

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION NO. 153

Authorizing the Chairman and Secretary/Treasurer to enter into an "Air Space Lease" agreement between the Metropolitan Exposition-Recreation Commission/Oregon Convention Center and the Oregon Department of Transportation for property located directly west of the Oregon Convention Center, known as the "Truck Marshaling Area", consisting of approximately 94,000 gross square feet of area under Interstate 5, and bounded by Occident, First and Oregon Streets, for said amount and under terms and conditions as set forth in attached lease agreement.

The Metropolitan Exposition-Recreation Commission finds:

1. That on September 15, 1990, METRO Construction Project Staff on behalf of the Oregon Convention Center entered into an Agreement with the Oregon Department of Transportation for the permit use of property under Interstate 5, directly west of the Oregon Convention Center bounded by Occident, First and Oregon Streets, known as the "Truck Marshaling Area", for the purpose of staging vehicles for events, employee parking and other uses as allowed under the proposed lease agreement, to augment the limited parking area supporting the Oregon Convention Center.

2. That the monthly rental rate set forth in aforementioned permit was \$4,800.00, pending the State's obligation to obtain an appraisal review of the property and set maintenance costs appropriately.

3. That in June of 1991, upon reappraisal of the said property by the firm of Palmer Groth & Pietka, the proposed monthly rental amount was adjusted to \$3,850.00 per month.

4. That upon crediting agreed upon monthly maintenance costs totaling \$1,050.00, and crediting over the ten year period of the lease, overpayment from twelve payments made to date of \$4,800.00 per month, that the monthly lease amount is reduced to \$2,600.00 for the first year, to be adjusted yearly in accordance with the "U.S. Cities Average" Consumer Price Index, minus adjusted maintenance costs based on the same CPI percentage.

5. That MERC Staff and METRO General Counsel have reviewed the proposed lease and find it acceptable.

BE IT THEREFORE RESOLVED

1. That the Metropolitan Exposition-Recreation Commission wishes to obtain leasehold privileges to the property under Interstate 5, directly west of the Oregon Convention Center, for the purpose of "event staging", employee parking and other uses not specifically restricted in the lease agreement, to augment the Oregon Convention Centers parking capacity.

2. That the Metropolitan Exposition-Recreation Commission authorizes the Chairman and Secretary/Treasurer to execute, pending approval by METRO General Counsel, attached lease agreement with the Oregon Department of Transportation, for the sum of \$2,600.00 per month, to be adjusted annually in accordance with the terms of the lease agreement, for a period of ten years, with option to extend year by year thereafter, for the area west of the Oregon Convention Center known as the "Truck Marshaling Area".

Passed by the Commission on this 13th day of November, 1991.



Chairman



Secretary/Treasurer

APPROVED AS TO FORM:


METRO General Counsel

Metropolitan Exposition-Recreation Commission

P.O. Box 2746 • Portland, Oregon 97208 • 503/731-7800 • Fax #731-7870 • 777 NE Martin Luther King Jr. Blvd.

November 8, 1991

M E M O R A N D U M

To: Metropolitan Exposition-Recreation Commission

From: Mark Hunter, Asst. to the General Manager

Re: Air Space Lease, Truck Marshaling Area, OCC

Background

Prior to the opening of the Oregon Convention Center in September of 1990, METRO Construction Project Staff and the City of Portland were negotiating with the State of Oregon Department of Transportation regarding a lease agreement for a parking area under Interstate 5, west of the Convention Center. A temporary lease agreement was ultimately established at a monthly rate of \$4,800, the amount of which the Convention Center has been paying since November of 1990, pending the outcome of appraisals of the property and further negotiations with the State regarding maintenance standards, costs and site use and development.

During this period of time, Staff with the assistance of the City of Portland Department of Transportation and a consulting Design/Engineering firm (OTAK), developed a site plan for the paving and use of the area for Truck Marshaling and Staging for Convention Center events. The State has agreed to this described use with certain qualifications as set forth in the Air Space Lease agreement, attached hereto.

