and replacement and renewal accounts.

E. The parties recognize that the ability of the Parking Lot to generate sufficient revenues to pay operation and maintenance expenses, and interest and principal on the Bonds is dependent on the ability of the parties to attract sufficient attendance at their separate facilities as well as the management decisions governing Parking Lot operations made by the Committee. In order to ensure to the maximum extent possible that the Parking Lot is operated in a prudent manner, the Committee shall consult with a recognized expert in parking lot management prior to establishing the Schedule of Fees and commencing Paid Parking. The Committee may establish a reserve account to ensure that funds are available to pay operation and maintenance expenses, and debt service during periods when revenues are not sufficient to pay such costs.

F. In the event the surplus revenues generated during any fiscal year together with the amounts retained in the Committee's reserve account are less than the projected operations and maintenance expenses, and debt service expense for the next fiscal year, the Committee shall so report to the parties. In such event any party may require the Committee to hire a recognized expert in parking lot operations to advise the Committee whether the cause for such financial circumstance is due to lower than anticipated attendance at the facilities or due to operational decisions regarding Parking Lot management. If the expert determines that operational decisions could enhance Parking Lot revenues, the expert shall make such recommendations as are appropriate. The Committee shall consider the recommendations, take such action as it deems appropriate, and report to the parties.

G. If Parking Lot revenues and reserves in the account created by the Committee shall be insufficient to pay all operations and maintenance, and debt service costs, METRO agrees to pay such amounts (other than operating and maintenance expenses, which shall be paid by the parties in the same proportion as surplus revenues would be distributed pursuant to Section 13 b.) from its otherwise available funds, subject to the following:

METRO shall be entitled to all revenues generated from the Parking Lot (after payment of the operations and maintenance expenses), and shall in the event the

Parking Lot generates sufficient revenue after payment of operations and maintenance expenses and costs required by the debt instruments, be entitled to reimbursement of all debt service payments or the Bonds advanced by METRO plus interest equal to the rate of return on Metro's pooled investments during the period prior to repayment.

13. Distribution of Surplus Revenues. In the event the Parking Lot generates revenues in excess of the amounts required for payment of the operation and maintenance expenses, and expenses and reserves referred to in Section 12 hereof, the surplus revenues shall be distributed and allocated as follows:

A. As a first priority the surplus revenues shall be expended for improvements to the Parking Lot or to enhanced operations as deemed necessary and appropriate by the Committee.

B. After payment of such Parking Lot-related costs as set forth in Section 13 A. hereof, the disposition of the remaining surplus revenues shall be handled and administered as follows:

- (1) All remaining surplus revenues shall be deposited in one or more interest bearing accounts until distributed.
- (2) During the first five-year period after the Parking Lot begins to operate on a Paid Parking basis, any remaining surplus revenues shall be used for the purpose of reimbursing the WFC, OMSI and Zoo for attendance and admission revenue losses reasonably attributable to the disruption caused by Washington Park Station construction and the conversion of the Parking Lot to Paid Parking, and to assure financial equity with respect to operation of the Parking Lot between the parties by balancing past contributions to Parking Lot operation and maintenance costs and other financial burdens borne or suffered since the inception of the Parking Lot Lease. The Committee shall make the allocation and distribution annually.
- (3) After the initial five-year period, any surplus revenues shall be distributed to WFC, OMSI and the Zoo on the basis of a formula which reflects the source of revenue

generation. The Committee shall review this formula and the resulting allocation annually.

- (4) The division of any surplus revenues between the parties shall not preclude the parties from agreeing to fund projects determined to be of mutual benefit. By way of illustration and not as a limitation, such projects could include restrooms, satellite parking, a mutual visitor center, joint marketing and advertising of Washington Park institutions, projects that address and enhance visitor amenities, such as an information kiosk, and any other projects that, in the opinion of the parties enhance the shared interests of the parties.

