

METROPOLITAN EXPOSITION-RECREATION COMMISSION

RESOLUTION 97-53


Authorizing the Chairman and Secretary Treasurer to execute, on behalf of the Commission, an Agreement For Light Pole Easement with the Multnomah Athletic Club and the City of Portland.

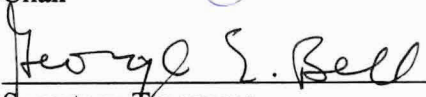
The Metropolitan Exposition-Recreation Commission finds:

1. That a Civic Stadium electric light standard is located on property owned by the Multnomah Athletic Club.
2. That the Multnomah Athletic Club has tendered a demand that the light standard be moved in order to accommodate the remodel of the Multnomah Athletic Club.
3. That the staff has negotiated an agreement with the Multnomah Athletic Club under which the Commission agrees to move the light standard, the Multnomah Athletic Club will provide the City of Portland with a permanent easement for the new light standard location, and will also pay both retroactive and prospective stadium usage fees to offset the cost of moving the standard.

BE IT THEREFORE RESOLVED that the Chairman and Secretary-Treasurer are authorized to execute, on behalf of the Commission, the Agreement for Light Pole Easement which is attached as Exhibit A to this resolution.

Passed by the Commission on October 8, 1997.



Chair


Secretary-Treasurer

APPROVED AS TO FORM



Daniel B. Cooper, General Counsel

MERC Staff Report

Agenda Item/Issue: Approving an Agreement for Light Pole Easement with the Multnomah Athletic Club and the City of Portland.

Resolution No.: 97-53

Date: October 8, 1997 **Presented by:** Mark Williams
Daniel B. Cooper
Kathleen Pool

Background Analysis: There is a large light standard at the Civic Stadium which is located on property owned by the Multnomah Athletic Club ("MAC"). It was placed there in 1982 pursuant to an agreement between the City of Portland and the Multnomah Athletic Club to modify some of the real property easements which were part of the original transfer of the Civic Stadium from the Multnomah Athletic Club to the City.

The Multnomah Athletic Club is currently undergoing a major remodel which requires relocation of the light standard. It is estimated that the standard will cost \$48,000 to relocate. The agreement for the original placement did not clearly establish who would be responsible for the cost of moving the light standard should that become necessary. The relocation affects the title to Civic Stadium and City approval will also be required. An agreement regarding relocation has been negotiated by MERC, MAC, and the City, under which MERC will pay for the relocation and MAC will pay new fees for its use of the stadium. The agreement now requires approval by the Commission.

Summary of the Agreement:

Section 1: MERC will move the existing pole to a new location on MAC property by November 30, 1997. MAC will have the right to run an electrical conduit, required by the renovation, through the base of the new light standard location.

Section 2: The City relinquishes any legal right to the old location for the old light standard.

Section 3: The MAC grants the City a permanent easement for the location of the new easement. If it has to be relocated again in the future, the MAC will bear the cost. The new easement will continue so long as the Stadium is used as a stadium, or until the new pole is removed. MERC will bear the costs of the new easement. The City will own the light standard which will be managed by MERC pursuant to the existing agreement with the City.

Section 4: The MAC will pay MERC \$9,975.00 for its 1997 use of the Stadium, and will pay established rates for future Stadium use.

Section 5: Contains general contract provisions.

Fiscal Impact:

Approval of the Agreement for Light Pole Easement will result in a cost to Civic Stadium of approximately \$48,000 of unbudgeted Maintenance and Repair Expense to cover the cost of moving the existing light standard. This expense will be offset by \$9,975 in revenue for the 1996/97 Stadium usage by MAC. Additionally, there will be a positive budget impact in future years from MAC's agreement to pay established rates for future Stadium usage.

Recommendation: Staff recommends that the Commission approve the proposed Agreement for Light Pole Easement.