As a result of continuing negotiations with the State, Staff succeeded in obtaining an agreement with the State for a net monthly rent of \$2,600, for a period of ten years, with a yearly adjustment based on the consumer price index(U.S. City Average) provided that we conduct the maintenance on the property interior bordered by Holladay, First and Occident Streets. Maintenance, which is presently being done, will include picking up debris, painting of walls, sweeping and other general maintenance to keep the area at an acceptable level of appearance.

Financial Considerations

The monthly payment of \$2,600 was arrived at following a re-appraisal of the property, reassessment of the maintenance effort required in this high visibility area and application of overpayment credit from the \$4,800 monthly rental already paid over the last twelve month period in compliance with the temporary lease agreement.

Financial Considerations(con't)

Capital funds for the paving and development of the property are presently estimated at just over \$300,000. Coincidentally, the City of Portland is presently obligated to the Oregon Convention Center for \$300,000 due to the Convention Center's contribution of that amount in 1989, to assist in the development of police substation in the area of the Convention Center. This development failed to take place and thus the City is obligated to reimburse the \$300,000. Any amount over the \$300,000 can be taken from the capital reserve fund.

Legal Considerations

METRO General Counsel has reviewed the lease agreement and has suggested some modifications of the language regarding the rental amount being derived from the appraisal amount of the property rather than the CPI(pages 1 & 2), general indemnification(page 4) and termination of the contract(page 4). It is not anticipated that there will be any problems with the suggested changes. Staff hopes to have these changes finalized by the Commission's meeting on the thirteenth.

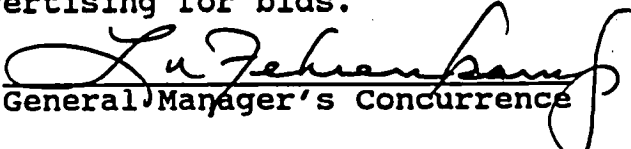
Other Considerations

By the development of this property in the proper manner, the Convention Center will create an area for the marshalling and staging of trucks and exhibitor vehicles thus reducing the amount of those vehicles in the regular parking area, will create an employee parking area that is regulated and safe and will visually enhance the presently drab area which is a natural link from the Convention Center to the Memorial Coliseum and proposed new arena.

Summary and Recommendation

MERC has tentatively negotiated a lease agreement with the State of Oregon for the property directly West of the Convention Center to be used for truck marshaling and vehicle staging. Cost of this lease will be \$2,600 a month for the first year, and then to be adjusted annually in the amount of the U.S. City Average Consumer Price Index. Staff recommends that the Commission authorize the Chairman and Secretary/Treasurer to execute this agreement with the State of Oregon.

Staff further recommends that the Commission authorize staff with the assistance of the original design engineer to complete design, and write bid specifications for the development of the property for a cost not to exceed \$15,000. Specifications would be subject to Commission approval prior to advertising for bids.


General Manager's Concurrence

LEASE
File #28039
1991 September 23

AIR SPACE LEASE

THIS LEASE, made and entered into this _____ day of _____, 19__, by and between the STATE OF OREGON, by and through its DEPARTMENT OF TRANSPORTATION, Highway Division, hereinafter called "State", and Metropolitan Exposition-Recreation Commission/Oregon Convention Center, hereinafter called "Lessee";

WITNESSETH

That State, for and in consideration of the covenants, conditions, agreements, and stipulations of Lessee contained in this lease, does lease unto Lessee, and Lessee does lease from State, only for vehicle parking purposes, that property located within the City of Portland and outlined in Yellow on Exhibit "A" attached hereto and by reference made a part hereof. The area encompassed by this lease is estimated to contain 64,712± square feet.

TO HAVE AND TO HOLD the above mentioned property, hereinafter called "premises", unto Lessee for the period from November 1, 1991 to August 31, 2001 and thereafter on a year to year basis unless cancelled. Lessee is given one (1) ten (10) year option to renew this lease. renewal will commence on the expiration of the original term, provided Lessee is not then in default.