14. Liability Insurance. At all times during the term of this 1994 Operating Agreement, each party shall have and keep in force at least the following insurance coverages or equivalent self-insurance program:

A. General Liability: Commercial Form General Liability Coverage (or Comprehensive General Liability with the Broad Form Endorsement). Such coverage shall be in the amount of no less than \$500,000, and \$1,000,000 in the aggregate.

B. Workers' Compensation Insurance: Each party shall have and keep in force Workers' Compensation insurance coverages or equivalent self-insurance program in accordance with ORS chapter 656.

C. Joint Insurance: The Committee may arrange for the purchase of property insurance, including earth movement and flood coverage, in limits deemed appropriate by the Committee. Each party shall be listed as a named insured, with waiver of subrogation. Such insurance may include business interruption and extra expense coverage in amounts not less than six months earnings during peak season. The Committee may also, if appropriate, obtain general liability insurance or other appropriate coverages for the Parking Lot, naming all parties as insured. In the event the Committee does so, such coverage may be substituted for such individual coverages specified in this paragraph 14.

D. Contractors Insurance: Any contractor providing operations, maintenance, paving, stripping, cleaning, landscaping, collections, and security must have commercial general and auto liability insurance in an amount and manner satisfactory to the Committee. Workers' Compensation in accordance with ORS chapter 656 shall also be required, where applicable.

E. Any contractor providing transportation services must be appropriately licensed and carry auto liability coverage in an amount and manner satisfactory to the Committee. Each party shall be named an additional insured.

F. The Committee may require that any contractor providing engineering and/or architectural related service to provide professional liability insurance in an amount and manner satisfactory to the Committee.

G. Notice of claims shall be reported to each party. If it is clear that the claimant was a patron of one of the parties, that party (or its insurance carrier) shall take the lead in the investigation. If it is unclear who the claimant was to visit, or visited multiple locations, all parties may initially investigate, and then shall agree on who should take the lead in the investigation and any necessary defense of any claim.

15. Assignability Restriction. This 1994 Operating Agreement shall not be transferable or assignable without the prior written consent of each party.

16. Attorneys' Fees. In the event of any litigation among the parties concerning this 1994 Operating Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees and court costs, including fees and costs on appeal to an appellate court and expert witness fees. In the event that a prevailing party employs in-house counsel, that party shall be entitled to recover the reasonable market value of its counsel's services.

17. Extent of Agreement. This 1994 Operating Agreement represents the entire and integrated agreement between the parties on the subject hereof. This 1994 Operating Agreement may be amended only by written instrument signed by all parties.

18. Severability of Contract/Savings Clause. In case any one or more of the provisions of this 1994 Operating Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

19. No Third Party Beneficiaries. This 1994 Operating Agreement is not intended to benefit any person, corporation, government body, individual, employee, group of employees, insurer or other legal entity other than the parties, or the parties lawful successors or assigns. In no event may an insurer of any party take any benefit from this 1994 Parking Lot Operating Agreement. The reference in this Section to the possible assignment of a party's interest shall not allow any assignment to take place except in conformance with Section 15 hereof. This 1994 Operating Agreement shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any third party in any proceeding whatsoever.

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IN WITNESS WHEREOF, each party has caused this 1994 Parking Lot Operating Agreement to be executed in triplicate by authority of its respective board of directors or executive committee as of the date first above written.

METRO

WORLD FORESTRY CENTER

By: _____

By: _____

Title: _____

Title: _____

OREGON MUSEUM OF SCIENCE AND INDUSTRY

By: _____

Title: _____

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DUTY...

PARKING LOT LEASE

OGC # 11.59.85

THIS LEASE made and entered into this 10th day of April, 1979, by and between the CITY OF PORTLAND, a municipal corporation of the State of Oregon (hereinafter referred to as "City"), and OREGON MUSEUM OF SCIENCE AND INDUSTRY, an Oregon nonprofit corporation (OMSI), WESTERN FORESTRY CENTER, an Oregon nonprofit corporation (WFC), and the METROPOLITAN SERVICE DISTRICT, a municipal corporation of the State of Oregon (MSD), (OMSI, WFC and MSD hereinafter collectively referred to herein as "Lessees").