AGREEMENT FOR LIGHT POLE EASEMENT

DATED: October 3, 1997

AMONG: MULTNOMAH ATHLETIC CLUB,
an Oregon non-profit corporation
1849 SW Salmon Street
Portland, OR 97201

("MAC")

AND: THE CITY OF PORTLAND,
a municipal corporation
1120 SW Fifth Avenue
Portland, OR 97204

("City")

AND: METROPOLITAN EXPOSITION AND
RECREATION COMMISSION,
a commission established pursuant
to the 1992 Metro Charter
777 NE Martin Luther King Jr. Boulevard
Portland, OR 97232

("MERC")

MAC owns the athletic and social club facility known as the Multnomah Athletic Club located adjacent to the south boundary of the Civic Stadium. The Civic Stadium is owned by the City and operated by MERC.

Pursuant to a deed from MAC to the City (conveying Civic Stadium to the City), dated December 28, 1966 and recorded March 6, 1967 in Book 550, Page 1008, Multnomah County Deed Records, MAC granted the City three easements on MAC owned property.

Pursuant to that Agreement to Modify Easements, dated December 31, 1981, MAC and MERC agreed to modify the easements granted in the above-referenced deed. Under

the Agreement to modify Easements, MERC erected a field light pole and lights and related equipment near the southwest corner of Civic Stadium (the "Existing Light Pole").

MAC plans to construct an expansion of its clubhouse which will require the relocation of the Existing Light Pole. MAC and MERC desire to provide for the relocation of the Existing Light Pole and its underlying easement.

NOW, THEREFORE, in consideration of the mutual promises of the parties set forth in this Agreement For Light Pole Easement (the "Agreement"), MAC, the City and MERC agree as follows:

SECTION 1 REMOVAL AND RE-INSTALLATION OF EXISTING LIGHT POLE

1.1 MERC agrees, at its sole cost and expense, to remove the Existing Light Pole from its current location and to re-install the Existing Light Pole in the New Easement area defined in Section 3 below on or before November 30, 1997. The removal obligation shall include the removal of the Existing Light Pole, the attached lights, conduit, cables, foundation concrete, and any related equipment. After removal of the Existing Light Pole, MERC shall cause the area of the Existing Light Pole to be leveled to grade in accordance with MAC's requirements.

1.2 MAC has the right to locate and install a conduit electrical line through or under the foundation of the relocated Existing Light Pole. MERC agrees to coordinate its construction activities with MAC so that MAC can install this conduit line. MAC and MERC agree to cooperate and coordinate their planning and construction activities so as to allow each party's work to occur efficiently and without delay.

SECTION 2 QUITCLAIM OF PRIOR EASEMENT

The City hereby terminates and quitclaims any right to any prior easement granted by the deed dated December 28, 1966 and recorded March 6, 1967 in Book 550, Page 1008 for the location of the Existing Light Pole.

SECTION 3 GRANT OF NEW EASEMENT

3.1 MAC hereby grants to the City, and its successors in interest, an easement for the construction, location, operation and maintenance of a field light pole, lights, and related equipment on that parcel of land described in attached Exhibit A (the "New Easement").

3.2 The New Easement is granted on the following terms and conditions:

3.2.1 The New Easement shall be effective until the earlier of: (i) the termination of the use of the Civic Stadium as a stadium; or (ii) the removal of the light pole and lights (except in the case of removal for repair or replacement) from the New Easement.

3.2.2 MAC shall have no cost or expense associated with the New Easement and MERC shall be solely responsible for any costs or expense on account of the New Easement.

3.2.3 The City shall own and be responsible for any improvements placed by MERC on the New Easement, which shall be subject to the 1990 Agreement Regarding Consolidation of Regional Convention, Trade, Spectator and Performing Arts Facilities Owned and Operated by the City of Portland and the Metropolitan Service District, between the City and Metro.

3.2.4 MAC may come upon the area of the New Easement so long as MAC does not interfere with any improvements placed on the New Easement by MERC.

