



METRO

Agenda

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

***NOTE DIFFERENT DATE AND DAY DUE TO THANKSGIVING HOLIDAY**

***Note Agenda Item No. 5.2 has been removed from the agenda for first reading**

DATE: November 24, 1992*
MEETING: METRO COUNCIL
DAY: Tuesday*
TIME: 5:30 p.m.
PLACE: Metro Council Chamber

Approx.
Time*

Presented
By

5:30
(5 min.)

ROLL CALL/CALL TO ORDER

- 1. INTRODUCTIONS**
- 2. CITIZEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS**
- 3. EXECUTIVE OFFICER COMMUNICATIONS**

(15 min.)

3.1 Briefing on Metropolitan Sports Authority

(20 min.)

3.2 Briefing on Facilities Funding Task Force

6:10
(5 min.)

4. CONSENT AGENDA (Action Requested: Motion to Adopt the Consent Agenda)

4.1 Minutes of October 22, 1992

REFERRED FROM GOVERNMENTAL AFFAIRS COMMITTEE

4.2 Resolution No. 92-1708, For the Purpose of Approving a Contract Amendment and Extension with WM Benefits

REFERRED FROM THE FINANCE COMMITTEE

4.3 Resolution No. 92-1710, For the Purpose of Approving a Request for Proposals Document for Property/Casualty Agent of Record/Broker and Waiving the Requirement for Council Approval of the Contract and Authorizing the Executive Officer to Execute the Contract Subject to Conditions

4.4 Resolution No. 92-1707, Authorizing the Finance and Management Information Department to Undertake an Escrow Restructuring for the 1992 General Obligation Refunding Bonds

6:15
(5 min.)

5. ORDINANCES, FIRST READINGS

5.1 Ordinance No. 92-475, An Ordinance Amending Ordinance No. 92-449B Revising the FY 1992-93 Budget and Appropriations Schedule for the Purpose of Funding a Hardware Upgrade and Software Support Services Enhancements to Metro's Financial Management System and for Funding Improvements to the Efficiency of Metro's Business Operations (Action Requested: Referral to the Finance Committee)

5.2 Ordinance No. 92-476, For the Purpose of Amending the Metro Code to Modify the Designated Facility Status of Columbia Ridge Landfill for Purposes of Flow Control, to Add Roosevelt Regional Landfill to the List of Designated Facilities, and Declaring an Emergency (Action Requested: Referral to the Solid Waste Committee)

* All times listed on this agenda are approximate; items may not be considered in the exact order listed.

For assistance/services per the Americans with Disabilities Act (ADA), dial TDD 273-5577 or 221-1646, ext. 206.

6. ORDINANCES, SECOND READINGS

REFERRED FROM THE SOLID WASTE COMMITTEE

- 6:20 (10 min.) 6.1 Ordinance No. 92-471B, For the Purpose of Amending the Metro Code to Establish Criteria to Consider in Designating Disposal Facilities, and Declaring an Emergency (Action Requested: Motion to Adopt the Ordinance) Wyers
- 6:30 (10 min.) 6.2 Ordinance No. 92-473A, For the Purpose of Amending Metro Code Sections 5.02.015 and 5.02.065, Relating to Disposal Charges at Metro Facilities, and Declaring an Emergency (Action Requested: Motion to Adopt the Ordinance) McFarland

7. RESOLUTIONS

REFERRED FROM THE TRANSPORTATION & PLANNING COMMITTEE

- 6:40 (15 min.) 7.1 Resolution No. 92-1673, Greenspaces Willing Seller Policy at Sunset Light Rail Transit Station (Action Requested: Motion to Adopt the Resolution) Devlin

BEFORE THE CONTRACT REVIEW BOARD

- 6:55 (5 min.) 7.2 Resolution No. 92-1704A, For the Purpose of Authorizing an Exemption to Metro Code Chapter 2.04.041(c), Competitive Bidding Procedures, and Authorizing a Sole-Source Contract with Oregon Graduate Institute of Science and Technology for Coordination Services for the Greencity Data Project (Action Requested: Motion to Adopt the Resolution) Washington

BEFORE THE CONTRACT REVIEW BOARD

- 7:00 (5 min.) 7.3 Resolution No. 92-1705A, For the Purpose of Authorizing an Exemption to Metro Code Chapter 2.04.041(c) Competitive Bidding Procedures and Authorizing a Sole Source Contract with the Urban Streams Council of the Wetlands Conservancy (Action Requested: Motion to Adopt the Resolution) Devlin
- 7:05 (20 min.) 7.4 Resolution No. 92-1711, For the Purpose of Suspending Negotiations with Tri-Met Regarding Development of a Joint Work Program to Study Potential of a Transfer of Tri-Met to Metro and Expressing Intent of the Council Regarding Future Study of the Issue (Action Requested: Motion to Adopt the Resolution) Devlin

REFERRED FROM THE SOLID WASTE COMMITTEE

- 7:25 (5 min.) 7.5 Resolution No. 92-1713, For the Purpose of Approving a Contract Increase to Sunflower Recycling/Pacific Bottle Regeneration to Complete the Wine Bottle Washing Project Funded as Part of 1991-92 1% for Recycling Program (Action Requested: Motion to Adopt the Resolution) Buchanan

(Continued)

7. RESOLUTIONS (Continued)

REFERRED FROM THE REGIONAL FACILITIES COMMITTEE

- 7:30
(20 min.) 7.6 Resolution No. 92-1714, For the Purpose of Amending the Consolidation Agreement Between the City of Portland and Metro and Transferring Memorial Coliseum from MERC to City Control and Authorizing an Admission Tax Offset Agreement with OAC and City (Action Requested: Motion to Adopt the Resolution)

REFERRED FROM THE GOVERNMENTAL AFFAIRS COMMITTEE

- 7:50
(5 min.) 7.7 Resolution No. 92-1709, Approving a RFP Document for an Agent of Record for Employee Benefits and Authorizing the Executive Officer to Execute the Contract (Action Requested: Motion to Adopt the Resolution)

- 7:55
(10 min.) 8. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

8:05 ADJOURN



METRO

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(10 min.)
- 8. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS**

8:05 **ADJOURN**

Meeting Date: November 24, 1992
Agenda Item No. 4.1

MINUTES

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

October 22, 1992

Council Chamber

Councilors Present: Presiding Officer Jim Gardner, Deputy
Presiding Officer Judy Wyers, Roger
Buchanan, Tanya Collier, Richard Devlin,
Ed Gronke, Sandi Hansen, Ruth McFarland,
Susan McLain, Terry Moore, George Van
Bergen and Ed Washington

Councilors Excused: Roger Buchanan

Councilors Absent: None

Also Present: Deputy Executive Officer Dick Engstrom

Presiding Officer Gardner called the regular meeting to order at
5:36 p.m.

Presiding Officer Gardner announced Agenda Item Nos. 8.1 and 10
had been added to this meeting's agenda and noted Agenda Item No.
8.1 would be considered immediately after Agenda Item No. 3.2.
He announced also that Agenda Item Nos. 7.2 and 7.3 would not be
considered at this meeting.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS

Teace Adams, Vice President, Columbia River Region Inter-League
Organization of the League of Women Voters (CRILLO), invited the
Council to a CRILLO reception to be held at Metro Center,
Thursday, November 12, from 4:30 to 5:30 p.m to discuss the
outcome of Metro ballot measures 26-1, Greenspaces, and 26-3,
Metro Charter, after the General Election on November 3, 1992.

3. EXECUTIVE OFFICER COMMUNICATIONS

3.1 Annual Report on Metro Facilities Recycling Efforts Per
Executive Order No. 47

Debbie Gorham, Waste Reduction Manager, gave the annual report on
Metro facilities recycling efforts per Executive Order No. 47.

3.2 Slide Show on Greenspaces Restoration

Andy Cotugno, Director of Planning, gave a brief update on
current Greenspaces activities.

Mel Huie, Senior Regional Planner, distributed a map showing the Greenspaces regional system of natural areas, open space, trails and greenways and an informational hand-out describing Greenspaces Restoration Grants.

David Ausherman, Associate Regional Planner, distributed "The Garden Festival as a Tool for Landscape Restoration" and presented a slide show on same.

8. NON-REFERRED RESOLUTIONS

8.1 Resolution No. 92-1703, For the Purpose of Expressing Metro's Appreciation to Janet Cobb for Her Volunteer Work on the Greenspaces Program and Bond Measure

Motion to Suspend the Rules: Councilor Devlin moved, seconded by Councilor Wyers, to suspend the Council's rules requiring resolutions be referred by Committee so that the Council as a whole could consider Resolution No. 92-1703.

Vote on Motion to Suspend the Rules: Councilors Collier, Devlin, Gronke, McFarland, McLain, Moore, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Buchanan was excused and Councilor Hansen was absent. The vote was unanimous and the motion passed.

Main Motion: Councilor Devlin moved, seconded by Councilor Wyers, to adopt Resolution No. 92-1703.

Councilor Devlin introduced Ms. Cobb and said Ms. Cobb had contributed a great deal of time and support to Metro's Greenspaces Program.

Councilor Devlin read the resolution for the record:

Whereas, The Metropolitan Greenspaces Program has used the East Bay Regional Park District in Alameda and Contra Costa counties in California as a model for its natural areas and open space program; and

WHEREAS, Metro officials, staff and Greenspaces cooperators have toured East Bay's regional parks and natural areas, and met with their staff including Janet Cobb, Assistant General Manager for Public Affairs to learn how a Greenspaces program could be implemented in the Portland/Vancouver region; and

WHEREAS, Metro Greenspaces planning staff have sought and received her advice from Ms. Cobb on the public information outreach program she coordinates for the East Bay Regional Park District; and

WHEREAS, Metro Councilors, and Greenspaces staff have sought and received advice from Ms. Cobb on the East Bay Regional Park District's public information program she coordinated for its open space bond measure which was approved by 67 percent of the vote; and

WHEREAS, Janet Cobb has conducted workshops for Metro staff and Greenspaces cooperators on public information strategies and techniques; and

WHEREAS, Audubon Society of Portland, Wetlands Conservancy, and Friends and Advocates of Urban Natural Areas (FAUNA) have sought and received advice on their citizen participation and education activities; and

WHEREAS, The Citizens Campaign for Metropolitan Greenspaces has sought and received her advice on developing strategies for the bond measure campaign; and

WHEREAS, Janet Cobb has provided such assistance without monetary compensation and even donated her vacation time to meet with Greenspaces staff and cooperators; now, therefore,

BE IT RESOLVED, That the Metropolitan Service District hereby expresses its appreciation and thanks to Janet Cobb for her sage advice and volunteer efforts for the Greenspaces Program and Bond Measure Campaign.

Vote on Main Motion: Councilors Collier, Devlin, Gronke, Hansen, McFarland, McLain, Moore, Van Bergen, Washington, Wyers and Gardner vote aye. Councilor Buchanan was excused. The vote was unanimous and Resolution No. 92-1703 was adopted.

Presiding Officer Gardner presented Ms. Cobb with a framed copy of Resolution No. 92-1703. Ms. Cobb thanked the Council and said she had greatly enjoyed participating in the Greenspaces Program in Oregon. She noted Councilors Devlin and McFarland visited the East Bay area to observe the program there and said Rich Carson, Michael Taylor and Brian Cosgrove had performed admirable work on behalf of the program. She said the Greenspaces campaign staff had worked extremely hard on Ballot Measure No. 26-1.

4. CONSENT AGENDA

4.1 Minutes of September 24, 1992

REFERRED FROM THE TRANSPORTATION & PLANNING COMMITTEE

4.2 Resolution No. 92-1679, For the Purpose of Approving in Concept the City of Portland's Master Plan for the Springwater Corridor

Motion: Councilor Wyers moved, seconded by Councilor Devlin, for adoption of the Consent Agenda.

Vote: Councilors Collier, Devlin, Gronke, Hansen, McFarland, McLain, Moore, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Buchanan was excused. The vote was unanimous and the Consent Agenda was adopted.

5. ORDINANCES, FIRST READINGS

5.1 Ordinance No. 92-473, For the Purpose of Amending Metro Code Sections 5.02.015 and 5.02.065, Relating to Disposal Charges at Metro Facilities, and Declaring an Emergency

The Clerk read the ordinance for a first time by title only.

Presiding Officer Gardner announced that Ordinance No. 92-473 had been referred to the Solid Waste Committee for consideration.

6. ORDINANCES, SECOND READINGS

6.1 Ordinance No. 92-472, An Ordinance Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 91-4: PCC Rock Creek

The Clerk read the ordinance for a second time by title only.

Presiding Officer Gardner announced the Council would consider Ordinance No. 92-472 in its capacity as a quasi-judicial decision-maker. He announced Ordinance No. 92-472 was first read on October 10, 1992, and a public hearing was held at which no persons appeared to testify. He said consideration of the ordinance was continued to this meeting for final consideration and vote.

Motion: Councilor Collier moved, seconded by Councilor Wyers, for adoption of Ordinance No. 92-472.

Councilor Van Bergen noted he asked at the October 10 meeting for a written answer on whether Case No. 91-4 was consistent with the action the Council took on the Benj Fran case in Beaverton and noted the October 19 memorandum by Mark Turpel, Senior Regional Planner, "PCC Rock Creek - Ordinance #92-472." He said that memo compared the Benj Fran and PCC cases. He noted staff said for the Hearings Officer to do a more thorough analysis of the two cases, it would cost approximately \$1,300. Councilor Van Bergen noted the October 16 memo also attached from Stuart Todd, Assistant Regional Planner, which noted the Benj Fran application involved a 472 acre site. He said this case requested 160 acres be included within the UGB. He said the memo also noted the PCC Rock Creek site was completely outside the UGB and that Benj Fran was surrounded on three sides by the UGB, had full access to facilities, and was rejected by the Council because Benj Fran could not demonstrate there were no other available sites within a 20 minute drive. He said the Council rejected the Benj Fran application at that time. He said before, the Council had been amenable to smaller adjustments. He said Mr. Todd's memo stated there were "unique elements influencing each case described. Benj Fran was unable to establish need for a major amendment to the UGB based on its premise and methodology, while PCC Rock Creek with an existent urban condition and an evidenced need was convincing. Metro Council, by Resolution No. 92-1630, expressed its intent to amend the urban growth boundary as petitioned for by PCC Rock Creek."

Councilor Van Bergen noted also attached to the memos from Mr. Turpel and Mr. Todd was a letter dated October 16 from Hearings Officer Larry Epstein. He objected to evaluating each case on its own merits and said that was contrary to how he had been taught to evaluate UGB cases. He referred the Council to the matrix on previous UGB cases as provided by Mr. Epstein.

Councilor Devlin noted Ordinance No. 92-450A adopted at the October 10 Council would tighten and clarify UGB criteria when it took effect in the Metro Code 90 days from the date of adoption. He said UGB cases would be evaluated on a consistent basis from that time.

Councilor Wyers asked if Ordinance No. 92-472 was consistent with previous Metro cases. Councilor Devlin said it was consistent with Metro action taken in the past.

Presiding Officer Gardner said Councilor Van Bergen had raised valid issues especially with regard to the Hearings Officer's current contract. He said when that contract was re-evaluated, the Council could request more than one appearance per case if necessary.

Councilor Van Bergen said again consistency with previous cases had not been followed. He believed Case No. 91-4 was similar to the Benj Fran case. Presiding Officer Gardner said this case did justify a UGB amendment because the facility, which represented urban use, was already there before the UGB was established and that the Benj Fran application asked for the ability to develop farm land. Councilor Van Bergen said that was not the criteria used in the past to alter the UGB.

Vote: Councilors Collier, Devlin, Gronke, Hansen, McFarland, McLain, Moore and Gardner voted aye. Councilors Van Bergen and Wyers voted nay. Councilor Washington abstained from the vote. Councilor Buchanan was excused. The vote was 8 to 2 in favor and Ordinance No. 92-472 was adopted.

Councilor Washington noted he would be teaching a class at the Rock Creek PCC campus and therefore had abstained from the vote.

7. RESOLUTIONS

7.1 Resolution No. 92-1699, For the Purpose of Approving the One Percent for Recycling Program Criteria, Application and Project List for FY 1992-93

Motion: Councilor Wyers moved, seconded by Councilor Hansen, for adoption of Resolution No. 92-1699.

Councilor Wyers gave the Solid Waste Committee's report and recommendations. Councilor Wyers explained the One Percent for Recycling Advisory Committee chaired by Councilor Buchanan had held several meetings and conducted a workshop for persons interested in submitting proposals. She said the work, the criteria, application and project list had been developed as a result of that work. She said the only significant changes this year involved adding two evaluation criteria on whether the proposal could serve as a model and be duplicated elsewhere, and whether a proposal would generate positive publicity. She said also that "precycling" would be emphasized.

Vote: Councilors Collier, Devlin, Gronke, Hansen, McFarland, McLain, Moore, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Buchanan was excused. The vote was unanimous and Resolution No. 92-1699 was adopted.

7.2 Resolution No. 92-1686, For the Purpose of Entering Into a Multi-Year Contract with the Most Qualified Proposer by Authorizing Issuance of a Request for Proposals for a Comprehensive Waste Stream Study

Presiding Officer Gardner announced the Solid Waste Committee did not forward Resolution No. 92-1686 to the Council for consideration and had been removed from this agenda.

7.3 Resolution No. 92-1683A, For the Purpose of Authorizing an Exemption from the Competitive Procurement Procedures of Metro Code Section 2.04.053 to Permit the Executive Officer to Execute Contract Amendment No. 16 with SCS Engineers

Presiding Officer Gardner announced the Solid Waste Committee had recommended Resolution No. 92-1683A to the full Council for adoption, but that in the interim, Solid Waste Committee staff had requested the resolution be returned to Committee for additional work. Presiding Officer Gardner asked for a motion to refer the resolution back to Committee.

Motion: Councilor Van Bergen moved, seconded by Councilor Devlin, to refer Resolution No. 92-1683A back to the Solid Waste Committee for further work.

Vote: Councilors Collier, Devlin, Gronke, Hansen, McFarland, McLain, Moore, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Buchanan was excused. The vote was unanimous and the motion passed.

7.4 Resolution No. 92-1693, For the Purpose of Authorizing the Executive Officer to Execute the Acquisition of Land in the Smith and Bybee Lakes Management Area

Motion: Councilor Washington moved, seconded by Councilor Devlin, for adoption of Resolution No. 92-1693.

Councilor Washington gave the Transportation and Planning Committee's report and recommendations. He said the resolution would authorize the Executive Officer to execute the acquisition of land in the Smith and Bybee Lakes management area. He said Metro acted as the trust fund manager and discussed real estate acquisition and negotiations. He said Metro's policy was to deal with willing sellers whenever possible and not practice its power of eminent domain.

Councilor Van Bergen asked about Metro's use of eminent domain in different subject areas, referring to issues related to the

Peterkort property related the acquisition of natural areas for the Greenspaces Program.

Councilor Washington clarified the Committee merely discussed eminent domain issues. Presiding Officer Gardner said Metro had always had the right of eminent domain and it was clearly stated in the Greenspaces Master Plan that Metro would use it as a last resort.

Pat Lee, Regional Planning Supervisor, briefly discussed the issues raised on eminent domain.

Councilor Devlin noted very little of the area proposed for the Smith and Bybee Lakes management area was considered developable.

Councilor McLain said other alternatives would be considered including trails and easements through property that owners did not wish to sell.

Councilor Van Bergen said he did not wish different Committees to weigh the same issues based on different criteria.

Vote: Collier, Devlin, Gronke, Hansen, McFarland, McLain, Moore, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Buchanan was excused. The vote was unanimous and Resolution No. 92-1693 was adopted.

7.5 Resolution No. 92-1668A, For the Purpose of Deferring Pursuit of a Local Option Vehicle Registration Fee for Arterial-Related Improvements

Motion: Councilor Devlin moved, seconded by Councilor Hansen, for adoption of Resolution No. 92-1668A.

Councilor Devlin gave the Transportation and Planning Committee's report and recommendations. He said two years ago the Council expressed its intent to pursue a vehicle registration fee for transportation improvements in the region and received permission from the State Legislature to do so. He said that resolution had a self-imposed deadline of November, 1992. He said the public had been surprisingly receptive to the fee, but said there issues related to state funding, the Regional Transportation Plan (RTP) and funding issues that needed to be discussed during the 1993 State Legislature. He said Resolution No. 92-1668A set a new deadline of November 1993 and also called for a work plan funded by Surface Transportation Act (STA) funds to assure that deadline was kept, or in reality, an earlier deadline, since a measure would need to appear on the General Election ballot at that time.

Councilor Devlin said the Committee amended Exhibit A, (B)(1), to add that consideration would be given to benefit vehicular modes in addition to already stated bike, pedestrian and transit modes.

Councilor Devlin clarified Metro did not have the authority to impose this fee on its own, but that it required a positive vote by the electorate.

Vote: Councilors Collier, Devlin, Gronke, Hansen, McFarland, McLain, Moore, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Buchanan was excused. The vote was unanimous and Resolution No. 92-1668A was adopted.

7.6 Resolution No. 92-1696, For the Purpose of Authorizing the Acceptance of a Transferred Position from the Oregon Office of Emergency Management to Metro and Directing Preparation of a Budget Amendment

Motion: Councilor McLain moved, seconded by Councilor Washington, for adoption of Resolution No. 92-1696.

Councilor McLain gave the Transportation and Planning Committee's report and recommendations. Councilor McLain referenced the resolution's Be it Resolved clauses to explain the resolution represented an intergovernmental agreement (IGA) between Metro and the Oregon Office of Emergency Management (OEM) and would require a Metro budget amendment reflecting the line item transfer. She said the OEM position was being cut, but that it was federally funded. She said Metro's earthquake planning FTE had been reduced earlier this year and that Metro would benefit from the FTE transfer.

Andy Cotugno, Director of Planning, said the salary and fringe costs would be fully covered, but that Metro would cover the indirect cost of providing support services in the amount of \$18,000. He noted the FTE budgeted for earthquake costs had not been hired so that were additional funds in the budget for that purpose.

To Councilor Wyers' question, Don Rocks, Executive Assistant, explained OEM needed to demonstrate to the State of Oregon that it had cut this position in their department. He said the IGA contained a cancellation clause with 30 days notice required.

Councilor Wyers said she was amenable to the position, but noted the Council originally cut that FTE. She expressed concern about

creating policy even though the funds would not involve Metro money.

Councilor Van Bergen asked if it was permissible to hire an FTE under such circumstances. Mr. Rocks said the FTE was an intergovernmental transfer, not a Metro hire, and that the Federal Emergency Management Administration (FEMA) had been fully informed of the circumstances involved.

Dan Cooper, General Counsel, said under such circumstances, employees followed their jobs, and that Metro was required to take that employee under federal guidelines.

Councilor Devlin said the Committee believed the FTE transfer would benefit the agency, the region and the state. He said the Committee believed it was better to take the position than have its benefit for the state cut entirely. He said this situation required further analysis of whether cuts should be made across the board or if the revenue sources should be considered on their own.

Councilor Collier expressed concern based on policy. She said it was difficult to convince taxpayers government was making necessary cuts when in reality it was transferring employees.

Councilor McLain concurred with Councilor Collier about public perception of such transfers, but said the opportunity to utilize existing federal funds would be good for Metro and that there was extra money in Metro's budget for support service costs.

Councilor Wyers said Mr. Rocks' staff report stated if FEMA funding disappeared, the FTE would no longer exist. She asked if the Council was creating policy by taking this FTE without thorough discussion of all regional needs and other issues that might better benefit the public such as analysis of housing issues.

Mr. Rocks said the transfer would enhance FEMA's work on earthquake planning in the State of Oregon. He said Metro's acceptance of the FTE was discretionary and did not obligate Metro to fund earthquake planning for the federal government in the future with Metro funds.

Councilor Moore said Metro would receive benefit for a cost of \$18,000. She said staff should clarify what services the public would receive in lieu of the FTE being eliminated.

Mr. Cotugno said the acceptance of the FTE was conditioned also on receiving an \$800,000 grant for two other positions to do

comprehensive earthquake planning. He said those positions were in the budget and one would be paid for by Metro and explained a Department of Geology and Mineral Industries (DOGAMI) project Metro had committed to perform in the region as a pilot project. He said there were preexisting funds for that project also. To Councilor Moore's question, he said there would be a clear job description of what services to the public the FTE would provide.

Mr. Cotugno and Mr. Rocks further clarified the new FTE would continue Metro's existing work program in addition to the federal and state-driven work plan.

Vote: Councilors Collier, Devlin, Gronke, Hansen, McFarland, McLain, Moore, Washington, Wyers and Gardner voted aye. Councilor Van Bergen voted nay. Councilor Buchanan was excused. The vote was 10 to 1 in favor and Resolution No. 92-1696 was adopted.

7.7 Resolution No. 92-1652A, For the Purpose of Authorizing a Development Effort and Stating Metro's Intent to Provide Financing Via General Obligation Bonds for the End of the Oregon Trail Project

Motion: Councilor McFarland moved, seconded by Councilor Devlin, for adoption of Resolution No. 92-1652A.

Councilor McFarland gave the Regional Facilities Committee's report and recommendations. She explained the Committee reviewed the resolution on three different occasions. She said the resolution was amended due to changes mutually agreed upon by the Committee, the Clackamas County Board of Commissioners, and the End of the Oregon Trail (EOT) Foundation. She said the Committee agreed to the final resolution which would establish Metro's intent to issue general obligation bonds for the End of the Oregon Trail Project and establish seven criteria for a Memorandum of Understanding, including management responsibilities, the bond amount and other issues. She supported the project because she said it was likely to be a national as well as an international facility in scope. The Council briefly discussed the issues further, including membership and size of the negotiating team.

Vote: Councilors Collier, Devlin, Gronke, Hansen, McFarland, McLain, Moore, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Buchanan was excused. The vote was unanimous and Resolution No. 92-1652A was adopted.

Councilor Devlin left the meeting to attend another meeting and was duly excused.

7.8 Resolution No. 92-1694A, For the Purpose of Authorizing the Issuance of the Request for Proposals for the Operator of Metro's On-Site Childcare Facility to be Located in the Headquarters Building

Main Motion: Councilor Washington moved, seconded by Councilor Hansen, for adoption of Resolution No. 92-1694.

Councilor Washington gave the Regional Facilities Committee's report and recommendations. He explained the Committee amended the fourth paragraph on page 9 of the RFP to read (additional language underline and deleted language bracketed): "Metro will determine [~~if continued operation is feasible~~] whether to continue the operation." He said the Committee discussed whether Metro would be held harmless in possible litigation, said the RFP contained language to that effect, and discussed toy and equipment safety. He said all of those issues were discussed to the satisfaction of the committee.

Councilor Hansen asked who would provide equipment initially. Councilor McLain said Metro would. Councilor McFarland said it was the Committee's understanding that Metro would fully equip the facility and when the operator left and another one stepped in, the original operator would leave it fully equipped.

Berit Stevenson, Project Manager, said in the case of other agency day care centers, other agencies such as the Corps of Engineers and Bonneville Power Administration provided a fully equipped facility with a replacement clause. Councilor Hansen said there were different day care programs such as the Montessori program and until Metro knew who the contractor and the program would be, it was not possible to select equipment.

Ms. Stevenson said Metro staff would finalize the list of equipment with the operator. Councilor Hansen asked who that contact person would be. Ms. Stevenson said a child care specialist would be utilized. Councilor Hansen asked if local programs would be emphasized over national programs and if local residents would be hired as day care employees. Ms. Stevenson said the evaluation criteria did not give an advantage to either a local or a national chain. She said staff tried not to do that to get a variety of proposals. She believed Metro would hear from local, non-profit providers. Councilor Hansen said two national companies had already solicited for a day care center via the auspices of Metro Central Station and said that RFP had

not even been issued yet. Ms. Stevenson said she believed a variety of proposals would be received because a non-profit agency would receive federal funding for food grants.

Councilor McLain said the Committee asked questions similar to Councilor Hansen's and referred to Attachment B, a preliminary list of equipment, toys and furniture. Councilor McLain said an advisory committee of specialists would be set up to advise Metro. Councilor McLain said the advisory group would inform parents, but not have parents as members.

Councilor Hansen said non-profit organizations were legally obligated to have a certain membership on their board of directors. She asked if the day care center would have a board of directors and an advisory group. Ms. Stevenson said there could be shared membership, but that staff did not believe they could dictate to an operator who their board of directors would be.

Councilor Gronke said he expressed concern at Committee that Metro should not manage a day care center.

Councilor Hansen agreed with Councilor Gronke. She said if Metro wanted to give an operator space to provide a day care center, that should be the extent of Metro's obligation. She said for Metro to have an advisory program in addition to a board of directors was unwieldy. She said if that were to be the case, Metro should not have a day care center and provide employees with day care allowances instead. She asked who would have the final word on child care issues.

Presiding Gardner noted Resolution No. 92-1694A did not include language on the board of directors and/or an advisory board.

Motion to End Debate: Councilor Collier moved to call the question.

Vote on Motion to End Debate: Councilors Collier and McLain voted aye. Councilors Gronke, Hansen, McFarland, Moore, Van Bergen, Washington, Wyers and Gardner voted nay. Councilors Buchanan and Devlin were excused. The motion to end debate failed and the debate continued.

Councilor Van Bergen said this resolution was the first time anything had been discussed at Council about the Sears Headquarters Building except for the police station. He asked Councilor McLain how much rent would be charged for the day care facility.

Councilor Wyers asked when and how information was disseminated to the full Council on the Sears Building other than at the Regional Facilities Committee.

Councilor McLain said the Regional Facilities Committee agendas were distributed to all 12 Councilors and contained reports on the building as well as reports on any questions asked by the Committee. She said Regional Facilities Department staff had been very cooperative. She said those reports could be scheduled for the November 12 Council for a briefing. She said she had received no questions from Councilors on the issues.

Councilor Wyers asked about costs. Councilor McLain said the project to-date was under cost.

Councilor McLain said the Regional Facilities Committee debated the day care question and said Resolution No. 92-1694 simply asked staff to continue the process as per instructions by the Committee. She said that both Councilor Hansen and herself had educational backgrounds and could discuss such issues in the future. She said the definition of what an advisory committee for the day care center would be was not germane to the resolution before the Council itself.

Councilor Wyers asked how much the contract cost was for the day care specialist. Ms. Stevenson said the contract amount was for \$2,000 of which \$1,800 to-date had been spent.

Councilor Hansen said discussion of the advisory committee might be germane to the proposer. Ms. Stevenson said the RFP requested the proposer work cooperatively with the advisory committee.

Councilor Hansen said unless the Scope of Work was amended, she could not vote for the resolution.

Councilor Gronke said he objected to micro-management of the facility by Metro. Presiding Officer Gardner asked Councilor Gronke if he objected to Metro operating a day care center. Councilor Gronke said he did not object to employer-provided day care, only to the method in which Metro was proposing to manage it. The Council briefly discussed the issues further.

Motion to Amend: Councilor Wyers moved, seconded by Councilor Van Bergen, to amend the Scope of Work, page 12, Section 3.3: "Contractor shall participate and cooperate with Metro's Childcare Advisory Committee if such a committee is established."

Vote on Motion to Amend: Councilors Collier, Hansen, McFarland, Moore, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Gronke voted nay. Councilor McLain abstained from the vote. Councilors

Buchanan and Devlin were excused. The vote was 8 to 1 in favor and Resolution No. 92-1694A was amended.

Vote on Main Motion as Amended: Councilors Collier, Hansen, McFarland, McLain, Moore, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Gronke voted nay. Councilors Buchanan and Devlin were excused. The vote was 9 to 1 in favor and Resolution No. 92-1694B was adopted.

9. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

Councilor Van Bergen served notice he would submit a proposal to the Finance Committee to re-evaluate the Hearings Officer's contract when it was renewed. He said there should be more than one appearance before the Council on UGB cases and that attorneys outside the City of Portland should be considered also.

Councilor McLain thanked all of the Council who came to the Regional Student Congress at the Oregon Convention Center October 17, 1992.

Councilor Washington noted and thanked other elected officials who attended including Multnomah County Commissioner Gary Hansen.

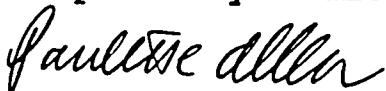
10. EXECUTIVE SESSION Held Under the Authority of ORS 192.660(1)(h) to Consult with Legal Counsel with Regard to Oregon Laborers-Employers Health & Welfare Trust Fund v. Metropolitan Service District

Presiding Officer Gardner announced the Council would hold an Executive Session under the authority of ORS 192.660(1)(h) to consult with Legal Counsel on matters related to the Oregon Laborers-Employers Health & Welfare Trust Fund v. the Metropolitan Service District.

The Executive Session began at 8:29 p.m. Those present were: Councilors Gronke, Washington, McFarland, Hansen, Wyers, Gardner, Collier, Moore, McLain and Van Bergen. Also present: Legal Counsel Mark Williams, Mr. Cooper and Deputy Executive Officer Dick Engstrom. The Executive Session ended at 9:00 p.m.

All business having been attended to, Presiding Officer Gardner adjourned the meeting at 9:00 p.m.

Respectfully submitted,



Paulette Allen
Clerk of the Council

Meeting Date: November 24, 1992
Agenda Item No. 4.2

RESOLUTION NO. 92-1708



METRO

Memorandum

2000 S.W. First Avenue
Portland, OR 97201-5396
503/221-1646

DATE: November 19, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council

RE: AGENDA ITEM NO. 4.2; RESOLUTION NO. 92-1708

The Council agenda will be printed before the Governmental Affairs Committee meets to consider Agenda Item No. 4.2 at its Thursday, November 19, meeting. Governmental Affairs Committee reports will be distributed in advance to Councilors and available at the Council meeting November 24.

BEFORE THE COUNCIL CONTRACT REVIEW BOARD
OF THE METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING A) RESOLUTION NO. 92-1708
A CONTRACT AMENDMENT AND)
EXTENSION WITH WM BENEFITS) Introduced by Rena Cusma,
) Executive Officer

WHEREAS, an agreement currently exists between the Metropolitan Service District and the Western Retirement Trust for the management of Metro's retirement plan; and

WHEREAS, the Western Retirement Trust currently performs services for Metro pursuant to this agreement; and

WHEREAS, in Resolution No. 91-1506, the Council of the Metropolitan Service District authorized the merger of Metro's then two different retirement plans into one plan, and assigned Western Retirement Trust as the Trustee of Plan; and

WHEREAS, in Resolution No. 92-1592, the Council appointed WM Trust as the non-discretionary Trustee of the Plan, and authorized the Executive Officer to appoint a five person Administrative/Advisory Committee to control plan assets and all matters concerning the Plan; and

WHEREAS, the Administrative/Advisory Committee has negotiated an acceptable extension and amendment to the original contract with the Western Retirement Trust; and

////

WHEREAS, it would be unnecessary, duplicative, and impractical for Metro to subject this contract extension and amendment to competitive procurement procedures; now, therefore,

BE IT RESOLVED,

- 1. That pursuant to Metro Code Section 2.04.054 (a) (3), the Personal Services Agreement attached as Exhibit "A" is exempted from the competitive procurement procedures of Metro Code Section 2.04.053.**
- 2. That the Executive Officer or her designee is authorized to enter into an agreement with WM Benefits in a form substantially similar to Exhibit "A."**

ADOPTED by the Council Contract Review Board of the Metropolitan Service District this ____ day of November, 1992.

Jim Gardner, Presiding Officer

EXHIBIT "A"

Scope of Work

Metropolitan Service District

Plan Recordkeeping and
Trust and Custodial Services

October 1992

WM BENEFITS GROUP

1201 Third Avenue, Suite 1200
Seattle, WA 98101
(206) 461-8600

Contents

Executive Summary

Section I *Benefit Service Corporation -
Plan Design, Consulting, Administration and Recordkeeping Services*

Section II *WM Trust Company -
Directed Trustee and Custodial Services*

Section III *Professional Fees -
Combined Benefit Service Corporation and
WM Trust Company Fee Arrangement*

Execution Page

Executive Summary

- ▶ **WM Benefits Group is a dba covering two wholly-owned subsidiaries of Washington Mutual Savings Bank: Benefit Service Corporation and WM Trust Company.**
- ▶ **The engagement outlines the plan recordkeeping services through Benefit Service Corporation and the trust and custodial services through WM Trust Company.**
- ▶ **The recordkeeping and trust costs are combined into one annualized charge through WM Trust Company utilizing a "basis" point charge with minimal transaction costs. All services provided under this agreement will be charged by WM Trust Company. However, the agreement separately identifies the recordkeeping charges of Benefit Service Corporation.**
- ▶ **The fees shown in this agreement assume that all employee data and payroll information is received in an electronic format via tape or diskette. The cost to process "hard copy" data will be billed at our hourly fee of \$35.00 per hour.**
- ▶ **Benefit Service Corporation will receive a portion of the fees earned by WM Trust Company. In the first year of the engagement, this is predicted to be \$18,500.**
- ▶ **This fee arrangement is for a two (2) year period beginning August 1, 1992 for the September 30, 1992 quarterly valuation and ending with the June 30, 1994 quarterly valuation.**
- ▶ **Our scope of work does not include future professional consulting services that are required to address legal and regulatory issues. WM Benefits Group shall be responsible for notifying Metro whenever it determines that it is providing services outside this engagement. Such services shall be contracted for in advance, in writing.**

Section I
Administration & Recordkeeping Services

A. Participant Recordkeeping & Plan Administration

Our recordkeeping and administration services are divided into two categories as follows:

(1) Participant Recordkeeping. This category includes:

- Updating the participant data base for contributions and investment election information on a quarterly basis using employer provided participant data;
- Updating individual participant accounts with investment income, gains and losses as well as reconciling trust investments to participant accounts;
- Updating participant account records with distributions, hardships and loans;
- Accounting for participant loans;
- Processing participant directed investment transfers; and
- Daily valuations of participant accounts and quarterly participant statements.
- PIN numbers to participants who complete the PIN application form, and voice response.

(2) Plan Administration. This category includes:

- Consultation with Metro as to the most cost effective and efficient procedures for plan administration, not to exceed ten (10) hours per calendar year; provided, however, that it shall be WM Benefits Group responsibility to notify Metro when the ten (10) hour limit is reached. Any consultation beyond ten (10) hours will be contracted for in advance, in writing.
- Assistance in developing and maintaining a complete administration forms and procedures manual, including:
 - ▶ Participation and enrollment forms,
 - ▶ Investment election forms,

- ▶ Loan package of promissory note, amortization schedule and security agreement,
- ▶ Distribution forms for retirement, termination, death, disability, hardship and loans,
- ▶ Beneficiary statement, and
- ▶ Qualified Domestic Relations Order (QDRO) package.
- Audit of the earnings allocation basis from the trust investment returns to the participant level accounts.
- Preparation of quarterly valuation reports, including balance sheet, income and expense statement, asset statement, reconciliation reports between WM Trust Company and recordkeeping reports, and schedules of adjustments and notes. All statements and reports will be sent within 45 days following receipt of all contribution and investment fund information.

Section II
Directed Trustee and Custodial Services

WM Trust Company will provide the following services for all plan assets:

- As a directed trustee, our fiduciary responsibility for the assets in our custody substantially reduces the liability of the individual trustees of the Plan.
- Monthly trust fund accountings showing all cash receipts, cash disbursements and asset changes in the portfolio will be provided within ten (10) business days following the end of each month, subject to timely reports from investment managers.
- Preparation of all disbursements, including lump sum and periodic benefit payments, and all tax forms.
- Automated cash management of deposits.
- Assignment of a professional trust administrator who is responsible for the overall supervision of the account.
- Settlement of all security trade transactions, including mutual funds.
- Safekeeping of all assets, including audit-controlled vault protection of securities and depository services.
- Reinvestment of dividend, interest and other income.
- Timely attention to bond maturities, bond calls, conversion rights, stock rights, stock and bond offerings, stock and cash dividends, stock splits and exchanges.
- Loan set-up and amortization schedule.
- Process participant-directed investment transfers at the request of recordkeeper.
- Annual performance measurement of investment options relative to the statement of investment policy.

Section III
Fee Agreement

**WM Trust Company Directed Trustee and Custodian and
Plan Administration from Benefit Service Corporation**

A) Plan Recordkeeping and Trust Services - Recurring Annually

The annual Directed Trustee, Custodial and Plan Administration fees are combined under the following schedule, and are based upon the market value of the accounts.

For all services shown in Sections I and II (*except for special consulting projects and for benefit distributions and participant loans, see below*) the fees charged will be 0.50% annually of all Plan assets held at WM Trust Company, plus out-of-pocket costs for wire transfers and certain distribution expenses detailed below for the period from August 1, 1992 until July 31, 1994.

Trustee, Custodial and Plan Administration services described in Sections I and II, shall be separately contracted for in advance, in writing.

Invoice Procedure

WM Trust Company will invoice Metro one-quarter (1/4) of the annual asset fee each quarter from August 1, 1992 through July 31, 1994. This invoice will also include wire transfer fees and distribution expenses described below.

Note: For participants who terminate employment and elect to maintain an account balance after separation from service, the fees described above will be charged to that participant's account. Metro shall have no liability for such fees.

B) Benefit Distribution Expenses

Distribution expenses for participants who terminate employment and elect an immediate distribution will be paid by Metro:

- \$55 for each lump sum benefit payment. This includes tax withholding and tax information for Form 1099-R.

Distribution expenses will be paid by participants who terminate employment but elect to maintain an account balance after separation from service. These expenses will be deducted from participant account balances. Metro shall have no liability for such fees.