W I T N E S S E T H :

WHEREAS the Washington Park Zoo (the "Zoo") is an operating division of MSD which operates said zoo adjacent to certain City-owned property that is leased to OMSI and WFC, and

WHEREAS OMSI is duly chartered to assist in accumulating, preserving and disseminating knowledge of science and industry in Oregon, has heretofore leased from the City certain City-owned property adjacent to the Zoo and WFC, has heretofore built and maintained a museum and other improvements upon said leased property, and intends to expand and improve its facilities, and

WHEREAS WFC is duly chartered to establish, build and operate a modern science and technological forest and wood products center for the use, education enjoyment and benefit

of the general public, has heretofore leased from City certain City-owned property adjacent to Washington Park Zoo and OMSI, has heretofore built and maintained said Center upon said leased property, and intends to expand and improve its facilities, and

WHEREAS OMSI needs additional leased property to proceed with its expansion plans, and

WHEREAS WFC must use area "A" of the property already leased to it for its expansion plans, and

WHEREAS City owns and maintains a parking lot adjacent to the Washington Park Zoo, OMSI and WFC, and said parking lot is used by these organizations and the public attending the facilities operated by these organizations, and

WHEREAS it would be to the mutual advantage of all parties hereto and in the public interest for OMSI and WFC to proceed with their expansion plans, and

WHEREAS it would be in the public interest for the parking lot to be leased to MSD, OMSI and WFC and to have such entities responsible for the paving and future maintenance of the parking lot,

NOW, THEREFORE, the parties hereto covenant and agree as follows:

1. Term of Lease. City hereby leases and lets to Lessees for a term of 35 years, commencing as of the date of this lease, the real property situated in the City of Portland, County of Multnomah and State of Oregon, more particularly

described on Exhibit A attached hereto and by this reference made a part hereof (the "leased property").

2. Extension. This lease may be extended upon such terms and conditions as the parties hereto may mutually agree.

3. Termination. Except as otherwise provided for in this lease, and as may be otherwise mutually agreed by the parties, this lease shall terminate in the event OMSI, WFC and MSD fail to use their respective properties adjacent to the leased property for the use, education, enjoyment and benefit of the general public.

4. Rent. Lessees agree to pay as rent for the leased property the sum of \$1 per year, payable in advance on the first day of each lease year. In addition to such rent, Lessees agree to pay promptly any and all taxes, liens and assessments which may be levied or imposed upon the leased property to the end and purpose that said leased property shall at all times be free and clear of any and all taxes, liens or assessments of whatsoever nature.

5. Improvements, Maintenance and Use. It is hereby recognized that the Lessees will continue using the leased property primarily as a parking lot consistent with its present use. It is hereby agreed that Lessees will pave any portion of the present parking lot located east of Knights Boulevard which is now unpaved, such paving to be completed prior to 1980. Lessees further agree to make corrective

repairs to that portion of the parking lot located east of Knights Boulevard which is presently paved and to the road located east of the parking lot, which is adjacent to the Zoo; on or before January 1, 1980. All paving and corrective repairs will be performed in accordance with specifications to be submitted for review and approval by the City Engineer for conformance to Public Works Standards. The City Engineer shall inspect the work for conformance with the approved specifications. The lessee shall pay for the City Engineer's work according to the fee schedule provided by Section 17.24.025 of the City Code. Lessees shall maintain and care for the leased property, so that it shall at all times be maintained in a good repair and in a clean and orderly fashion; provided, however, that the City will be responsible for maintaining, caring for, cleaning and controlling any roads which intersect or traverse the leased property. Lessees shall be responsible for providing lighting and other utilities needed to use the leased property to carry out their responsibilities with respect to it. It is hereby agreed that any and all improvements upon the leased property (except those set forth herein) shall be approved in writing by the City Commissioner in charge of the Bureau of Parks before any such improvement or construction is commenced.