3.2.5 To the greatest extent permitted by the Oregon Constitution and subject to the limitations of the Oregon Tort Claims Act, if otherwise applicable, MERC shall defend, indemnify, and hold MAC harmless from any claim, loss, or liability arising out of MERC's use of the New Easement.

3.2.6 The New Easement shall burden the property owned by MAC adjacent to the Civic Stadium, shall benefit the Civic Stadium, shall be appurtenant and not in gross, and shall run with the land.

3.2.7 MAC reserves the right to locate, install and maintain a conduit electrical line under or through the foundation of the field light pole to be located on the New Easement. MAC's electrical conduit line shall not interfere with the City's New Easement, and MAC shall defend, indemnify, and hold MERC and the City harmless from any claim, loss, or liability arising out of the location, installation, or associated use of the electrical conduit line.

SECTION 4 FEE FOR USE OF CIVIC STADIUM

4.1 Use in 1997

MAC agrees to pay MERC the sum of \$9,975.00, upon execution of this Agreement, as accrued fees for use of the Civic Stadium for the fiscal year ended June 30, 1997 and for any use incurred subsequent to June 30, 1997 and prior to the date of this Agreement.

4.2 Prospective Use of the Civic Stadium

MAC shall have the right to use the Civic Stadium for its activities, subject to the availability of the Civic Stadium. Whenever MAC uses the Civic Stadium, MAC shall pay the then established rates charged to comparable parties for comparable usage.

SECTION 5 GENERAL PROVISIONS

5.1 Captions

Captions used in this Agreement are used solely for convenience and shall not be used to interpret the terms or provisions of this Agreement.

5.2 Amendment

Any amendment to this Agreement must be in writing and must be signed by MAC and MERC, and any amendment affecting or encumbering title to the Civic Stadium must also have the prior written consent of the City.

5.3 Complete Agreement

This Agreement constitutes the complete and final agreement of the parties with respect to the matters covered by this Agreement and supersedes and replaces all prior written or oral agreements on the on the same subject matter. However, this Agreement does not supersede the provisions of the Deed and Agreement to Modify Easements, referred to above, which pertain to other easements granted by MAC to the City.

5.4 Attorneys' Fees

In the event any party institutes litigation to enforce or interpret this Agreement, then the prevailing party shall recover from the other party, and the other party shall pay, the prevailing party's reasonable attorneys' fees, paralegal fees, expert witness fees, costs, and expenses as determined by the judge at trial or upon any appeal or petition.

5.5 Binding Effect

This Agreement shall be binding upon the parties and their respective successors in interest. This Agreement shall also be binding upon MAC and any party to whom MAC transfers the property which is the subject of this easement and any party to whom the City transfers ownership of the Civic Stadium.

5.6 Notices

Any notice to be given by a party under the terms of this Agreement must be in writing. Notices may be given by hand delivery, by facsimile, or by certified mail. A notice given by hand delivery shall be effective when delivered to the party's office. A notice given by facsimile shall be effective upon electronic confirmation of transmission by the sending facsimile machine. Notices given by certified mail shall be effective on the third business day after placement in the U.S. mails, postage prepaid as certified mail, and properly addressed. Notices shall be given to the parties at their respective addresses first set forth above. Any party may change its address for notice purposes by a notice to the other party.

IN WITNESS WHEREOF, the parties have executed and delivered this

Agreement to be effective on the date first set forth above.

MAC:

MULTNOMAH ATHLETIC CLUB,
an Oregon non-profit corporation

By: _____

Its: _____

CITY:

THE CITY OF PORTLAND,
a municipal corporation

By: _____

Its: _____

MERC:

METROPOLITAN EXPOSITION AND
RECREATION COMMISSION,
a commission established pursuant to the 1992
Metro Charter

By: _____

Its: _____

THE STATE OF OREGON

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COUNTY OF MULTNOMAH

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This instrument was acknowledged before me on August _____, 1997, by
_____, _____ of Multnomah Athletic Club, an
Oregon non-profit corporation.

NOTARY PUBLIC, STATE OF OREGON

My Commission Expires: _____