- \$55 for each lump sum benefit payment. This includes tax withholding and tax information for Form 1099-R.

- \$50 per year for each recurring benefit payment. This includes tax withholding and tax information for Form 1099-R.

C) Participant Loan Expenses Paid by Participants (either paid directly by participant or deducted from participants' accounts) Metro shall have no liability for such fees.

- \$150 for each initial loan set up and check issue.

D) 1992 Consulting Projects

Professional fees for consulting, restatement and consolidation of two retirement plans into one document.

Consulting and drafting and merger consultation	\$2,250
IRS filing preparation	750
IRS user fee	750 (charged by IRS)

Additional consulting services may be required to answer IRS questions concerning the filing of the new document. These will be invoiced at \$185 per hour and covered by a separate agreement for each assignment. All additional consulting services will be contracted in advance.

Invoice Procedure

Benefit Service Corporation will invoice Metro on an incurred basis for the specific services listed above.

E) No fees or charges other than those authorized herein or authorized by separate written agreement shall be charged.

F) Termination and Renewal

Either party may terminate this agreement with 90 days written notice in advance of the termination date. This agreement may be renewed for subsequent periods after negotiation concerning proposed services and fees.

NOTE:

Benefit Service Corporation Fees Received from WM Trust Company

For its services as Plan Administrator, Benefit Service Corporation will receive \$18,500 in fees from WM Trust Company from August 1, 1992 until July 31, 1993, and from August 1, 1993 until July 31, 1994. These fees will compensate Benefit Service Corporation for the services detailed in Section I of this Letter of Engagement. In addition, Benefit Service Corporation will receive \$35 of each lump sum benefit payment from WM Trust Company.

Fee/Engagement for Recordkeeping and Trust Services

EXECUTION PAGE

This fee arrangement and engagement for services is for a two (2) year period beginning as of the effective date below. This engagement may be renewed for each year thereafter upon prior written agreement between Metro and WM Benefits Group. The agreement may be terminated at any time by either party (Metro or WM Benefits Group) effective upon thirty (90) days written notice to each party to this agreement.

Metro hereby acknowledges that Benefit Service Corporation is an affiliated company of WM Trust Company and that the fees to be paid to Benefit Service Corporation represent reasonable compensation for the services provided.

EFFECTIVE DATE: August 1, 1992

FOR: METROPOLITAN SERVICE DISTRICT OF PORTLAND

By: _____

Date: _____

FOR: WM TRUST COMPANY

By: _____
Alan W. Kennebeck

Date: _____

FOR: BENEFIT SERVICE CORPORATION

By: _____
Alan W. Kennebeck

Date: _____

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1708, FOR THE PURPOSE OF APPROVING A CONTACT AMENDMENT AND EXTENSION WITH WM BENEFITS

Date: November 19, 1992

Presented by: Sarah Keele
Paula Paris

BACKGROUND

Prior to the implementation of PERS, Metro's retirement plan consisted of the 5% Plan, which was administered through the Principal Financial Group, and the 6% Plan, administered through Western Retirement Trust. A previous agreement still currently in effect, existed between Metro and the Western Retirement Trust.

To improve plan design, service and eliminate administrative redundancy and expense, Resolution No. 91-1506 was brought before the Council and approved in September, 1991. This Resolution authorized:

- 1) the merger of the 5% Plan into Western Retirement Trust which operated the 6% Plan and 401(k) plan;
- 2) permitted savings that resulted from the elimination of the fees paid to administer the 5% Plan to be used to enhance the new plan by allowing employees to self-direct the investment of their accounts; and
- 3) assigned Western Retirement Trust as the Trustee of the Plan which provided them with the authority to negotiate the plan merger with the Principal Financial Group in Metro's behalf, and reassigned the plan's fiduciary responsibilities to Western Retirement Trust. This action relieved the Metro Executive Officer of this liability.

In March, 1992, an internal change occurred within Western Retirement Trust and the custodial and trust division's legal name changed to the WM Trust Company. In order for WM Trust to legally continue negotiations with the Principal Group, and retain their fiduciary responsibilities for the plans, they required the Metro Council to formally acknowledge the name change and approve WM Trust to perform all duties and services originally assigned to Western Retirement Trust.

Resolution No. 92-1592 appointed WM Trust as the non-discretionary Trustee of the plan and authorized WM Trust with the sole responsibility for the management and control of Metro's Trust Fund. This Resolution also authorized the Executive Officer to appoint a five person Administrative/Advisory Committee to control plan assets and all matters concerning the plan.

Staff Report
10-29-92
Page 2

This Committee assembled on several occasions with representatives of WM Trust to oversee the plan merger's progress and to develop the self-direction of investment program.

FISCAL IMPACT

Fiscal Impact: \$4,000

An extension and amendment of the existing contract with WM Trust for the implementation of the merger of the 5% and 6% plans, all Trustee and fiduciary liabilities, and the development and maintenance of the self-direction of investment program will increase the total administrative and recordkeeping costs of the two original 5% and 6% plans which was \$33,000, and which is budgeted within the current fringe rates, an additional \$4,000, or for a total annual cost of \$37,000, to operate the new merged plan.

ACTION REQUESTED

This action is a reconfirmation of the Metro Council's prior two Resolutions cited above. Because of the ongoing meetings with and administrative direction to WM Trust under these two prior Resolutions, it would not be practical to solicit proposals from other organizations to provide the services currently performed by WM Trust. However, to conform with the current Metro Code relative to extensions of Personal Service Contracts in excess of \$10,000, Council action is needed to finalize the Personal Service Contract and Fee Agreement with WM Trust. Therefore, pursuant to section 2.04.054(a)(3) of the Metro Code, we request authorization to immediately enter into an extension and amendment of the current agreement with WM Trust, resulting in a two-year personal services agreement with WM Trust, without evaluating proposals from other organizations, and pursuant to section 2.04.054 (a)(3), request Council approval to waive further Council action on this agreement, and authorize the Executive Officer to execute the contract with WM Trust.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 92-1708.



METRO

2000 SW First Ave.
Portland, OR 97201-5398
(503) 221-1646

Procurement Review Summary

To: Procurement and Contracts Division

Vendor
WM Trust and Benefit Service Corp

From ... Date Ongoing since 12/31/81

Department Executive Management

1201 Third Ave., Suite 1200

Division Personnel

Subject

Seattle, Washington 98101

Name Sarah Keele

Bid Contract

Vendor no.

Title Benefits Officer

RFP Other

Contract no. 902675

Extension 180

Administrative Agreement

Purpose Recordkeeping and administrative services for the Metro Salary Savings Plan

Expense

Procurement Personal/professional services Services (LM) Construction IGA

Revenue

Contract

Budget code(s)

610-090000-512300 *

Price basis

Term

Grant

*Please see "Comments" on reverse side of form

Unit

Completion

Other

Total

Annual

Other

Multi-year**

This project is listed in the 199_2_-199_3_ budget.

Payment required

12/31/81

Yes Type A

Lump sum

Beginning date

No Ongoing Type B

Progress payments

* * * *

Ending date

Total commitment	Original amount	\$ 33,000	estimated
	Previous amendments	\$ 0	
	This transaction	\$ 4,000	*
	Total	\$ 4,000	"
	A. Amount of contract to be spent fiscal year 92 - 93	\$ 37,000	"
	B. Amount budgeted for contract	\$ 33,000	"
	C. Uncommitted/discretionary funds remaining as of	\$ 33,000	" ***

PLEASE SEE ATTACHED MEMO OF EXPLANATION

Approvals

Division manager

Department director

Labor

Fiscal

Budget

Risk

Legal

* See instructions on reverse. ** If multi-year, attach schedule of expenditures. *** If A or B is less than C, and other line item(s) utilized, attach explanation/justification.

Competitive quotes, bids or proposals:

Submitted by	\$Amount	M/W/DBE	Foreign or Oregon Contractor
Submitted by	\$Amount	M/W/DBE	Foreign or Oregon Contractor
Submitted by	\$Amount	M/W/DBE	Foreign or Oregon Contractor

Comments: Actual costs will be expensed to 35 different appropriation units, up to 60 different account codes.

- Attachments:
- Ad for bid
 - Plans and specifications
 - Bidders list (M/W/DBEs included)

Instructions:

1. Obtain contract number from procurement division. Contract number should appear on the summary form and all copies of the contract.
2. Complete summary form.
3. If contract is:
 - A. Sole source, attach memo detailing justification.
 - B. Less than \$2,500, attach memo detailing need for contract and contractor's capabilities, bids, etc.
 - C. More than \$2,500, attach quotes, evaluation form, notification of rejection, etc.
 - D. More than \$10,000 or \$15,000 attach RFP or RFB respectively.
 - E. More than \$50,000, attach agenda management summary from council packet, bids, RFP, etc.
4. Provide packet to procurement for processing.

Special program requirements:

General liability: _____ / _____ / _____

Liquidated damages \$ _____ day

<input type="checkbox"/> Workers comp	<input type="checkbox"/> Prevailing wages
<input type="checkbox"/> Auto	<input type="checkbox"/> Non-standard contract
<input type="checkbox"/> Professional liability	<input type="checkbox"/> Davis/Bacon

Dates:

Ads _____ (Publication) _____

Pre-bid meeting _____ Bid opening** _____

Filed with council _____ For action _____

Filed with council committee _____ For hearing _____

Project estimate: _____

Funding:

Local/state

Federal

Other

Bond requirements:

_____ % Bid \$ _____

_____ % Performance \$ _____

_____ % Performance/payment* \$ _____

_____ % L/M \$ _____

* Separate bonds required if more than \$50,000.

** Minimum period: two weeks from last day advertised.



METRO


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

Memorandum

MEMO OF EXPLANATION

Date: November 4, 1992

To: WM Trust Contract File

From: Sarah Keele, Benefits Officer 

RE: MEMO TO FILE FOR THE EXPLANATION OF FUNDING FOR EXCESS CONTRACT AMOUNT

All costs associated with this contract are expensed to 35 different appropriation units based on the number of employees participating in the plan from each appropriation unit.

The maximum amount charged to any one appropriation unit as a result of this amendment will be minimal. While it is impossible at this time to specifically identify excess fringe benefit appropriations in each fund, it is believed that all divisions will be able to absorb the excess cost without problem. Lower than anticipated health care costs and position vacancies will result in increased funds available for other purposes. As the year proceeds, the budget will be monitored to ensure appropriation problems do not arise.

Project _____
Contract No. 902675

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the METROPOLITAN SERVICE DISTRICT, a municipal corporation organized under ORS Chapter 268, referred to herein as "Metro," located at 2000 S.W. First Avenue, Portland, OR 97201-5398, and WM TRUST COMPANY AND BENEFIT SERVICE CORPORATION, two wholly owned subsidiaries of Washington Mutual Savings Bank, collectively referred to herein as "Contractor," located at 1201 Third Avenue, Suite 1200, Seattle, Washington 98181.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. **Duration.** This personal services agreement shall be effective August 1, 1992 and shall remain in effect until and including June 30, 1994, unless terminated or extended as provided in this Agreement.
2. **Scope of Work.** Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. **Payment.** Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in the Scope of Work.
4. **Maintenance of Records.** Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.
5. **Ownership of Documents.** All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.
6. **Project Information.** Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

7. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

8. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

9. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

10. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the state of Oregon and shall be conducted in the circuit court of the state of Oregon, for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

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

12. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor 90 days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

13. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

14. Modification. 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.

CONTRACTOR

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Meeting Date: November 24, 1992
Agenda Item No. 4.3

RESOLUTION NO. 92-1710



METRO

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

Memorandum

DATE: November 19, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council

RE: AGENDA ITEM NO. 4.3; RESOLUTION NO. 92-1710

The Council agenda will be printed before the Finance Committee meets to consider Agenda Item No. 4.3 at its Thursday, November 19, meeting. Finance Committee reports will be distributed in advance to Councilors and available at the Council meeting November 24.

**BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT**

FOR THE PURPOSE OF APPROVING	)	RESOLUTION NO. 92-1710
A REQUEST FOR PROPOSALS)	
DOCUMENT FOR PROPERTY/	)	Introduced by Finance Committee
CASUALTY AGENT OF RECORD/)	
BROKER AND WAIVING THE)	
REQUIREMENT FOR COUNCIL)	
APPROVAL OF THE CONTRACT AND)	
AUTHORIZING THE EXECUTIVE)	
OFFICER TO EXECUTE THE)	
CONTRACT SUBJECT TO CONDITIONS)	

WHEREAS, Section 2.04.033 (b) of the Metro Code requires the Council to approve any document which is subject to competitive bidding or Request for Proposals procedures; and

WHEREAS, the contract for Property/Casualty Agent of Record/Broker requires Council approval, and the Request for Proposals document has been filed with the Council Clerk; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District approves the Request for Proposals for Property/Casualty Agent of Record/Broker attached as Exhibit A hereto and authorizes immediate release for response by vendors or proposers.
2. That subject to the conditions in Exhibit B attached hereto waives the requirement for Council approval of the contract and authorizes the Executive Officer to execute the contract if the conditions are met.

ADOPTED by the Council of the Metropolitan Service District this ____ day of
November, 1992.

Jim Gardner, Presiding Officer



Request for Proposals

**For Property/Casualty
Agent of Record/Broker
and/or Loss Control
Consultant**

METRO

*Finance & Management Information
Department
Risk Management Division
2000 SW First Avenue
Portland, OR 97201-5398*

Printed on recycled paper

**REQUEST FOR PROPOSALS
FOR PROPERTY/CASUALTY AGENT
OF RECORD/BROKER AND/OR
LOSS CONTROL CONSULTANT**

I. INTRODUCTION

The Risk Management Division of the Metropolitan Service District (Metro) is requesting proposals for Property/Casualty Agent of Record/Broker and/or Loss Control Consultant services which are outlined in this proposal. Proposals will be due on Friday, December 18, 1992, 3:00 p.m.; PST, in Metro's business offices, attention R. Scott Moss, Risk Manager, 2000 S.W. First Avenue, Portland, OR 97201. Details concerning the project and proposals are contained in this document. It is anticipated that the term of the contract will be from January 1, 1993 to December 31, 1995. A proposal may be provided for either an Agent of Record or a Loss Control Consultant or both.

II. REGIONAL RESPONSIBILITIES

Metro serves more than one million residents of the urban areas of Clackamas, Multnomah and Washington counties in the fast-growing Portland, Oregon, region. There are 24 cities ranging in size from Rivergrove (population 294) to Portland (population 437,319).

Metro provides the following regional services:

- Planning and management of the region's solid waste system and promotion of recycling.
- Planning of the regional transportation system.
- Planning and management of regional growth, including the urban growth boundary.
- Operation of the Metro Washington Park Zoo, the state's largest paid tourist attraction.
- Maintenance of a regional economic and demographic database and computer mapping system.
- Management of the Oregon Convention Center, Memorial Coliseum, Civic Stadium and Portland Center for the Performing Arts through the Metropolitan Exposition-Recreation Commission. Effective July 1, 1993, the Memorial Coliseum will transfer back to the City of Portland.

III. RISK MANAGEMENT PROGRAM

In July 1986, the Metro Council adopted Resolution No. 86-670 directing the Executive Officer to prepare, administer and maintain a self-insurance and risk management program. With this direction and a recommendation from a 1990 actuarial study, Metro developed a new Risk Management Division in July of 1991, to administer the risk associated with property, auto, general liability, and Workers' Compensation losses for the agency.

Effective July 1, 1992, Metro became self-insured for its general and automobile liability coverages. Metro maintains an actuarially sound self-insured reserve, and the Risk Management Division has established policies and procedures to assure the integrity of the program. During FY 1991-92, Metro had 31 general liability and automobile claims. On July 1, 1992, Metro contracted with Self-insured Management Services (SiMS) to provide adjusting services. Metro purchases a liquor liability policy from United National Insurance Company. This policy has a continuous January 1, renewal date.

In June of 1992, the Risk Management Division conducted a thorough analysis of self-insuring versus insuring workers' compensation coverage. Based on the available information, Metro chose a unique insurance program with SAIF Corporation under a paid loss retrospective program with a low specific limit and a very high aggregate limit. The Risk Management Division will market workers' compensation directly.

Metro insures approximately \$280,000,000 worth of property through Allendale Insurance Company. On July 1, 1993, Metro will have concluded a three-year contract with Allendale, which will be up for renewal.

Metro purchases crime insurance and a faithful performance bond from Hartford Accident & Indemnity Company. Both policies renew July 1, 1993.

Metro's Risk Management Division maintains a high standard of service by responding to the needs of our departments through the development of innovative and creative risk management techniques. To this end, Metro has developed relationships with a number of local brokerage firms. It is our expectation to continue utilizing these firms' services for specific and unique risk management projects.

IV. PROPOSED SCOPE OF WORK/SCHEDULE

Metro's risk management team combines internal and external resources to provide Metro departments with the highest quality of service. To this end, we request experienced Property/Casualty Agent of Records and Loss Control Consultants to submit proposals to be a part of Metro's risk management team. This request for proposals has two sections; agent of record services and loss control services. Qualified bidders may propose on either section or both sections. The agent of record services are further divided into two subsections: (A) general agent of record services; and (B) marketing

property insurance. Risk Management will evaluate the available resources and may directly be responsible for marketing property insurance.

A. General Agent of Record Services

- 1. General Agent of Record Services - We anticipate the fee for the following services to be under \$10,000 annually.**
 - i. Be available to the Risk Manager, or other staff as directed, for general insurance-related counseling.**
 - ii. Shall annually review Metro's insurance program and make recommendations to Risk Management.**
 - iii. Prepare and present, in coordination with Risk Management, a report on Metro's insurance program to Metro's Council the first calendar quarter of each year.**
 - iv. Market Crime insurance.**
 - v. Market Employee Dishonesty coverage.**
 - vi. Provide miscellaneous services; i.e., drivers license checks.**
 - vii. Be a resource for risk manager to exchange ideas**

- 2. Market Property Insurance - We anticipate the fee for the following services to be under \$10,000 annually.**
 - i. Survey the insurance market place to determine available property insurance markets.**
 - ii. Assist Risk Management in developing underwriting information.**
 - iii. Provide the available property insurance markets with Metro's underwriting information.**
 - iv. Review suggested policy forms and coverage's.**
 - v. Evaluate the financial strength of the proposed insurance company.**
 - vi. Issue Certificates of Insurance.**
 - vii. Assist in placement and resolution of any claims.**

B. Loss Control Consultation

- 1. Loss Control Consultation -- We anticipate the fee for the following services to be under \$10,000 annually.**
 - i. Be a risk management team member for loss control engineering.**
 - ii. At a minimum, provide a complete inspection of each of Metro's facilities annually.**
 - iii. Review and make recommendations concerning Metro's Accident Prevention and Loss Control Policy and Supervisor and Safety Committee Resource Manual.**
 - iv. Provide technical training to supervisors and employees as needed.**
 - v. Review and comment on loss control recommendations submitted by Metro's property and workers' compensation insurance companies.**
 - vi. Assist with compliance with OSHA rules and regulations.**
 - vii. Assist with analysis of OSHA citations.**
 - viii. Perform miscellaneous projects.**

V. QUALIFICATIONS/EXPERIENCE

Metro is looking for an Agent of Record who is licensed in the State of Oregon and has demonstrated experience with self-insured organizations. The Agent of Record must also have experience serving commercial clients approximately the same size as Metro and have knowledge and experience with public entities and the Oregon Tort Claims Act.

The Loss Control Consultant will have a strong background in providing loss control services for public and private entities with similar operations to Metro. Experience with facilities catering to large numbers of visitors and experience with hazardous materials is required. The Loss Control Consultant's career will have focused on loss control engineering to avoid liability and workers' compensation injuries.

Both the Agent of Record and Loss Control Consultant will have demonstrated thorough education and experience that they are technical experts in their field with the ability to effectively communicate Metro's needs to risk management, supervisors, employees, and the Metro Council. Both will have demonstrated creativity, not only to see things as they are but as they might be. Perhaps most important, both will have a

reputation among their peers and clients to have utmost integrity and a willingness to place their clients interest above their own.

VI. PROJECT ADMINISTRATION

All the work of the Agent of Record and Loss Control Consultant will be coordinated through the Risk Manager. Other principle contacts will be the Risk Analyst and the division's Administrative Secretary.

VII. PROPOSAL INSTRUCTIONS

A. Submission of Proposals

Five copies of the proposal shall be furnished to Metro addressed to:

**Mr. R. Scott Moss, Risk Manager
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201-5398**

B. Deadline

Proposals will not be considered if received after 3:00 p.m.; PST, Friday, December 18, 1992. Postmarks are not acceptable.

C. RFP as Basis for Proposals

This Request for Proposals represents the most definitive statement Metro will make concerning information upon which proposals are to be based. Any verbal information which is not contained in this RFP will not be considered by Metro in evaluating the proposals. All questions relating to the RFP or the project must be submitted in writing to R. Scott Moss, Risk Manager. Any questions which in the opinion of Metro warrant a written reply or RFP amendment will be furnished to all parties receiving a copy of this RFP. Metro will not respond to questions received after Wednesday, December 9, 1992.

D. Subconsultants; Disadvantaged Business Program

A subconsultant is any person or firm proposed to work for the prime consultant on this project. Metro does not wish any subconsultant selection to be finalized prior to contract award. For any task or portion of a task to be undertaken by a subconsultant, the prime consultant shall not sign up a subconsultant on an exclusive basis.

In the event that any subconsultants are to be used in the performance of this agreement, consultant is encouraged to make a good faith effort, as that term is defined in Metro's Disadvantaged Business Program (Section 2.04.160 of the Metro Code) to reach the goals of subcontracting 7 percent of the contract amount to Disadvantaged Businesses and 3 percent of the contract amount to Women Businesses. Consultant shall contact Metro prior to negotiating any subcontracts. For information on the status of this program please contact Metro's procurement officer at 221-1646 extension 536.

VIII. PROPOSAL CONTENTS

The proposal must be in the following format:

- A. Name, address, telephone number, and short history of the company. (one page)**
- B. Name, education, experience of Agent of Record and/or Loss Control Consultant.**
- C. Fees for services. (Agent of Records please separate general agent of record duties from the duties performed for marketing property insurance).**
- D. List all public and private entities and clients of Metro's size (present and past). Please include contact person's name and telephone number.**
- E. Describe in detail a proposed work plan to service Metro. The proposed work plan should include: the goals and objectives of the Agent of Record and Loss Control Consultant in servicing Metro; a detailed proposal of services; when these services are to be provided; and a proposed self-evaluation. The work plan will be judged on both creativity and proposed activities.**

IX. FEES FOR SERVICES

Metro desires to provide an annual fee for service. Agent of Record must separate their annual fee for services into two segments. The first segment will be for general agent of record services and the second segment will be for marketing of property insurance. Agent of Record must also provide an annual statement detailing all commission earnings. Such earnings will be used to reduce the annual fee. Please indicate fee for the next three years. The Loss Control Consultant must also provide an annual fee for service.

X. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award - This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to accept or reject**

any or all proposals received as the result of the request, to negotiate with all qualified sources, or to cancel all or part of this RFP.

- B. **Contract Type** - Metro intends to award a personal services contract with the selected firm for this project. A copy of the standard contract form, which the successful firm will be required to execute, is attached.
- C. **Billing Procedures** - Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. A monthly billing, accompanied by a progress report, will be prepared by consultant for review and approval.
- D. **Validity Period and Authority** - The proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.

XI. EVALUATION OF PROPOSALS

- A. **Evaluation of Procedure** - Proposals received that conform to the proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. The evaluation process will result in Metro developing a short list of the firms who, in its opinion, are most qualified. Interviews with these firms may be requested prior to the final selection of one firm.
- B. **Evaluation Criteria** - Proposals submitted that conform to the instructions provided in this RFP will be evaluated on the following criteria:
 - 1. **Work plan (25 points)**
 - Organization of proposal. Response to purpose and scope of work.
 - Description of proposed services.
 - 2. **Experience and Qualifications of the Agent of Record and Loss Control Consultant as outlined (25 points)**
 - 3. **Cost of Service (25 points)**
 - 4. **Response from References (25 points)**

Project _____

Contract No. _____

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the METROPOLITAN SERVICE DISTRICT, a municipal corporation organized under ORS Chapter 268, referred to herein as "Metro," located at 2000 S.W. First Avenue, Portland, OR 97201-5398, and _____, referred to herein as "Contractor," located at _____.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. **Duration.** This personal services agreement shall be effective _____ and shall remain in effect until and including _____, unless terminated or extended as provided in this Agreement.

2. **Scope of Work.** Contractor shall provide all services and materials specified in the attached "Exhibit A – Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

3. **Payment.** Metro shall pay Contractor for services performed and materials delivered in the maximum sum of _____ AND _____/100THS DOLLARS (\$_____), in the manner and at the time specified in the Scope of Work.

4. **Insurance.**

a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:

(1) Broad form comprehensive general liability insurance covering personal injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and

(2) Automobile bodily injury and property damage liability insurance.

b. Insurance coverage shall be a minimum of \$500,000 per occurrence, \$250,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be

provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

e. Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS

form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

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

13. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

14. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

15. Modification. This Agreement is the entire agreement between the parties, and may only be modified in writing, signed by both parties.

CONTRACTOR

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

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CONDITIONS FOR WAIVER OF COUNCIL APPROVAL

The Council of the Metropolitan Service District waives the requirement for the Council approval of the Property/Casualty Agent of Record/Broker and/or Loss Control Consultant contracts, subject to the following conditions:

- 1. The amount of the three year contract for all services shall not exceed \$30,000 annually.**
- 2. The service provided shall conform in all material respects to the specifications set out in the Request for Proposals for a Property/Casualty Agent of Record/Broker and/or Loss Control Consultant.**

STAFF REPORT

APPROVAL OF RESOLUTION NO. 92-1710 FOR THE PURPOSE OF REQUESTING PROPOSALS AND EXECUTING A CONTRACT FOR PROPERTY/CASUALTY AGENT OF RECORD/BROKER

Date: November 19, 1992

Presented by: Scott Moss, Risk Manager

BACKGROUND

A three-year contract with Willis Corroon will expire on December 31, 1992. The original contract was for \$50,000 annually, for a total of \$150,000. Under this contract, a full range of services was provided by the broker. With the establishment of a Risk Management Division, the contract was re-negotiated to \$29,000 in FY 1991-92 to reflect reduced services required.

Risk Management originally proposed an RFP to the Finance Committee which was based on the reduced services currently being provided by the broker of record. Upon the advice and counsel of the Finance Committee, Risk Management has re-evaluated the use of a broker of record. The analysis takes into account the level of experience and expertise of the Risk Management Division as well as the transfer of the Memorial Coliseum. The RFP has been significantly revised.

The RFP has been modified to have two separate sections: Section One provides for general agent of record services. Section Two provides for loss control services. Qualified bidders may propose to do either or both sections.

Section One: Agent of Record Services

The services of the agent of record is further subdivided into two subsections. Subsection A provides for general agent of record services including marketing crime insurance and employee dishonesty insurance, reviewing Metro's insurance program, preparing an annual insurance report, and providing general insurance-related consulting.

Subsection B provides for marketing Metro's property insurance program. Risk Management will be analyzing internal resources and may opt to market this coverage directly.

Each of these services is expected to cost approximately \$10,000 annually.

Section Two: Loss Control Services

A separate section is established for loss control services. This has two advantages: 1) it provides a larger pool of loss control experts who may contract with Metro, and 2) it will

allow smaller brokers, who do not employ loss control consultants, to submit a response to the RFP. Loss control services include inspections at each Metro facility, review of hazardous operations, specific safety training, review recommendations of property insurance companies, assistance with specific projects, i.e. new building loss control, ergonomics, OSHA citations. The expected cost of this contract is under \$10,000 and is included in the current budget as a "B" contract.

Attachment A demonstrates the standard agent of record services.

Standard Agent of Record Duties

Excluded from RFP

- Market Liability Insurance
- Claims Review
- Market Workers Compensation
- Limited Contract Review
- Allocation of Premium
- Limited Risk Assessments
- Limited Risk Management Consulting

Estimated Cost \$20,000

Absorbed Internally effective January 1, 1992

Section One - Agent of Record Subsection A

- General Insurance Consulting
- Prepare annual report to Finance Committee
- Market Crime Insurance
- Market Employee Dishonesty Insurance
- Market Liquor Liability Insurance
- Miscellaneous services
- Drivers License Records
- Policy Review

Estimated Cost \$10,000

Proposed duties of broker under new contract

Section One - Agent of Record Subsection B

- Market Property Insurance
- Issue Certificates of Insurance

Estimated Cost \$10,000

Under consideration for internal responsibility

Section Two - Loss Control Consultant

- Loss Control Engineering
- Safety Inspections
- Technical Training on Safety
- Review of insurance company safety recommendations
- Miscellaneous projects
- OSHA Citations

Estimated Cost \$10,000

Handled by separate contract

Mr. Robert Rayfield
Senior Vice President
Willis Corroon
1600 S.W. Fourth Avenue
Portland, OR 97207

Mr. Ron Graybeal
Assistant Vice President
JBL&K Insurance
Public Entity Department Manager
220 N.W. Second Avenue, Suite 800
Portland, OR 97209

Mr. Bob Lilly
Vice President
Sedgwick James of Oregon, Inc.
111 S.W. Columbia
Portland, OR 97201-5897

Mr. Donald E. Sprague
Vice President
Johnson & Higgins
111 S.W. Fifth Avenue
Suite 2600
Portland, OR 97204-3629

Meeting Date: November 24, 1992
Agenda Item No. 4.4

RESOLUTION NO. 92-1707



METRO

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

Memorandum

DATE: November 19, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council

RE: AGENDA ITEM NO. 4.4; RESOLUTION NO. 92-1707

The Council agenda will be printed before the Finance Committee meets to consider Agenda Item No. 4.4 at its Thursday, November 19, meeting. Finance Committee reports will be distributed in advance to Councilors and available at the Council meeting November 24.

**BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT**

AUTHORIZING THE FINANCE AND	)	Resolution No. 92-1707
MANAGEMENT INFORMATION)	
DEPARTMENT TO UNDERTAKE AN)	
ESCROW RESTRUCTURING FOR	)	Introduced by Rena Cusma,
THE 1992 GENERAL OBLIGATION	)	Executive Officer
REFUNDING BONDS)	

WHEREAS, under Resolution No. 92-1592, the Metro Council authorized the advance refunding of the General Obligation Convention Center Bonds, Series 1987 (the Refunded Bonds); and

WHEREAS, Metro issued the General Obligation Refunding Bonds, 1992 Series A (the Refunding Bonds) to refund the Refunding Bonds; and

WHEREAS, Metro achieved a gross savings of approximately \$3.5 million in debt service by issuing the Refunding Bonds; and

WHEREAS, an Escrow Account was established with Metro's Trustee bank as the depository for the proceeds of the Refunding Bonds; and

WHEREAS, the Escrow Account was set up using open-market securities; and

WHEREAS, it is now desirable to restructure the Escrow Account using state and local government securities (SLGS); and

WHEREAS, the restructuring is estimated to produce net proceeds to Metro of approximately \$25,000; and

WHEREAS, the net proceeds from the restructuring transactions are to be deposited to the Convention Center Debt Service Fund to be used to reduce Metro's general obligation bond tax levy; NOW THEREFORE,

BE IT RESOLVED, that

The Council of the Metropolitan Service District authorizes the Finance and Management Information Department to undertake the escrow restructuring and deposit the net proceeds of the transaction to the Convention Center Debt Service Fund.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1992.

**_____
Jim Gardner, Presiding Officer**

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1707 AUTHORIZING THE FINANCE AND MANAGEMENT INFORMATION DEPARTMENT TO UNDERTAKE AN ESCROW RESTRUCTURING FOR THE 1992 GENERAL OBLIGATION REFUNDING BONDS

Date: November 12, 1992

Presented by: Jennifer Sims
Christopher Scherer

Background

On April 1, 1992, Metro issued general obligation bonds totalling \$65,210,000 (the Refunding Bonds) to refund its \$65,000,000 General Obligation Convention Center Bonds (the Refunded Bonds) and take advantage of lower interest rates. This refunding resulting in a gross debt service savings of approximately \$3.5 million. Because many of the Refunded Bonds had not reached maturity and were not callable under the terms of the original resolution authorizing the bonds until December 1, 1997, it was necessary to place the proceeds of the Refunding Bonds in an escrow account. This escrow account pays interest to the holders and the Refunded Bonds and provides for the redemption of these bonds when due and callable. This type of financing is called an Advance Refunding.

Escrow Investments

Escrow investments deemed to be appropriate for this type of transactions by rating agencies and other public finance professionals must be of the highest quality and fully predictable in terms of maturity and pay-out. At the time of this transaction, Metro had to choose between state and local government investments (SLGS) or open-market investments (treasury bonds). Market conditions at the time argued for open-market securities, and accordingly, these were chosen for the escrow account. By its investment choices and negotiations with the underwriter, Metro achieved the highest possible savings at that time.

Maturity Inefficiencies

Issuers have a great deal of discretion in assembling SLGS that exactly match the maturity dates dictated by the refunding. Open-market securities are less flexible in available maturity dates. Because of this, escrow agreements using open-market securities have "inefficiencies" created by investments maturing several days before they are actually required to pay interest or refund bonds. Metro and its consultants analyzed these inefficiencies and determined that the savings achieved by using open-market securities exceeded the dollar value of the inefficiency.

**STAFF REPORT
CONSIDERATION OF RESOLUTION NO. 92-1707
November 12, 1992
Page 2**

Benefits of Restructuring

Because of the continued lowering of interest rates it is now economically beneficial to restructure the escrow account by trading the open-market securities for SLGS. Through this transaction, a benefit of approximately \$32,000 accrues to Metro. Transaction costs of approximately \$8,000 would be paid from this amount leaving a net benefit of \$24,000. This amount would be paid into the Convention Center Debt Service Fund and reduce the tax levy for FY 1993-94.

Resolution 92-1707 authorizes the Finance and Management Information Department to conduct the escrow restructuring. The restructuring will require a legal opinion (to be attained from Metro's Bond Counsel), an escrow verification to be performed by an accounting firm specializing in such efforts, and an amendment to our Trustee Agreement for the escrow. The transaction was originally proposed by the banking firm of Kidder Peabody which firm would be used by Metro to undertake the sale of existing open-market securities and purchase of SLGS.

Budget Impact

Sufficient appropriation authority exists within the Convention Center Capital Project Fund to pay the professional fees necessary under the transaction. As stated above, the fees will actually be payed from the proceeds of the restructuring so the current balance in the Fund will not be tapped for this transaction.

Recommendation of Executive Officer

The Executive Officer recommends adoption of Resolution No. 92-1707.

Meeting Date: November 24, 1992
Agenda Item No. 5.1

ORDINANCE NO. 92-475

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 92-475 AMENDING ORDINANCE NO. 92-449B REVISING THE FY 1992-93 BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF FUNDING A HARDWARE UPGRADE AND SOFTWARE SUPPORT SERVICES ENHANCEMENTS TO METRO'S FINANCIAL MANAGEMENT SYSTEM AND FOR THE PURPOSE OF FUNDING IMPROVEMENTS TO THE EFFICIENCY OF METRO'S BUSINESS OPERATIONS

Date: November 18, 1992

Presented by: Jennifer Sims
Ann Clem

FACTUAL BACKGROUND AND ANALYSIS

This action amends the Finance and Management Information Department's budget in the Information Services Division to provide for a hardware upgrade and enhanced software services support to the financial management system and to improve the efficiency of the agency's business operations. Each request will be discussed separately below.

Hardware Upgrade

The mainframe computer supporting the financial management system software has a battery backup power source. The life cycle of the battery is 5 years and its life cycle terminates October, 1993. Information Services Division is recommending we replace the battery during the move to the new Metro Center facility. The computer will not be in use during the process of moving, therefore, it is a window of opportunity to replace the battery. The battery is normally sold for \$5,055.00, but if we purchase it within the next 30 days we can do so at a cost of \$4,055.00. The \$4,055.00 includes the cost of installation, shipping, and refurbishing the machine cabinet.

This action requests the transfer of \$4,055.00 from the Support Service Fund contingency to capital outlay in the Finance and Management Information department.

Software Support Services

MGSI, the company who developed and implemented our financial management software system, was acquired by SCT. SCT is administering a new and formalized support agreement effective January 1, 1993. The cost of the support agreement is \$8,010 for the time period of January 1, 1993 through June 30, 1993. MGSI currently supports our software system and will continue to do so at no cost to Metro until January 1, 1993. Without this support service, MGSI can charge Metro at the rate of \$75.00 per hour for all support, inclusive of telephone calls, and we become a lower priority to clients with the service agreement. This support service arrangement is essential to the on-going operation of our financial management system.

This action requests the transfer of \$8,010.00 from the Support Service Fund contingency to Material & Services in Finance and Management Information department.

Improved efficiency to Metro's Business Functions

Information Services Division proposes the purchase of four (4) personal computers to be used as follows: as a substitute for when someone's computer is being repaired; when a person is hired temporarily to perform a short duration project; to accommodate new employees of Metro for a short period of time until the department can purchase a computer for them; to allow machines for ISD to instruct people on the use of METNET; to accommodate other situations where computers are needed on a short term basis. We are requesting the purchase of four (4) personal computers, complete with software, at a cost of \$2188.00 each.

This action requests the transfer of \$6,000.00 from the Support Service Fund contingency to capital outlay in Finance and Management Information department to cover the acquisition of the computers and requests the transfer of \$2752.00 to Materials & Services in Finance and Management Information department to cover the cost of software.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive officer recommends adoption of Ordinance No. 92-475 transferring \$20,817 from the Support Service Fund Contingency to the Information Services Division of the Finance and Management Information Department for the purpose of funding a hardware upgrade and software services enhancements to Metro's financial management system and for funding improvements to the efficiency of Metro's business operations

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE AMENDING ORDINANCE NO.)
92-449B REVISING THE FY 1992-93 BUDGET)
AND APPROPRIATIONS SCHEDULE FOR)
THE PURPOSE OF FUNDING A HARDWARE)
UPGRADE AND SOFTWARE SUPPORT)
SERVICES ENHANCEMENTS TO METRO'S)
FINANCIAL MANAGEMENT SYSTEM AND)
FOR FUNDING IMPROVEMENTS TO THE)
EFFICIENCY OF METRO'S BUSINESS)
OPERATIONS)

ORDINANCE NO. 92-475

Introduced by Rena Cusma,
Executive Officer

WHEREAS, The Council of the Metropolitan Service District has reviewed and considered the need to transfer appropriations within the FY 1992-93 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

1. That Ordinance No. 92-449B, Exhibit B, FY 1992-93 Budget, and Exhibit C, Schedule of Appropriations, are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance transferring \$20,817 from the Support Service Fund Contingency to the Information Services Division of the Finance and Management Information Department for the purposes of funding a hardware upgrade and software support services enhancements to metro's financial management system and for funding improvements to the efficiency of Metro's business Operations

2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1992.