6. Management of Parking Lot. Lessee's respective board of directors, or their duly appointed delegates, shall jointly have exclusive and final authority and responsibility for controlling and managing the leased property in a lawful manner which is not inconsistent with this agreement.

7. Liability Insurance. At all times during the operation of this lease Lessees shall have and keep in force public liability insurance in the minimum amounts of \$100,000 for personal injury to any one person, \$300,000 for all personal injuries resulting from one accident and \$300,000

property damage for all damage claims resulting from one accident or a single limit policy of \$300,00 covering both personal injury and property damage, which insurance shall name as additional insureds the City of Portland, its officers, agents and employes. In the event the Oregon Statutes relating to maximum liability exposure of municipal corporations is amended during the term of this lease, such insurance coverage shall be modified by the lessee to an amount at least equal to the maximum liability exposure of a municipal corporation or its officers, agents and employes. A certificate evidencing such insurance shall be filed with the City Auditor and shall require notice in writing ten (10) days prior to cancellation, termination or modification. Should Lessees fail to have and keep in force such public liability insurance, and if after twenty (20) days written notice such breach continues without proper steps being taken by Lessees to remedy the same, the City Council may terminate this lease. The adequacy of such insurance coverage and the form of such insurance shall be subject to approval by the City Attorney.

8. Assignability Restriction. This lease shall not be transferable or assignable, except as otherwise provided herein, without the written consent of the City Council first obtained.

9. No Vested Interest Created. No expenditure of money, lapse of time or other act or thing shall operate as an estoppel against the City of Portland or be held to give Lessees any vested right hereunder. Except as may be otherwise mutually agreed, at the termination of this lease or any extension thereof, howsoever terminated, all buildings, fixtures and permanent improvements of any and all sort shall automatically become the property of the City. Within 90 days after such termination, Lessees shall remove all their personal property from the property.

IN WITNESS WHEREOF Lessees have caused this lease agreement to be executed in triplicate by authority of their respective boards of directors or executive committees and the City has caused the same to be executed in triplicate by its Mayor and Commissioner of Public Affairs as of the date first above written, the City acting pursuant to Ordinance No. 147431.

OREGON MUSEUM OF SCIENCE AND
INDUSTRY

By Fred Z. Weber

Title President

By ~~Newton D. Kent~~

Title _____

WESTERN FORESTRY CENTER

By Julian N. Bassam

Title President

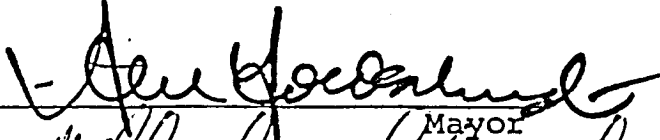
METROPOLITAN SERVICE DISTRICT

By Newton D. Kent

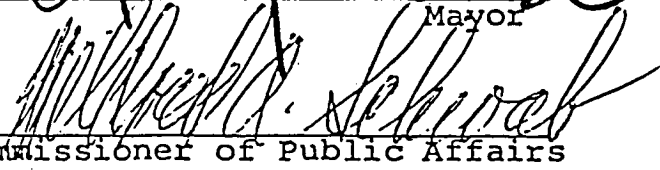
Title Chief Administrative Officer

CITY OF PORTLAND

By


Mayor

By


Commissioner of Public Affairs

Approved ~~as to Form~~ TO FORM



City Attorney ~~ORNEY~~

Legal Description
for
Parking Lot Lease

That certain real property situated in the City of Portland, County of Multnomah and State of Oregon more particularly described as follows:

Beginning at the center of Section 5, T1S, R1E, W.M.; thence N. 89° 53' 25" W. a distance of 1698.21 feet to the City of Portland's westerly boundary of Hoyt Park; thence S. 0° 03' 15" E. a distance of 1015.91 feet on the westerly City boundary to the true point of beginning.