Should Lessee elect to renew this lease, it shall give to Lessor its written notice of such election not later than six (6) months prior to the expiration of the original term. Lessor shall contact Lessee and arrange a suitable time and place to negotiate renewal of this lease. any negotiated changes in the terms and conditions of this lease shall be in writing and shall be effective upon termination of this lease. If the parties are unable to agree on changes in the terms and conditions, the lease shall be renewed with identical terms at the option of Lessor or shall terminate. The determination of rental value for the renewal period shall be based on Lessor obtaining an appraisal to determine the Fair Market Lease Rate.

In consideration of the leasing of premises and of the mutual agreements hereinafter contained, the parties hereto expressly covenant and agree as follows:

1. All permanent improvements made by Lessee on premises shall become the property of State upon installation.

LEASE
File #28039
September 23

2. The rental fee shall be \$2,800 less prepaid rent of \$200.00 per month resulting in a net monthly rental fee of \$2,600.00. The Fair Market Value rental fee will be adjusted annually to reflect the fair market rent. Rents shall be paid in advance and sent to Room 417, Highway Right of Way Division, State Transportation Bldg., Salem, OR, 97310. Effective annually on September 1, hereafter until lease expiration, the annual lease rate will be adjusted to reflect the change in the CONSUMER PRICE INDEX (CPI-U), "U.S. City Average" for the month three (3) months prior to the annual adjustment month. (i.e., Annual November lease is based upon the published rate for August of the same year.) The base CPI-U "U.S. City Average" factor for this lease is 130.4, based on the published rate for July, 1991 (1982-84 = 100).

3. The agreements, conditions, covenants and terms, herein contained and to be performed by the parties, are separate and independent; and the performance of each and every one is not conditioned or dependent upon performance of any other, unless specifically so stated within the language of the provision.

4. The parties agree that the lease is not intended for, nor does it allow, use of the premises for residential purposes. Lessee warrants that premises shall not be used for residential purposes. A breach of this warranty shall result in automatic termination of this agreement.

5. Lessee shall not: (a) install facilities for or operate on premises a gasoline supply station or gasoline pump; (b) allow vehicles used or designed for the transportation of gasoline, petroleum products or explosives on premises; (c) store bulk gasoline, petroleum products or explosives on premises.

6. No new improvements shall be placed in or on premises, and no alterations shall be made on premises without the prior written consent of State. all improvements made shall be done at the sole expense of Lessee.

7. It is the intent of the parties hereto that premises be used only for vehicle parking purposes.

LEASE
File #28039
1991 September 23

Premises shall not be used for the storage, dismantling, or manufacture of any inflammable materials, waste materials, junk scrap, or equipment, and shall not be used for any purpose deemed by State to be a potential hazard to the public using State's highway.

8. Occupancy of premises shall not be such as will permit hazardous or unreasonably objectionable smoke, fumes, vapor, or odors to emanate from premises. Operations on and maintenance of premises shall be subject to regulation by State to protect against hazards as to the use, safety or appearance of premises. Use and maintenance of premises shall cause no interference with traffic on State's highway. Maintenance of premises by Lessee, as required under Paragraphs 12 and 14 herein, shall include such emergency maintenance procedures as may be required by State.

9. Lessee shall be responsible for all taxes and assessments, if any, on all real and personal property and improvements on premises, including real property belonging to State. Real property taxes will be paid by State. Lessee shall reimburse State within 30 days of billing for said taxes by State.

10. Lessee shall pay for all utility services furnished to premises and shall order and pay for any meter installations which may be necessary.

11. No advertising signs, displays or devices may be erected on premises.

12. Lessee shall, at its sole expense, keep and maintain premises free of all noxious weeds, debris, and all inflammable or explosive materials of every kind, and shall keep premises at all times in an orderly, clean, and safe condition.

13. Lessee shall secure all necessary permits and licenses required in connection with operations on premises and shall comply with all federal, state, and local statutes, ordinances, and regulations that may concern, in any way, Lessee's use of premises.

14. Lessee shall, at its own cost and expense maintain premises. Lessee shall, without expense to State, take all steps necessary to effectively protect the highway facilities from damage incident to Lessee's use of premises.