Jim Gardner, Presiding Officer

ATTEST:

Clerk of the Council

**Exhibit A
Ordinance No. 92-475**

FISCAL YEAR 1992-93		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
For Information Only							
SUPPORT SERVICES FUND: Finance & Management Information (Information Systems)							
Total Personal Services		13.30	675,910	0.00	0	13.30	675,910
Materials & Services							
521100	Office Supplies		16,000		0		16,000
521110	Computer Software		10,600		10,762		21,362
521291	Small Tools		900		0		900
521310	Subscriptions		3,500		0		3,500
521320	Dues		500		0		500
521540	Maintenance & Repairs Supplies-Equipment		600		0		600
524190	Misc. Professional Services		2,200		0		2,200
524310	Management Consulting Services		8,000		0		8,000
525640	Maintenance & Repairs Services-Equipment		74,869		0		74,869
525710	Equipment Rental		800		0		800
526200	Ads & Legal Notices		300		0		300
526310	Printing Services		150		0		150
526410	Telephone		1,500		0		1,500
526440	Delivery Services		400		0		400
526500	Travel		6,500		0		6,500
526700	Temporary Help Services		1,000		0		1,000
526800	Training, Tuition, Conferences		14,600		0		14,600
526900	Misc Other Purchased Services		500		0		500
529500	Meetings		200		0		200
525740	Capital Lease Payments-Furniture & Equipment		185,840		0		185,840
Total Materials & Services			328,959		10,762		339,721
Capital Outlay							
571500	Purchases-Office Furniture & Equipment		91,760		10,055		101,815
Total Capital Outlay			91,760		10,055		101,815
TOTAL DIVISION EXPENDITURES		13.30	1,096,629	0.00	20,817	13.30	1,117,446

**Exhibit A
Ordinance No. 92-475**

FISCAL YEAR 1992-93		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
SUPPORT SERVICES FUND: Finance & Management Information Department							
Total Personal Services		43.75	1,973,222	0.00	0	43.75	1,973,222
<u>Materials & Services</u>							
521100	Office Supplies		59,494		0		59,494
521110	Computer Software		18,135		10,762		28,897
521111	Computer Supplies		480		0		480
521240	Graphics/Reprographic Supplies		500		0		500
521260	Printing Supplies		59,140		0		59,140
521290	Other Supplies		1,865		0		1,865
521291	Small Tools		900		0		900
521310	Subscriptions		5,300		0		5,300
521320	Dues		7,230		0		7,230
521540	Maintenance & Repairs Supplies-Equipment		600		0		600
524110	Accounting & Auditing Services		85,000		0		85,000
524190	Misc. Professional Services		46,200		0		46,200
524310	Management Consulting Services		8,000		0		8,000
525640	Maintenance & Repairs Services-Equipment		156,189		0		156,189
525710	Equipment Rental		800		0		800
526200	Ads & Legal Notices		1,100		0		1,100
526310	Printing Services		6,300		0		6,300
526320	Typesetting & Reprographics Services		500		0		500
526410	Telephone		1,500		0		1,500
526420	Postage		115,000		0		115,000
526440	Delivery Services		1,300		0		1,300
526500	Travel		14,922		0		14,922
526700	Temporary Help Services		2,800		0		2,800
526800	Training, Tuition, Conferences		25,650		0		25,650
526900	Misc Other Purchased Services		20,500		0		20,500
528100	License, Permits, Payments to Other Agencies		50,200		0		50,200
528200	Election Expense		75,000		0		75,000
529500	Meetings		500		0		500
529800	Miscellaneous		1,000		0		1,000
525740	Capital Lease Payments-Furniture & Equipment		199,610		0		199,610
Total Materials & Services			865,715		10,762		876,477
<u>Capital Outlay</u>							
571500	Purchases-Office Furniture & Equipment		115,560		10,055		125,615
Total Capital Outlay			115,560		10,055		125,615
TOTAL DEPARTMENT EXPENDITURES		43.75	3,054,497	0.00	20,817	43.75	3,075,314

**Exhibit A
Ordinance No. 92-475**

FISCAL YEAR 1992-93		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
SUPPORT SERVICES FUND:General Expenses							
<u>Interfund Transfers</u>							
581513	Trans. Indirect Costs to Bldg. Fund-Metro Center		311,347		0		311,347
581513	Trans. Indirect Costs to Bldg. Fund-Headquarters		79,418		0		79,418
581615	Trans. Indirect Costs to Insur. Fund-Gen1		15,156		0		15,156
581615	Trans. Indirect Costs to Insur. Fund-Workers' Comp		31,571		0		31,571
Total Interfund Transfers			437,492		0		437,492
<u>Contingency and Unappropriated Balance</u>							
599999	Contingency						
	* General		250,000		(20,817)		229,183
	* Builders License		8,790		0		8,790
599990	Unappropriated Fund Balance-Contractors License		121,250		0		121,250
Total Contingency and Unapp. Balance			380,040		(20,817)		359,223
TOTAL FUND EXPENDITURES		83.35	6,484,836	0.00	0	83.35	6,484,836

Exhibit B
Schedule of Appropriations
Ordinance No. 92-475

	Current Appropriation	Revision	Proposed Appropriation
SUPPORT SERVICES FUND			
Finance and Management Information			
Personal Services	\$1,973,222	\$0	\$1,973,222
Materials & Services	\$965,715	\$10,762	\$976,477
Capital Outlay	\$115,560	\$10,055	\$125,615
Subtotal	\$3,054,497	\$20,817	\$3,075,314
Regional Facilities			
Personal Services	\$559,185	\$0	\$559,185
Materials & Services	\$295,036	\$0	\$295,036
Capital Outlay	\$40,400	\$0	\$40,400
Subtotal	\$894,621	\$0	\$894,621
Personnel			
Personal Services	\$473,133	\$0	\$473,133
Materials & Services	\$98,111	\$0	\$98,111
Capital Outlay	\$13,250	\$0	\$13,250
Subtotal	\$584,494	\$0	\$584,494
Office of General Counsel			
Personal Services	\$414,900	\$0	\$414,900
Materials & Services	\$18,819	\$0	\$18,819
Capital Outlay	\$0	\$0	\$0
Subtotal	\$433,719	\$0	\$433,719
Public Affairs			
Personal Services	\$619,738	\$0	\$619,738
Materials & Services	\$75,015	\$0	\$75,015
Capital Outlay	\$5,220	\$0	\$5,220
Subtotal	\$699,973	\$0	\$699,973
General Expenses			
Interfund Transfers	\$437,492	\$0	\$437,492
Contingency	\$258,790	(\$20,817)	\$237,973
Subtotal	\$696,282	(\$20,817)	\$675,465
Unappropriated Balance	\$121,250	\$0	\$121,250
Total Support Services Fund Requirements	\$6,484,836	\$0	\$6,484,836

ALL OTHER APPROPRIATIONS REMAIN AS PREVIOUSLY ADOPTED

Meeting Date: November 24, 1992
Agenda Item No. 5.2

ORDINANCE NO. 92-476



METRO

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

Memorandum

Date: November 19, 1992

To: Clerk of the Council

From: *R. Carter* Roosevelt Carter, Budget and Finance Manager

Regarding: ATTACHED PROPOSED ORDINANCE NO. 92-476

The attached proposed Ordinance No. 92-476, as drafted, depends on approval of Ordinance No. 92-471B. If Ordinance 92-471B is not adopted, this Ordinance will require conforming amendments. The staff report for this Ordinance will be available prior to its review at the appropriate committee. Until the staff report is developed concerning Ordinance No. 92-476, the Ordinance has no recommendation from the Executive Officer.

dr
1203

Attachment

**BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT**

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 92-476
THE METRO CODE TO MODIFY THE)	
DESIGNATED FACILITY STATUS OF	)	Introduced by Rena Cusma,
COLUMBIA RIDGE LANDFILL FOR	)	Executive Officer
PURPOSES OF FLOW CONTROL, TO ADD)	
ROOSEVELT REGIONAL LANDFILL TO)	
THE LIST OF DESIGNATED FACILITIES,)	
AND DECLARING AN EMERGENCY)	

WHEREAS, Columbia Ridge Landfill is a "designated facility" for purposes of Metro solid waste flow control; and

WHEREAS, Columbia Ridge is currently allowed to accept solid waste as specified in its existing contract with Metro, and pursuant to duly issued non-system licenses; and

WHEREAS, Oregon Waste Systems (OWS), the owner of Columbia Ridge, was issued a non-system license on May 23, 1991, allowing it to accept special waste from the Metro area under certain conditions; and

WHEREAS, It is more appropriate, under the solid waste flow control chapter of the Metro Code, to "designate" facilities located outside of the District that are appropriate to receive waste from the Metro service area; and

WHEREAS, Regional Disposal Company (RDC), a Washington joint venture, with its home office at 4730 32nd Avenue South, Seattle, Washington 98118, owns and operates the Roosevelt Regional Landfill located in Klickitat County, Washington; and

WHEREAS, Both OWS and RDC have requested from Metro authority to accept special waste generated within the Metro service area; and

WHEREAS, Based on findings contained in the staff report accompanying this Ordinance and additional information provided during the hearing on this Ordinance, the Council has determined that it is appropriate to designate the Columbia Ridge Landfill and Roosevelt Regional Landfill for receipt of special waste from the District; and

WHEREAS, Both OWS and RDC are willing to enter into an agreement with Metro establishing the terms under which each facility may receive special waste; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.05.030 is amended to read:

5.05.030 Use of Designated Facilities:

(a) **Designated Facilities.** The following described facilities shall constitute the designated facilities to which ~~a waste hauler may deliver waste or to which~~ Metro may direct solid waste pursuant to a Required Use Order:

- (1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.
- (2) MSW (Municipal Solid Waste) Compost Facility. The MSW Compost Facility located at 5437 N.E. Columbia Boulevard, Portland, Oregon 97217.
- (3) Metro Central Station. The Metro Central Station located at 6161 N.W. 61st Avenue, Portland, Oregon 97210.
- (4) St. Johns Landfill. The St. Johns Landfill located at 9363 N. Columbia Boulevard, Portland, Oregon 97203.
- (5) Franchise Facilities. All disposal sites, transfer stations, processing facilities and resource recovery facilities within the District which operate pursuant to a Metro franchise under Chapter 5.01 of the Metro Code.
- (6) Lakeside Reclamation (limited purpose landfill). The Lakeside Reclamation limited purpose landfill, Route 1, Box 849, Beaverton, Oregon 97005, subject to the terms of the agreement in existence on November 14, 1989 authorizing the receipt of solid waste generated within the service area.
- (7) Hillsboro Landfill (limited purpose landfill). The Hillsboro Landfill, 3205 S.E. Minter Bridge Road, Hillsboro, Oregon 97123, subject to the terms of the agreement in existence on November 14, 1989 authorizing the receipt of solid waste generated within the service area.
- (8) Columbia Ridge Landfill. The Columbia Ridge Landfill owned and operated by Oregon Waste Systems, Inc. subject to the terms of the agreements in existence on November 14, 1989 between Metro and Oregon Waste Systems and between Metro

and Jack Gray Transport, Inc., provided that except as otherwise provided pursuant to a duly issued non-system license, no waste hauler or other person (other than Jack Gray Transport, Inc. as provided in the aforementioned agreement) shall be permitted to transport solid waste generated within the service area directly to, or to otherwise dispose of such solid waste at, said Columbia Ridge Landfill unless such solid waste has first been processed at another designated facility. In addition, Columbia Ridge Landfill may accept special waste generated within the service area:

(A) As specified in an agreement entered into between Metro and Oregon Waste Systems authorizing receipt of such waste; or

(B) Subject to a non-system license issued to a person transporting to the facility special waste not specified in the agreement.

(9) **Roosevelt Regional Landfill.** The Roosevelt Regional Landfill, owned and operated by Regional Disposal Company of Seattle and located in Klickitat County, Washington. Roosevelt Regional Landfill may accept special waste generated within the service area only as follows:

(A) As specified in an agreement entered into between Metro and Regional Disposal Company authorizing receipt of such waste; or

(B) Subject to a non-system license issued to a person transporting to the facility special waste not specified in the agreement.

(b) **Changes to Designated Facilities to be Made by Council.** From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of initial designated facilities any one or more of the facilities described in Metro Code Section 5.05.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to or delete a facility from the list of designated facilities. In deciding whether to designate an additional facility, or amend or delete an existing designation, the Council shall consider:

(1) The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination;

- (2) The record of regulatory compliance of the facility's owner and operator with federal, state, and local requirements;
- (3) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement;
- (4) The adequacy of operational practices and management controls at the facility;
- (5) The expected impact on the region's recycling and waste reduction efforts;
- (6) The expected impact on Metro's revenue;
- (7) The consistency of the designation with Metro's existing contractual arrangements;
- (8) The need for additional disposal capacity and the effect on existing designated facilities; and
- (9) Other benefits accruing to residents of the region from Council action in designating a facility, or amending or deleting an existing designation.

(c) An agreement, or amendment to an agreement between Metro and a designated facility, shall be subject to approval by the Metro Council prior to execution by the Executive Officer.

(d) An agreement between Metro and a designated facility shall specify the types of wastes from within Metro boundaries that may be delivered to, or accepted at, the facility.

(e) Use of Non-System Facilities Prohibited. Except to the extent that solid waste generated within the service area is transported, disposed of or otherwise processed in accordance with the terms and conditions of a non-system license issued pursuant to Metro Code Section 5.05.035, no waste hauler or other person shall transport solid waste generated within the service area to, or utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility.

Section 2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1992.

Jim Gardner, Presiding Officer

ATTEST:

Clerk of the Council

1108

Meeting Date: November 24, 1992
Agenda Item No. 6.1

ORDINANCE NO. 471B

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 92-471B, FOR THE PURPOSE OF AMENDING THE METRO CODE TO ESTABLISH CRITERIA TO CONSIDER IN DESIGNATING DISPOSAL FACILITIES AND DECLARING AN EMERGENCY

Date: November 18, 1992

Presented by: Councilor Wyers

Committee Recommendation: At the November 17 meeting, the Committee voted unanimously to recommend Council adoption of Ordinance No. 92-471B. Voting in favor: Councilors Buchanan, Hansen, McFarland, Van Bergen and Wyers.

Committee Issues/Discussion: The Committee held three hearings on the proposed ordinance. The ordinance was initially presented at the September 1 meeting. Metro Code Section 5.05.030 currently lists "designated" facilities to which Metro may direct waste. The list includes existing Metro transfer stations, the Composter, all franchised facilities, Lakeside Reclamation (Grabhorn), Hillsboro Landfill, and Columbia Ridge Landfill. The Code also provides that the Council may add or remove facilities from the list of designated facilities.

Phil North, Solid Waste Staff, provided the committee with a brief history of the development of the ordinance. He noted that, in addition to its designated facility status, the Columbia Ridge Landfill also has a non-system license. Under this license, the facility receives a variety of special wastes. When this license came up for renewal in the spring of 1992, the Office of General Counsel advised that it would be more appropriate to "designate" the facility to receive this material under Section 5.05.030. Counsel staff noted that non-system licenses were intended for generators and haulers and not landfill operators.

Upon learning that Columbia Ridge might receive designated status to accept special wastes, representatives of Regional Disposal Company approached Metro staff to obtain a similar designation for the Roosevelt Landfill which they operate in Klickitat County in eastern Washington. Since other facilities also were likely to request designation, solid waste staff determined that it should recommend that the code be amended to provide criteria that could be used by staff and the Council in determining whether individual facilities should receive "designated" status.

As a result, Ordinance 92-471 was drafted. The original ordinance identified four criteria that were to be used in determining whether a facility should be designated. These were: 1) future risk of environmental contamination, 2) the record of regulatory compliance, 3) compliance with Metro ordinances or assistance in Metro ordinance enforcement and 4) adequacy of operational practices and management controls. The original ordinance also provided for the designation of the Columbia Ridge and Roosevelt Landfills to receive certain special wastes as specified in draft

agreements presented to the committee.

The committee heard testimony from several landfill operators with an interest in receiving "designated" status. Representatives of Regional Disposal Company spoke in favor of the ordinance. They argued that competition in a field of special waste disposal would keep industrial and commercial generator costs down. In addition, they noted the environmental soundness of their facility and expressed a willingness to adequately police the material received from the Metro area. They also contended that the designation of additional facilities would allow Metro to better track material that is now "leaking" out of the system and allow Metro to receive its Tier One user fees for this material. Representatives of Sanifill (operator of the Northern Wasco Landfill) and the operator of the Finley Butte Landfill in eastern Oregon (near Boardman) also expressed interest in receiving designation and asked that their requests be considered at the same time as other potential applicants.

Oregon Waste Systems (operators of the Columbia Ridge Landfill) expressed concern that designation of the Roosevelt Landfill and other facilities would be in violation of the existing contract to send 90% of the region's waste to Columbia Ridge. Todd Sadlo, Office of General Counsel, indicated that he had met with legal representatives of Oregon Waste Systems and that they were in disagreement concerning the effect of designating additional facilities on the Columbia Ridge Contract.

Numerous issues emerged during the hearing and the Committee and staff agreed that staff needed to review these concerns and respond at a future hearing. The issue generally related to: 1) the need and effect of competition in the special waste disposal marketplace and Metro's role in this marketplace, 2) the effect of lower cost disposal options on the recycling of certain special wastes, 3) the effect of additional facilities on existing in-region special waste disposal facilities, 4) Metro's ability to police newly designated facilities and the cost of such policing, 5) the effect of designating facilities on Metro's efforts to control "leakage" of waste from the region, and 6) the effect of the ordinance on the Columbia Ridge contract with Oregon Waste Systems.

Following the hearing, the chair and the department agreed to separate the issue of developing facility designation evaluation criteria from the actual designation of specific facilities. At the November 3 meeting, staff presented Ordinance 92-471A. The amended ordinance eliminated all language relating to the designation of the Roosevelt and Columbia Ridge Landfills. In addition, the evaluation criteria were expanded to include: 1) the impact of a designation on the region's recycling and waste reduction efforts, 2) impact on Metro's revenues, 3) consistency with existing contractual obligations and 4) other benefits.

Bob Martin reviewed the department's intent concerning the revised ordinance. He noted that the ordinance would not affect existing

designated facilities. He observed that the criteria in the ordinance are simply factors that must be addressed by staff and the Council in determining whether to designate a particular facility. They are not rigid standards and give staff and the Council needed flexibility in examining issues concerning each individual facility. He noted that if the staff were given authority to designate facilities, he would request more rigid standards.

The committee received limited testimony due to the need to adjourn the meeting by a specific time. Representatives from Regional Disposal reiterated their position that approving the ordinance would establish a more competitive marketplace, allow Metro to capture its fees on material that is now escaping the system, and that they would institute strict policing procedures at their landfill. Mike Sandberg, representing Hillsboro Landfill expressed concern that smaller facilities like Hillsboro could not compete with larger regional landfills like Roosevelt, Columbia Ridge and Finley Butte.

Representatives of Oregon Waste Systems continued to express concern that the designation of additional facilities would violate their Columbia Ridge agreement with Metro. They also argued that designating additional facilities could disrupt Metro's disposal system planning efforts. In addition, they contended that a lack of specific evaluation criteria could cause legal and enforcement problems.

Councilor Wyers offered two potential amendments. These were: 1) adding language that would require Council approval of any agreements between Metro and a designated facility, and 2) requiring that such agreements include language outlining the types of waste that can be accepted at each designated facility. A "B" version of the ordinance was drafted that included these amendments. In addition, a third amendment was included in the "B" version which provides that the Council must consider the need for additional disposal capacity and the effect of any new designations on existing designated facilities.

The "B" version of the ordinance was considered at the November 17 meeting. Representatives from Regional Disposal Company reiterated their earlier position. They also noted that they believe that existing in-region landfill and recycling operators will be cost-competitive with them. They also offered to pay for an independent annual audit of the operation of the Roosevelt Landfill as it relates to the acceptance of waste from the Metro region. Representatives of the Finley Butte Landfill also expressed support for the ordinance. Peter Cramer, representing Schnitzer Steel Products, testified in favor of the ordinance, noting that increased competition for special waste disposal would reduce costs and make firms like his more competitive.

Each of those who testified expressed concern about the addition of the "need" criteria, noting that it could be used to restrict

competition. Councilor Van Bergen indicated that, while he would vote for the amended ordinance, if the "need" criteria were used to eliminate competition, he would act to have that criteria removed.

Bob Martin indicated his support of the proposed amendments. He also noted that he would be developing a budgetary proposal related to the need for policing and auditing any new designated facilities. He expressed optimism that additional revenue received from newly designated facilities could potentially cover the cost of additional policing. Councilor Wyers expressed support for the idea that designated facilities could pay for an independent audit.

Todd Sadlo, Office of General Counsel indicated that, while he and legal representatives of Oregon Waste Systems have not been able to agree on the effect of the ordinance on the Columbia Ridge agreement, he felt the committee could take action of the ordinance.



METRO

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

Memorandum

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: August 26, 1992

Re: Ordinance No. 92-471, For the Purpose of Considering an Ordinance Amending the Metro Code to Modify the Designated Facility Status of Columbia Ridge Landfill for Purposes of Flow Control, To Add Roosevelt Regional Landfill to the List of Designated Facilities, to Establish Criteria to Consider in Designating Disposal Facilities, and Declaring an Emergency

Ordinance No. 92-471 is scheduled for consideration by the Committee at the September 1 meeting.

Background

This ordinance has three principal purposes:

1) Clarification of the method by which Metro regulates the disposal of certain special wastes from the region at the Columbia Ridge Landfill. Certain special wastes are now disposed of at the Columbia Ridge Landfill under a non-system license granted to Oregon Waste Systems (OWS), the operator of the facility. These wastes are not under the agreement with OWS to send 90% of the region's municipal solid waste to Columbia Ridge.

Department and legal staff believe that non-system licenses were intended to be issued to generators and haulers of special wastes that dispose of this material at designated landfill sites. Since OWS neither generates or haulers the material to Columbia Ridge, staff believes that it is more appropriate to identify Columbia Ridge as a designated facility to receive the material. This is provided for in the ordinance.

The ordinance would not change OWS's authority to accept these types of wastes, nor would it affect the municipal solid waste agreement with OWS.

2) The Regional Disposal Company's (Rabanco) Roosevelt Landfill in Eastern Washington would be recognized as a designated facility. The facility would be able to accept those types of special wastes as designated in an agreement between Metro and the company. It is Metro's intent that both the Columbia Ridge and Roosevelt Landfills be authorized to accept the same types of materials. These would include: 1) construction and demolition debris, 2) asbestos, 3)

outdated or defective commercial or industrial products, 4) contaminated soils and 5) certain special wastes as defined in the Metro Code.

3) Criteria would be established to determine if a facility should be recognized as a designated facility. These criteria would include: 1) the degree to which prior wastes disposed of at a facility constitute an environmental risk, 2) the facility's regulatory compliance record, 3) compliance with the Metro Code and prior assistance in Metro enforcement efforts and 4) operational and management practices at the facility.

I have attached copies of draft designated facilities between Metro and OWS and Rabanco. According to Todd Sadlo, these documents will likely be revised prior to any final agreement being signed. (Note: At this point any final agreement would not be subject to Council review and approval.)

Issues and Questions

The committee may wish to address the following issues and questions relating to this ordinance:

1) Is staff aware of any other facilities that may request recognition as a designated facility?

2) What type of evaluation process was conducted to determine to suitability of the Roosevelt Landfill to serve as a designated facility?

3) What types of material does the Roosevelt Landfill wish to receive from the Metro region? How much material does the landfill anticipate receiving?

4) Why is there a need for an emergency clause with this ordinance?

METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

August 26, 1992

Executive Officer
Rena Cusma

Metro Council

Jim Gardner
Presiding Officer
District 3

Judy Wvers
Deputy Presiding Officer
District 8

Susan McLain
District 1

Lawrence Bauer
District 2

Richard Devlin
District 4

Edward P. Gronke
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Tanya Collier
District 9

Roger Buchanan
District 10

Ed Washington
District 11

Sandi Hansen
District 12

Mr. John Houser
Council Analyst
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201-5398

Re: Draft Designated Facility Agreement (See Ordinance No. 92-471)

Dear John:

Attached are two draft designated Facility Agreements, one between Metro and Regional Disposal Company (RDC), and the other between Metro and Oregon Waste Systems (OWS). There have been some modifications since these agreements were reviewed by RDC and OWS, and there may be additional modifications or additions prior to execution by the Executive Officer. The agreements are very similar, and intended to be essentially regulatory.

Please contact me if you have any questions or concerns.

Sincerely,



Todd Sadlo
Senior Assistant Counsel

gl
11729.016.E

Attachment

AGREEMENT

This Agreement is between the Metropolitan Service District, a municipal corporation organized under ORS chapter 268, referred to herein as "Metro," located at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, and Oregon Waste Systems, Inc., 5240 N.E. Skyport Way, Portland, Oregon 97218, referred to herein as "OWS."

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. OWS enters into this Agreement in recognition of the "Designated Facility" status conferred upon the OWS Columbia Ridge Landfill Facility near Arlington, Oregon, as that status was amended by Metro Ordinance No. 92-471.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. **Purpose and Authority.** The purpose of this Agreement is to establish the terms under which Oregon Waste Systems may receive, at its Columbia Ridge Landfill near Arlington, Oregon (herein "Facility"), the types of waste specified in section 4 of this Agreement that were generated within Metro boundaries.
2. **Duration.** Unless terminated sooner as specified herein, this Agreement shall remain in effect for two years from the date of execution by both parties.
3. **Maximum Tonnage.** Pursuant to this Agreement, OWS may accept at the Facility up to 150,000 tons per year of the special wastes described in section 4 of this Agreement. All waste entering the Facility from within Metro boundaries for processing, disposal, or any other reason, shall be weighed on certified scales, and records of each transaction maintained.
4. **Wastes That May be Accepted at the Facility.**
 - a. Pursuant to this Agreement, and to the extent the Facility has legal authority to accept such waste, the Facility may accept the following types of waste generated within Metro boundaries:
 - (1) Construction, demolition, and land clearing waste, and non-hazardous industrial dust.
 - (2) Asbestos (special requirements for packaging and unloading would apply).

- (3) **Outdated or Defective Commercial or Industrial Products.** Off specification materials could include outdated commercial or industrial products not meeting manufacturing specifications, or commercial product containing contaminants not suited for market conditions or consumer use.
 - (4) **Contaminated soil and other non-putrescible debris** from cleanup of petroleum or other non-hazardous chemical spills.
 - (5) **Special waste** as defined in section 5.02.015(s) of the Metro Code.
 - (6) **Other waste** as described in any future addendum to this Agreement.
- b. This Agreement shall not be construed to allow disposal at the Facility of mixed municipal solid waste from within Metro boundaries.
5. **Recordkeeping.** OWS shall maintain complete and accurate records regarding all solid waste transported, treated, disposed of, or otherwise processed pursuant to this Agreement, and shall make such records available to, or send copies to, the Metro Solid Waste Department or its duly designated agents for inspection auditing and copying upon not less than seven days written notice from Metro.
6. **Reports.**
- a. OWS shall report in writing to the Metro Solid Waste Department no later than the 15th day of each month, for the duration of this Agreement, the number of tons of solid waste transported, disposed of or otherwise processed pursuant to this Agreement during the preceding month. The reports shall provide sufficient detail to adequately identify the waste profile of the various materials transported, treated, and disposed of, but need not include the names of persons generating or delivering waste to the Facility. OWS shall not be required to provide to Metro the names of persons generating or delivering waste to the Facility unless Metro requests information regarding a specific generator or hauler for the purpose of enforcing the Metro Code. Metro shall maintain the confidentiality of all records submitted by OWS to the extent public disclosure is not required by ORS ch 192.
 - b. OWS shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1992.

- c. OWS shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. OWS shall also provide, within seven business days, a copy of any official enforcement action regarding the Facility or its operation, including but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.

7. User Fee/Excise Tax.

- a. OWS shall collect and pay to Metro, not later than the 15th day of each month, a fee equal to Metro's Regional User Fee multiplied by the number of tons (or fractions thereof) of solid waste disposed of or processed pursuant to this Agreement during the preceding month. OWS shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If OWS is unable to collect disposal charges, OWS may deduct uncollectible Metro fees and taxes, when an affidavit explaining the status of the uncollectible account is provided. If OWS receives a partial payment and the remainder of the account is uncollectible, the payment received shall be pro-rated between OWS's disposal charges and Metro's fees and taxes. For purposes of this section, an account may be considered "uncollectible" if disposal charges are due but not paid on the first day of the second month following billing. All amounts owing to Metro that are deemed "uncollectible" and are ultimately collected, shall be remitted to Metro within 30 days of receipt of OWS.
- b. OWS shall collect and pay to Metro, not later than the 15th day of each, all excise taxes required to be paid under Metro Code Chapter 7.01, in the manner specified in Chapter 7.01 and forms provided by Metro. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for transport to the Facility, even if OWS arranges that transport.
- c. A finance charge of one and one-half percent per month (18 percent per annum), computed from the date fees and taxes become 30 days past due, will be assessed on all fees and taxes which become 60 days past due and will be added to the oldest months charges past due. Finance charges will continue to be assessed on negotiated repayment schedules.

8. Modification, Suspension, and Termination.

- a. Metro's Executive Officer may modify, suspend, or terminate this Agreement as follows:

- (1) By giving OWS no less than 45 days written notice of pending suspension, modification or termination, if the Executive Officer determines that there has been sufficient change in any of the circumstances under which this Agreement was entered into, or if the Regional Solid Waste Management Plan is modified or amended in a manner to justify re-evaluation of this Agreement;
- (2) Without prior notice, if necessary to protect the public health, safety and welfare, and in the case of an emergency; and
- (3) Except as provided in subsection (2) of this section, if OWS fails to fully and promptly comply with a term or condition of this Agreement, the Executive Officer shall issue to OWS a written notice of non-compliance briefly describing such failure. The notice shall state that, within a period specified by the Executive Officer of at least 20 days, OWS must demonstrate to the satisfaction of the Executive Officer either that OWS has not violated a term or condition of this Agreement, or that the violation has been corrected. OWS shall also, within the same period, pay all fines owing as a result of non-compliance or make arrangements for payment satisfactory to the Executive Officer. Failure to comply with the notice of non-compliance shall be grounds for termination of this Agreement, effective as of 5:00 p.m., PST, on the last day of the compliance period specified by the Executive Officer. The Executive Officer may extend the compliance period to a total of no more than 60 days from the date of the notice of non-compliance, upon determining that OWS is making good faith efforts to comply and is capable of complying within the extended compliance period.

- b. The Executive Officer's decision to modify, suspend, or terminate this Agreement shall be reviewable under the contested case proceedings of Metro Code Chapter 2.05, unless such modification, suspension, or termination is required as a result of an amendment to the Metro Code. Filing of a contested case shall not stay the Executive Officer's decision to modify, suspend or terminate this Agreement, unless the Executive Officer agrees to such a stay in writing.

9. Compliance With Law.

OWS shall fully comply with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this

Agreement by reference as if specifically set forth herein. Such conditions and permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

10. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Agreement. Access to inspect is authorized:

- (a) During all working hours;
- (b) At other reasonable times with notice; and
- (c) At any time without notice when, in the opinion of the Metro Solid Waste Department Director, such notice would defeat the purpose of the entry.

11. Indemnification. OWS shall indemnify, defend, and hold Metro, its agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with OWS's performance under this Agreement.

12. Relation to Waste Delivery Guarantee. For purposes of the Waste Disposal Service Agreement ("Agreement") between Metro and OWS, dated April 11, 1988, as amended, waste disposed of by OWS at the Columbia Ridge Landfill pursuant to this Agreement shall not be considered either (1) "acceptable waste which Metro delivers to a general purpose landfill" for purposes of the 90 percent annual waste delivery guarantee (Specifications paragraph 1); or (2) "acceptable waste delivered to OWS during any calendar year quarter" for purposes of the limited guarantee against waste flow fluctuations (Specifications, paragraph 1).

13. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against OWS.
- b. OWS shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.

- c. The granting of this Agreement shall not vest any right or privilege in OWS to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition of this Agreement must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Agreement shall not waive nor prejudice Metro's right otherwise to require performance of the same term or condition or any other term or condition.
- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
- h. This Agreement is the entire agreement between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of the Metropolitan Service District for any purpose other than disposal in accordance with this Agreement.

OREGON WASTE SYSTEMS

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

TSS/gl
1096a

AGREEMENT

This Agreement is between the Metropolitan Service District, a municipal corporation organized under ORS chapter 268, referred to herein as "Metro," located at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, and Regional Disposal Company, a Washington joint venture, with its home office at 4730 32nd Avenue South, Seattle, Washington 98118, referred to herein as "RDC."

This Agreement is entered into by Metro under the authority of ORS 268.317, and Metro Code Chapter 5.05. RDC enters into this Agreement in recognition of the "Designated Facility" status conferred upon the RDC Roosevelt Regional Landfill Facility in Klickitat County, Washington, by Metro Ordinance No. 92-471.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. **Purpose and Authority.** The purpose of this Agreement is to establish the terms under which Regional Disposal Company may receive, at its Roosevelt Regional Landfill in Klickitat County, Washington (herein "Facility"), the types of waste specified in section 4 of this Agreement that were generated within Metro boundaries.
2. **Duration.** Unless terminated sooner as specified herein, this Agreement shall remain in effect for two years from the date of execution by both parties.
3. **Maximum Tonnage.** Pursuant to this Agreement, RDC may accept at the Facility up to 150,000 tons per year of the wastes described in section 4 of this Agreement. All waste entering the Facility from within Metro boundaries for processing, disposal, or any other reason, shall be weighed on certified scales, and records of each transaction maintained.
4. **Wastes That May be Accepted at the Facility.**
 - a. Pursuant to this Agreement, and to the extent the Facility has legal authority to accept such waste, the Facility may accept the following types of waste generated within Metro boundaries:
 - (1) Construction, demolition, and land clearing waste, and non-hazardous industrial dust.
 - (2) Asbestos (special requirements for packaging and unloading would apply).

- (3) Outdated or Defective Commercial or Industrial Products. Off specification materials could include outdated commercial or industrial products not meeting manufacturing specifications, or commercial product containing contaminants not suited for market conditions or consumer use.
- (4) Contaminated soil and other non-putrescible debris from cleanup of petroleum or other non-hazardous chemical spills.
- (5) Special waste as defined in section 5.02.015(s) of the Metro Code.
- (6) Other waste as described in any future addendum to this Agreement.

b. This Agreement shall not be construed to allow disposal at the Facility of mixed municipal solid waste from within Metro boundaries.

5. Recordkeeping. RDC shall maintain complete and accurate records regarding all solid waste transported, treated, disposed of, or otherwise processed pursuant to this Agreement, and shall make such records available to, or send copies to, the Metro Solid Waste Department or its duly designated agents for inspection, auditing and copying upon not less than seven days written notice from Metro.

6. Reports and Information.

a. RDC shall report in writing to the Metro Solid Waste Department no later than the 15th day of each month, for the duration of this Agreement, the number of tons of solid waste transported, disposed of or otherwise processed pursuant to this Agreement during the preceding month. The reports shall provide sufficient detail to adequately identify the waste profile of the various materials transported, treated, and disposed of, but need not include the names of persons generating or delivering waste to the Facility. RDC shall not be required to provide to Metro the names of persons generating or delivering waste to the Facility unless Metro requests information regarding a specific generator or hauler for the purpose of enforcing the Metro Code. Metro shall maintain the confidentiality of all records submitted by RDC to the extent public disclosure is not required by ORS ch 192.

b. RDC shall complete a cumulative status review of the waste types and profiles covering each six months of operations under this Agreement and shall provide such report to Metro within 45 days of the expiration of the six-month period covered by the report. The first report shall cover the period of operations from the date of execution of this Agreement through December 31, 1992.

- c. RDC shall provide to Metro copies of all permits covering the Facility or operations at the Facility. Copies of revisions to existing permits and newly issued permits shall be provided to Metro within seven business days of receipt. RDC shall also provide, within seven business days, a copy of any official enforcement action regarding the Facility or its operation, including but not limited to, a notice of violation or non-compliance with a statute, regulation, or permit condition.

7. User Fee/Excise Tax.

- a. RDC shall collect and pay to Metro, not later than the 15th day of each month, a fee equal to Metro's Regional User Fee multiplied by the number of tons (or fractions thereof) of solid waste disposed of or processed pursuant to this Agreement during the preceding month. RDC shall use reasonable business judgment in allowing generators or transporters of waste to dispose of waste at its Facility on a credit basis and shall use reasonable legal means to collect disposal charges, including all fees and taxes owed to Metro. If RDC is unable to collect disposal charges, RDC may deduct uncollectible Metro fees and taxes, when an affidavit explaining the status of the uncollectible account is provided. If RDC receives a partial payment and the remainder of the account is uncollectible, the payment received shall be pro-rated between RDC's disposal charges and Metro's fees and taxes. For purposes of this section, an account may be considered "uncollectible" if disposal charges are due but not paid on the first day of the second month following billing. All amounts owing to Metro that are deemed "uncollectible" and are ultimately collected, shall be remitted to Metro within 30 days of receipt by RDC.
- b. RDC shall collect and pay to Metro, not later than the 15th day of each month, all excise taxes required to be paid under Metro Code Chapter 7.01, in the manner specified in Chapter 7.01 and forms provided by Metro. Excise taxes shall be due for disposal of waste at the Facility, but shall not be due for transport to the Facility, even if RDC arranges that transport.
- c. A finance charge of one and one-half percent per month (18 percent per annum), computed from the date fees and taxes become 30 days past due, will be assessed on all fees and taxes which become 60 days past due and will be added to the oldest months charges past due. Finance charges will continue to be assessed on negotiated repayment schedules.

8. Modification, Suspension, and Termination.

- a. Metro's Executive Officer may modify, suspend, or terminate this Agreement as follows:

- (1) By giving RDC no less than 45 days written notice of pending suspension, modification or termination, if the Executive Officer determines that there has been sufficient change in any of the circumstances under which this Agreement was entered into, or if the Regional Solid Waste Management Plan is modified or amended in a manner to justify re-evaluation of this Agreement;
- (2) Without prior notice, if necessary to protect the public health, safety and welfare, and in the case of an emergency; and
- (3) Except as provided in subsection (2) of this section, if RDC fails to fully and promptly comply with a term or condition of this Agreement, the Executive Officer shall issue to RDC a written notice of non-compliance briefly describing such failure. The notice shall state that, within a period specified by the Executive Officer of at least 20 days, RDC must demonstrate to the satisfaction of the Executive Officer either that RDC has not violated a term or condition of this Agreement, or that the violation has been corrected. RDC shall also, within the same period, pay all fines owing as a result of non-compliance or make arrangements for payment satisfactory to the Executive Officer. Failure to comply with the notice of non-compliance shall be grounds for termination of this Agreement, effective as of 5:00 p.m., PST, on the last day of the compliance period specified by the Executive Officer. The Executive Officer may extend the compliance period to a total of no more than 60 days from the date of the notice of non-compliance, upon determining that RDC is making good faith efforts to comply and is capable of complying within the extended compliance period.

- b. The Executive Officer's decision to modify, suspend, or terminate this Agreement shall be reviewable under the contested case proceedings of Metro Code Chapter 2.05, unless such modification, suspension, or termination is required as a result of an amendment to the Metro Code. Filing of a contested case shall not stay the Executive Officer's decision to modify, suspend or terminate this Agreement, unless the Executive Officer agrees to such a stay in writing.

9. Compliance With Law.

RDC shall fully comply with all federal, state, regional and local laws, rules, regulations, ordinances, orders and permits pertaining in any manner to this Agreement. All conditions imposed on the operation of the Facility by federal, state or local governments or agencies having jurisdiction over the Facility are part of this Agreement by reference as if specifically set forth herein. Such conditions and

permits include those attached as exhibits to this Agreement, as well as any existing at the time of issuance of this Agreement and not attached, and permits or conditions issued or modified during the term of this Agreement.

10. Right of Inspection.

Authorized representatives of Metro shall be permitted access to the premises of the Facility at all reasonable times for the purpose of making inspections and carrying out other necessary functions related to this Agreement. Access to inspect is authorized:

- (a) During all working hours;
- (b) At other reasonable times with notice; and
- (c) At any time without notice when, in the opinion of the Metro Solid Waste Department Director, such notice would defeat the purpose of the entry.

11. Indemnification. RDC shall indemnify, defend, and hold Metro, and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with RDC's performance under this Agreement.

12. General Conditions.

- a. The power and right to regulate, in the public interest, the exercise of the privileges granted by this Agreement shall at all times be vested in Metro. Metro reserves the right to establish or amend rules, regulations or standards regarding matters within Metro's authority, and to enforce all such legal requirements against RDC.
- b. RDC shall be responsible for ensuring that its contractors and agents operate in complete compliance with the terms and conditions of this Agreement.
- c. The granting of this Agreement shall not vest any right or privilege in RDC to receive specific quantities of solid waste during the term of this Agreement.
- d. This Agreement may not be transferred or assigned without the prior written approval of Metro. Consent to assignment or transfer shall not be unreasonably withheld.
- e. To be effective, a waiver of any term or condition of or amendment to this Agreement must be in writing, signed by the Executive Officer. Waiver of a term or condition of this Agreement shall not waive nor prejudice Metro's

right otherwise to require performance of the same term or condition or any other term or condition.

- f. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
- g. If any provision of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
- h. This Agreement is the entire agreement between the parties. This Agreement does not allow receipt of solid waste from within the boundaries of the Metropolitan Service District for any purpose other than disposal in accordance with this Agreement.

**REGIONAL DISPOSAL COMPANY,
a Washington Joint Venture**

METROPOLITAN SERVICE DISTRICT

By: _____
Warren J. Razore

By: _____

Title: President and WJR Environ-
mental Inc. Managing Partner

Title: _____

Date: _____

Date: _____

TSS/gl
1096

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE	)	ORDINANCE NO. 92-471B
METRO CODE TO ESTABLISH CRITERIA)	
TO CONSIDER IN DESIGNATING	)	Introduced by Rena Cusma,
DISPOSAL FACILITIES, AND DECLARING	)	Executive Officer
AN EMERGENCY)	

WHEREAS, Certain solid waste disposal facilities located outside of District boundaries have requested authority to receive wastes generated within District boundaries; and

WHEREAS, Pursuant to Chapter 5.05 of the Metro Code regarding solid waste flow control, it is proper for the Metro Council to "designate" facilities that are appropriate to receive solid waste generated within District boundaries; and

WHEREAS, In order to determine whether a requesting facility is appropriate to receive waste from the service area, it is necessary to establish criteria for consideration by the Council; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.05.030 is amended to read:

5.05.030 Use of Designated Facilities:

(a) Designated Facilities. The following described facilities shall constitute the designated facilities to which Metro may direct solid waste pursuant to a Required Use Order:

- (1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.
- (2) ~~Metro-Riedel MSW (Municipal Solid Waste) Compost Facility.~~
The Metro-Riedel MSW Compost Facility located at 5437 N.E. Columbia Boulevard, Portland, Oregon 97217.
- (3) Metro Central Station. The Metro Central Station located at 6161 N.W. 61st Avenue, Portland, Oregon 97210.

- (4) **St. Johns Landfill.** The St. Johns Landfill located at 9363 N. Columbia Boulevard, Portland, Oregon 97203.
- (5) **Franchise Facilities.** All disposal sites, transfer stations, processing facilities and resource recovery facilities within the District which operate pursuant to a Metro franchise under Chapter 5.01 of the Metro Code.
- (6) **Lakeside Reclamation (limited purpose landfill).** The Lakeside Reclamation limited purpose landfill, Route 1, Box 849, Beaverton, Oregon 97005, subject to the terms of the agreement in existence on November 14, 1989 authorizing the receipt of solid waste generated within the service area.
- (7) **Hillsboro Landfill (limited purpose landfill).** The Hillsboro Landfill, 3205 S.E. Minter Bridge Road, Hillsboro, Oregon 97123, subject to the terms of the agreement in existence on November 14, 1989 authorizing the receipt of solid waste generated within the service area.
- (8) **Columbia Ridge Landfill.** The Columbia Ridge Landfill owned and operated by Oregon Waste Systems, Inc. subject to the terms of the agreements in existence on November 14, 1989 between Metro and Oregon Waste Systems and between Metro and Jack Gray Transport, Inc.