Thence S. 71° 08' 15" E. a distance of 178.80 feet to a point; thence N. 9° 16' 00" E. a distance of 475.05 feet to a point; thence N. 2° 01' 45" E. a distance of 113.57 feet to a point; thence N. 24° 39' 00" E. a distance of 238.51 feet to a point; thence N. 81° 43' 45" E. a distance of 269.34 feet to a point; thence N. 81° 43' 45" E. a distance of 47.00 feet more or less to a point; thence S. 55° 31' 30" E. a distance of 378.00 feet more or less to a point; thence S. 30° 0' 00" E. a distance of 38.0 feet to an iron rod; thence S. 0° 9' 25" E. a distance of 252.39 feet to a point; thence S. 39° 52' 40" W. a distance of 114.33 feet to a point; thence S. 5° 48' 45" W. a distance of 122.73 feet to a point; thence S. 33° 42' 25" W. a distance of 26.62 feet to a point; thence S. 7° 41' 50" W. a distance of 159.61 feet to an iron rod; thence S. 20° 59' 0" E. a distance of 292.17 feet to a point; thence S. 17° 27' 25" W. a distance of 50.53 feet to a point; thence S. 56° 15' 35" W. a distance of 135.43 feet to a point; thence S. 45° 27' 20" W. a distance of 134.33 feet to an iron rod; thence S. 73° 0' 00" W. a distance of 410.0 feet more or less to a point in the northerly right-of-way line in the Sunset Highway as it presently exists; thence N. 13° 0' 00" W. a distance of 110.0 feet more or less along the right-of-way line to the north line of S.W. Knights Blvd. to a point; thence westerly a distance of 325.0 feet more or less along the right-of-way line to a point on the west line of Hoyt Park; thence N. 0° 03' 15" W. a distance of 595.00 feet more or less to the true point of beginning.

FIRST EXCEPTING therefrom the following real property leased

to OMSI:

Commencing at the center of Section 5, T.1S., R.1E., W.M.; thence N.89°53'25"W. along the East-West half section line of said Section 5, 1698.21 feet to a point on the City of Portland's westerly boundary; thence S.0°03'15"E. along said westerly boundary, 979.50 feet to the true point of beginning; thence S.69°14'00"E., 127.50 feet to a point; thence N.74°31'10"E., 346.77 feet to a point; thence S.13°07'30"W., 153.78 feet to a point; thence S.19°38'00"E., 82.90 feet to a point; thence S.81°25'22"E., 241.74 feet to a point; thence S.20°47'00"E., 193.00 feet to a point; thence S.37°54'00"W., 109.60 feet to a point; thence S.76°35'40"W., 705.14 feet to a point on the City of Portland's westerly boundary; thence N.0°03'15"W., 646.96 feet to the point of beginning, containing 7.892 acres, more or less.

AND FURTHER EXCEPTING therefrom the following real property

leased to Western Forestry Center:

Commencing at the center of Section 5, T.1S., R.1E., W.M.;
thence N.89°53'25"W. along the East-West half section line of
said Section 5, 1698.21 feet to a point on the City of Portland's
westerly boundary; thence S.0°03'15"E. along said westerly
boundary, 878.00 feet to the true point of beginning; thence
N.51°58'40"E., 292.84 feet to a point; thence N.9°16'00"E., 94.00
feet to a point; thence N.2°01'45"E., 113.57 feet to a point;
thence N.24°39'00"E., 238.51 feet to a point; thence N.81°43'45"E.,
269.34 feet to a point; thence S.13°07'30"W., 715.00 feet to a
point; thence S.74°31'10"W., 346.77 feet to a point; thence
N.69°14'00"W., 127.50 feet to a point on the City of Portland's
westerly boundary; thence N.0°03'15"W., 101.50 feet to the point
of beginning, containing 5.543 acres, more or less.