LEASE
File #28039
1991 September 23

Lessee shall be liable to and shall reimburse State for any damage to State's highway right of way fences, markers, monuments, slope easements, structures or facilities resulting from or attributable to the use and occupancy of premises by Lessee.

15. Lessee shall occupy and use premises at its risk and expense, and shall save and hold harmless State, its Transportation Commission, Commission members, officers, agents, and employees, from all claims, suits or actions for any damage to property or injury or death of any person arising out of or in connection with the occupancy of use of premises by Lessee. State shall, in no event, be liable to Lessee for any damage to property, or injury to or death of any person occurring or arising from the use of premises by Lessee.

16. Lessee shall not use or allow premises to be used for any unlawful purpose whatsoever.

17. Lessee shall, for its operations under this lease, carry and keep in force public liability and property damage insurance in a form and with companies acceptable to State, with limits for each occurrence of not less than \$300,000 for one person and \$1,000,000 for all persons for injury or death, and \$50,000 for damage to property. The insurance policy or policies shall include as additional named insureds the State of Oregon, its Transportation Commission, its members, officers, agents, and employees. Lessee shall furnish State with this signed lease a certificate of insurance for, or a copy of each policy.

18. Lessee shall not assign this lease or sublet premises without the prior written consent of State, and any attempt to assign or sublet without written consent shall be void and shall be grounds for termination of this lease at the option of State.

19. This lease may be terminated as to all or part of premises when needed for public purposes, or when State determines that it is in the public's best interest, upon the delivery of a one (1) year written notice to Lessee of its intent to terminate same. If lease is terminated by Lessor prior to August 31, 2001, Lessor agrees to reimburse Lessee for actual construction costs of on site improvements placed on premises during the first year of this lease at the rate of 10% per annum or prorated portion thereof, for each year lease has been in effect. In the event of such termination, Lessee waives its rights to make a claim for any losses or damages suffered thereby, other than the reimbursement provisions of this section.

LEASE
File #28039
1991 September 23

20. State specifically reserves the right to enter and occupy premises upon failure of Lessee to comply with any provision of this lease. State also reserves the right to enter premises for purposes of inspection and to determine whether Lessee is complying with the provisions of this agreement; to perform acts necessary or proper for the protection, preservation, maintenance, reconstruction, and operation of State's highway construction or maintenance. State also reserves the right to enter and take possession of premises in case of national or other emergency for the purpose of preventing sabotage and otherwise protecting its highway. During such emergency occupation Lessee shall be relieved from obligation to comply with the provisions of this lease.

21. If Lessee should breach or fail to comply with any provision of this lease, if Lessee files a voluntary petition in bankruptcy, if any involuntary petition in bankruptcy is filed against Lessee, if any proceeding is filed to subject this lease or the interest of Lessee herein to garnish or sale under execution, said act or acts of omission or commission may at the option of State constitute a forfeiture of all rights under, the voiding of, and the termination of this lease. The further occupancy of premises after such forfeiture by Lessee shall be deemed a forcible detainer thereof by Lessee, and State may without notice, re-enter and take possession of premises, and may, with or without force, and with or without legal process, evict and dispossess Lessee from premises. If any suit, action or proceeding is brought to enforce any provision of this lease, the prevailing party shall receive from the other party such sums as the court may award as reasonable attorney's fees and costs.

22. In the event of termination, regardless of how effected, including termination for need or failure to comply with any provision of this lease, Lessee shall, by the date of said termination, peaceably and quietly leave, vacate completely and surrender premises, including those improvements and fixtures placed or made thereon by Lessee that belong to State, in a good, clean and slightly condition, reasonable use and wear, and damage by earthquake, fire, public calamity, the elements, acts of God, or other circumstances over which Lessee has no control, excepted. If any property not belonging to State, is not removed from premises and premises are not completely vacated by said termination date, and if premises are not restored to a clean and slightly condition by said date, State may proceed to remove the same and restore premises, and Lessee shall pay State, upon demand, the reasonable cost to state of such removal and restoration.