(b) Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of initial designated facilities any one or more of the facilities described in Metro Code Section 5.05.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to ~~or delete a facility from the list of designated facilities one or more additional facility.~~ In deciding whether to designate an additional facility, or amend or delete an existing designation, the Council shall consider:

- (1) the degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) the record of regulatory compliance of the facility's owner and operator with federal, state, and local requirements;

- (3) the record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement;
- (4) the adequacy of operational practices and management controls at the facility;
- (5) the expected impact on the region's recycling and waste reduction efforts;
- (6) the expected impact on Metro's revenue;
- (7) the consistency of the designation with Metro's existing contractual arrangements;
- (8) the need for additional disposal capacity and the effect on existing designated facilities; and
- (9) other benefits accruing to residents of the region from Council action in designating a facility, or amending or deleting an existing designation.

(c) An agreement, or amendment to an agreement between Metro and a designated facility, shall be subject to approval by the Metro Council prior to execution by the Executive Officer.

(d) An agreement between Metro and a designated facility shall specify the types of wastes from within Metro boundaries that may be delivered to, or accepted at, the facility.

(e)(e) Use of Non-System Facilities Prohibited. Except to the extent that solid waste generated within the service area is transported, disposed of or otherwise processed in accordance with the terms and conditions of a non-system license issued pursuant to Metro Code Section 5.05.035, no waste hauler or other person shall transport solid waste generated within the service area to, or utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility.

Section 2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1992.

Jim Gardner, Presiding Officer

ATTEST:

Clerk of the Council

1103b

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE)
METRO CODE TO ESTABLISH CRITERIA)
TO CONSIDER IN DESIGNATING)
DISPOSAL FACILITIES, AND DECLARING)
AN EMERGENCY)

ORDINANCE NO. 92-471A
Introduced by Rena Cusma,
Executive Officer

WHEREAS, Certain solid waste disposal facilities located outside of District boundaries have requested authority to receive wastes generated within District boundaries; and

WHEREAS, Pursuant to Chapter 5.05 of the Metro Code regarding solid waste flow control, it is proper for the Metro Council to "designate" facilities that are appropriate to receive solid waste generated within District boundaries; and

WHEREAS, In order to determine whether a requesting facility is appropriate to receive waste from the service area, it is necessary to establish criteria for consideration by the Council; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.05.030 is amended to read:

5.05.030 Use of Designated Facilities:

(a) Designated Facilities. The following described facilities shall constitute the designated facilities to which Metro may direct solid waste pursuant to a Required Use Order:

- (1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.
- (2) ~~Metro Riedel MSW (Municipal Solid Waste)~~ Compost Facility. The ~~Metro Riedel MSW~~ Compost Facility located at 5437 N.E. Columbia Boulevard, Portland, Oregon 97217.
- (3) Metro Central Station. The Metro Central Station located at 6161 N.W. 61st Avenue, Portland, Oregon 97210.

- (4) **St. Johns Landfill.** The St. Johns Landfill located at 9363 N. Columbia Boulevard, Portland, Oregon 97203.
- (5) **Franchise Facilities.** All disposal sites, transfer stations, processing facilities and resource recovery facilities within the District which operate pursuant to a Metro franchise under Chapter 5.01 of the Metro Code.
- (6) **Lakeside Reclamation (limited purpose landfill).** The Lakeside Reclamation limited purpose landfill, Route 1, Box 849, Beaverton, Oregon 97005, subject to the terms of the agreement in existence on November 14, 1989 authorizing the receipt of solid waste generated within the service area.
- (7) **Hillsboro Landfill (limited purpose landfill).** The Hillsboro Landfill, 3205 S.E. Minter Bridge Road, Hillsboro, Oregon 97123, subject to the terms of the agreement in existence on November 14, 1989 authorizing the receipt of solid waste generated within the service area.
- (8) **Columbia Ridge Landfill.** The Columbia Ridge Landfill owned and operated by Oregon Waste Systems, Inc. subject to the terms of the agreements in existence on November 14, 1989 between Metro and Oregon Waste Systems and between Metro and Jack Gray Transport, Inc.

(b) Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of initial designated facilities any one or more of the facilities described in Metro Code Section 5.05.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to ~~or delete a facility from the list of designated facilities~~ one or more additional facility. In deciding whether to designate an additional facility, or amend or delete an existing designation, the Council shall consider:

- (1) the degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) the record of regulatory compliance of the facility's owner and operator with federal, state, and local requirements;

- (3) the record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement;
- (4) the adequacy of operational practices and management controls at the facility;
- (5) the expected impact on the region's recycling and waste reduction efforts;
- (6) the expected impact on Metro's revenue;
- (7) the consistency of the designation with Metro's existing contractual arrangements; and
- (8) other benefits accruing to residents of the region from Council action in designating a facility, or amending or deleting an existing designation.

(c) Use of Non-System Facilities Prohibited. Except to the extent that solid waste generated within the service area is transported, disposed of or otherwise processed in accordance with the terms and conditions of a non-system license issued pursuant to Metro Code Section 5.05.035, no waste hauler or other person shall transport solid waste generated within the service area to, or utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility.

Section 2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1992.

Jim Gardner, Presiding Officer

ATTEST:

Clerk of the Council

TSS 1103a

**BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT**

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 92-471
THE METRO CODE TO MODIFY THE)	
DESIGNATED FACILITY STATUS OF	)	Introduced by Rena Cusma,
COLUMBIA RIDGE LANDFILL FOR	)	Executive Officer
PURPOSES OF FLOW CONTROL, TO ADD)	
ROOSEVELT REGIONAL LANDFILL TO)	
THE LIST OF DESIGNATED FACILITIES,)	
TO ESTABLISH CRITERIA TO CONSIDER)	
IN DESIGNATING DISPOSAL FACILITIES,)	
AND DECLARING AN EMERGENCY)	

WHEREAS, Columbia Ridge Landfill is a "designated facility" for purposes of Metro solid waste flow control; and

WHEREAS, Columbia Ridge is currently allowed to accept solid waste as specified in its existing contract with Metro, and pursuant to duly issued non-system licenses; and

WHEREAS, Oregon Waste Systems (OWS), the owner of Columbia Ridge, was issued a non-system license on May 23, 1991, allowing it to accept special waste from the Metro area under certain conditions; and

WHEREAS, It is more appropriate, under the solid waste flow control chapter of the Metro Code, to "designate" facilities located outside of the District that are appropriate to receive waste from the Metro service area; and

WHEREAS, Regional Disposal Company (RDC), a Washington joint venture, with its home office at 4730 32nd Avenue South, Seattle, Washington 98118, owns and operates the Roosevelt Regional Landfill located in Klickitat County, Washington; and

WHEREAS, Both OWS and RDC have requested from Metro authority to accept special waste generated within the Metro service area; and

WHEREAS, In order to determine whether either of the above-referenced facilities are appropriate to receive special waste from the service area, it is necessary to establish criteria for consideration by the Council of the Metropolitan Service District; and

WHEREAS, Based on findings contained in the staff report accompanying this Ordinance and additional information provided during the hearing on this Ordinance, the Council has determined that it is appropriate to designate the Columbia Ridge Landfill and Roosevelt Regional Landfill for receipt of special waste from the District; and

WHEREAS, Both OWS and RDC are willing to enter into an agreement with Metro establishing the terms under which such waste can be accepted at their respective facilities; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.05.030 is amended to read:

5.05.030 Use of Designated Facilities:

(a) Designated Facilities. The following described facilities shall constitute the designated facilities to which ~~a waste hauler may deliver waste or to which~~ Metro may direct solid waste pursuant to a Required Use Order:

- (1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.
- (2) ~~Metro-Riedel MSW (Municipal Solid Waste)~~ Compost Facility. The ~~Metro-Riedel MSW~~ Compost Facility located at 5437 N.E. Columbia Boulevard, Portland, Oregon 97217.
- (3) Metro Central Station. The Metro Central Station located at 6161 N.W. 61st Avenue, Portland, Oregon 97210.
- (4) St. Johns Landfill. The St. Johns Landfill located at 9363 N. Columbia Boulevard, Portland, Oregon 97203.
- (5) Franchise Facilities. All disposal sites, transfer stations, processing facilities and resource recovery facilities within the District which operate pursuant to a Metro franchise under Chapter 5.01 of the Metro Code.
- (6) Lakeside Reclamation (limited purpose landfill). The Lakeside Reclamation limited purpose landfill, Route 1, Box 849, Beaverton, Oregon 97005, subject to the terms of the agreement in existence on November 14, 1989 authorizing the receipt of solid waste generated within the service area.
- (7) Hillsboro Landfill (limited purpose landfill). The Hillsboro Landfill, 3205 S.E. Minter Bridge Road, Hillsboro, Oregon 97123, subject to the terms of the agreement in existence on November 14, 1989 authorizing the receipt of solid waste generated within the service area.

(8) Columbia Ridge Landfill. The Columbia Ridge Landfill owned and operated by Oregon Waste Systems, Inc. subject to the terms of the agreements in existence on November 14, 1989 between Metro and Oregon Waste Systems and between Metro and Jack Gray Transport, Inc.; ~~provided that except as otherwise provided pursuant to a duly issued non-system license, no waste hauler or other person (other than Jack Gray Transport, Inc. as provided in the aforementioned agreement) shall be permitted to transport solid waste generated within the service area directly to, or to otherwise dispose of such solid waste at, said Columbia Ridge Landfill unless such solid waste has first been processed at another designated facility.~~ In addition, Columbia Ridge Landfill may accept special waste generated within the service area:

(A) As specified in an agreement entered into between Metro and Oregon Waste Systems authorizing receipt of such waste; or

(B) Subject to a non-system license issued to a person transporting to the facility special waste not specified in the agreement.

(9) Roosevelt Regional Landfill. The Roosevelt Regional Landfill, owned and operated by Regional Disposal Company of Seattle and located in Klickitat County, Washington. Roosevelt Regional Landfill may accept special waste generated within the service area only as follows:

(A) As specified in an agreement entered into between Metro and Regional Disposal Company authorizing receipt of such waste; or

(B) Subject to a non-system license issued to a person transporting to the facility special waste not specified in the agreement.

(b) Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of initial designated facilities any one or more of the facilities described in Metro Code Section 5.05.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to the list of designated facilities one or more additional facility. In deciding whether to designate any additional facility, the Council shall consider:

- (1) the degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) the record of regulatory compliance of the facility with federal, state, and local requirements;
- (3) the record of the facility regarding compliance with Metro ordinances or assistance to Metro in Metro ordinance enforcement; and
- (4) the adequacy of operational practices and management controls at the facility.

(c) Use of Non-System Facilities Prohibited. Except to the extent that solid waste generated within the service area is transported, disposed of or otherwise processed in accordance with the terms and conditions of a non-system license issued pursuant to Metro Code Section 5.05.035, no waste hauler or other person shall transport solid waste generated within the service area to, or utilize or cause to be utilized for the disposal or other processing of any solid waste generated within the service area, any non-system facility.

Section 2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1992.

Jim Gardner, Presiding Officer

ATTEST:

Clerk of the Council

TSS 1103

SUPPLEMENTAL STAFF REPORT

CONSIDERATION OF AMENDING THE METRO CODE TO ESTABLISH CRITERIA TO CONSIDER IN DESIGNATING DISPOSAL FACILITIES, AND DECLARING AN EMERGENCY

Date: October 27, 1992

Presented by: Bob Martin

Metro code currently provides for the designation of future facilities by Council, however, the criteria for such decisions is not included in the code. We currently have three requests from facilities wishing to be on our designated facility list, and the Code lacks any clear basis for accepting or rejecting them. The proposed ordinance will provide the basis for future decision for adding or deleting designated facilities. Once these criteria are adopted we will be able to make recommendations to Council on any pending applications.

The key provisions under the ordinance for consideration of facility designation are:

1. The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination;
2. The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements;
3. The record of the facility regarding compliance with Metro ordinances and agreements of assistance to Metro in Metro ordinance enforcement;
4. The adequacy of operational practices and management controls at the facility;
5. The expected impact on the region's recycling and waste reduction efforts;
6. The expected impact on Metro's revenue;
7. The consistency of the designation with Metro's existing contractual arrangements; and,
8. Other benefits accruing to residents of the region from Council action in designating a facility, or amending or deleting an existing designation.

The foregoing list of evaluation criteria will be used for consideration of facility designation under the ordinance. They will provide an orderly, objective and fair means by which to consider future additions to Metro's list of designated facilities. Such designations will be done by ordinance and the evaluation criteria as it applies to each specific facility will be provided on a case by case basis.

In order for this ordinance to take effect immediately upon passage, an emergency clause has been added to the ordinance.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 92-471A

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 92-471 FOR THE PURPOSE OF CONSIDERING AN ORDINANCE AMENDING THE METRO CODE TO MODIFY THE DESIGNATED FACILITY STATUS OF COLUMBIA RIDGE LANDFILL FOR PURPOSES OF FLOW CONTROL, TO ADD ROOSEVELT REGIONAL LANDFILL TO THE LIST OF DESIGNATED FACILITIES, TO ESTABLISH CRITERIA TO CONSIDER IN DESIGNATING DISPOSAL FACILITIES, AND DECLARING AN EMERGENCY.

Date: August 19, 1992

**Presented by: Bob Martin
Roosevelt Carter
Phil North**

FACTUAL BACKGROUND AND ANALYSIS

Oregon Waste Systems (OWS) was issued a Non-System License on May 23, 1991 under Metro's Flow Control Ordinance, Chapter 5.05 of the Metro Code. This license authorized various special wastes to be transported and disposed at the Columbia Ridge Landfill other than those being reviewed under Oregon Waste Systems contract with Metro.

Metro has also received a request from Regional Disposal Company of Seattle, Washington that it be permitted to receive certain types of special waste from the District to be disposed at its Roosevelt Regional Landfill located in Klickitat County, Washington. Previously such a request has been viewed as a request to transport solid waste out of the region under the authority of a Non-System License issued under Metro's Flow Control Ordinance.

Non-System Licenses are more appropriately issued to generators or haulers as contrasted with disposal sites/landfills and that landfills desiring authority to receive certain types of waste should become designated facilities under the Flow Control Ordinance. The conditions of the Landfill's receipt of waste would be determined by an agreement entered into between Metro and the facility.

A key element to the ordinance amendment is the addition of criteria to be considered relative to facility designation. One criteria is assessment of future risk to Metro based on the facility history of waste acceptance and the degree to which prior areas and waste types received at the facility are known.

Also considered is the facility's record of regulatory compliance and its record of cooperation with Metro regarding compliance with Metro ordinances. A final criterion is adequacy of operational practices and management control at the facility

The designation of Columbia Ridge Landfill under the ordinance as modified maintains the existing relationship between Metro and Oregon Waste Systems (OWS) relative to the materials being received under OWS's Non-System License. Procedurally, the proposed ordinance

distinguishes between facilities being "designated" versus generators or haulers being eligible to apply for a Non-System License. This is consistent with current legal interpretation of Metro's Flow Control Ordinance.

The present request for facility designation by Regional Disposal Company is similar to the request by Oregon Waste Systems to be designated as an approved facility under our Flow Control Ordinance. The types of material sought to be approved for disposal at the Roosevelt Regional Landfill are similar to those being sought for the Columbia Ridge Landfill.

This staff report will be supplemented prior to public hearing at the Council Solid Waste Committee (CSWC) with respect to the facility evaluation criteria as they pertain to the particular facilities. Also, copies of the proposed agreements will be available to the CSWC.

In order for this ordinance to take effect immediately upon passage, an emergency clause has been added to the ordinance;

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Ordinance No. 92-471.

Meeting Date: November 24, 1992
Agenda Item No. 6.2

ORDINANCE NO. 92-473A

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 92-473A, FOR THE PURPOSE OF AMENDING METRO CODE SECTIONS 5.02.015 AND 5.02.065, RELATING TO DISPOSAL CHARGES AT METRO FACILITIES, AND DECLARING AN EMERGENCY

Date: November 18, 1992

Presented by: Councilor McFarland

Committee Recommendation: At the November 17 meeting, the Committee voted unanimously to recommend Council approval of Ordinance No. 92-473A. Voting in favor: Councilors Buchanan, Hansen, McFarland, Van Bergen and Wyers.

Committee Issues/Discussion: Under recently effective amendments to the federal Clean Air Act, the intentional release of freon is illegal. Thus, Metro is now incurring additional costs associated with the removal of freon from refrigeration and air conditioning units disposed of at our transfer stations. Metro has had to purchase freon removal equipment and storage canisters and has incurred labor and transportation costs.

The intent of the fees proposed in Ordinance No. 92-473A is to recover these additional costs. The proposed charges would be \$15 for a residential refrigeration unit and \$20 for a commercial unit. The fees would pay for labor, equipment and transportation costs related to the removal of the freon. The canisters into which the freon is removed will be sent to a local refrigeration supply and ultimately to California where the freon will be reclaimed or recycled. Metro may receive rebates depending on the purity of the freon that is shipped to California. It is the staff's intent that the fees collected will be cost-neutral and will only cover Metro's expenses in providing these disposal services.

At the hearing, Sam Chandler, Solid Waste Staff, indicated that an amendment approved by the Rate Review Committee had inadvertently not been included in the version of the ordinance filed in the Council office. The amendment (pg. 2, Section 5.02.065 (a), last line) would add the phrase "with the exception of CFC tanks and refrigeration units." The intent of the amendment is to provide that other existing special waste disposal fees and surcharges would not be applicable to the items covered by the new fee set forth in this ordinance. The amendment was unanimously approved.

John Houser, Council Analyst, indicated to the committee that during the budget process he would examine the revenues and expenditures related to the freon removal program to insure that the fees remain cost-neutral.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 92-473A
METRO CODE SECTIONS 5.02.015 AND)	
5.02.065, RELATING TO DISPOSAL CHARGES	)	Introduced by Rena Cusma,
AT METRO FACILITIES, AND DECLARING	)	Executive Officer
AN EMERGENCY)	

WHEREAS, Recent federal law changes prohibit the release of chlorofluorocarbons (CFC's, also commonly referred to by the trade name "Freon") into the atmosphere; and

WHEREAS, Metro currently accepts refrigeration units and air conditioners for recycling at its transfer stations, and uses special equipment to remove and capture the CFC's contained in such appliances; and

WHEREAS, the cost of equipment to remove refrigerants from appliances, and the staff time needed to perform removal activities should properly be recovered from individuals delivering such appliances to Metro facilities; and

WHEREAS, ORS 268.515(7) states that "Except in an emergency, the imposition of or increase in a service or user charge shall not become effective until 65 business days after approval by the governing body."; and

WHEREAS, Because the program is ongoing, and expenses have been, and continue to be incurred specifically related to refrigerant recovery activities, it is necessary to begin recovering necessary expenses as soon as reasonable public notice will allow and in less than 65 days; and

WHEREAS, The ordinance was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Subsection (s) (10) of Metro Code Section 5.02.015 is amended as follows. The remainder of the Section 5.02.015 is unaltered by this amendment:

"5.02.015 Definitions:

(s) "Special Waste" means any waste (even though it may be part of a delivered load of waste) which is:

10) Chemical containing equipment removed from service (for example - filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks, refrigeration units, or any other chemical containing equipment); or"

Section 2 - Metro Code Section 5.02.065 is amended to read:

"5.02.065 Special Waste Surcharge and Special Waste Permit Application Fees:

(a) There is hereby established a Special Waste Surcharge and a Special Waste Permit Application Fee which shall be collected on all special wastes disposed at Metro facilities and on all Special Waste Permit Applications. Said Surcharge and fee shall be in addition to any other charge or fee established by this chapter. The purpose of the surcharge and permit application fee is to require disposers of special waste to pay the cost of those services which are provided by the Metro Solid Waste Department to manage special wastes. The said surcharge and fee shall be applied to all acceptable special wastes as defined in Metro Code Section 5.02.015-
with the exception of CFC tanks and refrigeration units.

(b) The amount of the Special Waste Surcharge collected shall be \$4.00 per ton of special waste delivered.

(c) The amount of the Special Waste Permit Application Fee shall be \$25.00. This fee shall be collected at the time Special Waste Permit Applications are received for processing.

(d) Lab or testing costs which are incurred by Metro for evaluation of a particular waste may be charged to the disposer of that waste.

(e) The amount charged for residential refrigeration units and CFC containing tanks shall be \$15.00.

(f) The amount charged for commercial refrigeration units shall be \$20.00.

(g) Refrigeration units that can be certified as free of CFC chemical content shall be considered a recyclable and therefore exempt from any fee."

Section 3. Because the ongoing refrigerant recovery program at Metro facilities is dependent on fees to offset the cost of collection equipment and testing, an emergency is declared to exist, and the effective date of this ordinance shall be January 1, 1993.

ADOPTED by the Council of the Metropolitan Service District this _____
day of _____, 1992.

Jim Gardner, Presiding Officer

ATTEST:

Clerk of the Council

SC:ay
SW92473.ORD

**BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT**

FOR THE PURPOSE OF AMENDING	)	ORDINANCE NO. 92-473
METRO CODE SECTIONS 5.02.015 AND)	
5.02.065, RELATING TO DISPOSAL CHARGES	)	Introduced by Rena Cusma,
AT METRO FACILITIES, AND DECLARING	)	Executive Officer
AN EMERGENCY)	

WHEREAS, Recent federal law changes prohibit the release of chlorofluorocarbons (CFC's, also commonly referred to by the trade name "Freon") into the atmosphere; and

WHEREAS, Metro currently accepts refrigeration units and air conditioners for recycling at its transfer stations, and uses special equipment to remove and capture the CFC's contained in such appliances; and

WHEREAS, the cost of equipment to remove refrigerants from appliances, and the staff time needed to perform removal activities should properly be recuperated from individuals delivering such appliances to Metro facilities; and

WHEREAS, ORS 268.515(7) states that "Except in an emergency, the imposition of or increase in a service or user charge shall not become effective until 65 business days after approval by the governing body."; and

WHEREAS, Because the program is ongoing, and expenses have been, and continue to be incurred specifically related to refrigerant recovery activities, it is necessary to begin recuperating necessary expenses as soon as reasonable public notice will allow and in less than 65 days; and

WHEREAS, The ordinance was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Subsection (s) (10) of Metro Code Section 5.02.015 is amended as follows. The remainder of the Section 5.02.015 is unaltered by this amendment:

"5.02.015 Definitions:

(s) "Special Waste" means any waste (even though it may be part of a delivered load of waste) which is:

10) Chemical containing equipment removed from service (for example - filters, oil filters, cathode ray tubes, lab equipment, acetylene tanks, CFC tanks, refrigeration units, or any other chemical containing equipment); or"

Section 2 - Metro Code Section 5.02.065 is amended to read:

"5.02.065 Special Waste Surcharge and Special Waste Permit Application Fees:

(a) There is hereby established a Special Waste Surcharge and a Special Waste Permit Application Fee which shall be collected on all special wastes disposed at Metro facilities and on all Special Waste Permit Applications. Said Surcharge and fee shall be in addition to any other charge or fee established by this chapter. The purpose of the surcharge and permit application fee is to require disposers of special waste to pay the cost of those services which are provided by the Metro Solid Waste Department to manage special wastes. The said surcharge and fee shall be applied to all acceptable special wastes as defined in Metro Code Section 5.02.015.

(b) The amount of the Special Waste Surcharge collected shall be \$4.00 per ton of special waste delivered.

(c) The amount of the Special Waste Permit Application Fee shall be \$25.00. This fee shall be collected at the time Special Waste Permit Applications are received for processing.

(d) Lab or testing costs which are incurred by Metro for evaluation of a particular waste may be charged to the disposer of that waste.

(e) The amount charged for residential refrigeration units and CFC containing tanks shall be \$15.00.

(f) The amount charged for commercial refrigeration units shall be \$20.00.

(g) Refrigeration units that can be certified as free of CFC chemical content shall be considered a recyclable and therefore exempt from any fee."

Section 3. Because the ongoing refrigerant recovery program at Metro facilities is dependent on fees to offset the cost of collection equipment and testing, an emergency is declared to exist, and the effective date of this ordinance shall be January 1, 1993.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1992.

Jim Gardner, Presiding Officer

ATTEST:

Clerk of the Council

SC:ay
SW92473.ORD

Staff Report

CONSIDERATION OF ORDINANCE NO. 92-473 FOR THE PURPOSE OF AMENDING METRO CODE SECTIONS 5.02.015 AND 5.02.065, RELATING TO DISPOSAL CHARGES AT METRO FACILITIES, AND DECLARING AN EMERGENCY

Date: October 30, 1992

Presented by: Sam Chandler

Proposed Action:

Ordinance No. 92-473 amends the Metro Code to include refrigeration units in the definition of Special Waste and allows for a Special Waste surcharge to cover the cost of testing and special handling of freon recovered from refrigeration units received at Metro solid waste facilities.

Background:

"Freon" is a trade name referring to a group of chlorofluorocarbons (CFC's) widely used in industry. Concerns about their negative effects on the earth's ozone layer caused them to be banned from aerosol cans in the mid 1970's. Recently, growing concerns about the impacts of freon from other sources, such as escape when repairing or discarding refrigeration units, have brought about changes in the Clean Air Act Rules. The ultimate goal of the rule change is to phase out the use of freon in most industries.

Metro is a responsible party in the management of freon contained in refrigeration units accepted for disposal or recycling at the Metro solid waste facilities for the following reasons:

- Under the conditions of the 1990 Clean Air Act Amendments, the intentional release of freon from refrigeration units is illegal, effective July 1, 1992.
- Freon is a non-acceptable waste at the Columbia Ridge Landfill.
- Compressors, the components that contains the freon refrigerant, in refrigeration units must be removed before the units or compressors can be accepted by scrap metal processors for recycling.

At Metro solid waste facilities there are two sources of waste freon: that contained in household and commercial refrigeration units, and the residue remaining in metal freon charging canisters. With the removal of the compressor prior to recycling, if the freon is not recovered before the tubing is cut and the is compressor removed, the freon will escape into the atmosphere. Metal canisters, if not evacuated before compaction will crack, allowing the freon to escape. In addition, by removing the freon, the canisters then can be recycled.

It is preferable to have the freon that comes into Metro facilities recycled. In the freon field, the term "recycling" has a particular meaning, as do the terms "recovery", and "reclamation." Recovery refers to the act of removing freon from refrigeration units and containing the material in a storage tank. Recycling refers to the process of cycling recovered freon through a machine that removes many of the common contaminants, primarily using simple filters. Reclamation

refers to the actual distillation of the freon. Because freon is a gas at room temperature, reclamation requires sophisticated equipment, currently found at only a handful of facilities in the country.

Current Practice:

Removal and collection of freon from refrigeration units and canisters received at Metro solid waste facilities began July 1, 1992. Three recovery systems were purchased for use at the two transfer stations. Each facility has a stationary system for the recovery of R-12 (primarily from refrigerators and freezers); the third system for the recovery of R-22 (primarily from air conditioners) is transported between the two sites. Refrigerators, freezers, water coolers, air conditioners, etc. received at both Metro South and Metro Central are delivered to a specified area within the transfer station. A Metro employee, specially trained in the recovery of freon, inserts a valve into the tube which leads from the compressor. This valve is attached to a hose leading to the recovery unit which evacuates and transfers the freon to 100 pound storage tanks. When the tanks are full they are delivered to a refrigeration supply company for transport to a freon reclamation/disposal plant in California. The stripped units and evacuated compressors are placed in a dropbox for delivery to a scrap metals dealer.

Refrigerator and freezer units contain between one-half pound and two pounds of freon, depending on their age. Air conditioners may contain up to six pounds of freon. Some refrigeration units that are brought to the facilities have lost or expended their freon. Unfortunately, there is no way of knowing this until the valves have been inserted and evacuation procedures are underway. The process of removing freon takes approximately 15-20 minutes per refrigerator/freezer, 30 minutes per air conditioner and 12-15 minutes per canister. Since July, a monthly average of 300 refrigerator/freezers, 30 air conditioners, and 110 canisters have been received at the two transfer stations. These numbers represent a significant increase over previous months when freon recovery was not required. Consequently, it has been determined that the program will require one full time employee to manage recovery of freon at the facilities. Given the anticipated extensive use, the equipment has an expected life of from two or three years with regular maintenance. At this time, refrigeration units accepted at the facilities have been treated as a recyclable and therefore not charged a disposal or processing fee.

Budget Impact:

Data obtained over the past three months indicate that it costs \$15 to manage freon recovery from residential refrigeration units and \$20 to manage freon recovery from commercial refrigeration units. These costs include labor, maintenance on existing equipment and the cost for replacement equipment. At current customer levels, revenue from Ordinance No. 92-473 is estimated to be \$72,000 per year. This will fund 1 FTE Hazardous Waste Technician classification, the purchase and maintenance of \$10,000 worth of freon equipment, and approximately \$2,000 worth of disposable supplies. With the adoption of Ordinance No. 92-473 the task is projected to be revenue-cost neutral.

Executive Officer's Recommendation:

The Executive Officer recommends approval of Ordinance No. 92-473.

Meeting Date: November 24, 1992
Agenda Item No. 7.1

RESOLUTION NO. 92-1673

TRANSPORTATION AND PLANNING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 92-1673, APPLYING THE GREENSPACE PROGRAM WILLING SELLER POLICY AT SUNSET LIGHT RAIL STATION

Date: October 29, 1992

Presented by: Councilor Devlin

Committee Recommendation: At the October 27 meeting, the Transportation and Planning Committee voted unanimously to recommend Council adoption of Resolution No. 92-1673. Voting in favor: Councilors Devlin, McLain, Moore, and Washington. Excused: Councilor Buchanan.

Committee Issues/Discussion: Andy Cotugno, Planning Director, presented the staff report. The resolution under consideration provides the basis for settlement of three currently pending cases before the Land Use Board of Appeals (LUBA). The suits are between Metro and the Peterkort family who owns property at the interchange between Highway 217 and the Sunset Highway. There are several competing Metro interests represented at this particular site. These include: 1) the Metro Greenspaces Program designation of this property as a high quality natural area; 2) a transportation interest because of the intent for light rail and highway construction on or around the site; and 3) land use interests relative to the Regional Urban Growth Goals and Objectives (RUGGO). Further complicating the issue is the policy, within the Greenspaces Master Plan, to acquire property for Greenspaces from "willing sellers" while maintaining the rights of "eminent domain" where necessary. The Peterkort family has brought suit with LUBA because of the "eminent domain" clause.

This resolution is an attempt to clarify Metro's intent regarding eminent domain and this particular property. The resolution provides that Metro will only seek to purchase portions of the property or acquire conservation easements from "willing sellers" only and will not use the power of eminent domain until two years after the Westside Light Rail has been completed. During the intervening period of time, further work will be necessary to reconcile competing Metro interests (i.e. what is the balance between development interests and Greenspaces interests). The intent is also for active participation by Metro in the development process, which is currently controlled by Washington County's plan, to protect out interests. Active participation means seeking notification of all proceedings, providing testimony, intervening or becoming a party in those cases if necessary.

Larry Shaw, Legal Counsel, explained several of the other issues further complicating this issue. In addition to planning efforts now underway for design of the transit station, and the construction of a Barnes Road extension, there is also a new road being constructed connecting 112th to Barnes Road. This connecting road has been very controversial during the past year. During the

last week, the Peterkort's began construction of the road under authority of a Facilities Permit. The area in question is on their property, within 800 feet of the north property line. Washington County plans to complete the connection with 112th following selection of the appropriate alignment. The reason for construction at this time is economics. The contractor for the Barnes Road project was available at the same unit price to complete the 112th project, thereby justifying the earlier start date because of the savings of mobilization costs. Tri-Met also wants the road completed now as part of the development needed for construction of the Westside Light Rail. Mr. Shaw has reviewed the documentation, but has not received confirmation from the Department of State Lands or the Corp of Engineers that authority over the wetlands portion of the site.

Public Testimony: Charlotte Corkran, Patricia Miller and Troy Horton, representing the Friends of Cedar Springs, testified expressing their concern about the current 112th Avenue road project. They support the resolution but with serious reservations. Ms. Corkran expressed concern about the impact of the road project on the adjacent wetland and stated her desire for Metro to have a much larger role in the complete planning effort. Ms. Miller said this is "not a micro road issue, but a macro Greenspaces issue". She is concerned about the ultimate alignment of 112th and the 800 foot variance now under consideration by Washington County that could seriously damage or completely destroy the pond and a large stand of 100 year old cedar trees. She said there is no public process. She was also concerned about the meaning of "good faith". Mr. Horton explained that his group was willing to "jeopardize our own dream" by supporting this resolution. He supports the resolution, though, because it will remove the Peterkort's fear about condemnation and make it possible for them to sit down and discuss the situation with the Friends groups.

Councilor Consideration: Councilor questions centered on the following:

- 1) What is financially at stake for the Peterkort family? How far are they willing to go to protect their interests?
- 2) Is the Peterkort family operating in "good faith"?
- 3) Was the 112th alignment the choice of the Peterkort's or was it the result of a planning process? How much say did the family have over design of the road?
- 4) Why is the road project happening now, rather than later? Who is paying for it?
- 5) What land use approvals have been gained?
- 6) Is the road public?
- 7) What was the nature of the agreement made by the Peterkort family with local jurisdictions?

Jim Coleman, Ramis, O'Donnell, appeared to answer questions on behalf of Tim Ramis. He explained that the 112th project was part of the land use planning process in which the Peterkort's have

expended over \$2 million over a several year period. The design was approved by Washington County, with the blessing of Tri-Met to coincide with the light rail transit (LRT) station planning. The road is part of the Regional Transportation Plan and the Washington County Comprehensive Plan. This portion of the road is being paid for by the Peterkort family as part of a package of agreements in exchange for which they get desired zoning for the area to be developed around the LRT Station. It is a public road which, following the decision for alignment may be connected with 112th by Washington County. It is being developed now because it is more economically feasible than later. The Barnes Road extension is a public project that is adjacent.

Larry Shaw explained that the history of the site involves a complicated and all-inclusive plan amendment connecting all issues, of which 112th is only one. To be allowed re-zoning, the Peterkort's were required to: 1) dedicate Barnes Road; 2) build 112th on their property; and 3) sell 6.4 acres to Tri-Met, which resulted in their additional donation of 3 more acres. What they received was re-zoning of all property south of the creek to "office/commercial" with a master plan overlay.

Andy Cotugno explained that in addition to the Comprehensive Plan permanent designation, there was also a Master Plan approval for a portion of the property, that is a five year action that has since lapsed. Both actions were taken in 1982. There will need to be a new Master Plan at some point in time. Overlapping that, there is intent to do station-area planning around all Westside LRT Stations which may or may not lead to changes in Comprehensive Plan designations. This review will take several years and will examine actual land use designations for possible change. Additionally, Washington County has undertaken an interim action to deal with disallowed and allowed land uses, certain set-back requirements, and parking orientation requirements to be in place in the interim period of time. That action was tabled until next March. Finally there is the Greenspaces Plan, which also designates some of the same area. This designation is non-specific at this time, until a complete evaluation of all properties is undertaken following passage of the ballot measure.

Councilor McLain expressed concern regarding the potential of the Peterkort's to start new lawsuits, even if they have agreed to settle the three now pending. Councilor Van Bergen asked about whether other parties could bring suit even if the Peterkort's cannot. The question was answered that the Peterkort's are the only "party" in the suits and the 21 day period of filing has passed so there are no other "parties".

Councilor Moore felt that Metro is being held hostage by an outdated Washington County Comprehensive Plan. Her support of the resolution hinged on reinforcing Metro's role in the process. She suggested strengthening the final "resolve" in the resolution. She also had questions regarding several of the "whereas" sections, specifically the last.

Work Session: Following discussion of exact wording, the committee approved amending the resolution by deleting the final "whereas" section and further amending as follows:

"IT IS FURTHER RESOLVED, that, consistent with the Greenspaces Master Plan objectives of Greenspace protection and the objectives of the Regional Transportation Plan, Metro will monitor and become a party in [~~public hearings on development proposals~~] all planning and proposed development actions on the Peterkort property in the vicinity of the Sunset LRT Station; and"

Councilor Devlin providing additional testimony as a result of several phone calls and clarified that passage of this resolution is contingent on "good faith". If there is an abuse of the process, by any participant, then the issue or eminent domain can and will be reopened.

**BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT**

GREENSPACES WILLING SELLER	)	RESOLUTION NO. 92-1673
POLICY AT SUNSET LIGHT RAIL)	
TRANSIT STATION	)	Introduced by Rena Cusma,
	)	Executive Officer

WHEREAS, The Council of the Metropolitan Service District unanimously adopted the Greenspaces Master Plan by Resolution No. 92-1637 on July 23, 1992; and

WHEREAS, The Greenspaces Master Plan describes a desired regionwide system of ecologically significant natural areas recommended for protection, management, and interconnection by greenways and trails to be accomplished through a variety of strategies; and

WHEREAS, The Metro Council unanimously adopted Resolution No. 92-1639A referring to the voters a \$200 million general obligation bond measure to enable protection through purchase of more than 7,000 acres of identified significant natural areas; and

WHEREAS, Master Plan Policy 1.20 states that Metro will negotiate any acquisition of natural areas primarily with willing sellers, using eminent domain only in extraordinary circumstances; and

WHEREAS, The Peterkorts requested both removal from the Master Plan of the 150-acre potential protected area entitled "Cedar Mill" and elimination of any use of eminent domain by the program; and

WHEREAS, Neighbors in the Cedar Mill area have indicated a strong interest in a Natural Area Park that would include a wooded portion of the Peterkort property and they have supported the retention of the Cedar Mill natural area in the Master Plan; and

WHEREAS, The Metro Council adopted the Greenspaces Master Plan with the Cedar Mill area retained as a significant natural area for potential purchase from a willing seller; and

WHEREAS, The voters overwhelmingly approved \$125 million in bonds for the local match on the \$900 million Westside Light Rail Transit (LRT) Project; and

WHEREAS, Much of that portion of the Peterkort property containing upland forest resources is within the half-mile Station Area Planning area around the Sunset LRT Station; and

WHEREAS, An interim overlay zone developed with Metro and Tri-Met assistance which would include new land use regulations to assure transit-supportive development near the Sunset LRT Station is under consideration; and

WHEREAS, The Sunset LRT Station for construction on land adjacent to the Peterkort property is being designed for construction within the next several years; and

WHEREAS, The acknowledged Washington County comprehensive plan currently designates the Peterkort property an "Area of Special Concern" and requires the following protection for forested areas on the Peterkort property:

- 1. Requirement that the riparian areas along Johnson Creek be retained in their natural condition.**
- 2. Requirement of a Master Plan and planned development procedures with public notice, hearing, and appeal procedures.**
- 3. Requirement of landscape plans in Master Plan process that retain all trees and wooded areas possible.**
- 4. Requirement for a development permit for any tree removal.**
- 5. Requirement of additional open space allocations to obtain density bonuses in a clustered development; and**

WHEREAS, Peterkort Co. has appealed the Metro Council resolutions relating to Greenspaces to the Land Use Board of Appeals (LUBA) contesting the extent of their impact on development of the Peterkort property; and

WHEREAS, The Peterkorts have agreed to dismiss these appeals upon assurance that Metro recognizes the need to avoid eminent domain until transit station development and initial development of transit-supportive uses adjacent to the transit station allows coordinated application of Greenspaces and LRT Station Area Planning policies at this location; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District recognizes the need to maximize the public's investment in light rail transit by assuring transit-supportive development of the areas around the Sunset LRT Station and all westside stations; and

IT IS FURTHER RESOLVED,

That coordination of the Greenspaces Master Plan willing seller policy with the extraordinary circumstances of Sunset LRT Station construction and regulation is achieved by no exercise of Metro powers of eminent domain to acquire Peterkort property in the vicinity of the Sunset LRT Station for a period of two years following the opening of Westside LRT; and

IT IS FURTHER RESOLVED,

That Metro will pursue further analysis towards willing seller acquisition of land or conservation easements and other protection of Goal 5 resource lands in the Cedar Mill area as provided for in Washington County comprehensive plan and in the Metro Greenspaces Master Plan in the Cedar Mill area; and

IT IS FURTHER RESOLVED,

That, consistent with the Greenspaces Master Plan objectives of Greenspace protection and the objectives of the Regional Transportation Plan, Metro will monitor and become a party in public hearings on development proposals on the Peterkort property in the vicinity of the Sunset LRT Station; and

IT IS FURTHER RESOLVED,

That Metro will continue to implement the Greenspaces Master Plan including the Cedar Mill area, by a integrated, cooperative, public process addressing the interests of the property owners, including the Peterkorts, LRT Station Area Planning, and coordination with surrounding neighbors and other interested parties.

ADOPTED by the Council of the Metropolitan Service District this _____

day of _____, 1992.