ORDINANCE No. 147431

An Ordinance authorizing lease of the city-owned parking lot adjacent to the Portland Zoo to the Oregon Museum of Science and Industry, the Metropolitan Service District and the Western Forestry Center for use and maintenance purposes for the benefit of the general public and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. The City presently owns and operates a parking lot adjacent to the Portland Zoo, the Oregon Museum of Science and Industry and the Western Forestry Center.
2. The Metropolitan Service District, the Oregon Museum of Science and Industry and the Western Forestry Center, all non-profit corporations, desire to lease such property from the City for a term of thirty-five years for the purpose of operating, improving and maintaining the area for the benefit of the general public.
3. Such real property will not be needed for public use during the term of such lease.
4. Operation and maintenance of such parking lot by the Metropolitan Service District, the Oregon Museum of Science and Industry, and the Western Forestry Center would be in the public interest.

NOW, THEREFORE, The Council directs:

- a. Lease of parking lot, described in the attached document, to the Metropolitan Service District, the Oregon Museum of Science and Industry and the Western Forestry Centers, all Oregon non-profit corporations, for a period of thirty-five years at a yearly rental rate of one dollar (\$1.00), is hereby authorized as defined in attached document.

Section 2. The Council declares that an emergency exists because it is in the best interest of the general public to allow Oregon Museum of Science and Industry, Western Forestry Center and the Metropolitan Service District to begin necessary improvements and repairs on the parking lot as soon as possible; therefore, this Ordinance shall be in force and effect from and after its passage by Council. Mayor of the City of Portland

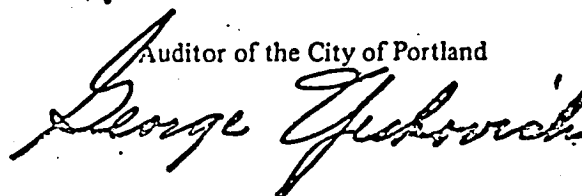
Passed by Council, MAR 28 1979

Commissioner Schwab
MAS.g
March 23, 1979

Attest:



Auditor of the City of Portland



STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 94-2035 AUTHORIZING AN AMENDMENT TO THE PARKING LOT AGREEMENT FOR THE WASHINGTON PARK PARKING LOT BETWEEN METRO, WORLD FORESTRY CENTER AND OMSI

Date: September 22, 1994

Presented by Don Rocks
Dan Cooper

FACTUAL BACKGROUND AND ANALYSIS

Amendment to the Washington Park Parking Lot Operating Agreement is made necessary by the anticipated change from operating a free parking lot that serves the three cultural institutions sharing the site to a fee paid parking lot. That change, in turn, is driven by the Washington Park light rail station which is currently under construction.

It is generally agreed that if the existing parking lot were to continue to be a free facility, it would become a convenient park and ride station for area residents which would reduce or eliminate parking for visitors to the institutions.

In addition to the practical aspect of operating the parking lot as a paid facility that will continue to principally service visitors to the zoo, World Forestry Center and OMSI, financial projections indicate that the revenue stream produced will be more than adequate to retire revenue bonds and maintain and operate the lot. The approximate bond amount is expected to be in the \$5.5 million range. Of that amount, \$2 million represents Metro's Westside Light Rail commitment. The remainder is required for design and construction of the reconfigured parking lot, associated gates and equipment and financing requirements. Upon retiring the debt, the operation is expected to produce a significant excess revenue stream which can be divided among the institutions.

The directors of the three institutions will function as the Parking Lot Committee. That body will set policy and make decisions regarding operation of the parking lot. The committee will budget all revenues and expenditures within Metro's annual budget and be audited as part of Metro's financial statements.