LEASE
File #28039
1991 September 23

23. TIME is of the essence of every provision of this lease. Failure of State to object to the violation of any provision of this lease shall not be deemed a waiver by State of a subsequent similar breach or of State's right to demand strict performance by Lessee of the provision hereof.

24. Notwithstanding anything herein contained to the contrary, this lease may be terminated or any provision of this lease may be changed, by mutual consent of the parties hereto.

25. The provisions of this lease and all obligations and rights thereunder shall extend to and bind the successors and assignees of Lessee and any assignee or legal successor of State.

26. Notwithstanding any provision herein to the contrary, Lessee shall comply with all the standards and requirements of Federal Highway Administration Regulation, which shall, in case of conflict with any provision of this lease, be deemed minimum standards and requirements. This paragraph shall not, however, relieve Lessee from the duty to comply with all other provisions of this lease and all provisions of this lease which are in addition to or more stringent than the standards and requirements of said regulations.

27. Lessee, for itself and its successors and assigns, as part of the consideration hereof, does covenant and agree, as a covenant running with the land, that (1) no person, on the grounds of race, color, or national origin, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of premises; (2) that in connection with the construction of any improvements on premises, no discrimination shall be practiced in the selection of employees and contractors, by contractors in the selection and retention of first-tier subcontractors, and first-tier subcontractors in the selection and retention of second-tier subcontractors; and (3) that Lessee shall use premises in compliance with all other requirements imposed pursuant to Title 15, Code of Federal Regulations Commerce and Foreign Trade, Subtitle A, Office of the Secretary of Commerce, Part 8 (15 C.F.R., Part 8), and as said Regulations may be amended.

28. In the event of breach of any of the above non-discrimination covenants, State shall have the right to immediately terminate this lease, to re-enter and repossess premises, and to hold the same as though this lease had never been made or issued.

LEASE
File #28039
1991 September 23

29. This lease is intended to supersede and/or replace that certain existing Land Agreement dated September 15, 1990 entered into by the parties hereto for the rental of premises.

30. Should this lease be terminated for any reason, Lessee hereby acknowledges, understands, agrees and waives any and all benefits under the Uniform Relocation Assistance and Real Property Acquisition policies Act of 1970 as amended, or any other benefits under similar acts applicable to lessee, or the property leased herein.

31. THIS CONTRACT CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE, OR TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OF CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. LESSEE, BY THE SIGNATURE BELOW, HEREBY ACKNOWLEDGES READING THIS CONTRACT, UNDERSTANDING IT, AND AGREEING TO BE BOUND BY ITS TERMS AND CONDITIONS.

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Dale Hormann, Legal Counsel &
Assistant Attorney General

Date: _____

FHWA FORMAT APPROVAL:

By: _____
Title: _____
Date: _____

OSHD REGION ENGINEER APPROVAL:

By: _____
Title: _____
Date: _____

LEASE
File #28039
1991 September 23

STATE OF OREGON, by and through its
DEPARTMENT of TRANSPORTATION,
Highway Division

By _____
Steven Green, Right of Way Mgr.
Date: _____

Metropolitan Exposition-Recreation
Commission

By _____
Title: _____
Date: _____

STATE OF OREGON, County of Marion

_____, 1991. Personally appeared Steven Green, who
being sworn, stated that he is the Right of Way Manager for the
State of Oregon, Department of Transportation, Highway Division,
and that this document was voluntarily signed on behalf of the
State of Oregon by authority delegated to him. Before me:

Notary Public for Oregon

My Commission expires _____

LEASE
File #28039
1991 September 23

STATE OF OREGON, County of Multnomah

On _____, 1991, personally appeared
_____, and who being sworn, stated that he is
the _____ for the Metropolitan
Exposition-Recreation Commission and that this instrument was
voluntarily signed on behalf of the Metropolitan Exposition-
Recreation Commission by authority delegated to him.
Before me:

Notary Public for Oregon

My Commission expires _____

APPROVED AS TO FORM

_____, METRO General Counsel