**_____
Jim Gardner, Presiding Officer**

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STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1673 APPLYING THE GREENSPACES PROGRAM WILLING SELLER POLICY AT SUNSET LIGHT RAIL STATION

Date: October 27, 1992

Presented by: Andy Cotugno and Larry Shaw

FACTUAL BACKGROUND AND ANALYSIS

Based on Metro's adopted policies in RUGGO, the Regional Transportation Plan, and the Metropolitan Greenspaces Master Plan, Metro has multiple policy interests relating to land uses on the 250-acre Peterkort property including:

- o Development of the Sunset Light Rail Transit (LRT) Station on 6.4 acres owned by Tri-Met adjacent to the State Route 217/State Route 26 interchange. All LRT stations are major regional transportation investments and high transportation and land use planning priorities. Metro is actively participating in LRT station area planning, sponsored by Tri-Met, to assist in development of transit supportive land uses proximate to LRT stations;
- o Objective 16.3 of RUGGO requires evaluation and designation of "mixed use urban centers" defined as a "...mixed use node of relatively high density, supportive of non-auto based transportation modes and supported by sufficient public facilities,...parks open space and other urban amenities...." Connection points to light rail are good candidates for future designation as mixed use urban centers;
- o The Metropolitan Greenspaces Master Plan identifies significant natural resources in the Cedar Mill area where protection efforts should be pursued through a variety of strategies. Forested and wetland areas on the Peterkort property are among the resource lands where protection opportunities are being investigated consistent with Master Plan direction.
- o The Metro Council has referred Ballot Measure 26-1 to the voters of the District which, if approved at the November 3 election, would provide for the sale of general obligation bonds to raise funds for the acquisition of greenspaces, primarily from willing sellers.

During deliberations on the Greenspaces Master Plan, legal representatives of the Peterkort family, claiming potential transportation/greenspaces policy conflicts on their property, requested both removal of the Cedar Mill natural area from the proposed greenspaces system map and elimination of any use of eminent domain as a strategy for assembling the system. The Metro Council did not concur with the Peterkorts' concern and adopted the Master Plan with the Cedar Mill area retained and the willing seller policy unaltered. The representatives of the Peterkorts have indicated they are not willing sellers at this time and have appealed Metro Council resolutions relating to the Greenspaces Program to the Land Use Board of Appeals (LUBA).

Staff believes that it is feasible and desirable to accomplish both transportation and greenspaces goals on the property. Given the unique circumstances surrounding the Peterkort property, Resolution No. 92-1673 articulates an application of the willing seller policy specifically for the 250 acre parcel. In summary the resolution outlines a policy that Metro shall not use eminent domain to protect significant greenspaces on the site until two years after Sunset LRT Station construction. This should allow initial development of transit supportive uses adjacent to the LRT station, avoiding the policy conflict perceived by the Peterkorts. Based on this policy, the Peterkorts have agreed to dismiss the LUBA appeals.

Resolution 92-1673 also directs staff to monitor and become a party in public hearings on development proposals on the Peterkort property to ensure protection of Goal 5 resource lands as provided for in Washington County's comprehensive plan and significant natural resource lands in the Cedar Mill area identified in the Greenspaces Master Plan during the effective life of the policy.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 92-1673.

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Meeting Date: November 24, 1992
Agenda Item No. 7.2

RESOLUTION NO. 92-1704A

TRANSPORTATION AND PLANNING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 92-1704-A, AUTHORIZING AN EXEMPTION TO METRO CODE CHAPTER 2.04.41(C), COMPETITIVE BIDDING PROCEDURES, AND AUTHORIZING A SOLE-SOURCE CONTRACT WITH OREGON GRADUATE INSTITUTE OF SCIENCE AND TECHNOLOGY FOR COORDINATION OF THE SECOND YEAR OF METROPOLITAN GREENSPACES EDUCATION PROGRAM, THE GREEN CITY DATA PROJECT

Date: November 17, 1992

Presented by: Councilor Washington

Committee Recommendation: At the November 10 meeting, the Transportation and Planning Committee voted 4-0 to recommend Council adoption of Resolution No. 92-1704-A, as amended. Voting in favor: Councilors Devlin, McLain, Moore, and Washington. Excused: Councilor Buchanan.

Committee Issues/Discussion: Pat Lee, Planning Supervisor, presented the staff report. He explained that this is the second year that Metro has chosen Saturday Academy of the Oregon Graduate Institute of Science and Technology to do the Green City Database Project. The project utilizes students in grades 6-12 to supplement some of the field inventory work that is part of our Natural Areas Inventory Database for the Greenspaces program. During the last year, 54 students from six schools, including one in Clark County, Washington, visited 15 sites and provided data.

This resolution authorizes Metro to go forward with a contract for \$20,000, which hopefully will allow us to double the number of schools involved and sites visited. The methodology was set during the past year, but will be refined this year. Saturday Academy is the only institution having the facilities and capabilities to conduct this program.

Eventually, it is hoped that this program will become a function of the environmental education arena of the Greenspaces program, centralized at Metro as soon as staffing levels can support it.

Councilor Moore commented that the amount of the contract and year were not included within the body of the resolution. Mr. Lee commented that both pieces of information were included within the staff report. The competition date is June, 1993. Councilor Moore suggested the resolution be amended to add both the date and amount to the resolution.

She also about the status of the Tualatin Hills Park District, with the GreenCity Data Project. Mr. Lee explained that the most active participants in this project have been the Audobon Society and various governmental agencies. Tualatin Hills Park District has not been as active as others. No specific outreach has been offered to the Park District, but the project originated within the

Greenspaces Technical and Policy Advisory Committees, of which Tualatin Hills was a member.

Councilor Washington asked about the process of selection for choosing schools and students. Mr. Lee explained that those selected have expressed an interest and have worked with Saturday Academy before. Councilor Washington requested that a major effort be made to include schools in northeast and north Portland in the future, particularly regarding the Slough running through these areas.

The committee approved recommending the resolution to the full Council, as amended to include the date and amount of contract.

BEFORE THE CONTRACT REVIEW BOARD
OF THE METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 92-1704-A
AN EXEMPTION TO METRO CODE)	
CHAPTER 2.04.041(c), COMPETITIVE	)	INTRODUCED BY RENA CUSMA,
BIDDING PROCEDURES, AND	)	EXECUTIVE OFFICER
AUTHORIZING A SOLE-SOURCE)	
CONTRACT WITH OREGON GRADUATE)	
INSTITUTE OF SCIENCE AND)	
TECHNOLOGY FOR COORDINATION)	
SERVICES FOR THE GREENCITY)	
DATA PROJECT)	

WHEREAS, there is no other educational institution in the Metro region that serves students in grades 6 - 12 throughout the area covered by the Metropolitan Greenspaces Program; and

WHEREAS, the GreenCity Data Project requires involvement from students, schools, and resource agencies in four counties and two states; and

WHEREAS, the ability to cross school district and state lines is critical to the success of coordination of the GreenCity Data Project; and

WHEREAS, the Oregon Graduate Institute of Science and Technology's Saturday Academy is the only educational agency in Metro's region able to match the requirements needed for Project coordination; and

WHEREAS, it is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

WHEREAS, the awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency; now, therefore,

BE IT RESOLVED

The Contract Review Board hereby exempts the attached Contract No. 902705, for a \$20,000 contract to be completed by June, 1993, to the Oregon Graduate Institute of Science and Technology from the competitive bidding requirement pursuant to Metro Code Chapter 2.04.060.

ADOPTED by the Contract Review Board of the Metropolitan Service District this _____ day of _____, 1992.

Jim Gardner, Presiding Officer

Exhibit A

The Contract Review Board has considered the staff presentation in consideration of this Resolution and makes the following findings of fact:

1. In Resolution No. 92-1637, the Metro Council adopted a master plan for the Metropolitan Greenspaces program, in which a cooperative regional system of natural areas, open space, trails, and greenways for wildlife and people in Multnomah, Clackamas and Washington counties in Oregon and Clark County, Washington was proposed.
2. The Metropolitan Greenspaces master plan has identified environmental education and public involvement in regional urban natural areas and open spaces as priority areas for cooperative action.
3. An integral part of the Greenspaces program is the collection of information about characteristics and field conditions of natural area sites in all four counties of the system.
4. In Summer of 1991 preliminary planning for an educational program aimed at involving middle and high school students in data collection on sites in four counties was begun by Planning Department staff in conjunction with eight government agency departments and nonprofit cooperators in the Greenspaces program.
5. In Spring of 1992, the first phase of a pilot project called the GreenCity Data Project was undertaken, involving 54 students and 6 teachers leading six student teams.
6. This first phase of the GreenCity Data Project was coordinated by the Oregon Graduate Institute of Science and Technology's Saturday Academy program, including management of student teams, development of curriculum materials, field survey and teaching aids for future implementation phases of the Project.
7. Following evaluation of the first phase of the pilot, Planning Department staff and cooperating agencies seek to carry out a second year of the GreenCity Data Project.
8. It is unlikely that the exemption of this contract from competitive bids will encourage favoritism or substantially diminish competition for public contracts because this is the second phase of a pilot project that is intended to provide data for future grant applications.
9. Planning staff research indicates that Saturday Academy is the only institution in the Portland metropolitan area capable of meeting these requirements.

10. The award of this public contract based on an exemption from competitive bidding will result in substantial cost savings to Metro and other public agencies who are sharing the project cost because use of the experienced pilot project contractor assures higher quality project results from these public funds.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1704 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO METRO CODE CHAPTER 2.04.041(c), COMPETITIVE BIDDING PROCEDURES, AND AUTHORIZING A SOLE-SOURCE CONTRACT WITH OREGON GRADUATE INSTITUTE OF SCIENCE AND TECHNOLOGY FOR COORDINATION OF THE SECOND YEAR OF METROPOLITAN GREENSPACES EDUCATIONAL PROGRAM, THE GREENCITY DATA PROJECT

Date:

Presented by: Ellen Lanier-Phelps

FACTUAL BACKGROUND AND ANALYSIS

The Metropolitan Greenspaces Master Plan has identified environmental education and public involvement in regional urban natural areas and open spaces as priority areas for action. Two of the eight overriding goals of the master plan call for educational programs that will lead to a better understanding of our urban environment and encourage citizen involvement in the Greenspaces system.

An integral part of the Greenspaces program is the collection of information about the characteristics and field conditions of various natural areas sites. The Greenspaces data collection process originally was undertaken by trained biologists on contract to Metro. This information has formed the core of a Greenspaces data base that will be useful as we move ahead with protection and management programs and plans.

In the first or pilot year of the GreenCity Data Project student teams undertook a modified version of this data collection process. The goal was not only to develop a simplified process that would enable Metro to add to its data base but also to allow students to be able to take an active role in building the region's Greenspaces system.

In the pilot phase of the GreenCity Data Project, middle and high school students participated with a volunteer teacher and Audubon naturalist in the collection of data on targeted Greenspaces sites. The project aimed to enrich students' understanding of science and natural history by training them in field observation, plant and wildlife identification, data organization and data analysis. Several accomplishments from the first year were:

- The curriculum, field survey form, and teaching aids for future programs were developed, tested and evaluated.
- 54 students and 6 teachers were trained.
- In cumulative terms, over 1200 hours were dedicated to student and teacher field work.
- 2085 total hours of instruction were received.

- 15 additional site surveys were undertaken, including location of habitat for two "List 4" species (the pileated woodpecker and red-legged frog).

In the second year of the GreenCity Data Project, we will refine the educational processes and double the number of schools that can be involved to a total of twelve. This second year will allow Metro to continue to increase environmental awareness amongst these schools and their students, foster a sense of ownership in local natural areas, and facilitate active involvement in urban environmental issues by the generation that will benefit most imminently from the Greenspaces system.

The geographic scope of the Metropolitan Greenspaces program encompasses four counties (Clackamas, Multnomah, Washington, and as well as Clark County, Washington) and involves a cooperative network of agencies, jurisdictions, and individuals. A coordinating contractor again is needed to ensure fulfillment of all objectives and tasks related to the schools, students, and sites involved in the project located in different parts of the region.

The continued success of this education program will require technical assistance and help with site accessibility issues by a collaboration of groups including the Audubon Society of Portland, Friends and Advocates of Urban Natural Areas, Portland State University (through its Center for Urban Studies, Departments of Biology and Geography, and Division of Continuing Education) and the City of Portland (Parks Bureau and Bureau of Environmental Services).

Metro staff will work with a local project manager from the Oregon Graduate Institute of Science and Technology (through its Saturday Academy) in coordination of the agencies and student groups involved in the project. The project will be completed by June 15th, 1993.

Sole-Source Justification

The Saturday Academy, located at the Oregon Graduate Institute of Science and Technology is the only educational institution specializing in teaching students in grades 6 - 12 in all of the four counties involved. Saturday Academy can cross school district and state lines in seeking student and teacher participation, as well as be able to provide the coordinating guidance to other agencies involved in the data collection and analysis.

Budget Impact

Funding for the GreenCity Data Project comes from the Metropolitan Greenspaces grant from the U.S. Fish and Wildlife Service. A total of \$20,000 has been allocated for this Project. This \$20,000 will be matched in time, services, or dollars by Oregon Graduate Institute's Saturday Academy and the other agencies assisting with the Project.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 92-1704.

Meeting Date: November 24, 1992
Agenda Item No. 7.3

RESOLUTION NO. 92-1705A

TRANSPORTATION AND PLANNING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 92-1705-A, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO METRO CODE CHAPTER 2.04.041(C) - COMPETITIVE BIDDING PROCEDURES, AND AUTHORIZING A SOLE SOURCE CONTRACT WITH THE URBAN STREAMS COUNCIL OF THE WETLANDS CONSERVANCY TO PROVIDE TECHNICAL ASSISTANCE TO METRO ON THE GREENSPACES RESTORATION AND ENHANCEMENT GRANTS PROGRAM

Date: November 17, 1992

Presented by: Councilor Devlin

Committee Recommendation: At the November 10 meeting, the Transportation and Planning Committee voted 4-0 to recommend Council adoption of Resolution No. 92-1705-A, as amended. Voting in favor: Councilors Devlin, McLain, Moore, and Washington. Excused: Councilor Buchanan.

Committee Issues/Discussion: Mel Huie, Senior Regional Planner, presented the staff report. He explained that restoration of degraded natural areas is a priority charge of the Greenspaces Master Plan. This resolution will enable Metro to provide a much higher level of technical assistance to cities, counties and special districts "friends" groups that are carrying out the 33 different restoration projects.

The Urban Streams Council will work with Metro staff to meet with the local project managers on a monthly one-to-one basis. Quarterly meetings of all project managers are anticipated to allow them to share ideas and information. The Urban Streams Council is uniquely qualified to provide such assistance, having already provided two technical workshops, utilizing the services of technical experts in other states.

For the third year program of restoration, Metro will be seeking projects within the inner city. Staff has already met with staff from the Portland Parks Bureau in this regard. Citizen outreach meetings are anticipated for January, 1993 to assist in this effort of finding Greenspaces projects for this area of the region.

Councilor Devlin clarified that this new approach is a result of vocalized concerns regarding the lack of projects located within northeast and north Portland. That area has now been targeted for the third year. There will still be a geographic dispersion of funds, but usually funds are distributed to suggested projects from interest groups. The City of Portland has made several suggestions, several of which have been funded, but has never suggested sites within this area.

Councilor Moore commented on the natural environment component in the Albina Plan. This resolution is very timely, especially if the Columbia Slough system becomes one of the areas for enhancement

restoration.

Councilor Moore also suggested an amendment to the resolution to include the time frame of the contract within the body of the resolution, rather than just referencing it within the staff report. Mr. Huie said the appropriate date to reference would be March, 1994.

Finally, Councilor Moore asked about comments made at last night's meeting in Beaverton regarding the spraying of Reed Canary Grass. Mr. Huie explained that the spraying may be being done with local funds. Metro's grants are only a portion of the funding available. This project calls for getting rid of the grass by natural methods. However, some chemicals have been approved by the U.S. Fish and Wildlife Service. There is some experimentation going on to eradicate the grass by burning, excavation or chemical methods. The Department does not favor the use of chemicals.

Councilor Devlin elaborated on the extent of the grass problem. The Jackson Bottom area has the same difficulty, as do many areas.

Councilor Washington expressed his interest in being involved, particularly when considering the Columbia Slough system. This is an excellent opportunity to get young people involved and generally educate the public. He asked for a tour to be provided.

Councilor McLain asked how the Department intended to promote public knowledge of the program and individual projects. Mr. Huie explained it is done on an individual basis. Public involvement and education is not only required, but is of particular interest in pursuing. Councilor McLain commented that even with the failure of the Greenspaces Ballot Measure, 200,000 people support the effort. It is even more important now to cultivate media events to promote public education.

The resolution was approved for recommendation, as amended to add the date of the contract.

BEFORE THE CONTRACT REVIEW BOARD
OF THE METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 92-1705-A
AN EXEMPTION TO METRO CODE CHAPTER)
2.04.041 (c) COMPETITIVE BIDDING) Introduced by Rena Cusma,
PROCEDURES AND AUTHORIZING A SOLE) Executive Officer
SOURCE CONTRACT WITH THE URBAN)
STREAMS COUNCIL OF THE WETLANDS)
CONSERVANCY)

WHEREAS, the Metropolitan Greenspaces Master Plan has outlined the restoration of degraded natural areas as a priority; and

WHEREAS, the Metropolitan Greenspaces Program has outlined a four-phase approach for inventorying, mapping, preserving, protecting and acquiring natural areas; and

WHEREAS, Phase 3 calls for restoration and enhancement demonstration projects as part of the Greenspaces Program; and

WHEREAS, the U.S. Fish and Wildlife Service (USFWS) has awarded Metro with funds to carry out the restoration and enhancement projects; and

WHEREAS, local agencies and nonprofit organizations are developing restoration and enhancement proposals; and

WHEREAS, Metro and the Urban Streams Council are providing local agencies and nonprofit organizations with technical assistance on their restoration and enhancement projects; and

WHEREAS, Metro, USFWS and the Urban Streams Council will be working together to monitor and evaluate the long-term benefits of the restoration projects; and

WHEREAS, Metro and local grantees will be required to monitor the restoration projects for three years following their completion; and

WHEREAS, Metro will require technical assistance on developing a monitoring and evaluation process for the restoration and enhancement projects; and

WHEREAS, the Urban Streams Council is uniquely qualified to work on such projects related to the restoration of degraded natural areas in an urban environment; and

WHEREAS, the Urban Streams Council, a branch of the nonprofit Wetlands Conservancy, was specifically established to work with local agencies, nonprofit organizations, neighborhood organizations, businesses and citizens in the protection and restoration of streams, riparian zones and wetlands; and

WHEREAS, the Urban Streams Council has access to nationally recognized resource people in the field of natural areas and stream restoration who will be available to work on the Greenspaces restoration projects; and

WHEREAS, the Urban Streams Council of the Wetlands Conservancy is a cooperator of the Metropolitan Greenspaces Program; and

WHEREAS, the Urban Stream Council is the only nonprofit organization in Metro's region able to match the requirements needed for the Greenspaces Restoration and Enhancement Program's design, implementation and evaluation/monitoring; and

WHEREAS, it is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

WHEREAS, the awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contract agency, now, therefore,

BE IT RESOLVED,

That based on the findings attached as Exhibit "A" and incorporated herein, the Contract Review Board of the Metropolitan Service District hereby exempts the attached Contract No. 902696, to be completed by March, 1994, to the Urban Streams Council of the Wetlands Conservancy from the competitive bidding requirements pursuant to Chapter 2.04.060 of the Code of the Metropolitan Service District.

ADOPTED by the Contract Review Board of the Metropolitan Service District this _____ day of _____ 1992.

Jim Gardner, Presiding Officer

EXHIBIT "A"

The Contract Review Board has considered the staff presentation in consideration of this Resolution and makes the following findings of fact:

1. Planning has a need for technical services for Phase 3 of its program for restoration of degraded natural areas including enhancement projects in wetlands, along stream corridors and riparian zones, and upland sites.
2. Restoration and enhancement concepts and methodologies are generally still in experimental phases because they are relatively new technologies for our region and the country in dealing with degraded natural areas.
3. Urban Streams Council was specifically established by the Wetlands Conservancy for the purpose of protection and restoration of streams, riparian zones and wetlands.
4. The Urban Streams Council is uniquely qualified because it and its resource people have carried out restoration activities locally and in California. Metro has observed their expertise in working with localities and community groups during two recent public workshops on restoration of degraded sites in the Metro area.
5. It is unlikely that this exemption will encourage favoritism or diminish competition for public contracts because: 1) the experimental nature of this work currently limits prospective bidders from participating and application of Urban Stream Council's expertise to this project will provide expanded opportunities for public contracts in the future, and 2) the grant source of funds for this project recognized Urban Stream Council's expertise as part of their approval of funds to Metro.
6. The award of this public contract based on exemption from competitive bidding will result in substantial cost savings to Metro and other public agencies because of the efficiencies created by Urban Streams Council's access to natural and internationally recognized experts in this new field.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1705 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO METRO CODE CHAPTER 2.04.041 (c) COMPETITIVE BIDDING PROCEDURES AND AUTHORIZING A SOLE SOURCE CONTRACT WITH THE URBAN STREAMS COUNCIL OF THE WETLANDS CONSERVANCY

Date: November 10, 1992

Presented By: Mel Huie,
Planning Department

FACTUAL BACKGROUND AND ANALYSIS

Restoration of degraded natural areas is a priority activity of the Greenspaces Master Plan. The Greenspaces Program has outlined a four-phase approach to identify, map, protect, preserve and acquire natural areas in the region. Phase 3 specifically calls for the program to carry out restoration and enhancement projects in wetlands, along stream corridors and riparian zones, and in upland sites. Restoration projects are relatively new techniques for our region and the country in dealing with degraded natural areas. Restoration and enhancement concepts and methodologies are generally still in early experimental phases. We will be learning as we move forward on the projects. The activities, techniques and methodologies need to be carefully reviewed, evaluated and published in a report. Technical advice is needed to assist Metro, U.S. Fish and Wildlife Service (USFWS) and the local grantees on how to develop and carry out effective restoration projects and monitoring programs.

The restoration projects require extensive program management, monitoring and technical assistance. Local project managers are generally untrained and unfamiliar with the new restoration, bio-engineering techniques, and sources for native plant materials and seeds which are essential components of the program. They also need background in reading the landscape, hydrology, biology and botany, fish and wildlife habitat, native plantings and naturescaping techniques. Putting together an appropriate proposal, including project design, landscape and engineering drawings, placement of plants, earth moving techniques, etc., is also very difficult for local staff due to the lack of training, knowledge and experience in restoration and enhancement. Research is being conducted in how to eradicate invasive species such as Himalayan blackberry and Reed Canary Grass without chemical applications. Such technical research needs to be disseminated and explained to local project managers.

Technical assistance services include:

- a. Review program guidelines and grant application kit.
- b. Meet with local planners and project staff to develop appropriate restoration and enhancement projects.

- c. Conduct workshops for local jurisdictions and nonprofit organizations on how to put together appropriate restoration and enhancement projects.
- d. Review proposals/grant applications submitted to Metro for funding.
- e. Tour and evaluate the project sites.
- f. Participate in the interviews and advise Metro in which projects should be funded and how projects can be improved to better meet the objectives of the Greenspaces program.
- g. Provide guidance and project management advice to local staff on the implementation of the restoration and enhancement projects.
- h. Assist in developing a monitoring system for the projects to track long-term benefits of the projects.
- i. Assist in developing an evaluation system and form for the projects.
- j. Assist Metro in monthly and quarterly meetings with the local project managers.
- k. Coordinate other restoration projects funded by non-Metro funds and how they can share restoration techniques.
- l. Assist in preparing final reports on the restoration projects.
- m. Assist Metro in reviewing the Greenspaces natural areas and master plan map, and watershed maps to identify potential restoration/enhancement projects.
- n. Conduct literature search of restoration projects and techniques in other parts of the country and world. Share information with Metro and Greenspaces cooperators. Prepare a bibliography.

SOLE SOURCE JUSTIFICATION

Metro and The Wetlands Conservancy/Urban Streams Council worked cooperatively to secure the federal funds for the Greenspaces Program. In its contract with Metro, the USFWS recognized the Urban Stream's Council expertise as part of their approval of funds to Metro.

The Metropolitan Greenspaces Master Plan strongly encourages direct involvement of land trusts and non-profit organizations in implementation of the Master Plan. The Wetlands Conservancy is a local, private, non-profit land trust active in the protection, restoration and management of natural areas within the Portland/Vancouver metropolitan area. Within the last year, the Conservancy specifically created the Urban Streams Council to work directly with cities, counties, special districts, state and federal agencies, nonprofit organizations, neighborhood associations, businesses and citizens in education, planning and project implementation activities related to streams and watersheds in the metropolitan area.

The Urban Streams Council and its resource people have carried out such activities locally and in California and are uniquely qualified to provide such technical assistance and advice to Metro and the grantee agencies/organizations in restoration project development, implementation, monitoring and evaluation. The Wetlands Conservancy has been an active partner in development of the Greenspaces Program

and is thoroughly aware of the objectives of the Master Plan and constituent expectations for its implementation. Metro previously collaborated with the Urban Streams Council in conducting two public workshops on restoration of degraded sites, organizing and sponsoring the October 17-18, 1992, Adopt-A-Stream Conference and we are working cooperatively in the publication of urban streams brochures and maps.

BUDGET IMPACT

Funding for the restoration and enhancement program comes from the USFWS. The grants may be awarded to cities, counties, special districts and nonprofit organizations located in Clackamas, Multnomah and Washington Counties in Oregon, and Clark County in Washington (i.e., within the geographic area where the natural areas inventory was conducted and not the entire area of the counties).

Summary of funding for the Greenspaces restoration and enhancement program:

- Year 1: \$200,000 in grants funded 14 projects. The grants leveraged approximately \$1 million in local funds, donated materials and volunteer labor. Projects must be completed by March 31, 1993.
- Year 2: \$250,000 in grants will be awarded. Ten projects funded at \$133,590; eight additional projects are still being reviewed for potential funding of \$116,410. Projects must be completed by March 31, 1994.
- Year 3: \$200,000 in grants will be awarded (once a contract between Metro and the USFWS is signed). Metro may select a certain number of restoration projects which tie into the Greenspaces system map and Master Plan, and work directly with local agencies in developing, implementing and monitoring the projects. The balance of funds would be competitively bid out. Projects must be completed by March 31, 1995.

Funding for the \$27,500 contract would come from the USFWS's second year grant to Metro. Funds have been earmarked in this year's budget for this contract.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 92-1705.

Meeting Date: November 24, 1992
Agenda Item No. 7.4

RESOLUTION NO. 92-1711

TRANSPORTATION AND PLANNING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 92-1711 FOR THE PURPOSE OF SUSPENDING NEGOTIATIONS WITH TRI-MET REGARDING DEVELOPMENT OF A JOINT WORK PROGRAM TO STUDY POTENTIAL OF A TRANSFER OF TRI-MET TO METRO AND EXPRESSING INTENT OF THE COUNCIL REGARDING FUTURE STUDY OF THE ISSUE

Date: November 19, 1992

Presented by: Councilor Devlin

Committee Recommendation: At the November 18 meeting, the Transportation and Planning Committee voted unanimously to recommend Council adoption of Resolution No. 92-1711. Voting in favor: Councilors Devlin, McLain, Buchanan, Moore, and Washington.

Committee Issues/Discussion: Councilor Richard Devlin briefed the committee on the need for the resolution. He explained that the resolution is to state Metro's intent regarding a potential merger with Tri-Met, following the most recent Council retreat and one subsequent meeting with Tri-Met. With the resolution, negotiations will be suspended with Tri-Met - effectively agreeing to disagree. Further, the resolution identifies Metro's next steps - to return to the philosophy expressed in the Dec., 1990 resolution, and, "at a time to be determined by the Council", proceed with a study. Finally the resolution, within the "Whereas" sections, establishes the Metro and legislative history of this issue since 1969.

This is the first stage of a two stage process. The second stage will be development of the timing and content of the actual work program of study.

Councilor McLain asked about the potential for parallel or joint studies with Tri-Met, rather than a study undertaken only by Metro. Councilor Devlin explained that there were several areas where further negotiation might have resulted in agreement (e.g. timing and funding of the joint project). The major point of disagreement was Tri-Met's assertion that they be allowed equal say in the final decision. It was very clear during the Council retreat discussions of this issue that the Council would never accept such a condition. To proceed with negotiations following establishment of this impasse, would have been misleading to Tri-Met and "disingenuous" on our part.

Councilor Devlin explained that although several work plans have been considered, including dates of implementation, no actual work plan has been adopted by the Council.

Councilor Moore asked whether this resolution could be construed as the first step toward an actual merger. Councilor Devlin explained that this resolution should not be construed in this manner. The resolution clearly states that the next step to proceed will happen

when the Council deems it appropriate. Councilor Moore asked that it be clearly stated on the record that approval of this resolution did not bring Metro any closer to taking over Tri-Met than before and that the intent was only to clarify the record. Councilor Devlin agreed with the statement but clarified that Metro is now at a juncture where we could proceed with the study within the next few months, but that formal decision has not been made. Since passage of the Charter, there are many new issues to address by the Council within a relatively short period of time. He had no reading of what the timeline might be for the Council or the current position of the Executive Officer.

Councilor Washington clarified the difference between the terms "take-over" and "merger". He explained that Metro has never viewed the process as a "take-over", but that Tri-Met has chosen to characterize it as such if they are not allowed an equal vote.

Councilor Devlin explained that the 1992 Charter clearly states that Metro has the authority to transfer Tri-Met by ordinance. No emergency clause may be attached to the ordinance, so that it may be referred to the voters.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF SUSPENDING)
NEGOTIATIONS WITH TRI-MET REGARDING))
DEVELOPMENT OF A JOINT WORK)
PROGRAM TO STUDY POTENTIAL OF A)
TRANSFER OF TRI-MET TO METRO AND)
EXPRESSING INTENT OF THE COUNCIL)
REGARDING FUTURE STUDY OF THE ISSUE)

RESOLUTION NO. 92-1711

Introduced by Councilor
Richard Devlin

WHEREAS, A merger of the Tri-County Metropolitan Transit District (Tri-Met) with the Metropolitan Service District (Metro) has been authorized since the enactment of Chapters 267 and 268 of the Oregon Revised Statutes, by the respective 1969 and 1977 Legislative Assemblies; and

WHEREAS, The Task Force on Metropolitan Regional Government was created by action of the 1987 Legislative Assembly, in part to examine questions relating to a merger between Tri-Met and Metro; before this body, Tri-Met raised questions regarding legal impediments needing legislative remedy; and

WHEREAS, The Council of the Metropolitan Service District, on June 23, 1988, adopted Resolution 88-943 supporting amending Oregon Revised Statutes to remove any legal impediments to the merger of Tri-Met with Metro; and

WHEREAS, After seeking the legal opinion of the Office of Legislative Counsel, the Task Force on Metropolitan Regional Government introduced legislation to the 1989 Legislative Assembly to make minor statutory amendments to remove legal impediments to a merger between Tri-Met and Metro; legislation failed to be adopted due to Tri-Met's lobbying efforts; and

WHEREAS, The Council of the Metropolitan Service District, on

July 12, 1990, adopted Resolution 90-1293A to establish a process to pursue a merger with Tri-Met; and

WHEREAS, The Council of the Metropolitan Service District, by minority report on December 13, 1990, adopted Resolution 90-1361 to establish a work plan for the analysis of issues related to the transfer of mass transit services from Tri-Met to Metro; activities suspended, at Tri-Met request, until completion of Westside Light Rail Transit full-funding agreement, then anticipated for September, 1971; and

WHEREAS, The Council of the Metropolitan Service District in June, 1991, adopted the 1991-92 FY Budget which included funds within the budget of the Office of Government Relations for a contractual study of issues relating to the potential transfer of Tri-Met to Metro; and

WHEREAS, The General Manager of Tri-Met, in his letter of March 31, 1992, requested Metro to withdraw release of a "request for proposal" for a study of transfer issues based on the following concerns: 1) the impact of "attendant speculation" of an imminent merger as it relates to Tri-Met's ability to gain a Full Funding Grant Agreement for the Westside Project; 2) a weakening of Tri-Met's status in the bond market; 3) a disregard for the commitment made in Metro Resolution 90-1361; and 4) an undermining of Tri-Met negotiations with the Amalgamated Transit Union; and

WHEREAS, On April 9, 1992, the Presiding Officer of the Metro Council introduced Resolution 92-1613, for the purpose of approving a "request for proposal" for the financial impact study of a Tri-

Met - Metro merger; and

WHEREAS, The Council of the Metropolitan Service District, on April 23, 1992, unanimously adopted a motion to delay action on Resolution 92-1613 and direct the Executive Officer to work with the Tri-Met General Manager and Council Presiding Officer to develop a work plan for the two agencies to examine merger issues; and

WHEREAS, On May 27, 1992, the Tri-Met General Manager, after one brief meeting with the Metro Executive Officer in April, 1992, submitted Tri-Met's "Draft Proposed Work Program" for Metro Executive Officer and Council response; and

WHEREAS, On May 28, 1992, the Council of the Metropolitan Service District, narrowly failed to adopt Resolution 92-1613, approving a "request for proposal" for a financial impact study of a Tri-Met - Metro merger but adopted Resolution 92-1628A for the purpose of establishing a joint work plan between Metro and Tri-Met to study merger options; the original resolution failed as a result of Tri-Met's assertion that the Westside Light Rail Transit full-funding agreement might be placed in jeopardy if the resolution passed; the new resolution provided for assignment to Council Governmental Affairs Committee, or other appropriate committee, and referred the Tri-Met "Draft Proposed Work Program" to the Governmental Affairs Committee for consideration; and

WHEREAS, On July 14, 1992, the Metro Presiding Officer, following consultation with Chairpersons of Council Governmental Affairs and Transportation and Planning Committees, referred to the

Council Transportation and Planning Committee Resolution No. 92-1640, for the purpose of approving an unwritten intergovernmental agreement (IGA) between Metro and Tri-Met to conduct a work plan related to a Metro - Tri-Met merger; an action effectively indefinitely postponing Resolution 92-1628A and assigning drafting of the IGA to the Transportation and Planning Committee; and

WHEREAS, The Chair of the Transportation and Planning Committee appointed a work group including the Metro Executive Officer, Presiding Officer, Chair of the Transportation and Planning Committee, Tri-Met General Manager, and Metro and Tri-Met staff, to develop the aforementioned intergovernmental agreement; and

WHEREAS, The work group, after four formal meetings: agreed that joint planning ventures between Metro and Tri-Met would be of benefit to each agency and the region; may have reached agreement on issues of timing and cost of the study; but were polarized over Tri-Met's insistence to be allowed an equal voice in the ultimate decision regarding merger of the two agencies; and

WHEREAS, On November 3, 1992, the citizens of the Metropolitan Service District by a 62% majority, approved the 1992 Metro Charter, which, in Section 7 (4) provides for Metro to "at any time assume the duties, functions, powers and operations of a mass transit district by ordinance"; and

WHEREAS, as of the date of this resolution: 1) the Westside Light Rail Transit full-funding agreement is in place; 2) the bonds have been sold; and the negotiations between Tri-Met and the

July 12, 1990, adopted Resolution 90-1293A to establish a process to pursue a merger with Tri-Met; and

WHEREAS, The Council of the Metropolitan Service District, by minority report on December 13, 1990, adopted Resolution 90-1361 to establish a work plan for the analysis of issues related to the transfer of mass transit services from Tri-Met to Metro; activities suspended, at Tri-Met request, until completion of Westside Light Rail Transit full-funding agreement, then anticipated for September, 1991; and

WHEREAS, The Council of the Metropolitan Service District in June, 1991, adopted the 1991-92 FY Budget which included funds within the budget of the Office of Government Relations for a contractual study of issues relating to the potential transfer of Tri-Met to Metro; and

WHEREAS, The General Manager of Tri-Met, in his letter of March 31, 1992, requested Metro to withdraw release of a "request for proposal" for a study of transfer issues based on the following concerns: 1) the impact of "attendant speculation" of an imminent merger as it relates to Tri-Met's ability to gain a Full Funding Grant Agreement for the Westside Project; 2) a weakening of Tri-Met's status in the bond market; 3) a disregard for the commitment made in Metro Resolution 90-1361; and 4) an undermining of Tri-Met negotiations with the Amalgamated Transit Union; and

WHEREAS, On April 9, 1992, the Presiding Officer of the Metro Council introduced Resolution 92-1613, for the purpose of approving a "request for proposal" for the financial impact study of a Tri-



METRO

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

Memorandum

DATE: November 12, 1992

TO: Transportation and Planning Committee Members
Interested Parties

FROM: Gail Ryder, Council Analyst

RE: Resolution 92-1711 Potential Amendments

Chairman Devlin has asked me to do some additional historic research of Metro and Oregon legislative records on the subject of a Tri-Met merger, during the period of time from 1978 and 1990. Pending the result of that research, there may be amendments submitted on November 18 to this resolution adding additional "Whereas" sections. No changes are anticipated to the "Be It Resolved" sections.

Meeting Date: November 24, 1992
Agenda Item No. 7.5

RESOLUTION NO. 92-92-1713

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 92-1713, FOR THE PURPOSE OF APPROVING A CONTRACT INCREASE TO SUNFLOWER RECYCLING/PACIFIC BOTTLE REGENERATION TO COMPLETE THE WINE BOTTLE WASHING PROJECT FUNDED AS PART OF 1991-92 1% FOR RECYCLING PROGRAM

Date: November 18, 1992

Presented by: Councilor Buchanan

Committee Recommendation: At the November 17 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 92-1713. Voting in favor: Councilors Buchanan, Hansen, McFarland, Van Bergen and Wyers.

Committee Issues/Discussion: Sunflower Recycling received a \$77,700 grant from the 1% program to aid in establishing a recycling program for green wine bottles. The bulk of the funding was for the purchase of bottle washing equipment and a truck to collect the bottles. The remainder was to be used for the development of a bottle collection system and the renovation of facilities to be used for the project.

Sunflower has encountered a number of unforeseen problems including currency fluctuations that affected the cost of the bottle washing equipment and the need to obtain and renovate an additional building to house the project. As a result, Sunflower has requested an additional \$36,490 to complete the project. Sunflower originally estimated its contribution to the project to be about \$20,000, but has actually spent about \$50,000 to date. Data provided to the committee indicates that Sunflower will begin selling its recycled bottles to local vintners shortly.

At the hearing, Judith Mandt, Solid Waste Staff, and Del Seitzinger of the 1% Committee reviewed the history of the committee's consideration of Sunflower's request for additional funds. They noted that the committee made numerous requests for additional information and that Sunflower readily responded. They also noted the the principals in the project had now invested a significant amount of their own money in it.

Seitzinger noted that Metro's additional support for the project is a "win-win" situation. First, it will reduce disposal costs for major users of wine, such as restaurants. Second, it will help remove a major recyclable item from the waste stream. And, third it will reduce vintners costs for obtaining new bottles for their products.

Councilor McFarland asked if the additional funding was available from existing resources. Mandt responded that two projects that had been funded will not be completed and therefore the money allocated to them would not be spent. In addition, the program had a small contingency amount that had been set aside. The additional funding for Sunflower would come from these sources.

Councilor Hansen asked whether, as part of the original proposal, restaurants or vintners would contribute to the cost of establishing the program. Mandt noted that there was no monetary contribution due to uncertainties about the success of the project. She noted that restaurants that are now participating in the program are taking the time to source separate their green wine bottles. She noted that it is now projected that the program may be profitable within six months to one year.

Councilor Hansen expressed some concern that, by granting this request, all of the additional funding currently available would be used. She noted that other current grantees may have similar financial problems and may have desired the opportunity to apply for additional funding. Mandt responded by noting the potential value of the Sunflower project and that it would likely fail if additional funding were not provided.

**BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT**

FOR THE PURPOSE OF APPROVING A CONTRACT)	RESOLUTION NO. 92-1713
INCREASE TO SUNFLOWER RECYCLING/PACIFIC)	
BOTTLE REGENERATION TO COMPLETE THE)	Introduced by
WINE BOTTLE WASHING PROJECT FUNDED AS)	Rena Cusma, Executive Officer
PART OF 1991-92 1% FOR RECYCLING PROGRAM)	

WHEREAS, The 1% for Recycling Program awarded a \$77,700 grant to Sunflower Recycling Cooperative in the 1991-92 funding cycle to establish a wine bottle washing project; and

WHEREAS, The project was estimated to cost approximately \$100,000 to build and Sunflower would provide the \$22,300 balance of project costs as a partial match to the 1% For Recycling Program grant; and

WHEREAS, Metro entered into a contract with Sunflower in April, 1992 and Sunflower has proceeded with the project by purchasing the wine bottle washing machine, setting up collection and delivery routes, purchasing crates and totes, and making modifications at the recycling center to accommodate the wine bottle washing facility on-site; and

WHEREAS, Sunflower has determined that the on-site location is not suitable for the operation and has relocated the facility to an adjacent building; and

WHEREAS, Unforeseen project costs and increased costs as a result of foreign currency fluctuations and improvements and/or underestimates in the original proposal have caused the project to exceed the \$100,000 estimated cost of implementation by approximately \$62,000; and

WHEREAS, Sunflower has formed a separate company specifically for the wine bottle washing project to be called Pacific Bottle Regeneration and is now doing business as same for the purposes of this operation; and

WHEREAS, The 1% For Recycling Committee has reviewed and considered this request and recommends approval of the grant increase to be paid to Sunflower/Pacific Bottle Regeneration from unexpended 1% For Recycling Program funds carried over from previous years; and

WHEREAS, The 1% For Recycling Committee's recommendation was presented to the Executive Officer for consideration and was submitted to the Council Solid Waste Committee for review, concurrence, and recommendation to the Metro Council to approve; and

WHEREAS, The Council Solid Waste Committee has reviewed the request and recommends approval of the 1% For Recycling Committee's recommendation; now therefore,

BE IT RESOLVED, that

1) The Metro Council recognizes that the wine bottle washing project has the potential to substantially further reduce and reuse in the region, and acknowledges that unforeseen project cost overruns have been incurred and it is therefore necessary to increase the funds available for the project in order to complete its implementation; and

2) Approves the recommendation that the contract with Sunflower/Pacific Bottle Regeneration be amended to increase the \$77,700 contract amount by \$36,490 for a contract total of \$114,190 in order to cover actual project costs for the facility.