If parking revenues and accumulated reserves were to be insufficient to pay all costs of operation, maintenance and debt service, Metro would pay such amounts in the same proportion as surplus revenues would be distributed.

All surplus revenues accumulated during the first five years of operation will be placed in interest bearing accounts. Those sums shall be used to reimburse the institutions for losses reasonably attributable to disruption caused by construction of the light rail station; to losses occasioned by conversion to a paid lot and to redress any inequity of costs borne by

the institutions during the lot's history of operation as a free facility. After the initial five year period, surplus revenues shall be distributed to the institutions based on a formula which reflects the source of revenue generation.

The amended Operating Agreement makes no reference to including the City of Portland as a recipient of surplus revenues.

Earlier Metro discussions with Commissioner Hale's office sought to determine what amount/percentage the City might regard as equitable and justified by their ownership of the subject property. No understandings or agreements were concluded. Upon informing the World Forestry Center and OMSI of those discussions, they were inclined to adopt a harder line and opted to further explore whether or not the City had a legitimate claim to surplus parking revenues.

A meeting with City Attorney Jeff Rogers by Metro, World Forestry Center and OMSI legal counsel was scheduled and held, but netted no advance. The matter of legal justification was not explored. Metro, WFC and OMSI then met and concluded that no attempt should be made at this time to answer the question of city claim or to establish an amount or formula that would include the City as a recipient of surplus revenues. The rationale is that there is no pressing need to find immediate answers. Surplus revenues will not be available for distribution for at least five years. Revenue projections may or may not be realized. And actual experience with paid lot operation may result in off site impacts and costs which cannot be accurately foreseen and which might cause the parties, including the City, to readjust their present responsibilities.

A separate lease between Metro, World Forestry Center, OMSI and the City of Portland presently grants control of the parking lot to the institutions. The lease with the City dates from 1979 and has a 35 year life with some 19 of those years remaining. Adoption of the amended Operating Agreement has no impact on the lease with the City, although future developments may lead to a renegotiation of its terms and conditions.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 94-2035.

REGIONAL FACILITIES COMMITTEE REPORT

RESOLUTION NO. 94-2035, AUTHORIZING AN AMENDMENT TO THE PARKING LOT AGREEMENT FOR THE WASHINGTON PARK PARKING LOT BETWEEN METRO, WORLD FORESTRY CENTER AND OMSI

Date: October 6, 1994

Presented by: Councilor Gates

COMMITTEE RECOMMENDATION: At its October 5, 1994 meeting the Regional Facilities Committee voted 5-0 to recommend Council adoption of Resolution No. 94-2035. All committee members were present and voted in favor.

COMMITTEE DISCUSSION/ISSUES: Executive Assistant Don Rocks presented the staff report. He noted that the parking lot will be managed jointly by the three parties to the agreement through a Parking Lot Committee, composed of the directors of the three institutions. He pointed out that there are statements in the agreement which establish as policy two issues that the Metro Council has not formally considered as policy matters. Those two issues are contained in the last two "Whereas" statements on page 2 of the agreement, and say that Metro "has agreed to issue debt instruments" to pay for construction of the lot and light rail station, and that "it is necessary to institute parking fees" in order to pay the debt service. Mr. Rocks said there are some issues not yet resolved among the parties, but they will be resolved in the first five years of the operation of the fee-paid parking lot. Those include establishment of a formula to determine how any excess revenues will be distributed, beyond a stipulation that such revenue will be disbursed based on the source of the revenues. (See Section 13 of the agreement.) Mr. Rocks noted that the City of Portland is not mentioned as a participant in the agreement. The City had been included in discussions, but no agreement could be reached on an equitable share for the City, so the parties decided merely to continue their lease with the City which still has some 20 years to run. After some years of experience operating the lot, discussion with the City may again take place. Finally, Mr. Rocks noted that the annual budget for the parking lot will be part of the Metro budget, and said that the agreement commits Metro to cover any shortfall that may occur in a given year.