ADOPTED by the Council of the Metropolitan Service District this _____ day of

_____, 1992.

Jim Gardner, Presiding Officer

JM:ay
SW921713.RES
November 9, 1992

**Exhibit A
Cash and Property**

Partner	Capital Contribution	Value
1. PR	Bottle washing machine	\$66,000.00
2. Patterson	\$62,022.23 promissory note from Sunflower Recycling Coop to Patterson	\$62,022.23
3. Patterson	Promissory note for \$3,977.77	\$ 3,977.77

ASSET CONTRIBUTIONS TO PBR

PR	bottle washer	66,000
PATTERSON	truck	10,093
	totes	1,800
	pallet jack	225
	2 hand trucks	250
	4 metal glass bins	1,000
	4 metal glass barrels	100
	misc tools (utility knives, ear guards...)	50
	lease deposit	3,400
	site improvements	8,355
	cash	13,978
	sorted bottles: 157,000 x \$0.10 =	15,700
	unsorted bottles: 22,000 x \$0.05 =	1,100

		56,051
	third party labor	3,174
	bottle washer shipping	6,775

		9,949
	grand total	66,000

PROMISSORY NOTE FROM SUNFLOWER RECYCLING COOP
TO PATTERSON USE OF FUNDS

EQUIPMENT		
bottle-washer		7,102.80
shipping		6,775.35
tote shipping		114
truck		4,000
signage		106.40
paint		987.50
registration		171.00
pallet jack		175
repair		47.10
2 hand trucks		250
4 bins		1,000
4 metal barrels		100
misc tools		50

		20,879.15
INVENTORY		3,722
WAGES		13,524.71
RENT		3,400
SITE IMPROVEMENT		
general contractor		4,500
plumbing		2,785.75
concrete		78.10
insulation		346.05
permit & architect		645.25

		8,355.15
OVERHEAD		
fax		20
OLCC restaurant list		20
postage		72.50
Wine Press subscription		9
fuel (through 8/92)		172.27
truck repair		12
insurance		
truck		1,512.10
liability		323.35

		2,141.22
CASH		10,000.00

		62,022.23

STAFF REPORT

**IN CONSIDERATION OF RESOLUTION NO. 92-1713 FOR THE PURPOSE
OF APPROVING A CONTRACT INCREASE TO SUNFLOWER
RECYCLING/PACIFIC BOTTLE REGENERATION TO COMPLETE THE
WINE BOTTLE WASHING PROJECT FUNDED AS PART OF 1991-92 1%
FOR RECYCLING PROGRAM**

Date: November 9, 1992

Presented By: Judith Mandt

PROPOSED ACTION:

To increase the contract of Sunflower Recycling Coop, doing business as Pacific Bottle Regeneration by \$36,490 to complete wine bottle washing facility as part of 1991-92 1% For Recycling Program.

BACKGROUND:

Last year the 1% For Recycling Program granted \$77,700 to Sunflower Recycling in southeast Portland to establish a wine bottle washing operation that would wash wine bottles consumed in the region and redistribute them to local vintners for reuse. The project was chosen as a marketing and waste reduction project because of its high potential to reduce the region's cullet stockpile and create demand for reuse. It was expected to cost a total of \$95,000 to \$100,000. Sunflower would provide the \$17,300 to \$22,300 the balance of funds as partial match.

When the committee selected this project, Sunflower representatives advised that the project cost estimate for the machine had increased since the proposal was submitted, and requested additional funds. Currency fluctuations of the U.S. dollar to the Austrian shilling increased the cost of the machine by about \$6,000 more than anticipated. Since the Sunflower proposal was very conservative, there was no room for cost-overruns. The committee noted the information, but declined to increase the grant because it would be unfair to other proposers to change the amount of this proposal unless the same was offered to all. They said they preferred to wait for definite costs incurred, but would consider a request at a later date if justified. Reflecting this decision and the need for a prudent reserve for the program, the committee set aside a contingency of \$5,750 this year.

The project commenced immediately after executing a contract in April. The required deposit of \$60,000 for the Klinger bottle washing machine to be fabricated in Austria was placed in a controlled account for staged dispersals, and Sunflower accepted delivery of the machine in September. During the summer months, Sunflower began to build the collection route, purchase crates and totes, and make modifications at the recycling coop to house the operation in the northwest portion of the property. In early September, they determined that the on-site building would not be suitable for the operation. Space in a

vacant building on S.E. Gladstone, adjacent to the recycling center, was found to substitute for the on-site facility. At the same time, Sunflower made the decision to form a separate company for this operation to be called Pacific Bottle Regeneration (Attachment D). Alexander Patterson, project manager, and Pacific Regeneration, Inc., a subsidiary of Sunflower, form a partnership. The work force and management of the wine bottle reuse project remain the same.

PRESENT STATUS

As anticipated by Metro, Sunflower has borne a portion of the cost of the project directly. The Cooperative has invested approximately \$50,000 in the project to date. This is more than double the amount they originally expected to invest. A number of factors contributed to this. The actual project cost was seriously underestimated. The international currency fluctuation ultimately resulted in a cost increase of about \$6,500. Payment of some \$6,800 for shipping and U.S. Customs was not contemplated. Costs related to equipment and supplies acquisition were also higher than estimated. Alterations to the new building including plumbing, electrical, heating, other site preparation, and purchase of a used forklift also increase the project costs. Originally expected to cost no more than \$100,000, in actuality the project will run closer to \$162,000 (Attachment A).

Sunflower is requesting an additional grant of \$36,490 from Metro to pay for increased project associated costs. The breakdown of additional funds request in Attachment B shows the added costs for equipment, supplies, and site preparation for which financial assistance is needed. The 1% For Recycling Committee has reviewed and discussed this request as part of their agenda at three separate meetings. Sunflower representatives have been requested to bring detailed and revised information, including a proforma for the first year of operation (Attachment C) and were interviewed twice by the committee prior to its decision. At its October 21 meeting, the committee unanimously approved a recommendation to provide the additional funds.

There are funds available in the 1% for Recycling Program budget to cover this increase. The contingency reserve of \$5,750 alone would be insufficient, however, two projects funded in two past funding cycles will not be done because of problems incurred in start-up. Due to the lateness of the decision not to continue them, the funds were carried over from the previous year and could be used for this purpose.

Babyland Diaper Service: Received a \$28,050 grant in 1990-91, expended \$700 before determining it was not feasible, \$27,350 balance remains.

This project was to fund search and purchase of a reusable cloth bag to deliver and pick-up diapers to replace the disposable plastic bags currently used. The contractor experimented with 7 different bags but found none acceptable to customers. Fading caused by industrial strength detergents and unremovable stains in the fabric were primary factors. Customer confidence was critical and their concerns, even offset by the environmental ethic, could not be overcome with any bag fabric that was tested.

The contract, which would have expired in August, 1992, had been carried over in this fiscal year and funds are unearmarked at this time.

Gale & Associates: Received a \$10,000 grant in 1991-92; no funds were expended. *Recycling By-the-Book* was a project funded to collect and recycle books at school libraries in Washington County. It was to have been a collaborative project of Gale & Associates and Lakeside Reclamation, a recycling business. After the grant award was made, Lakeside Reclamation made the decision not to proceed with the project. Gale & Associates made sincere attempts to continue on with the project, but after six months, there was no contract and the project was deemed to be unfeasible at this time.

Total Available from these two projects: \$37,350

Total Sunflower/Pacific Bottle Regeneration Request: \$36,490

The committee gave serious and lengthy consideration to this request. The project is viewed as having potential to effect substantial waste reduction in the region. The removal and reuse of two million wine bottles per year is achievable and realistic, if sufficient capital is invested now. Sunflower is seen as having made a firm commitment to the project and much hard work has gone into it. The cost increases that affect this project are deemed as a lack of knowledge of the actual dimensions of this project and largely beyond their control. The committee feels that the project would be significantly impaired if the requested increase in funds is not made, and recommends that the full amount of Sunflower/Pacific Bottle Regeneration's request of \$36,490 be funded.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 92-1713 to approve the grant increase requested by Sunflower/Pacific Bottle Regeneration, thus amending the contract by \$36,490.

JM:ay
1%WINEINCR.RPT
November 9, 1992

PROJECT: Wine bottle washing 1% project
METRO POC: Judith Mandt, Solid Waste Administration Manager
CONTRACTOR POC: Alexander Patterson, John Garofalo
COMPLETION DATE: June 30, 1993

This agreement is entered into between the Metropolitan Service District (Metro) and Sunflower Recycling Cooperative, hereinafter called "Contractor," pursuant to the 1% for Recycling Grant Contract, dated April 1, 1992.

1. Metro and Contractor agree that cost of services provided by Contractor are greater than originally estimated by the parties, and that Contractor shall continue to provide the services until June 30, 1993.
2. Metro agrees to pay the Contractor the sum of \$36,490 for the above described services. Metro shall pay the Contractor within 30 days of completion of services and receipt of an approved billing from the Contractor.
3. The maximum compensation which Metro shall be obligated to pay the Contractor pursuant to this Change Order shall be \$36,490.
4. Pursuant to Article XIII of the contract between the parties, Metro consents to the assignment of this contract from Sunflower Recycling Cooperative to Pacific Bottle Regeneration, which is an Oregon general partnership comprised of Alexander C. Patterson and Pacific Regeneration, Inc., a subsidiary of Sunflower Recycling Cooperative.
5. Except as modified herein, all other terms and conditions of the original agreement and previous change orders (if any) remain in full force and effect.

SUNFLOWER RECYCLING COOPERATIVE

METROPOLITAN SERVICE DISTRICT

Signature

Signature

Print name, title

Print name, title

Date

Date

ALEXANDER C. PATTERSON

Signature

Print name, title

Date

PACIFIC REGENERATION, INC.

Signature

Print name, title

Date

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ATTACHMENT A
Breakdown of Total Costs (actual and estimate)

Inventory		\$ 2,279
		4,500
Wages	Labor	
	April	720
	May	1,989
	June	2,888
	July	3,830
	August	4,800
	September-November	15,000
	Training	1,000
Equipment		
	Washer	61,000
		7,080
	Shipping And Customs	6,780
	Truck	9,000
	Paint and Sign	1,587
	Registration	171
	Totes	1,800
	Delivery	626
	Pallet Jack	225
	Used Fork Lift	800
Supplies		
	Boxes And Dividers	15,000
	Pallet Wrap, Tape, Etc.	3,000
Rent		
	April - October	6,000
	Down Payment & November (new location)	3,400
Overhead		
	OLCC List of Licensed Restaurants	20
	Postage	72
	Subscription to Wine Press	9
	Truck Operation	1,250
Site Preparation		
	Plumbing	1,525
	Electricity	930
	Walls	4,000
	Oil Burner	375
	Finishing	1,000
TOTAL		\$162,656

ATTACHMENT B

BREAKDOWN OF METRO'S CONTRIBUTION

METRO'S CONTRIBUTION TO DATE

WAGES	LABOR	3,120.00
	TRAINING	1,000.00
EQUIPMENT		
	BOTTLE-WASHER	61,000.00
	TOTES	1,800.00
	TOTE TRANSPORT	626.00
	TRUCK	5,000.00
	SIGNAGE (PROMO)	500.00
LEASEHOLD IMPROVEMENTS		569.00
OVERHEAD		200.00
TOTAL		73,815.00

Of the \$77,700 grant, \$3,885 remains unpaid. *

BREAKDOWN OF ADDITIONAL FUNDS REQUESTED

EQUIPMENT		
	FINAL PAYMENT ON BOTTLE-WASHER	7,080
	SHIPPING BOTTLE-WASHER	6,780
	FORKLIFT	800
SUPPLIES		
	CASE BOXES AND DIVIDERS	15,000
SITE PREP		
	FRAMING & WALL HANGING	4,000
	OIL BURNER HOOK-UP	375
	PLUMBING	1,525
	ELECTRICAL HOOK-UP	930
TOTAL		36,490

* Metro's 5% retainage for this contract

ATTACHMENT C

WINE BOTTLE PROGRA
FIRST YEAR PROJECT
FOR THE YEAR ENDINER 30, 1993

	SEP	OCT	NOV	DEC	JAN	FEB
# CASES SOLD (CASH PROJECTIONS)	0	0	4,500	5,000	5,500	6,000
BAL FWD	4,800	6,085	9	1,528	7,931	12,646
CASH SALES ¹		0	855	950	1,045	1,140
NET 30			0	10,260	11,400	12,540
NET 60				0	5,130	5,700
NET 90					0	855
TOTAL RECEIPTS	0	0	855	11,210	17,575	20,235
LOANS/GRANTS	10,000	10,000	28,000	10,000	3,000	
CASH AVAILABLE	14,800	16,085	28,864	22,738	28,506	32,881
PURCHASES:						
BOTTLES	500	1,300	1,400	1,600	1,800	2,000
BOXES	0	0	5,000	2,200	2,200	2,200
DIVIDERS			10,000 ⁹			
LABOR: ²	0	2,000	4,000	4,000	4,400	4,800
SUPPLIES	0	0	450	500	550	600
ADMIN	800	500	500	500	500	500
TRANSPORTATION ³	0	0	900	1,000	1,100	1,200
EQUIP USAGE	0	0	675	750	825	900
MARKETING	0	0	111	1,457	2,285	2,631
FIXED COSTS:						
RENT ⁴	3,400	0	300	1,200	1,200	2,250
INSURANCE	0	275	550	550	550	550
MISC	0	450	450	450	450	450
OTHER COSTS:						
SHIPPING ⁵	3,820					
SITE IMPV	195	3,2516	2,000 ¹⁰			2,000
EQUIP		7,8007	1,000			
PROF FEES		5008				
INCENTIVE BONUSUS	0	0		600		
TOTAL EXPENDITURES	8,715	16,076	27,336	14,807	15,860	20,081
ENDING BALANCE	6,085	9	1,528	7,931	12,646	12,800

WINE BOTTLE PROGRA
 FIRST YEAR PROJECT
 FOR THE YEAR ENDIN

	SEP	TOTALS
# CASES SOLD	9,500	77,000
(CASH PROJECTIONS)		
BAL FWD	12,365	
CASH SALES	1,805	14,630
NET 30	20,520	153,900
NET 60	9,690	66,690
NET 90	1,520	9,500
	-----	-----
TOTAL RECEIPTS	33,535	244,720
LOANS/GRANTS		61,000
CASH AVAILABLE	45,900	
PURCHASES:		
BOTTLES	3,800	29,900
BOXES	4,400	35,800
DIVIDERS		30,000
LABOR:	7,800	64,600
SUPPLIES	950	7,700
ADMIN	750	8,300
TRANSPORTATION	1,900	15,400
EQUIP USAGE	1,425	11,550
MARKETING	4,360	31,814
FIXED COSTS:		
RENT	2,250	24,100
INSURANCE	550	6,325
MISC	450	5,400
OTHER COSTS:		
SHIPPING		3,820
SITE IMPV		7,446
EQUIP		8,800
PROF FEES		500
INCENTIVE BONUSUS	600	2,400
	-----	-----
TOTAL EXPENDITURES	29,235	293,855
	-----	-----
ENDING BALANCE	16,665	11,865
	=====	=====

WINE BOTTLE PROGRAM
FIRST YEAR PROJECTIONS
FOR THE SIXTEEN MONTHS ENDI

	PER CASE
# CASES SOLD	
INCOME	3.80

EXPENSES:

BOTTLE PURCHASES	0.36
BOXES/DIVIDERS	0.70

LABOR:	
SORTING	0.60
WASHING	0.24

SUPPLIES	0.10
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ADMIN	0.05
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TRANSPORTATION	0.20
EQUIP USAGE	0.15
MARKETING	0.45

FOOTNOTES TO CASH PROJECTION

1. Estimate of rate of payment for cases sold based on Pixner's experience.
2. Labor includes sorting, washing and related production costs. Through November costs include additional labor for site set-up. September and one half of October labor costs paid by Sunflower with revenues outside of wine bottle reuse budget.
3. Transportation is delivery of washed bottles. Calculation of estimated delivery costs: average of 200 miles/delivery, 5 hours. \$40.00 truck operation + \$50.00 labor = \$90.00/delivery of 480 cases = \$0.187/case. Call it \$0.20/case to be safe. We expect that we will usually be bringing back bottles from winery tasting rooms when we make deliveries, thus lowering the actual costs.
4. First and last month's payment on lease. October represents an early occupation of part of the premises. Following rent costs are per signed lease agreement.
5. Final payment for shipping bottle washing machine.
6. Plumbing, wiring, and heater hook-up of machine.
7. \$7,000 final payment on machine; \$800 for forklift.
8. To pay lawyer for writing the joint venture contract.
9. Dividers bought in bulk quantities.
10. Purchase of tanks for soaking problem bottles.

ATTACHMENT D

PARTNERSHIP AGREEMENT

DATED AS OF: October 15, 1992

BETWEEN: ALEXANDER PATTERSON
("Patterson")
2202 SE Brooklyn
Portland, OR 97202

AND: PACIFIC REGENERATION, INC.
an Oregon corporation
("PR")
2345 SE Gladstone
Portland, OR 97202

Patterson and PR (the "parties") desire to become partners and to form a general partnership under the laws of the State of Oregon for the purposes and on the terms and conditions stated in this Agreement.

SECTION 1. FORMATION OF PARTNERSHIP

1.1 Partnership. The parties (hereinafter referred to collectively as the "partners" and referred to in their individual capacities as a "partner" hereby form a general partnership (hereinafter referred to as the "partnership") pursuant to the Oregon Uniform Partnership Law, Chapter 68 of the Oregon Revised Statutes, for the purposes and on the terms and conditions stated in this Agreement.

1.2 Name. The name of the partnership shall be Pacific Bottle Regeneration. The parties will register this name with the Corporation Division of the Oregon Secretary of State.

1.3 Principal Place of Business. The partnership's principal place of business shall be at 2501 SE Gladstone, Portland, Oregon 97202. The principal place of business may change from time to time and other places of business may be established by actions taken in accordance with the provisions of this Agreement that govern management of the partnership's business and affairs.

1.4 Term. The partnership shall begin as of the date of this Agreement and shall continue until the partnership decides on its termination, unless it has been dissolved or terminated earlier under this Agreement.

1.5 Purpose. The sole purpose of the partnership is to engage in the business of owning and operating a bottle reuse and washing facility and to do all things related to, incidental to, or in furtherance of that business.

SECTION 2. CAPITAL CONTRIBUTIONS

2.1 Initial Contributions.

2.1.1 Cash and Property. The partnership's initial capital shall consist of the amounts in cash and property shown in Exhibit A to this Agreement. That exhibit sets forth the capital contributions to be made by the respective partners, the nature of their respective contributions and, for contributions consisting of property, the amounts that the partners agree are the market values of the respective items. Each partner shall pay in full or convey his or its contribution to the partnership upon execution of this Agreement.

2.1.2 Tax Treatment of Property. Notwithstanding other provisions of this Agreement, in computing each partner's share of the partnership's federal and state taxable income, if the agreed market value of any of the property items differs from the tax basis of the property, the depreciation expense and gain or loss on any disposition of that item shall be allocated among the partners. The allocation shall be such that the tax treatment of the partners, excluding the partner who contributed the item, will be the same as if the contributing partner had given an amount in cash equal to the agreed market value of the item, and the partnership had then purchased it for that amount.

2.2 Failure to Make Initial Contribution. If any partner fails to pay or convey his or its initial contribution to the partnership's capital at the time and in the form and amount required by this Agreement, the partnership shall immediately dissolve. Each partner who has paid or conveyed all or any portion of his or its initial contribution to the partnership's capital shall be entitled to a return of the funds and properties he or it contributed.

2.3 Additional Capital. Whenever it is determined by the managing partner that the partnership's capital is presently or is likely to become insufficient for the conduct of its business, the managing partner may, by written notice to all partners, call for additional contributions to capital. These contributions shall be payable in cash no later than the date specified in the notice, or no sooner than 30 days after the notice is given. Each partner shall be liable to the partnership for the partner's share of the aggregate contributions duly called for under this paragraph. Each partner's share shall be in proportion to his or its share of the partnership's profits, but no partner, in any fiscal year, shall be required in the event of such call to contribute more

than 10 percent of the credit balance in the capital account as of the end of the immediately preceding fiscal year, reduced by any contribution to the partnership's capital made by him or it since the end of that fiscal year. In the event the contribution is not paid the partner shall also pay the partnership interest thereon from the date due until paid at the rate of 9 percent per annum. If payment is not made within six months from the due date, the non-paying partner's right to vote on partnership matters shall be suspended until payment is made and votes shall be calculated as if the non-paying partner's capital account did not exist. If payment is not made within 12 months from the due date, the other partners may on a pro rata basis contribute the required amount without interest and receive a corresponding credit in the contributing partner's capital account.

2.4 Voluntary Contributions. No partner may make any voluntary contribution of capital to the partnership without the consent of the managing partner.

2.5 Withdrawal of Capital. No partner may withdraw capital from the partnership without the consent of those partners holding 55 percent of the interest of the partners in the partnership.

2.6 No Interest on Capital Contributions. No partner shall be entitled to receive any interest on his or its capital contribution. If the partner is entitled to a repayment of his or its contribution, the partner shall also be entitled to interest on it at the rate of 9 percent per annum from the date when repayment should have been made.

2.7 Future Loans. No partner shall lend or advance money to or for the partnership's benefit without the approval of the managing partner.

If any partner, with the requisite consent of the managing partner, lends any money to the partnership in addition to his or its contribution to its capital, the loan shall be a debt of the partnership to that partner. The liability shall not be regarded as an increase of the lending partner's capital and it shall not entitle him or it to any increased share of the partnership's profits.

SECTION 3. ALLOCATION OF PROFITS AND LOSSES

3.1 General Allocation. The partnership's profits and losses shall be shared in proportion to the partners' capital accounts.

3.2 Circumstances for Reallocation. Patterson and PR recognize that the equipment and truck ("Equipment") contributed by PR to the partnership may be subject to encumbrances, including without limitation, a security interest held by Cascadia Fund securing approximately \$31,000. The Equipment is contributed to the partnership subject to these encumbrances. PR will continue to be liable for all payments on the Equipment. If it becomes necessary or desirable for the partnership or Patterson to make any payment relating to the Equipment because of any non-payment thereof by PR, then the partnership or Patterson may make such payment and assume the remaining obligations thereunder. In such event, the amount paid and assumed by Patterson and one-half of the amount paid and assumed by the partnership shall be considered to be a purchase by Patterson of a portion of PR's capital account and partnership interest and the allocation of profits and losses thereafter shall be adjusted in proportion to the total of capital contributions made by the parties. As an illustration, if the partnership pays \$30,000 or Patterson pays \$15,000 and the capital contributions of each party made to that date totaled \$80,000 each, then Patterson would be allocated a capital account of \$95,000, PR would be allocated a capital account of \$65,000, and 59.4 percent of the partnership's profits and losses would be allocated to Patterson and 40.6 percent of the partnership's profits and losses would be allocated to PR.

SECTION 4. DISTRIBUTIONS

4.1 Discretionary Distributions. The managing partner shall review periodically the financial condition of the partnership to determine whether any cash is held which is in excess of the amounts reasonably needed in the business of the partners. The partnership shall distribute such cash to the partners upon approval of the partners holding a majority interest in the capital of the partnership. Any cash distributions made pursuant to this section shall be allocated among the partners in accordance with their interests in profits and losses.

4.2 Mandatory Distributions. Within 90 days after the end of the fiscal year of the partnership there shall be distributed in cash to the partners, in proportion to their respective shares in the partnership's profits, amounts equal to 50 percent of the partnership's net profit for that fiscal year computed under this Agreement provided that the remaining 50 percent equals at least 100 percent of the partnership's short-term liabilities outstanding at the close of the prior fiscal year.

4.3 Drawing Accounts. Each partner during any fiscal year shall be entitled to draw against profits such amounts as shall from time to time be agreed on by the managing partner, but such amounts shall never exceed one-half of the profits each quarter. These amounts shall be charged to the partners' drawing accounts as they are drawn.

4.4 Excessive Withdrawals. Notwithstanding the provisions of this Agreement governing drawing accounts of partners, to the extent any partner's withdrawals under those provisions during any fiscal year of the partnership exceed his or its distributable share in the partnership's profits, the excess shall be regarded as a loan from the partnership that he or it is obligated to repay within 30 days after the end of that fiscal year, with interest on the unpaid balance at the rate of 9 percent per annum from the end of that fiscal year to the date of repayment.

4.5 Overall Limit on Distributions. The aggregate amounts distributed to the partners from the partnership's profits shall not, however, exceed the amount of cash available for distribution, taking into account the partnership's reasonable working capital needs as determined by the managing partner.

SECTION 5. ACCOUNTING

5.1 Fiscal Year. The fiscal year of the partnership shall be one ending on December 31 of each year.

5.2 Accounting Method. The partnership books shall be kept on the accrual basis.

5.3 Capital Accounts. An individual capital account shall be maintained for each partner and his or its initial capital contribution in cash or property shall be credited to that account. No additional share of profits or losses shall inure to any partner because of changes or fluctuations in his or its capital account except as provided in Section 3.2.

5.4 Determination of Profit and Loss. The partnership's net profit or net loss for each fiscal year shall be determined as soon as practicable after the close of that fiscal year in accordance with the accounting principles employed in the preparation of the federal income tax return filed by the partnership for that year, but without any special provisions for tax-exempt or partially taxable income. By March 15 of each year, the partnership shall complete its tax return and provide each partner with all requisite tax information to allow each partner to complete the partner's tax return.

SECTION 6. RECORDS AND REPORTS

6.1 Partnership Books. Proper and complete books of account of the partnership business shall be kept at the partnership's principal place of business and shall be open to inspection by any of the partners or their accredited representatives at any reasonable time during business hours. The accounting records shall be maintained in accordance with generally accepted bookkeeping practices for this type of business.

6.2 Annual Report. Within 120 days after the end of each fiscal year of the partnership, the partnership shall furnish to each partner an annual report. This report shall consist of at least

(a) a copy of the partnership's federal income tax returns for that fiscal year;

(b) supporting profit and loss statements;

(c) a balance sheet showing the partnership's financial position as of the end of that fiscal year; and

(d) any additional information that the partners may require for the preparation of their individual federal and state income tax returns.

6.3 Operating Budget. At least 30 days prior to the end of each fiscal year the partnership shall furnish each partner with a proposed operating budget for the next fiscal year. The managing partner shall attempt to obtain the partners' agreement to the proposed operating budget, but in the absence of such agreement, the managing partner may adopt the budget unless restricted by Section 7.2.

SECTION 7. MANAGEMENT

7.1 Control. The managing partner shall be Alexander Patterson. He shall have control over the business of the partnership and assume direction of its business operations. The managing partner shall consult and confer as far as practicable with the nonmanaging partners, but the power of decision shall be vested in him. The powers and duties of the managing partner shall include control over the partnership's books and records and the hiring of any independent certified public accountants he deems necessary for this purpose. Except as otherwise expressly provided in this Agreement, all things to be done by the partnership shall be done under the managing partner's control and supervision. The managing partner shall be entitled to reimbursement monthly, on the submission of an

itemized account, of any sums he shall have expended for the benefit of the partnership's business. On the managing partner's death, resignation, sale of his partnership interest, or other disability, a successor managing partner shall be selected by a majority in capital interest of the partners.

7.2 Acts Requiring Majority Consent. The following acts may be done only with the consent of the partners or partners holding 55 percent of the interest of the partners in the partnership:

(a) approving the operating budget if the total amount of the fixed cost budget and administrative budget therein exceeds 15 percent of the partnership's revenue for the prior fiscal year or if the partnership had a net operating loss during the prior fiscal year (see Exhibit B for the 1993 approved operating budget);

(b) changing the business purpose of the partnership;

(c) borrowing in excess of \$10,000 in the partnership's name;

(d) purchasing any piece of equipment with capital costs in excess of \$10,000, or incurring annual aggregate capital costs in excess of an amount equal to 50 percent multiplied by the net profit for the prior fiscal year;

(e) transferring, hypothecating, compromising or releasing any partnership claim in excess of \$2,000 except on payment in full;

(f) selling, leasing or hypothecating any partnership property or entering into any contract for any such purpose, other than in the ordinary course of the partnership's business and other than any hypothecation of partnership property to secure a debt resulting from any transaction permitted under (b);

(g) knowingly suffering or causing anything to be done whereby partnership property having a value in excess of \$10,000 may be seized or attached or taken in execution, or its ownership or possession otherwise endangered; and

(h) termination of the partnership.

7.3 Withdrawal of Funds. All partnership funds shall be deposited in the partnership's name and shall be subject to withdrawal only on the signature of the managing partner.

7.4 Outside Activities. Any partner may be engaged in one or more businesses, other than the business of the partnership, but only to the extent that this activity does not compete or materially interfere with the business of the partnership and does not conflict with the obligations of that partner under this Agreement. Neither the partnership nor any other partner shall have any right to any income or profit derived by a partner from any business activity permitted under this section.

7.5 Salaries. The managing partner shall be entitled to a monthly salary of not less than \$1,000 or such other greater amount that may from time to time be determined by the consent of the partners holding 55 percent of the interest of the partners in the partnership. This salary shall be treated as a partnership expense in determining its profits or losses.

7.6 Removal of Managing Partner. The managing partner may be removed upon (a) the consent of the partners holding 55 percent of the interest of the partners in the partnership or (b) the other partners establishing that the managing partner has consistently and negligently mismanaged the partnership in a manner to cause the partnership substantial harm or that he has managed the partnership in a manner which has provided him with substantial benefits not reasonably due him as a partner or as a manager.

SECTION 8. CHANGES IN MEMBERSHIP

8.1 New Partners. A new partner may be admitted to the partnership as of the beginning of any fiscal year of the partnership, but only with the written approval of all the partners. Each new partner shall be admitted only if he or it shall have executed this Agreement and an appropriate supplement to it, in which the new partner agrees to be bound by the terms and provisions of this Agreement as they may be modified by that supplement. Admission of a new partner shall not cause dissolution of the partnership.

8.2 Interest of New Partner. A newly admitted partner's capital contribution and share of the partnership's profits and losses shall be set forth in the written consents of the partners consenting to the admission of the new partner.

8.3 Partner's Death, Disability or Voluntary Withdrawal. The partnership shall dissolve and terminate on any partner's death, permanent physical or mental disability, or voluntary withdrawal from the partnership.

8.4 Bankruptcy. Any partner shall cease to be a partner and shall have no interest in common with the remaining partners in the partnership or its properties if:

(a) he or it files a voluntary petition in bankruptcy, is adjudicated a debtor in a bankruptcy proceeding, becomes insolvent, makes an assignment of his or its partnership interest or substantially all of his or its assets for the benefit of creditors, or applies for or consents to the appointment of a receiver or trustee with respect to any substantial part of his or its assets, or if

(b) a receiver or trustee is appointed or an attachment or execution levied with respect to any substantial part of the partner's assets or the partner's partnership interest and the appointment is not vacated or the attachment or execution is not released within 60 days, or if

(c) a charging order is issued against a partner's interest in the partnership and is not released or satisfied within 60 days.

From the date that a partner ceases to be a partner, he or it shall be considered in equity as a vendor to the partnership of his or its share of the partnership's assets at a price equal to the credit balance of his or its capital account at that date as increased by his or its share of any partnership net profit and decreased by his or its share of any partnership net loss not yet reflected in the capital account. That amount shall be considered a debt due owed by the partnership to that partner or his or its assignee or trustee, and all necessary deeds and other documents shall be executed for the vesting of the partner's share in the partnership. The debt due plus interest thereon at the rate of 9 percent per annum shall be amortized and paid over a three year period by monthly payments.

8.5 Limited Transferability. A partner may transfer all or part of his or its interest in the partnership only as follows:

- (1) to the partnership or to any other partner;
- (2) by succession or testamentary disposition on his death;
- (3) by a gift to his spouse or children, or to a trustee for his spouse or children or both;

(4) to a corporation if, immediately following the transfer, the partner making the transfer owns at least 75 percent of that corporation's voting shares; or

(5) to any person after the partner making the transfer has first offered the other partners their rights of first refusal in accordance with the provisions of this Agreement dealing with those rights of first refusal.

8.6 Right of First Refusal. If any partner receives an offer, whether solicited by him or it, from a person not then a partner, to purchase all or any portion of his or its interest in the partnership and if the partner receiving the offer is willing to accept it, he or it shall give written notice of the amount and terms of the offer, the identity of the proposed transferee and his or its willingness to accept the offer to each of the other partners. The other partners shall have the option, within 60 days after that notice is given, to purchase the designated interest or designated portion of the interest of the partner giving notice on the same terms as those contained in the offer. The other partners may exercise this option jointly or individually. If more than one partner exercises the option individually, the partner giving notice may choose whose exercise of the option he or it shall accept.

SECTION 9. DISSOLUTION

On any dissolution of the partnership under this Agreement or applicable law, except as otherwise provided in this Agreement, the continuing operation of the partnership's business shall be confined to those activities reasonably necessary to wind up the partnership's affairs, discharge its obligations and preserve and distribute its assets.

SECTION 10. MISCELLANEOUS

10.1 Indemnification. Each partner shall indemnify and hold harmless the partnership and each of the other partners from any and all expense and liability resulting from or arising out of any negligence or misconduct on his or its part to the extent that the amount exceeds the applicable insurance carried by the partnership.

10.2 Amendments. This Agreement may be amended at any time and from time to time, but any amendment must be in writing and signed by each person who is then a partner.

10.3 Notices. Any written notice to any of the partners required or permitted under this Agreement shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or the

third day after mailing if mailed to the party to whom notice is to be given, by first class or air mail, postage prepaid and addressed to the addressee at the address stated above, or at the most recent address, specified by written notice, given to the sender by the addressee under this provision. Notices to the partnership shall be similarly given and addressed to it at its principal place of business.

10.4 Counterparts. The parties may execute this Agreement in two counterparts, each of which will be considered an original, but both of which together will constitute the same instrument.

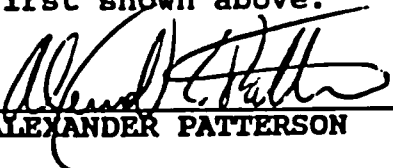
10.5 Governing Law. This Agreement is executed and intended to be performed in the State of Oregon, and the laws of that state shall govern its interpretation and effect.

10.6 Successors. This Agreement shall be binding on and inure to the benefit of the respective successors, assigns and personal representatives of the parties, except to the extent of any contrary provision in this Agreement.

10.7 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

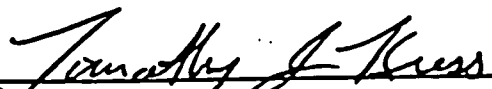
10.8 Entire Agreement. This instrument contains the entire agreement of the parties relating to the rights granted and obligations assumed in this instrument. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the party to be charged.

IN WITNESS WHEREOF, the partners have executed this Agreement as of the date first shown above.



ALEXANDER PATTERSON

PACIFIC REGENERATION, INC.



By: TIMOTHY J. KRESS
Its: President

Meeting Date: November 24, 1992
Agenda Item No. 7.6

RESOLUTION NO. 92-1714



METRO

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

Memorandum

DATE: November 19, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council

RE: AGENDA ITEM NO. 7.6; RESOLUTION NO. 92-1714

The Council agenda will be printed before the Regional Facilities Committee meets to consider Agenda Item No. 7.6 on Tuesday, November 24.

**BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT**

FOR THE PURPOSE OF AMENDING THE) RESOLUTION NO. 92-1714
CONSOLIDATION AGREEMENT BETWEEN)
THE CITY OF PORTLAND AND METRO) Introduced by
AND TRANSFERRING MEMORIAL COLISEUM) Executive Officer Rena Cusma
FROM MERC TO CITY CONTROL AND) and Presiding Officer, Jim
AUTHORIZING AN ADMISSION TAX) Gardner
OFFSET AGREEMENT WITH OAC AND CITY)

WHEREAS, Metro and the City of Portland entered into a Consolidation Agreement which transferred City facilities managed by the Exposition-Recreation Commission and all employees to the control of the Metropolitan Exposition-Recreation Commission; and

WHEREAS, The City has now entered into an agreement with the Portland Trail Blazers and Oregon Arena Corporation (OAC) which transfers operational management of Memorial Coliseum to the OAC; and

WHEREAS, the City cannot meet its obligation to the OAC to transfer control of Memorial Coliseum without an amendment to the Consolidation Agreement which returns the Coliseum to the City; and

WHEREAS, Metro recognizes the City's investment of public funds and its right and responsibility to negotiate terms with the Trail Blazers and OAC that result in a new Arena and guarantees the continued presence of the Trail Blazers in the City and the region for at least thirty years; and

WHEREAS, The Metro Facilities Study concluded that two arenas operating competitively side-by-side could not both prosper, which conclusion provided the rationale for OAC management of both arenas, and

WHEREAS, City will finance over \$34.5 million in public improvements and will collect a 6% user fee on all tickets for the Arena and Coliseum from the Portland Trail Blazers (OAC); and

WHEREAS, City and Metro both approved resolutions that recognized the need to agree to offset the 6% user fee payment from OAC to the City against any future admission tax collected by Metro or the City; and

WHEREAS, authorizing an amendment to the Consolidation Agreement and entering into an Admission Tax Offset Agreement to support the City's negotiations and completion of the Arena project is in the best interests of the City and the region; now therefore

BE IT RESOLVED that the Executive Officer is authorized to execute the Amended Consolidation Agreement attached as Exhibit "A" and the Admission Tax Offset Agreement attached as Exhibit "B".

ADOPTED by the Council of the Metropolitan Service District this
_____ day of _____, 1992.

Jim Gardner, Presiding Officer

AMENDED

**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**

This Agreement dated as of December 19, 1989, ~~amended as of~~
1992, is between the City of Portland, Oregon (City); and the Metropolitan Service District
(Metro); and the City of Portland Exposition-Recreation Commission (ERC).

~~City, Metro, and ERC agree that the December 19, 1989, Agreement is amended as
follows:~~

RECITALS:

- ~~1. In January 1985 the City, Metro, and Clackamas, Multnomah, and Washington counties established the Committee on Regional Convention, Trade, and Spectator Facilities (CTS Committee) consisting of public and private representatives.~~
- ~~2. In May 1986 the CTS Committee adopted recommendations regarding regional convention, trade, and spectator facilities.~~
- ~~3. The CTS recommendations called for Metro to establish a regional commission under ORS Chapter 268 for the planning, development, promotion, operation, and management of the region's convention, trade, and spectator facilities, and for the City and Multnomah County to transfer responsibility for operating their regional convention, trade, and spectator facilities to the regional commission.~~
- ~~4. In May 1986 the City, by Resolution No. 34110, found that Metro should be responsible for the planning, development, promotion, operation, and management of the region's public convention, trade show, and spectator facilities and resolved that the City work with Metro to develop a plan for the transfer of the ERC's functions and responsibilities to a regional commission to be established by Metro, with the transfer to be completed by the date of opening of the Oregon Convention Center.~~

~~5. In November 1986 the voters of the Metropolitan Service District approved the sale of \$65,000,000 in General Obligation bonds to assist in financing construction of the Oregon Convention Center; the 1987 and 1989 sessions of the Oregon Legislature authorized \$15,000,000 from State Economic Development Funds to assist in financing construction; and the City of Portland through a Local Improvement District has secured an additional \$5,000,000 to assist in financing construction.~~

~~6. The Metro Council on October 22, 1987, adopted Metro Ordinance No. 87-225 which created the Metropolitan Exposition Recreation Commission with powers and duties substantially similar to the City Exposition Recreation Commission for the purpose of maintaining and operating metropolitan convention, trade, and spectator facilities.~~

~~7. The Oregon Convention Center is scheduled to open in the fall of 1990.~~

~~8. The City and Metro have been involved in extensive negotiations regarding consolidation of City and Metro convention, trade, spectator, and performing arts facilities.~~

~~9. The negotiating process produced a Memorandum of Understanding which stated proposed principles to govern an initial phase of consolidation; which expressed the intention of the City and Metro to approve a formal consolidation agreement consistent with those principles; and which anticipated that the formal consolidation agreement would be prepared and approved as soon as possible.~~

~~10. The Metro Council and the City Council approved the Memorandum of Understanding.~~

~~11. This Agreement has been prepared to implement the Memorandum of Understanding.~~

RECITALS:

~~1. As of December 19, 1989, the City, Metro, and the ERC entered into an 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. The December 19, 1989, Agreement provided generally for the consolidated operation, under Metro's Metropolitan Exposition Recreation Commission (Metro ERC), of the City's Memorial Coliseum (Coliseum), Civic Stadium, and Portland Center for the Performing Arts, together with Metro's Oregon Convention Center. The December 19, 1989, Agreement provided in detail for the transfer of operational control of the City's facilities from the ERC to the Metro ERC.~~

~~2. In 1991 and 1992 the City, Trail Blazers Inc. (TBI), and Oregon Arena Corporation (OAC) entered into a cooperative process for the development of a 19,000 seat~~

Arena and related parking garage and other improvements generally located on the site of the Coliseum and for the consolidated operation of the Arena and Coliseum by OAC.

3. To facilitate implementation of agreements related to construction and operation of the Arena and related facilities, the City must remove the Coliseum from the mix of facilities operated by Metro and the Metro ERC.

4. Metro, the City, and the ERC recognize that they need to amend the Agreement to reflect the changed status of Coliseum operation.

SECTION 1

DEFINITIONS

In this Agreement, the following terms shall have the following meanings unless the context indicates otherwise:

"Agreement" means the 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 entered into by the City of Portland and the Metropolitan Service District on December 19, 1989, as amended.

"Arena" means an approximately 19,000 seat, multi-purpose facility to be constructed by OAC on the Coliseum property.

"City" means the City of Portland, Oregon.

"City Council" means the Council of the City of Portland or the lawful successor thereto.

"Coliseum" means the Portland Memorial Coliseum complex.

"Coliseum Fund" means the fund described in Section 7(f) hereof.

"Commissioner in Charge" means the City Commissioner to whom the Mayor of the City assigns responsibility for the City's relationship with Metro ERC.

"Convention Center" means the Oregon Convention Center.

"ERC" means the City Exposition-Recreation Commission.

"ERC Facilities" means the Coliseum, PCPA, and the Stadium ~~except that as of July 1, 1993, ERC Facilities means only the PCPA and the Stadium.~~

"Facilities" means the ERC Facilities, ~~Convention Center and other regional convention, trade, or spectator facilities~~ Metro ERC Facilities, and Other Facilities.

"Metro" means the Metropolitan Service District.

"Metro Council" means the Council of the Metropolitan Service District provided for in ORS 268.150 or the lawful successor thereto.

"Metro ERC" means the Metropolitan Exposition-Recreation Commission.

"Metro ERC Facilities" means the Oregon Convention Center and other convention, trade, or spectator Facilities owned by Metro and operated by Metro ERC.

"Metro Executive Officer" means the duly elected Executive Officer provided for in ORS 268.180 or the lawful successor thereto.

~~**"OAC"** means the Oregon Arena Corp. or any successor in interest.~~

"Other Facilities" means present and future convention, trade, or spectator facilities within the Metro district other than the ERC Facilities and Metro ERC ~~Facilities.~~

"PCPA" means the Portland Center for the Performing Arts complex.

~~**"Project Facilities"** means the sports Arena, Plaza, Memorial Coliseum, and associated Exhibit Hall, all located generally on the site of the Memorial Coliseum at 1401 North Wheeler, Portland, Oregon.~~

"Stadium" means the Portland Civic Stadium.

SECTION 2

TRANSFER OF OPERATIONS AND MANAGEMENT OF ERC FACILITIES TO THE METRO ERC

- A. Subject to the terms and conditions contained in this Agreement City hereby transfers to Metro and Metro hereby accepts responsibility for operation and management of the ERC Facilities effective as of January 4, 1990. Metro agrees that authority and responsibility for operation and management of the ERC Facilities is hereby delegated to Metro ERC. All duly adopted resolutions of the ERC in force and effect on

January 3, 1990, shall remain in force and effect with regard to the ERC Facilities until superseded or repealed by resolutions duly adopted by the Metro ERC.

City has entered into agreements with OAC under which, effective on July 1, 1993, OAC becomes responsible for operations and management of the Coliseum in conjunction with OAC constructing an Arena and other public improvements on the Coliseum property. As of July 1, 1993, a termination under the provisions of this Agreement shall be deemed to have occurred as to the Coliseum, which as of July 1, 1993, shall no longer be considered an ERC Facility for the purpose of this Agreement, but the terms of this Agreement shall remain in full force and effect for the remaining ERC Facilities. As to the Coliseum, as of July 1, 1993, the provisions of Section 18(D) apply.

- B. The power and authority of Metro ERC has been created by Metro pursuant to the provisions of ORS 268.395 and 268.400. Chapter 6.01 of the Metro Code sets forth the power, authority and duties of Metro ERC. Metro agrees to adopt the amendments to Metro Code Sections 6.01.030, 2.04.035, and 1.01.010 attached hereto as Exhibit "A." The parties agree that the continued existence of Metro ERC with the power, authority, and duties it will possess under Metro Code Chapter 6.01 as amended are an essential element to the City's willingness to transfer operation and management control of the ERC Facilities to Metro. The parties also agree that during the term of this Agreement it may be necessary or desirable for Metro to amend the provisions of Metro Code Chapter 6.01 in order to reflect changes in law or to provide for a response to changed circumstances. Therefore City agrees Metro may amend Chapter 6.01 during the term of this Agreement upon obtaining City's prior approval pursuant to Section 19 of this Agreement.
- C. Except as expressly provided otherwise, the provisions of this Agreement shall be effective as of January 4, 1990, and shall be effective only during the term of this Agreement.

SECTION 3

REAL AND PERSONAL PROPERTY

- A. City and ERC hereby transfer, effective January 4, 1990, to Metro the right to beneficial use of all real property comprising the ERC Facilities. City and ERC shall retain title to and beneficial ownership of all real property comprising ERC Facilities. City and ERC shall not take any action with regard to the real property comprising the ERC Facilities that would interfere with management and operation of the ERC Facilities. Metro shall not take any action with regard to the real property comprising

the ERC Facilities that would affect or encumber the title to the property without the prior written consent of City.

Effective on July 1, 1993, Metro's right to beneficial use of all Coliseum real property is terminated.

- B. City, either directly or through ERC, owns certain rights to use real property subject to restrictions and therefore City and ERC have certain obligations related thereto. In addition to the provisions of Subsection (A) of this Section, the following provisions shall apply to specific real property.

Effective on July 1, 1993, all Coliseum personal property shall be returned to City pursuant to Section 18(D).

1. First Congregational Church

- (a) City and the First Congregational Church are parties to a Ground Lease, Parking Rights Agreement and Agreement to Lease Space dated November 1, 1984, (Church Agreement) providing land for use of PCPA and creating related obligations. City hereby authorizes Metro, effective January 4, 1990, to exercise all of City's rights under the Church Agreement. Metro shall perform all obligations of City under the Church Agreement.
- (b) City shall notify the First Congregational Church that all notices to be given to City under the Church Agreement also shall be given to Metro at the address set out in Section 22 hereof.

2. Al Kader Temple

- (a) City and Al Kader Temple are parties to a Parking Rights Agreement dated August 1, 1984, (Al Kader Agreement) providing parking rights to City and creating related obligations. City hereby authorizes Metro, effective January 4, 1990, to exercise all of City's rights under the Al Kader Agreement. Metro shall perform all obligations of City under the Al Kader Agreement.
- (b) City shall notify Al Kader Temple that all notices to be given to City under the Al Kader Agreement also shall be given to Metro at the address set out in Section 22 hereof.

3. Multnomah Athletic Club

City is the grantee under a deed from the Multnomah Athletic Club as grantor dated December 28, 1966, (MAC Deed) conveying to City Portland Civic Stadium, the underlying land, and certain easements. City hereby authorizes Metro, effective January 4, 1990, to exercise all of City's rights under the MAC Deed except that Metro shall not cease the use of the granted premises or a substantial portion thereof without the prior written consent of City. Metro shall perform all obligations of City under the MAC Deed.

- C. Personal Property. City or ERC if then in existence, otherwise City, shall be the owner of all ERC Facilities-related personal property owned by City or ERC as of January 3, 1990, and also of all capitalized personal property acquired thereafter by Metro ERC using ERC Facilities-related funds. Metro and Metro ERC shall have the right to beneficial use thereof. Metro ERC shall maintain records of all capitalized personal property identifying the Facility at which the property will be used and the source of funding, as appropriate. Nothing in this Section, however, shall prevent Metro ERC from disposing of ERC Facilities-related personal property in the ordinary course of business or from acquiring title to personal property using both ERC and Metro ERC Facilities-related funds that is of common benefit to ERC and Metro ERC Facilities. On disposition of ERC Facilities-related personal property, any compensation received for the property shall be treated as ERC Facilities-related revenues. Metro and Metro ERC shall not dispose of ERC Facilities-related personal property, except in the ordinary course of business, without the prior written consent of City.
- D. Acquisition of Real Property. Prior to acquiring any real property with ERC Facilities-related funds, Metro and Metro ERC shall identify resources and appropriations for the acquisition in the annual or supplemental or amended budget for Metro ERC subject to City approval as provided for in Section 6 of this Agreement. As of January 4, 1990, Metro and Metro ERC hereby are designated, to the extent City and ERC have authority to so designate, to represent City and ERC in any contract or legal proceeding for the acquisition using ERC Facilities-related funds of real property initiated by City or ERC for the benefit of the ERC Facilities. Title to any and all real property and improvements thereto acquired by Metro or Metro ERC with ERC Facilities-related funds shall be taken in the name of City or ERC as appropriate. Any disposition of City- or ERC-owned real property shall be subject to the same requirements as apply to dispositions of other City property.
- E. Audit of Property Records. On or before January 4, 1990, or as soon as practicable thereafter, Metro and Metro ERC shall an prepare an initial inventory of all personal and real property possessed by ERC and all records related thereto. The initial inventory shall be the basis for identifying all property for which Metro shall assume

responsibility hereunder. Thereafter, Metro and Metro ERC, as of July 1 each year beginning with July 1, 1990, shall prepare an annual inventory of real property and capitalized personal property owned by City and ERC as to which Metro has the right of beneficial use under this Agreement. The initial inventory prepared by Metro and Metro ERC under this Subsection shall be prepared in a manner acceptable to City and its outside auditors and shall be subject to City's approval, which approval shall not be unreasonably withheld. The subsequent annual inventory shall be conducted in a fashion substantially similar to the manner in which City conducts its own annual inventory of personal property. Copies of all inventories shall be furnished to City.

On or before July 1, 1993, Metro shall provide to the City an inventory of all Coliseum real property and capitalized personal property substantially similar in form to that required to be provided annually to the City. Thereafter, Metro's annual inventory shall not include Coliseum real and personal property.

SECTION 4

PERSONNEL

- A. The City and Metro agree that all employees presently employed by ERC will be transferred to Metro ERC and will become employees of Metro ERC as provided for herein. On transfer, employees shall continue to have all accrued but unused vacation, sick leave, and personal leave time that they have immediately prior to transfer.
- B. Transfer of Represented Employees. On January 4, 1990, ERC shall transfer all of its employees represented by labor unions to Metro ERC. Thereafter, Metro ERC shall recognize the same unions as representative of the transferred employees and shall comply with the collective bargaining agreements in effect prior to transfer.
- C. Transfer of Non-Represented Employees. On January 4, 1990, ERC shall transfer all of its unrepresented employees to Metro ERC.
- D. Employees' Statutory Rights. On and after January 4, 1990, Metro ERC shall assure that all ERC employees as of January 3, 1990, are accorded all the rights to which they are entitled under Oregon laws affecting the transfer of duties from one unit of government to another.
- E. Assignment of Collective Bargaining Agreements. ERC hereby assigns to Metro ERC, and Metro on behalf of Metro ERC, hereby accepts assignment of all collective bargaining agreements to which ERC is a party, effective as of January 4,

1990. Metro ERC shall conduct such impact bargaining with affected unions as is appropriate and necessary under applicable law.

SECTION 5

CONTRACTS AND LICENSES

- A. Assignable ERC Contracts and Licenses. ERC hereby assigns to Metro ERC all contracts, permits, rental agreements, and licenses to which ERC is a party and which are assignable without the consent of other parties, effective as of July 1, 1990. From January 4, 1990, through June 30, 1990, these contracts, permits, rental agreements, and licenses shall be subject to the management and control of Metro ERC to the same extent and subject to the same City procedural requirements as applied to ERC immediately prior to January 4, 1990.
- B. Other ERC Contracts and Licenses. ERC hereby assigns to Metro ERC each contract, permit, rental agreement, and license to which ERC is a party, the assignment to be effective on July 1, 1990, or on obtaining the consent of the other parties thereto, whichever occurs later. From January 4, 1990, through the effective date of the assignment, these contracts, permits, rental agreements, and licenses shall be subject to the management and control of Metro ERC to the same extent and subject to the same City procedural requirements as applied to ERC immediately prior to January 4, 1990.

SECTION 6

BUDGET APPROVAL FOR METRO ERC

- A. For fiscal years commencing on or after July 1, 1990, Metro ERC's annual budget shall be subject to City and Metro approval and shall be included in the overall Metro budget for submission to the Tax Supervision and Conservation Commission. Metro ERC's annual budget shall include a separate budget for each of the ERC Facilities, in the standard format used by Metro for its budget units. City's right to approve or disapprove the Metro ERC budget shall be applicable only to the budgets for the ERC Facilities.
- B. Metro ERC Budget Process. All Metro ERC budgets and supplemental and amended budgets will be part of the Metro budget and will be subject by law to the budget procedures governing Metro. In addition, the Metro ERC budget and supplemental and amended budgets shall be subject to the approval of City to the extent described in Subsection (A) of this Section. In order to carry out successful budget procedures,

with Metro and City both approving the same budget, it will be necessary that there be a high degree of cooperation among Metro, City, and Metro ERC in the budget process. Therefore Metro ERC and Metro shall make every reasonable effort to inform City of and provide the opportunity for City review of and participation in the Metro ERC budget development and review process. Concomitantly, City shall make every reasonable effort to participate in that process. These efforts shall be made with a view to identifying and resolving conflicts early in the budget process in order to avoid surprises or unresolved disputes at the end of the process. In order to achieve this objective, the process for City review of the Metro ERC budget shall be as follows:

1. On or before February 1 of each year, Metro ERC shall provide to the Metro Executive Officer the proposed Metro ERC budget for the next fiscal year. The Metro Executive Officer shall transmit the proposed Metro ERC budget to the Commissioner in Charge and to the City Auditor at the same time the proposed Metro budget is transmitted to the Metro Council.
2. Within forty-five (45) days of receipt of the proposed Metro ERC budget, City shall review and approve or disapprove by resolution adopted by the City Council the proposed Metro ERC budget for the next fiscal year. In the event of disapproval, the City Council shall state the reasons for disapproval, the portions of the proposed budget objected to, and proposed revisions that would meet City's approval. A failure by the City Council to act within forty-five (45) days of receipt shall be deemed an approval of the proposed Metro ERC budget.
3. In the event Metro revises a proposed Metro ERC budget following City approval, then the revised proposed budget shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposed budget. City review period shall be twenty (20) days from receipt of the revised proposed budget.
4. In the event Metro revises a proposed Metro ERC budget following City disapproval, but proposes revisions different than those proposed by City, then the revised proposed budget shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposed budget. City review period shall be twenty (20) days from receipt of the revised proposed budget.
5. Any supplemental budget adopted by Metro for Metro ERC shall be subject to the same procedure as governs City review of a proposed annual Metro ERC budget.

6. Any budget amendment adopted by Metro for Metro ERC, except as part of a supplemental budget, shall be subject to the same procedure as governs City review of a proposed annual Metro ERC budget except that (a) the amendment shall be deemed approved unless the Commissioner in Charge notifies Metro within fifteen (15) days of receipt of the proposed amendment that City intends to review the amendment, and (b) if the Commissioner in Charge does so notify Metro then the amendment shall be deemed approved unless the City Council acts on it within thirty (30) days of receipt.

C. Financial Reporting Requirements. Metro ERC shall provide to City monthly financial reports showing the current status of revenues and expenditures of Metro ERC for the then current fiscal year. These reports shall be in no less detail than reports Metro ERC regularly prepares for its own and Metro's review and shall provide details separately identifying the financial status of each ERC Facility.

D. Metro ERC Management Services. It is Metro ERC's present intention to maintain a central management staff for all the Facilities under its jurisdiction and to allocate the central management costs among the Facilities based on a formula. The initial allocation formula shall be based on an annual determination of the time spent on each Facility by each central management staff employee weighted by the salary of each employee. Any other method for allocating management costs if Metro ERC adopts a different management structure or allocation formula, shall be established as part of the Metro ERC annual budget and shall be subject to City's review and approval, which approval shall not be unreasonably withheld. City review and approval or disapproval shall be part of the budget review process and shall follow the procedures for budget review and approval set forth in Subsection (B) of this Section.

SECTION 7

MONEY TRANSFERS, ACCOUNTING, AND AUDITING

A. Financial Transactions from January 4, 1990, to June 30, 1990. During the period from January 4, 1990, to June 30, 1990, ERC shall receive all ERC Facilities-related revenues, which shall be treated as ERC revenues for budget purposes; and ERC shall pay all ERC Facilities-related expenses, which shall be treated as ERC expenditures for budget purposes. During this period, all ERC Facilities-related financial transactions shall follow the procedures established therefor by this Subsection:

1. City shall process all duly authorized requests for payment received from Metro ERC related to ERC Facilities on forms to be provided by City including payroll and accounts payable, for payment from ERC funds in accord with current practice. Metro ERC shall transmit all funds received

from operations of ERC Facilities to City for deposit into ERC funds in accord with current practice.

2. City shall maintain records of all fiscal transactions related to the ERC Facilities and shall transmit periodic reports thereof to Metro and Metro ERC at the same time it transmits its regular periodic reports to responsible City officials.
3. City shall make all required reports to and filings with federal and state agencies including the Internal Revenue Service related to the financial transactions carried out under this Subsection, on behalf of Metro, Metro ERC, City, and ERC. If City legally is unable to do this, it shall prepare sufficient information for Metro and Metro ERC to allow Metro to make the reports and filings in a timely manner.

B. General. On July 1, 1990, except as otherwise provided in this Subsection, all moneys in the following ERC Funds shall be transferred to Metro for use by Metro ERC as provided herein:

Exposition-Recreation -- Civic Stadium Fund
Exposition-Recreation -- Memorial Coliseum Fund
Expo-Recreation -- Performing Arts Fund
Performing Arts Center Construction Fund

Between the dates of July 1, 1990, and completion of the audit described in Subsection (D) of this Section, City shall retain sufficient amounts in the ERC Funds, as agreed to by City and Metro, in order to provide for positive balances in all ERC Funds immediately prior to the adjustments under Subsection (D) of this Section. The amounts retained shall be set so as to avoid any adverse impact on Metro ERC operations. Any dispute between the parties regarding amounts to be retained shall be resolved pursuant to Section 15 of this Agreement.

C. Payables and Receivables. ERC hereby assigns to Metro ERC as of July 1, 1990, all ERC accounts receivable and other receivables existing as of that date or thereafter accruing. Metro ERC shall be responsible for payment of all ERC accounts payable and other obligations existing as of that date or thereafter accruing, except that liabilities covered by insurance or self-insurance shall be treated as provided in Section 11 of this Agreement and City shall be responsible for the payments identified in Section 13 of this Agreement. Metro ERC shall pay, out of ERC Facilities-related funds, all tax and other governmental assessments against real property comprising the ERC Facilities and against any ERC Facilities-related personal property.

- D. Adjustments Following Audit. A portion of City's official independent audit for FY 1989-90 shall cover all ERC operations for the entire period from July 1, 1989, through June 30, 1990. On completion and acceptance by City of the portion of the official City independent audit covering ERC for FY 1989-90, adjustment shall be made in the amounts transferred under Subsection (A) of this Section as indicated by the audit so as to bring the amounts retained in ERC funds under Subsection (B) of this Section to zero. In the event of excess transfers to Metro on July 1, 1990, Metro shall refund the amount of the excess to City or ERC as appropriate. In the event of deficient transfers to Metro, City or ERC as appropriate shall transfer the amount of the deficiency to Metro for use by Metro ERC as provided herein. City shall encourage its auditors to complete the portion of the audit covering ERC as quickly as possible. Any dispute between the parties regarding funds to be transferred shall be resolved pursuant to Section 15 of this Agreement. Metro ERC shall prepare appropriate responses to management findings related to ERC Facilities contained in the audit.
- E. Treatment of Monies from January 4, 1990, through June 30, 1990. Pursuant to Subsection 7(A) of this Section, from January 4, 1990 through June 30, 1990, the collection of ERC Facilities revenues to be deposited into ERC funds and the payment of ERC Facilities expenditures from ERC funds shall be subject to the direction and control of Metro ERC to the same extent and subject to the same City procedural requirements as applied to ERC immediately prior to January 4, 1990. During this period, revenues from and expenditures for the ERC Facilities shall be accounted for in the same way as is in effect immediately prior to January 4, 1990.
- F. Audits and Accounting Beginning July 1, 1990. Beginning with FY 1990-91, Metro ERC, in its accounting, shall account separately for each of the ERC Facilities and shall comply with generally accepted governmental accounting principles and with the requirements of the Government Accounting Standards Board in accounting for ERC Facilities operations and maintenance. Metro ERC annually shall obtain an audit of its operations, with ERC Facilities separately accounted for. The audit may be conducted as a portion of Metro's audit. The audit of Metro ERC's operations, as to the portion covering ERC Facilities, shall be prepared in a manner acceptable to City and its auditors. In the event it is necessary under National Council on Government Accounting Statement 3 for City to include the ERC Facilities operations in City's Consolidated Annual Financial Report, then Metro ERC shall provide its audit to City not later than September 30 of each year.
- G. Restrictions on Use. The beginning balance in the Funds transferred to Metro ERC on July 1, 1990, under Subsection (B) of this Section, as determined by the audit referred to in Subsection (C) of this Section, shall be used only for the benefit of the ERC Facilities. Nothing in this Agreement shall prevent the transfer of resources among the ERC Facilities as provided in any Metro ERC budget. In addition, any net

surplus from operation of the ERC Facilities shall be used only for the benefit of the ERC Facilities. The beginning balance in the Performing Arts Center Construction Fund shall be deposited into a separate account maintained by Metro ERC and shall be used for capital appropriations to complete PCPA construction in a manner consistent with the original architecture and aesthetics of the PCPA and with the pledges giving rise to the Fund. Any revenues received by Metro from Multnomah County in support of the Oregon Convention Center shall be used only for the purposes authorized by the agreement between Metro and Multnomah County. Any net surplus from operation of Metro ERC facilities shall be used only as determined by Metro.

- H. Event and Concession Bank Accounts. ERC maintains in its name bank accounts into which it deposits event- and concession-related revenues, from which it pays event- and concession-related expenses including amounts owing to ERC from the event sponsors and concessionaires, and from which it pays the balance after expenses to the event sponsors and concessionaires. On January 4, 1990, ownership of the accounts shall be transferred to Metro ERC or the accounts may be closed and the account balances transferred to new accounts opened by Metro ERC or some comparable change may be made, as determined by Metro ERC. ERC shall execute whatever documents are necessary to accomplish the change. Following the change, Metro ERC shall make all payments for which the accounts are obligated. On or before January 4, 1990, or as soon as practicable thereafter, Metro and Metro ERC shall conduct an audit of such accounts to determine the condition thereof as of the effective date of transfer.
- I. Unemployment Compensation Payments as to ERC. Notwithstanding any other provision of this Section, City shall pay any unemployment billings due to the State of Oregon that are applicable to ERC employees terminated prior to January 4, 1990. City shall bill ERC for the amount of any payments made by City applicable to the period prior to July 1, 1990, and shall bill Metro ERC for the amount of any payments made by City applicable to the period following June 30, 1990. ERC and Metro ERC shall pay the City billings following their receipt.

I. Coliseum Fund. Effective as of July 1, 1992, Metro has established a new Coliseum Fund separate and distinct from other Metro ERC funds, to be used exclusively to receive all Coliseum revenues and pay all Coliseum disbursements on or after July 1, 1992. Metro shall pay the positive cash balance, if any, determined to have been accumulated in the Coliseum Fund as of July 1, 1993, as directed by City. City has entered into an agreement with OAC providing for a deposit by OAC into the Coliseum Fund of up to \$875,000 if needed to meet Coliseum cash flow requirements from July 1, 1992 until July 1, 1993. In determining whether there is a positive balance in the Coliseum Fund as of July 1, 1993, any payments made by OAC from the \$875,000 obligation shall be treated as liabilities of the fund prior to determining

the cash balance of the fund. If there is an operating loss to the Coliseum Fund between July 1, 1992, and July 1, 1993, beyond the \$875,000 to be provided by OAC, then the additional operating loss shall be covered by transfers to the Coliseum Fund from the Metro ERC funds for ERC facilities. Prior to transferring the Coliseum Fund to the City, Metro may deduct all proper charges against the fund for services rendered and loans advanced to the Coliseum Fund except to the extent any operating deficit exceeds the \$875,000 to be provided by OAC. Except as authorized by this Agreement, monies shall not be transferred from the new Coliseum Fund to other ERC facilities. Actual determination of the balance of the Coliseum Fund as of July 1, 1993, and payment of the amount provided for herein to the City by Metro shall be accomplished in a like manner and subject to the equivalent procedures provided for in Section 7(B), (C), and (D) which governed payment of the ERC funds to Metro in 1990.

The transfer of the balance existing in the Coliseum Fund as of July 1993 to City by Metro is subject to the following additional provisions:

Metro may charge to the Coliseum Fund the costs of insuring or creating self-insurance reserves against unforeseen or known liabilities including, but not limited to, tort claims, Workers' Compensation claims, and reserve accounts for payment of accrued vacation leave for Coliseum employees, and unemployment benefits provided that Metro may only charge the Coliseum Fund for such costs in an amount not to exceed \$300,000 or the positive balance in the Coliseum Fund, whichever is less.

Any charges for such costs in excess of \$300,000 or the positive balance in the Coliseum Fund, whichever is less, shall be charged to the Spectator Facilities Fund provided in no event shall Metro's liability exceed the amounts available in the Spectator Facilities Fund.

SECTION 8

CENTRAL SERVICES AND OTHER CHARGES

- A. **Metro Charges To Metro ERC for Council and Executive Officer.** Metro may charge Metro ERC for Council and Executive Officer services as provided for herein during the first two (2) fiscal years that this Agreement is in effect (Fiscal Year 1989-90 and 1990-91.) Thereafter, Metro shall no longer charge for Council and Executive Officer services to any Facilities operated by Metro ERC including the Oregon Convention Center. The amount charged by Metro to Metro ERC in FY 1990-1991 for Council and Executive Officer services shall not exceed the current level of charges for Council and Executive Officer services set in the Metro FY 1989-90

budget for payment of such charges by Metro ERC to Metro for operations of the Oregon Convention Center, which amount is \$23,577. Metro shall not charge Metro ERC for Council and Executive Officer services for ERC Facilities for FY 1989-90 and shall not charge for FY 1990-91 in an amount in excess of the actual general fund charge for City Council services imposed on ERC by City as set out in City's budget for FY 1989-90, which amount is \$14,641. Metro ERC shall not pass on to the ERC Facilities any Metro charge for Metro Council and Executive Officer services in excess of the amounts charged to Metro ERC by Metro for ERC Facilities.

- B. Central Services and Central Services Charges. Nothing contained herein shall preclude Metro from charging Metro ERC for central services provided to Metro ERC by Metro, subject to City review and approval during the annual budget process pursuant to the procedure set out in Section 6(B) of this Agreement. Such charges shall not be increased in any fiscal year over the amount originally budgeted without prior review and approval of City pursuant to the same procedure as the procedure for supplemental budgets pursuant to Section 6(B) of this Agreement. The budget reviews under Section 6(B) of this Agreement shall include review of both the allocation of central services functions between Metro and Metro ERC and the charges therefor.

SECTION 9

METRO EXCISE TAX

- A. General. Under Chapter 332, 1989 Oregon Laws, Metro has the authority to impose excise taxes on persons using facilities, equipment, systems, functions, services, or improvements owned, operated, franchised, or provided by Metro. As a result of this Agreement, Metro will have the authority to impose excise taxes on persons using the ERC Facilities.
- B. Limitation. Metro shall not directly or indirectly use revenues from excise taxes on persons using the ERC Facilities for the purpose of funding Council or Executive Officer services or for any other purpose except as authorized in Subsection (C) below, without the prior written consent of City, which consent shall not be unreasonably withheld.
- C. Use. Metro shall provide all revenues from excise taxes on persons using the ERC Facilities to Metro ERC except that Metro may pledge the revenues for the benefit of Facilities operated by Metro ERC. Metro ERC shall use all revenues so provided to it for the benefit and operation of the Facilities operated by Metro ERC.

SECTION 10

INDEMNIFICATION

A. Tort and Workers' Compensation Claims.

1. City, to the maximum extent permitted by law, shall indemnify Metro, Metro ERC, and their officers, employees, and agents against and defend and hold them harmless from any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from any claim that has been made or is capable of being made as a tort claim as that term is defined by ORS 30.260(8), or a Workers' Compensation claim pursuant to ORS Chapter 656 or similar federal legislation, including any claims brought in any federal court or other federal forum, based on any act or occurrence that takes place prior to July 1, 1990, in connection with or as a result of operation of the ERC Facilities, or that

takes place after June 30, 1993, in connection with or as a result of operation of the Coliseum, the Arena, or any public improvement constructed on the Coliseum property.

2. Metro, to the maximum extent permitted by law, shall indemnify City, ERC, and their officers, employees, and agents against and defend and hold them harmless from any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from any claim that has been made or is capable of being made as a tort claim as that term is defined by ORS 30.260(8), or a Workers' Compensation claim pursuant to ORS Chapter 656 or similar federal legislation, including any claims brought in any federal court or other federal forum, based on any act or occurrence that takes place on or after July 1, 1990, in connection with or as a result of operation of the ERC ~~or Metro~~ ERC Facilities.
3. The foregoing indemnification, defense, and hold harmless provisions are for the sole and exclusive benefit and protection of Metro, Metro ERC, City, ERC, and their respective officers, employees, and agents, and are not intended, nor shall they be construed, to confer any rights on or liabilities to any person or persons other than Metro, Metro ERC, City, ERC, and their respective officers, employees, and agents.

- B. **Contract and Quasi-Contract Claims.** Metro and Metro ERC, to the maximum extent permitted by law, shall indemnify City and ERC against and defend and hold them harmless from any and all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, and actions, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from any claim for damages due under any contract, permit, rental agreement, or license or any claim based on any contract or quasi-contractual relationship not defined as a tort claim under ORS 30.260(8), any statutory rights claim, and any claim of rights under a collective bargaining agreement, no matter when the claim may have arisen based on an act, occurrence, event, or transaction in connection with or as a result of operation of the PCPA or Stadium, and such claims based on any act, occurrence, event, or transaction in connection with or as a result of operation of the Coliseum so long as the claim has arisen prior to July 1, 1992. However, this agreement to indemnify and hold harmless is limited to payment of funds generated by the ERC Facilities or transferred to Metro by City and dedicated to the ERC Facilities. Metro shall have no obligation to expend funds on claims related to City Facilities from sources dedicated to Metro Facilities or other Metro functions.

City and ERC, to the maximum extent permitted by law, shall indemnify Metro and Metro ERC against and defend and hold them harmless from any and all liabilities,

actions, damages, claims, demands, judgments, losses, costs, expenses, suits, and actions, including but not limited to attorney's fees and expenses of trial and an appeal, related to or resulting from any claim for damages due under any contract, permit rental agreement or license or any claim based on any contract or quasi-contractual relationship not defined as a tort claim under ORS 30.260(8); any statutory rights claim, and any claim of rights under a collective bargaining agreement, in connection with or as a result of operation of the Coliseum, Arena, and any public improvement constructed on the Coliseum property arising on or after July 1, 1992.

This provision is subject to the following:

The Portland Winter Hawks have filed a civil action in Multnomah County Circuit Court alleging claims arising out of ERC's imposition of a user fee on tickets as well as claims that the construction of the Arena will constitute a breach of the agreement for the Winter Hawks' use of the Coliseum. City and Metro agree to cooperate in the defense of this lawsuit notwithstanding the judgment of any court. Metro shall be only obligated to pay, and in that event only out of the Spectator Facilities Fund, any amounts paid to the Winter Hawks, if any, for user fee payments received on or before June 30, 1992. City or the Coliseum Fund shall be the source of payment of any additional amounts found to be owed to the Winter Hawks. Attorney's fees, costs, and interest payments, if any, will be shared proportionately based on the amounts, if any, paid to the Winter Hawks.

SECTION 11

INSURANCE

During the term of this Agreement, Metro shall obtain and maintain insurance providing coverage for risks associated with operation of the ERC Facilities as provided for herein. After July 1, 1993, this Section shall only apply to risks associated with the operation of the PCPA and the Stadium.

- A. Tort and Workers' Compensation Coverages. Metro shall maintain insurance policies or a self-insurance program consistent with Oregon Law to provide full coverage for any and all tort claims as that term is defined in ORS 30.260(8) and any Workers' Compensation claim pursuant to ORS Chapter 656 that may be brought by any person including any claims brought on any federal court or other federal forum based on any act or occurrence that takes place on or after July 1, 1990.

If commercial insurance policies are obtained such policies shall name City, ERC, and their officers, employees, and agents as additional named insureds.

In addition, in order to fully fund the existing coverage maintained by City through its Risk Management program for all tort claims and Workers' Compensation claims arising prior to July 1, 1990, City may charge ERC an additional sum of \$123,000. Such sum shall be deducted from the balance of the ERC funds to be transferred to Metro pursuant to Section 7.

- B. Property Insurance. Effective July 1, 1990, Metro shall purchase and maintain in a company or companies licensed to do business in the State of Oregon, policies in an all risk policy form providing for full replacement value coverage for the ERC Facilities. Such policies shall include boiler and machinery coverage. City and ERC shall be named as additional named insureds for all policies providing coverage for ERC Facilities to the full extent of City's insurable interest.

SECTION 12

PCPA ADVISORY COMMITTEE

The City Commissioner in Charge shall appoint a PCPA Advisory Committee consisting of that number of persons the Commissioner deems appropriate to serve as the official advisory committee to Metro ERC for all PCPA matters. Metro ERC and Metro shall inform the Advisory Committee of and provide the opportunity for Advisory Committee review of and comment on all Metro ERC actions affecting the PCPA. Actions affecting the PCPA shall be deemed to include, without limitation, all Metro ERC budget matters affecting the PCPA, all decisions regarding rates and charges for use of PCPA facilities, all decisions regarding hiring of key PCPA personnel, and all decisions regarding use of monies from the Performing Arts Center Construction Fund and its successor fund under Metro. Metro ERC shall provide reasonable staff assistance from staff assigned to PCPA to assist the Advisory Committee.

SECTION 13

ERC FACILITIES-RELATED BOND AND OTHER CAPITAL PAYMENTS

City presently is obligated to make certain bonded debt and other similar payments related to renovation of Civic Stadium and construction of PCPA. These payments are as follows:

1. Debt service on \$30,130,000 Performing Arts and Civic Stadium Refunding Series 1986 C General Obligation Bonds dated December 1, 1986; and
2. Certain credits allowed by City to Portland General Electric Company under the "Agreement Regarding Portland Hydroelectric Project (Bull Run River) Power Sales Agreement" dated December 26, 1985, related to the use of Hydroelectric Project surplus capital construction funds for payment of PCPA capital construction costs.

City shall continue to make the required bond payments and to allow the required credits until the underlying obligations are satisfied.

SECTION 14

RECORDS

- A. City and ERC Records. If requested by Metro ERC or Metro, and to the extent permitted by law, City or ERC shall provide either the originals or copies of any records in its possession regarding the ERC Facilities. The requesting party shall reimburse the provider for the reasonable costs of providing the records or copies thereof, if billed by the provider. All original records provided under this Subsection shall remain the property of the provider, even though in the possession of Metro ERC or Metro. Metro ERC and Metro shall not destroy or otherwise dispose of the original records without the prior written consent of the provider.
- B. Metro and Metro ERC Records. If requested by ERC or City, and to the extent permitted by law, Metro or Metro ERC shall provide copies of any records in its possession regarding Metro ERC Facilities. The requesting party shall reimburse the provider for the reasonable costs of providing copies of the records, if billed by the provider. City and ERC shall not destroy or otherwise dispose of original records without the prior written consent of Metro.

SECTION 15

DISPUTE RESOLUTION

In the event of a dispute arising under this Agreement among any of the parties, any party may initiate the following dispute resolution process:

1. The initiating party shall give written notice of initiation to each other party then in existence, to the Metro Executive Officer, to the Commissioner in Charge, and to a person mutually agreed to by the Metro Executive Officer and the Commissioner in Charge. The three together shall constitute the Dispute Resolution Committee. The notice shall identify the dispute as to which the dispute resolution process is being initiated.
2. Not later than fifteen (15) days after receipt of the notice of initiation, each party to this Agreement may submit a written statement to the Dispute Resolution Committee stating the party's position on the dispute.
3. Not later than thirty (30) days after notice of initiation, the Dispute Resolution Committee shall decide on a resolution of the dispute and shall notify the parties to this Agreement of the resolution. Decisions of the Dispute Resolution Committee shall be by majority vote.
4. Decisions of the Dispute Resolution Committee shall be final and binding on the parties except for those disputes which are specified as grounds for termination of this Agreement pursuant to Section 18(C) of this Agreement.

SECTION 16

REMEDIES

In the event a party fails to comply with any provision of this Agreement, then any other party shall be entitled to any remedy available at law or in equity, including without limitation the right to specific performance. The termination of this Agreement shall not prevent a party from receiving any additional remedy not inconsistent with the events specified to occur on termination.

SECTION 17

FURTHER CONSOLIDATION

- A. Term of Agreement. The term of this Agreement shall continue unless termination occurs as provided for in Section 18 of this Agreement, or until the parties hereto then in existence enter into an agreement for further consolidation of the ERC Facilities and functions under Metro ERC. The various provisions of this Agreement

shall continue in effect only during the term of this Agreement, except that the provisions governing termination and remedies shall survive termination.

- B. Consolidation. It is the intention of City and Metro to pursue further consolidation of the region's convention, trade, and spectator Facilities following execution of this Agreement. The parties intend that this further consolidation will take two forms.

First, the parties to this Agreement intend to provide for a more complete consolidation of the ERC Facilities under Metro ERC. This further consolidation of the ERC Facilities under Metro ERC will require further agreement by the parties. The parties agree to make a good faith effort to resolve all outstanding issues with the express intent to provide for further consolidation as soon after January 4, 1992, as possible. To meet this goal, the parties agree to commence negotiations within two weeks of the effective date of the amendments to the December 19, 1989 Agreement to establish the terms for transfer to Metro of full control of the PCPA and Stadium as soon as possible, and to successfully conclude these negotiations by July 1, 1993.

Second, the parties to this Agreement agree that further consolidation may involve the consolidation under Metro ERC of Facilities operated by other local governments within the region including, but not limited to, the Multnomah County Exposition Center. This further consolidation also may include the construction of additional convention, trade, spectator, and performing arts facilities by Metro through Metro ERC or through other means and their consolidation under Metro ERC's operation, or the construction of new facilities by other local governments in the region and their consolidation under Metro ERC's operation. Metro and Metro ERC shall have the lead role in such further consolidation efforts. City agrees to review and consider in good faith the approval of any Metro ERC budget item, Metro Code amendment, or amendment to this Agreement that is requested by Metro to assist Metro and Metro ERC in achieving such further consolidation, which approval shall not be unreasonably withheld.

SECTION 18

TERMINATION

- A. Termination by Mutual Agreement. The parties hereto who remain in existence may terminate this Agreement at any time by mutual written agreement. The procedure on termination by mutual agreement shall be determined by the termination agreement.
- B. Unilateral Termination. In the absence of a signed written agreement among the parties hereto then in existence for further consolidation of the ERC Facilities and functions under Metro ERC, then City or Metro on or after July 1, 1991, may by

duly adopted resolution of its governing body initiate termination of this Agreement and thereafter give notice of termination. The termination shall be effective on the first July 1 that is at least six (6) months after the date of the notice. On the effective date of the termination, the events described in Subsection (1) through (11) of Subsection (D) of this Section shall occur.

C. Termination for Cause.

- 1. This Agreement shall terminate if Metro shall amend Chapter 6.01 of the Metro Code without City's prior approval; or if Metro shall adopt a Metro ERC annual or supplemental or amended budget or increase a central service charge to Metro ERC chargeable to ERC Facilities during a fiscal year above the amount budgeted without City's prior approval; or if Metro shall violate the provisions of Sections 4(B), 7(F) or (G), or 8 of this Agreement without City's prior approval, all subject to the following procedures:**
 - a. City in its discretion shall elect to give Metro written notice, in a form approved by the City Council, specifying the action Metro has taken that triggers proceedings under this Subsection. The notice may specify a date on which termination shall occur, provided that the date specified must be no sooner than thirty (30) days from the date of receipt of the notice by Metro.**
 - b. Following receipt of the notice from City, Metro shall have thirty (30) days within which to rescind the action that City specified. In the absence of rescission, this Agreement shall terminate either thirty (30) days after receipt of the notice by Metro or on the later date specified in the notice, whichever is later.**

- 2. This Agreement shall terminate if City shall unreasonably withhold its approval of any action requested by Metro under Section 17(B) of this Agreement to assist Metro and Metro ERC in achieving consolidation of facilities operated by other governments within the region under Metro ERC's management and control, subject to the following procedures:**
 - a. Metro in its discretion shall elect to give City written notice, in a form approved by the Metro Executive Officer and the Metro Council, specifying the action requested as to which City unreasonably has withheld its approval, triggering proceedings under this Subsection.**
 - b. Following receipt of the notice from Metro, City shall have thirty (30) days within which to approve the action as to which Metro has requested approval. In the absence of approval, this Agreement shall**

terminate either ninety (90) days after receipt of the notice by City or on the July 1 next following, whichever is later.