Council Analyst Casey Short noted that Mr. Rocks had addressed the issues that they had discussed earlier. He said he agreed with Mr. Rocks that Council approval of the agreement would effectively establish Council policy in areas that have not previously been considered, such as the need to issue debt to reconfigure the lot and to institute a fee paid parking system. Mr. Short noted that the agreement called for the three agencies to "assure financial equity" among themselves for costs borne in the first 15 years of parking lot operations (from 1979 to the present), although the agreement does not say how those costs are to be determined.

Mr. Short discussed the creation of the Parking Lot Committee. He said there is no stipulation that the Metro Council has a role in setting the parking fees, as it does for Zoo admissions. He said that adoption of the agreement would effectively delegate to the Parking Lot Committee the authority to determine fees and establish formulas for revenue sharing, compensation for past costs, and reimbursement for revenue losses attributed to parking lot construction. He said neither he nor Mr. Rocks knew whether establishment of or changes to the parking fees would require a vote of the people if Measure 5 passes in the November 1994 general election. Mr. Short said he understood that any shortfall requiring Metro to cover the costs would require a budget amendment and therefore Council would have to approve it. Finally, Mr. Short pointed out that the original 1979 lease is listed as an exhibit on page 1 of the agreement, but was not attached.

Mr. Rocks said that although the agreement treats all parties to it as equals, it is acknowledged that the Zoo is the major player and generates the most visitors and revenue; this has become more apparent with OMSI no longer occupying its building. He also said there are provisions dealing with the possibility of one of the parties ceasing to own or operate a facility in the area.

Councilor Gates asked how parking for staff will be handled. General Services Director Doug Butler said staff will park in a separate area.

Councilor Hansen and Councilor Moore spoke to the issues in both agreements that gave clear Council policy direction, and encouraged that the committee report and discussion at Council point out those issues. They include the Council's direction, in adopting the agreements, that it intends to issue revenue bonds (or some other debt instrument) to pay Metro's \$2 million commitment to the Zoo station; that the parking lot will be reconfigured to turn it into a fee paid parking lot; that Knights Blvd. will be reconfigured in order to accomplish this; and that the bonds will be issued to pay for the parking lot project as well as the light rail station, with parking revenues pledged to pay for the bonds. There is also the understanding that the Council is delegating some authority to the Parking Lot Committee to make operational decisions regarding the split of revenues from the lot, within the guidelines established in the parking lot operating agreement. The Parking Lot Committee also has authority to set the fees for parking, subject to the Council's annual review and approval in the budget process.

In response to a question from Councilor Washington, Mr. Cooper said the agreement includes a provision for the Parking Lot Committee's budget to be reviewed and approved by the Council. He added that the Parking Lot Committee has been in existence since 1979, and that the major change to the existing agreement is the institution of paid parking with day-to-day management by the committee (subject to Council oversight through the budget.)

He also noted that the agreement includes a requirement of consultation with an expert in parking lot management to minimize the risk of revenue loss.

In response to a question from Councilor Moore, Mr. Butler explained that revenues in the first five years of operation are substantially committed to pay for the bonds. After that time, planned expansion of the Zoo and Forestry Center may well require additional construction of structured parking to meet the demand for parking. With these commitments, he doesn't expect there will be much excess revenue generated for distribution. Councilor Moore said her main concern is that parking fees are set high enough to discourage the lot's use as a park-and-ride lot, but not too high to discourage attendance at the facilities. She asked if the provisions for Council approval of the budget were sufficient to allow Council to review and address the fee structure. Mr. Cooper said he believes that is correct.

Mr. Cooper outlined the risks involved in this agreement. The first is the risk to attendance, to ensure it is high enough to produce sufficient revenue to pay off the bonds. The second risk is a management risk, to see that the partners work cooperatively to ensure proper management for all the partners. He said that while this cannot be guaranteed, there is a 15-year history of common management that has worked well so far.