D. In the event of termination, subject to compliance with any statutory requirements, the following shall occur:

1. All revenues from and expenditures for ERC Facilities shall be treated as ERC revenues and expenditures;
2. All Metro ERC accounts receivable and other receivables related to ERC Facilities existing as of that date or thereafter accruing shall be assigned to ERC, and ERC shall be responsible for payment of all Metro ERC accounts payable and other obligations existing as of that date or thereafter related to the ERC Facilities, except for liabilities covered by insurance or self-insurance based on actions or failures to act prior to termination;
3. All monies in Metro ERC funds related to ERC Facilities shall become the property of ERC and shall be transferred to ERC;
4. All event and concession bank accounts related to the ERC Facilities shall be transferred to ERC following which ERC shall make all payments for which the accounts are obligated;
5. All records related to ERC Facilities shall become the property of ERC and shall be transferred to ERC;
6. All property authorizations under Section 3 of this Agreement shall be rescinded and all Metro ERC obligations thereunder shall terminate;
7. All personnel whose positions are included in the budgets for ERC Facilities shall become employees of ERC;
8. All personnel holding central management staff positions transferred by ERC to Metro ERC hereunder shall become employees of ERC;
9. All contracts, permits, rental agreements, and licenses or portions thereof related to the ERC Facilities shall be assigned to ERC;
10. All other charges, allocations, and transfers as are necessary or desirable to the proper operation of ERC Facilities and other Facilities operated by Metro ERC shall be carried out in good faith by the parties hereto; and

11. Any dispute between the parties regarding carrying out the requirements of Subsections (D)(1) through (D)(10) of this Section shall be resolved pursuant to Section 15 of this Agreement.

SECTION 19

AUTHORITY TO MAKE DECISIONS

- A. This Agreement provides for various approvals, waivers, executions of further documents implementing this Agreement, or other decisions or actions to be made or taken on behalf of City and Metro hereunder. Except as provided in Section 6(B) of this Agreement and in Subsection (B) of this Section, such approvals, waivers, executions, or other decisions or actions shall be deemed made or taken if in writing and executed by the Commissioner in Charge, if on behalf of City, and by the Metro Executive Officer, if on behalf of Metro. Any amendments to this Agreement and any further consolidation agreement must be approved by the City Council, the Metro Council, and ERC if then in existence.
- B. The process for City approval of Metro amendments to Metro Code Chapter 6.01 shall be as follows:
 1. Metro shall provide to the Commissioner in Charge and to the City Auditor the proposed Code amendment.
 2. Within thirty (30) days from receipt of the proposed Code amendment the City Council shall review and approve or disapprove it by resolution. In the event of disapproval, the City Council shall state the reasons for disapproval and proposed revisions, if any. A failure by the City Council to act within the thirty (30) days period shall be deemed an approval.
 3. In the event Metro revises a proposed amendment, following City approval, then the proposed revision shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposal.
 4. In the event Metro revises a proposed amendment, following City disapproval, but proposes revisions different than those proposed by City, then the proposed revisions shall be provided to the Commissioner in Charge and to the City Auditor for City review according to the same procedure as governed City review of the initial proposal.

SECTION 20

ASSIGNMENT AND TRANSFER

This Agreement shall not be assignable or transferable by either party or by operation of law except with the written consent of the other party. A consenting party may impose any conditions on the consent that are reasonable under the circumstances. The assignee or transferee shall be bound by all the provisions of this Agreement. The assignor or transferor shall not be relieved of any obligations under this Agreement unless the written consent of the other party expressly so provides.

SECTION 21

ATTORNEYS' FEES

In the event of a suit or action to interpret or enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial and on appeal of the suit or action, in addition to all others sums provided by law.

SECTION 22

NOTICE

Any notice provided for hereunder shall be deemed sufficient if deposited in the United States mail, certified mail, return receipt requested, postage prepaid, addressed either to the following address or to such other address or addresses as the recipient shall have notified the sender of by notice as provided herein:

Metro: **Executive Officer**
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

With a copy to:
Clerk of the Council
Metropolitan Service District
2000 S.W. First Avenue
Portland, OR 97201-5398

City: City Auditor
City of Portland
1220 S. W. Fifth Avenue
Portland, OR 97204

With a copy to:
Commissioner in Charge of ERC
City of Portland
1220 S.W. Fifth Avenue
Portland, Oregon 97204

Notice hereunder shall be deemed received three (3) days after mailing as provided in this Section or on actual delivery to the addressee, whichever occurs first.

SECTION 23

EXECUTION OF FURTHER DOCUMENTS

In order to complete implementation of the provisions of this Agreement, it may be necessary for Metro, Metro ERC, City, and ERC to execute further documents enabling implementation. Each of them shall execute such further documents and take such other steps as are reasonably necessary or appropriate to implementing the provisions hereof.

SECTION 24

WAIVERS

The waiver of any provision of this Agreement, whether a waiver as to a particular application of the provision or as to all applications of the provision, shall be binding on the party making the waiver only if in writing and executed by the party. Unless otherwise expressly provided in the written waiver, the waiver by a party of performance of a provision as to a particular application shall not be a waiver of nor prejudice the party's right to require performance of the provision as to other applications or of any other provision.

SECTION 25

ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties. This Agreement may not be modified except by a written amendment dated and approved and signed by all the parties hereto then in existence. No party shall be bound by any oral or written statement or course of conduct of any officer, employee, or agent of the party purporting to modify this Agreement.

APPROVED AS TO FORM:

City Attorney

CITY OF PORTLAND

By: _____
J. E. Bud Clark, Mayor

By: _____
Mike Lindberg, Commissioner
of Public Affairs

By: _____
Barbara Clark, Auditor

APPROVED AS TO FORM:

Metro General Counsel

METROPOLITAN SERVICE DISTRICT

By: _____
Rena Cusma,
Executive Officer

APPROVED AS TO FORM:

**EXPOSITION-RECREATION
COMMISSION**

By: _____
_____, Chairperson

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CITY/METRO/OAC AGREEMENT TO OFFSET ADMISSION TAX

This Agreement, dated _____, 1992, is between the City of Portland, Oregon (City), the Metropolitan Service District (Metro), the Oregon Arena Corporation (OAC), and the Trail Blazers Inc. (TBI).

RECITALS

A. The City, OAC, and TBI are entering into a project agreement for the development of a sports arena and plaza generally located on the site of the City's Memorial Coliseum and Exhibit Hall, and for operation of the Project Facilities by OAC.

B. Pursuant to those agreements, OAC will be collecting user fees on tickets for events at the Project Facilities and will make payments to the City from user fees collected.

C. The City and Metro have authority to impose and collect admission taxes on tickets for spectator events, including events at the Project Facilities.

D. The parties to this Agreement believe it is in their best interest to ensure that the user fee on events at the Project Facilities (Coliseum, Arena, Plaza, and Exhibit Hall) is offset against any Admission Tax imposed by the City or Metro so as to avoid unreasonably high cumulative excise charges on tickets.

SECTION 1

DEFINITIONS

1. "Admission Tax" means any tax or imposition imposed by the City or Metro directly on the issuance, purchase, sale or use of tickets for events at the "Project Facilities" as defined below. Admission taxes include any tax measured by the gross receipts from

ticket sales or admissions, and also include impositions which (a) are specific to the Project Facilities, or (b) taxes on or measured by the gross receipts of sales of tickets and admissions to assembly type facilities such as theaters, stadiums, auditoriums, amphitheaters, plazas, exhibit halls and performance halls. Admission taxes do not include taxes which are of a general nature, and applicability, including business income, gross receipts or sales taxes.

2. "User Fee" means the additional charge not to exceed 6 percent imposed by OAC on tickets for events at the Project Facilities, which User Fee is subsequently paid by OAC to the City, pursuant to the agreements between OAC and the City.

3. "Project Facilities" means the sports Arena, Plaza, Memorial Coliseum, and associated Exhibit Hall, all located generally on the site of the Memorial Coliseum at 1401 North Wheeler, Portland, Oregon.

SECTION 2

ADMISSION TAX OFFSET

4. In the event that the City or Metro imposes any Admission Tax, OAC may offset, dollar-for-dollar, the amount paid in User Fees to the City against the amount of Admission Tax payable to the City or Metro in the manner set forth in this Agreement.

5. OAC may reduce the Admission Tax it collects on each ticket, and thus reduce the amount of Admission Tax OAC pays to Metro or the City by an amount equal to the amount of User Fees OAC must collect on each ticket and pay to the City pursuant to its agreements with the City. The intended result of this Agreement is as follows:

- a. If the User Fee is greater than the sum of all admission taxes imposed by the City and Metro, then OAC need not collect or pay any Admission Tax.
- b. If the sum of the admission taxes is greater than the User Fee, then OAC may collect and pay as Admission Tax only the amount by which the sum of admission taxes exceeds the User Fee.
- c. If OAC must collect and pay a partial Admission Tax, as in (b) above, and both the City and Metro have imposed admission taxes, then the amount paid by OAC shall be apportioned between the City and Metro in the same ratio as the ratio between the full admission taxes imposed by the City and Metro.

6. Nothing in this Agreement shall reduce or impair the obligations of OAC to pay User Fee revenue to the City pursuant to the agreements between OAC and the City.

7. In the event that the City or Metro, in spite of this Agreement, collect Admission Tax from OAC without it being reduced by the amount of User Fee as provided in this Agreement, then the City or Metro shall reimburse OAC so that the net effect is the same as if the Admission Tax had been fully offset by the User Fee as contemplated by paragraph 4 of this Agreement.

8. The User Fee contemplated by this Agreement is the 6 percent fee on tickets sold in the new Arena and Coliseum. Any increase in this fee subsequently agreed to by City and OAC or any other payments made by OAC to City pursuant to the agreements between OAC and City are excluded from the Admission Tax offset and OAC shall not be

entitled to offset any such additional User Fee or payments against any Admission Tax subsequently imposed by Metro or City.

9. This Agreement shall be in effect as long as OAC is contractually obligated to pay User Fees to the City pursuant to the agreements entered into between City and OAC on November 5, 1992.

DATED this ____ day of _____, 1992.

Oregon Arena Corporation

Trail Blazers Inc.

City of Portland

Metropolitan Service District

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1128

STAFF REPORT

RESOLUTION 92-1714, FOR THE PURPOSE OF AMENDING THE CONSOLIDATION AGREEMENT BETWEEN THE CITY OF PORTLAND AND METRO AND TRANSFERRING MEMORIAL COLISEUM FROM MERC TO CITY CONTROL AND AUTHORIZING AN ADMISSION TAX OFFSET AGREEMENT WITH OAC AND CITY

November 18, 1992

By: Don Rocks

BACKGROUND

Negotiations between Metro staff and Portland staff established the positions of both governments with respect to the issues to be addressed in the amendment to the Consolidation Agreement. The agreement signed between the city and the Oregon Arena Corporation specified that the city would obtain an amendment returning the Memorial Coliseum to city control by December 1, 1992. Failure to obtain the amendment within that timeframe, under the terms and conditions of the agreement, would result in the collapse of the Arena Project.

The deadline for the conclusion of negotiations between the city and Metro imposed by the city/OAC agreement resulted in (1) direct talks between the Metro Executive Officer and Presiding Officer and the Mayor and liaison commissioner to ERC facilities, and (2) the agreement that the issue of city approval of MERC budgets and of the Metro Ordinance governing the MERC would be discussed and resolved immediately following finalization and approval of the amendment returning the Coliseum to the city.

Discussions between the elected officials produced city agreement that real costs of transferring the Coliseum--unemployment benefits for MERC employees, claims liabilities, vacation pay-out etc.--would be paid out of the Coliseum Fund and not the Spectator Facilities Fund as previously desired by the city. A cap on Coliseum Fund pay-outs was established at \$300,000. The worst case transfer cost scenario produced a figure of \$584,000 which assumes, among other things, that OAC hires no MERC employees whatsoever. A more realistic assessment of actual transfer costs tells us that the \$300,000 cap should be adequate and that MERC should not have to dip into the Spectator Facilities Fund.

With regard to the 6% offset, Metro officials agreed, in the spirit of the MOU earlier endorsed by the city and Metro, that amendment language shall grant that exemption with the proviso that it shall not be collected in perpetuity, but only so long as the proceeds are applied to purposes directly related to the city debt, costs incurred in negotiations, in unbonded transaction costs, in overseeing construction of Arena complex facilities and subsequent costs of Coliseum maintenance or replacement.

Since those understandings were reached, members of the Council have expressed strong interest in returning to negotiations and resolving issues that were deferred until after finalization and approval of the amendment. Accordingly, the elected officials have scheduled another meeting which--at time of writing--has not yet been held. The results of that meeting shall be reported upon its conclusion.

ITEMS TO BE INCLUDED IN CONSOLIDATION AGREEMENT
November 4, 1992

The following provisions are contained in Coliseum Operating or Development Agreements and OAC wants them reflected in the amended Consolidation Agreement. MERC staff are aware of many/most of them and are already implementing some of the provisions.

1. MERC must provide OAC a list of all outstanding contracts by December 1. OAC will agree to assume all contracts that are given to it by that date.
2. An inventory of all personal property, equipment, fixtures located at Coliseum and necessary for its operation must be completed by December 1.
3. MERC must maintain Coliseum at normal/budgeted levels and not defer necessary maintenance and repair.
4. New agreements entered into by MERC must be subject to City/OAC approval and must have language that deals with construction interruptions and necessary seismic improvements.
5. Consumables at Coliseum remain at Coliseum on OAC assumption.
6. MERC to work with OAC , contractors and customers to minimize disruption and related financial impacts.
7. MERC must cooperate with OAC during transition period, including providing space for OAC employees.
8. MERC to continue to aggressively market and book Coliseum during transition.
9. MERC cooperate with City to accommodate seismic improvements.

Meeting Date: November 24, 1992
Agenda Item No. 7.7

RESOLUTION NO. 92-1709



METRO

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

Memorandum

DATE: November 19, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council

RE: AGENDA ITEM NO. 7.7; RESOLUTION NO. 92-1709

The Council agenda will be printed before the Governmental Affairs Committee meets to consider Agenda Item No. 7.7 at its Thursday, November 19, meeting. Governmental Affairs Committee reports will be distributed in advance to Councilors and available at the Council meeting November 24.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING A	)	RESOLUTION NO. 92-1709
REQUEST FOR PROPOSALS DOCUMENT FOR)	
AGENT OF RECORD AND AUTHORIZING	)	Introduced by Rena Cusma,
THE EXECUTIVE OFFICER TO EXECUTE	)	Executive Officer
THE CONTRACT)	

WHEREAS, Section 2.04.033(a) of the Metro Code requires the Council of the Metropolitan Service District must approve the proposal document for certain contracts; and

WHEREAS, The contract for an agent of Record for Employee benefits requires Council approval, and the proposal document has been filed with the Council Clerk; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District approves the Request for Proposals for an Agent of Record for employee benefits attached as Exhibit A hereto and authorizes that it be released for response by vendors or proposers.
2. That the Executive Officer is authorized to execute the contract thereby waiving further Council action pursuant to Section 2.04.033 (b) of the Metro Code.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1992.

Jim Gardner, Presiding Officer

EXHIBIT "A"

**REQUEST FOR PROPOSALS
AGENT OF RECORD AND CONSULTANT
FOR EMPLOYEE HEALTH AND WELFARE PLANS**

I. INTRODUCTION

The Metropolitan Service District (Metro) is requesting proposals from qualified firms to provide consulting services and act as Metro's Agent of Record for its employee health and welfare plans. The appointment will be for a three-year period commencing January 1, 1993. Proposals will be due by 3:00 p.m., PST _____, 1992 in Metro's Personnel Office, located at 2000 Southwest First Avenue, Portland, Oregon 97201-5398.

II. GENERAL INFORMATION

The Metro-sponsored employee benefit plan consists of medical, dental, vision, prescription, life, dependent life, and long-term disability insurances. Metro employees also participate in the Public Employees Retirement System (PERS). Eligible employees also have the option to participate in the 401(k)/Metro Salary Savings Plan and an IRC 129 pre-tax dependent care reimbursement program.

The Metro-sponsored benefit plan is offered to all regular non-represented employees; and members of the American Federation of State, County, and Municipal Employees (AFSCME) Local 3580; and all full-time members of International Alliance of Theatrical Stage Employees (IATSE) Local 28 (utility workers), and International Union of Operating Engineers (IUOE) local 87; and the Laborers International Union (LIU) Local 483. Members of LIU have the option to participate in the Metro-sponsored plan, or received their health and welfare benefits through the Oregon Laborers Trust.

Through the collective bargaining process, a labor-management benefit committee has been established to review plan costs and administration, potential plan design changes, and may make recommendations regarding the Metro employee benefit plans. The collective bargaining contract year is from July 1 through June 30.

III. 1992 - 1993 PLAN AND PARTICIPANT INFORMATION

Projected employee participation:

Medical:

Kaiser Permanente	180
ODS	350

Dental:

ODS	530
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Vision:

Kaiser Permanente	180
Vision Service Plan	350

Life, AD&D, LTD:

Standard Insurance	530
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III. **1992 - 1993 PLAN AND PARTICIPANT INFORMATION (cont.)**

Projected Premiums:

ODS	\$1,171,500
Kaiser Permanente	\$ 563,000
Vision Service Plan	\$ 50,000
Standard Insurance	\$ 147,000

Plan Year:

July 1 through June 30.

IV. **MINIMUM QUALIFICATIONS AND EXPERIENCE**

- A. Shall be licensed by the Insurance Commission of the State of Oregon.
- B. Shall have had at least five years experience providing employee benefit consulting to public sector clients.
- C. Shall maintain a main or branch office in the Portland metro area.

V. **SELECTION CRITERIA**

Accepted proposals will be reviewed by a screening committee who will evaluate proposals on the basis of whether they meet the minimum requirements and will rank them based upon the following evaluation criteria:

- A. **TECHNICAL EXPERTISE:** knowledge and skill in the areas of underwriting/actuarial services and products, plan design and financing, IRC 125 and 129 plans, PERS benefits, public sector benefit requirements, benefit law, insurance placement and carrier negotiations.
- B. **CREATIVITY:** ability to design and implement effective, timely, and cost conscious solutions to employee benefit problems.
- C. **COMMUNICATION AND INTERPERSONAL SKILLS:** ability to work and communicate effectively with Metro staff and management, union representatives and committees, insurance carriers, and provide compelling testimony when necessary.

VI. **SCOPE OF WORK**

- A. Assist in the placement of all employee health and welfare insurance including:
 - o Development of marketing specifications.
 - o Evaluation of proposals.
 - o Identification of market conditions pertinent to successful carrier negotiations.

VI. SCOPE OF WORK (cont.)

- B. Assist in the management of employee benefit insurance including:**
- o Underwriting analyses for annual contract renewal negotiations.
 - o Annual financial projections for Metro's budget decision-making process.
 - o Review, analysis, and costing of proposed plan amendments.
- C. Prepare an annual benefit cost management report including:**
- o Statement of projected financial requirements of all employee benefits for the coming plan year with updated cost history and cost trends
 - o Summary of health and welfare insurance carriers and administrator performance evaluations.
 - o Identification of areas for additional cost savings with estimated projected savings.
 - o Recommendations regarding carrier renewals.
- D. Provide specific information regarding existing, new or impending legal or tax requirements that may effect Metro's health and welfare plans.**
- E. Provide information or perform special studies on an ad hoc basis as requested by the Executive Officer, Personnel Manager, or Benefits Officer.**
- F. Upon request by Metro, the Consultant will provide a written fee estimate, with a guaranteed maximum cost for any special study or project outside this Scope of Work. If approved by Metro, the consultant shall thereafter perform such special studies or projects at the written estimate price or such fee as may be negotiated by the parties.**
- G. On a monthly basis, the Consultant will provide a statement of commissions received from each insurance carrier and a provide a detailed explanation of all billable hours incurred for consulting services or insurance placement.**

VII. COMPENSATION

For services falling within this Scope of Work, the consultant will be compensated by receiving commissions directly from the insurance companies providing employee benefit insurance to Metro. Metro shall not be directly obligated for payment to the consultant.

The annual aggregate commission paid from Metro's health and welfare insurance carriers to the consultant shall not exceed \$36,000 per plan year. If the billable time for service will be less than \$36,000 in any given plan year, the excess commission compensation will be carried forward and applied directly to the following plan year's services.

VIII. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award -- This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to accept or reject any or all proposals received in whole or in part as the result of this request, to negotiate with all qualified sources, or to cancel all or part of this RFP.**
- B. Contract Type -- Metro intends to award a Personal Services Contract with the firm selected to provide service. A copy of the standard form contract which the successful consultant will be required to execute is attached.**
- C. Billing Procedures -- Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. A monthly billing, accompanied by a progress report, will be prepared by the consultant for review and approval.**
- D. Validity Period and Authority -- The proposal shall be considered valid for a period of least ninety (90) days and shall contain the name, title, address and telephone number of an individual or individuals with authority to bind any company contacted during the period of which Metro is evaluating the proposal.**

IX. PROPOSAL CONTENTS REQUIREMENTS

All proposals must include the following information:

- A. Name and address of your organization, the date established, and a brief description of it's historical background.**
- B. The name, title, address, and phone number of the individual preparing the response and who can be contacted regarding this RFP.**
- C. Describe the business experience and professional achievements of the principals of your firm who would be assigned to work on Metro's account. Attach resumes or summarized credentials of the account manager and all other staff who would be assigned to Metro's account.**
- D. Provide a list of other Oregon Public Sector employers for which you provided similar services to those contained within this Scope of work within the past five years. Include the names, titles and phone numbers of appropriate contacts at these organizations who are able to discuss the services your agency provided in detail.**

IX. PROPOSAL CONTENTS REQUIREMENTS (cont.)

- E. Briefly describe your organizations expertise in the following areas (please note those services available through your Portland office):
- o Health plan design and financing
 - o Underwriting and actuarial service
 - o Employee benefit legislation, tax issues and requirement for public sector employers
 - o IRC 125 and 129 Plans
 - o Public Employes Retirement System (PERS)
 - o Flex Spending Arrangements
 - o Collective bargaining
 - o Dependent Care Reimbursement Programs
- F. Provide any other information which you feel would assist Metro in the process of evaluating your proposal.

X. RFP ATTACHMENT

The following attachments are included with this RFP:

- A. A copy of the Personal Service Agreement your organization will be required to sign prior to the award of this contract. You will note that this document includes the required levels and types of insurance the consultant must purchase and maintain during the life of this agreement.
- B. Section 2.04.100 of the Metro Code titled, "Disadvantaged Business Program, Purpose and Authority," whereby Metro extends equal opportunity to all persons and specifically encourages disadvantaged and women-owned businesses to access and participate in this and all Metro projects, programs, and services. The Section also declares that Metro and its contractors shall not discriminate against any person or firm based on race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

XI. PROPOSAL INSTRUCTIONS

- A. **Deadline and Submission of Proposals**

Three copies of the proposal shall be furnished to Metro addressed to:

Sarah Keele
Benefits Officer
Metropolitan Service District
2000 S.W. First Avenue
Portland, Oregon 97201-5398

Proposals will not be considered if received after 3:00 p.m., PST, on _____.
Postmarks are not acceptable.

XI. PROPOSAL INSTRUCTIONS (cont.)

B. Basis for Proposals

This RFP represents the most definitive statement Metro will make concerning the information upon which proposal are to be based. Any verbal information which is not contained in this RFP will not be considered by Metro in evaluating the proposal. All questions relating to the RFP must be submitted in writing to Sarah Keele, Benefits Officer. Any questions which in the opinion of Metro warrant a written reply or RFP amendment will be furnished to all parties receiving a copy of this RFP. Metro will not respond to questions received after _____.

XII. EVALUATION OF PROPOSALS

A. Only proposals prepared in full conformance with these RFP instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. The evaluation process will result in Metro developing a short list of the firms who, in its opinion, are most qualified. Interviews with these firms will be requested prior to final selection of one firm.

B. Firms responding to the Request for Proposals will be evaluated on the basis of the following:

1. General (5 pts.)

- a. Organization of proposal
- b. Responsiveness to the purpose and scope of services

2. Personnel (10 pts.)

- a. Experience and qualifications of principals assigned to this project.
- b. Availability of personnel assigned.
- c. Additional professional resources available.

3. Organization, Experience and Services of Firm (10 pts.)

- a. Previous history and experience with similar types of government agencies.
- b. Previous history and experience in the appropriate insurance fields.
- c. Structure of services provided and appropriateness to Metro's needs.
- d. Favorable references from similar public sector clients you have provided similar services.

All firms submitting proposals will be notified when a consultant has been selected. Metro reserves the right to reject any or all proposals, to waive irregularities and technicalities and to accept the proposal deemed most advantageous to the District.

Jeff Lange
Gales Creek Insurance
800 NW 6th Ave.
Portland, OR 97209

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Les Morton
Standard Insurance
5100 SW Macadam, Suite 200
Portland, OR 97201

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Terry Venezia
Mercer, Inc.
900 SW Fifth Ave., Suite 1000
Portland, OR 97204

^E

Parke Blundon
Willis - Caroon
P.O. Box 8699
Portland, Or 97207

^E

Cathy Webb
JBL&K
220 NW 2nd, Suite 800
Portland, OR 97209

^E

Johnson and Higgins
111 SW Fifth Ave.
Portland, OR 97204-3629

^E

Gordon Osaka
111 SW Fifth Ave., Suite 3860
Portland, OR 97204*

^E

Kathleen Sadowski
1395 Liberty Street SE
Salem, OR 97302*

^E

Eddie Yen
Supreme Insurance Agency
220 NW Second Ave., Suite 118
Portland, OR 97209*

^E

Steve Brookshire
Coordinated Resource Group
5440 SW Westgate Drive, Suite 325
Portland, OR 97221

^E

Kim Herron
Northwestern Mutual Life
1221 SW Yamhill, Suite 400
P.O. Box 8709
Portland, OR 97208

^E

Mike Schneider
Alexander & Alexander
111 SW Fifth Ave., Suite 3700
Portland, OR 97204

^E

Bill Lovejoy
Benefit Brokers & Consultants
111 SW Columbia Suite 1280
Portland, OR 97201

^E

Howard Johnson & Co.
888 SW 5th Ave.
Portland, OR 97204

^E

Hartzel Cobb
7160 SW Raleighwood Lane
Portland, OR 97224

^E

*=DBW & MBE'S

STAFF REPORT

RESOLUTION NO. 92-1709, FOR THE PURPOSE OF APPROVING A REQUEST FOR A PROPOSAL DOCUMENT FOR AN AGENT OF RECORD FOR EMPLOYEE BENEFITS AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE THE CONTRACT

Date: November 19, 1992

Presented By: Sarah Keele
Paula Paris

BACKGROUND:

Metro secures the services of an Agent of Record for consulting services and assistance in the administration of Metro's employee benefit insurance programs. Examples of the scope of services the Agent of Record/Consultant provides include: health and welfare insurance placement; carrier negotiations; benefit insurance management advice; cost control recommendations; and information on existing or impending legal or tax requirements effecting Metro's employee benefit programs. Metro's current Agent of Record is William Mercer, Incorporated, whose contract will expire December 31, 1992. The firm selected will be appointed for a period between January 1, 1993 and December 31, 1995.

The Agent of Record/Consultant will be selected from respondents to the request for proposals and selected in accordance with Metro contract rules for personal services. Proposals will be evaluated on the basis of organization, responsiveness to purpose and scope of services required, experience of the firm, and the qualifications and abilities of the personnel the firm will be assigning to this project.

COMPENSATION

For services falling within this Scope of Work, the Agent of Record/Consultant will be compensated by receiving commissions directly from the insurance companies providing employee benefit insurance to Metro. Metro shall not be directly obligated for payment to the Agent of Record/Consultant.

However, the annual aggregate commission paid from Metro's health and welfare insurance carriers to the Agent of Record/Consultant shall not exceed \$36,000 per plan year. If the billable time for service will be less than \$36,000 in any given plan year, the excess commission compensation will be carried forward and applied directly to the following plan year's services.

Staff Report
11-3-92
Page 2

ACTION REQUESTED

Pursuant to section 2.04.033(b) of the Metro Code, upon approval of the Request for Proposal documents, permission is requested to waive the requirement of Council approval of the contract and authorize the Executive Officer to execute the contract upon completion of the RFP process.

In previous years, this particular contract was designated as either a "B" or an "N/A" contract. If the Council does not elect to schedule a hearing on this matter over the course of the next fourteen (14) days, the solicitation may be advertised and released to prospective proposers as attached (Exhibit "A").

EXECUTIVE OFFICERS RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 92-1709.

NOTICE TO POTENTIAL PROPOSERS:

METRO'S DISADVANTAGED, MINORITY, AND WOMEN-OWNED BUSINESS PROGRAM

In the event that any subcontractors are to be utilized in the performance of this agreement, the proposer's attention is directed to Metro Ordinance No. 92-466A which will be effective December 24, 1992 and thereafter will establish the language of Metro Code provision 2.04.100, 200, & 300 which will replace the existing RFP attachment.

Copies of that document are available from the Procurement and Contracts Division of Regional Facilities, Metropolitan Service District, Room 340 , Metro Center, 2000 S.W. First Avenue, Portland, OR 97201-5398, extension 280.

METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

October 22, 1991

Dear Potential Bidder/Proposer:

For the past ten years, the Metropolitan Service District has had a special contracting program to encourage participation in metro contracts by businesses owned by minorities including women. This program has been applied to both federally funded and locally funded projects.

We have now been advised by our General Counsel that the Metro Code provisions relating to participation by minority-owned businesses in locally funded contracts are unconstitutional.

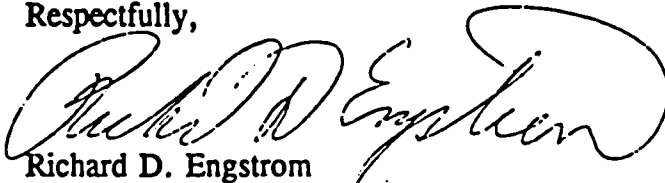
Therefore, I must reluctantly advise you that until the Metro Council acts to correct this defect and/or adopts a new program, I cannot and will not act in probable violation of the law and attempt to enforce the present Metro DBE and WBE Program requirements on locally funded projects.

The economy of the Metro region is comprised of a multitude of emerging and small businesses which mirror the racial diversity within our boundaries. They're our customers and clients. They pay taxes. They hire the local work force. They determine the health of the local economy. Supporting those businesses should not be viewed as just a requirement. Supporting those businesses should be viewed as good business!

I, therefore encourage you to set the legal question aside and voluntarily follow good faith efforts to utilize Disadvantaged, Minority and Women Owned Business Enterprises as your subcontractors and suppliers.

Please consider these issues carefully. Talk to your legal counsel. Reflect upon the larger issue. If you have questions, please contact Rich Wiley at Metro 221-1646.

Respectfully,



Richard D. Engstrom
Deputy Executive Officer

2.04.100 Disadvantaged Business Program, Purpose and Authority:

(a) It is the purpose of this ordinance to establish and implement a program to encourage the utilization by Metro of disadvantaged and women-owned businesses by creating for such

businesses the maximum possible opportunity to compete for and participate in Metro contracting activities.

(b) The portions of this ordinance which relate to federally funded contracts are adopted pursuant to 49 CFR 23 and are intended to comply with all relevant federal regulations. Federal regulation 49 CFR 23 and its amendments implement section (105)(f) of the Surface Transportation Assistance Act of 1982 relating to the participation by Minority Business Enterprises in Department of Transportation programs.

(c) This ordinance shall be known and may be cited as the "Metro Disadvantaged Business Program," hereinafter referred to as the "Program."

(d) This ordinance supersedes the Metro "Minority Business Enterprise (MBE) Program" dated October 1980 and amended December 1982.

(Ordinance No. 83-165, Sec. 1; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.105 Policy Statement:

(a) Through this Program, Metro:

- (1) Expresses its strong commitment to provide maximum opportunity to disadvantaged and women-owned businesses in contracting;
- (2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and
- (3) Assures conformity with applicable federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by this ordinance shall apply to all Metro departments and project areas except as expressly provided in this ordinance.

(d) The objectives of the program shall be:

- (1) To assure that provisions of this ordinance are adhered to by all Metro departments, contractors, employees and USDOT subrecipients and contractors.
- (2) To initiate and maintain efforts to increase program participation by disadvantaged and women businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43(a)(1) and (2), and said statements shall be included in all USDOT agreements with USDOT subrecipients and in all USDOT assisted contracts between Metro or USDOT subrecipients and any contractor.

(Ordinance No. 83-165, Sec. 2; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.110 Definitions: For purposes of this Ordinance, the following definitions shall apply:

(a) "Applicant" means one who submits an application, request or plan to be approved by a USDOT official or by Metro as a condition to eligibility for Department of Transportation (USDOT) financial assistance; and "application" means such an application, request or plan.

(b) "Construction Contract" means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(c) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction; and the buyer to pay for them. For purposes of this ordinance a lease or a purchase order of \$500.00 or more is a contract.

(d) "Contractor" means the one who participates, through a contract or subcontract, in the Program and includes lessees.

(e) "Department or USDOT" means the United States Department of Transportation, including its operating elements.

(f) "Disadvantage Business Enterprise or DBE" means a small business concern which is certified by an authorized agency and:

- (1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

For purposes of USDOT assisted contracts, the term Disadvantaged Business Enterprise shall be deemed to include Women-Owned Business Enterprises.

(g) "Executive Department" means the State of Oregon's Executive Department.

(h) "Joint Venture" is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a DBE/WBE and non-DBE/WBE, the DBE/WBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a DBE/WBE and a non-DBE/WBE must receive Metro approval prior to contract award to be counted toward any DBE/WBE contract goals.

(i) "Labor and Materials Contract" is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

(j) "Lessee" means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

(k) "Oregon Department of Transportation or ODOT" means the State of Oregon's Department of Transportation.

(l) "Personal Services Contract" means a contract for services of a personal or professional nature.

(m) "Procurement Contract" means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.

(n) "Recipient" means any entity, public or private, to whom USDOT financial assistance is extended, directly or through another recipient for any program.

(o) "Small Business Concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(p) "Socially and Economically Disadvantaged Individuals or Disadvantaged Individuals" means those individuals who are

citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Certifying recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Certifying recipients also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

- (1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Portuguese-American, Spanish culture or origin, regardless of race;
- (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
- (5) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

(q) "USDOT Assisted Contract" means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with USDOT financial assistance.

(r) "USDOT Financial Assistance" means financial aid provided by USDOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

(s) "Women-Owned Business Enterprise or WBE" means a small business concern, as defined pursuant to section 3 of the Small

Business Act and implementing regulations which is owned and controlled by one or more women and which is certified by an authorized agency. "Owned and controlled" means a business which is at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women. For purposes of USDOT assisted contracts, the term Disadvantaged Business Enterprise shall be deemed to include Women-Owned Business Enterprises.

(Ordinance No. 165, Sec. 3; amended by Ordinance No. 84-181, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.115 Notice to Contractors, Subcontractors and Subrecipients: Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the Program which are USDOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate. Likewise, contractors of Metro accepting locally-funded contracts under the Program shall be advised that failure to carry out the applicable provisions of the Program shall constitute a breach of contract and, after notification by Metro, may result in termination or such other remedy as Metro deems appropriate.

(Ordinance No. 83-165, Sec. 4; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.120 Liaison Officer:

(a) The Executive Officer shall by executive order, designate a Disadvantaged Business Liaison Officer and, if necessary, other staff adequate to administer the Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the Program.

(b) The Liaison Officer shall be responsible for developing, managing and implementing the program, and for disseminating information on available business opportunities so that DBEs and WBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the Liaison Officer, all department heads and program managers shall have responsibility to assure implementation of the Program.

(Ordinance No. 83-165, Sec. 5; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.125 Directory: A directory of DBEs and WBEs certified by ODOT or the Executive Department, as applicable shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet Program requirements.

(Ordinance No. 83-165, Sec. 6; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.130 Minority-Owned Banks: Metro will seek to identify minority-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE/WBE banks.

(Ordinance No. 83-165, Sec. 7; amended by Ordinance No. 84-181, Sec. 3; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.135 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate DBE and WBE participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of DBEs and WBEs.

(b) Referring DBEs and WBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the program to organizations and individuals concerned with DBE/WBE programs.

(e) Periodic reviews with department heads to insure that they are aware of the program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE/WBE goals for department

contracts shall be factors considered during annual performance evaluations of the department heads.

(f) Monitor and insure that Disadvantaged and Women Business Enterprise planning centers and likely DBE/WBE contractors are receiving requests for bids, proposals and quotes.

(g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE/WBE participation.

(h) Distribution of lists to potential DBE/WBE contractors of the types of goods and services which Metro regularly purchases.

(i) Advising potential DBE/WBE vendors that Metro does not certify DBE/WBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE and WBE participation in contracts. In an effort to become more knowledgeable regarding DBE and WBE resources, the committee shall also invite potential DBE and WBE contractors to attend selected meetings.

(l) Requiring that at least one DBE or WBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$15,001 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$10,001 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no DBEs or WBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs and WBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(m) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs and WBEs in Metro contracting activities.

(Ordinance No. 83-165, Sec. 8; amended by Ordinance No. 84-181, Sec. 4; Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.140 Certification of Disadvantaged Business Eligibility:

(a) To participate in the Program as a DBE or WBE, contractors, subcontractors and joint ventures must have been certified by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the certification and recertification processes of ODOT and will utilize ODOT's certification list until December 31, 1987, and, thereafter, the Executive Department's list in determining whether a prospective contractor or subcontractor is certified as a DBE or WBE. A prospective contractor or subcontractor must be certified as a DBE or WBE by one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible DBE or WBE and be counted toward meeting goals. Metro will adhere to the Recertification Rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for USDOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the USDOT-assisted portion of this Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

- (1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the certifying agency as a disadvantaged business. The challenge shall be made in writing to the recipient.
- (2) With its letter, the challenging party shall include all information available to it relevant to

a determination of whether the challenged party is in fact socially and economically disadvantaged.

- (3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.
 - (i) if the recipient determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.
 - (ii) if the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.
- (4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as a socially and economically disadvantaged individual.
- (5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.
- (6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.

- (7) In making the determinations called for in paragraphs (b)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.
- (8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect." 49 CFR 23.69.

(Ordinance No. 83-165, Sec. 9; amended by Ordinance No. 84-181, Sec. 5; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.145 Annual Disadvantaged Business Goals:

(a) The Metro Council shall, by resolution each June, establish annual DBE goals and for locally-funded contracts, separate WBE goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts, and USDOT assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) Projection of the number and types of contracts to be awarded by Metro;
- (2) Projection of the number, expertise and types of DBEs and WBEs likely to be available to compete for the contracts;
- (3) Past results of Metro's efforts under the Program;
- (4) For USDOT-assisted contract goals, existing goals of other local USDOT recipients and their experience in meeting these goals; and
- (5) For locally-funded contract goals, existing goals of other Portland metropolitan area contracting agencies, and their experience in meeting these goals.

(c) Annual goals for USDOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the USDOT-assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available

for 30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice.

(e) Metro will publish notice regarding proposed locally-funded contract goals not later than ten (10) days prior to adoption of the goals.

(Ordinance No. 83-165, Sec. 10; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.150 Contract Goals:

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000.

(b) The Liaison Officer may set a contract goal for any contract other than construction contracts over \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the Liaison Officer and shall not be tied, necessarily, to the annual goal for such contract type.

(c) Even though no DBE/WBE goals are established at the time that bid/proposal documents are drafted, the Liaison Officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.160, to achieve DBE/WBE participation in the same goal amount as the current annual goal for that contract type.

(d) Contract goals may be complied with pursuant to Section 2.04.160 and/or 2.04.175. The extent to which DBE/WBE participation will be counted toward contract goals is governed by the latter section.

(Ordinance No. 83-165, Sec. 11; repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.155 Contract Award Criteria:

(a) To be eligible for award of contracts containing a DBE/WBE goal, prime contractors must either meet or exceed the specific goal for DBE and WBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of DBEs and WBEs

certified by ODOT until December 31, 1987, and, thereafter, by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or request for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.160 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged Business Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a DBE/WBE in which the DBE/WBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders/proposers shall, by the close of the next working day following bid opening (or proposal submission date when no public opening is had), submit to Metro detailed DBE and WBE Utilization Forms listing names of DBEs and WBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and DBE/WBE subcontractors and suppliers to be utilized in performance of the contract. A sample Letter of Agreement will be provided by Metro. The DBE and WBE Utilization Forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that the DBE/WBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right to determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided

above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law.

(Ordinance No. 83-165, Sec. 12; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.160 Determination of Good Faith Efforts:

(a) Bidders or Proposers on USDOT-assisted contracts to which DBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. A showing of good faith efforts must include written evidence of at least the following:

- (1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform disadvantaged and women business enterprises of contracting and subcontracting or material supply opportunities available on the project;
- (2) Advertisement in trade association, general circulation, minority and trade-oriented, women-focus publications, if any and through a minority-owned newspaper or minority-owned trade publication concerning the sub-contracting or material supply opportunities at least 10 days before bids or proposals are due.
- (3) Written notification to a reasonable number but no less than five (5) DBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from

DBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE sufficient opportunity to develop quotes or proposals for the work described.

- (4) Evidence of follow-up to initial solicitations of interest, including the following:
 - (A) The names, addresses, telephone numbers of all DBE contacted;
 - (B) A description of the information provided to DBE firms regarding the plans and specifications for portions of the work to be performed; and
 - (C) A statement of the reasons for non-utilization of DBE firms, if needed to meet the goal.
- (5) Negotiation in good faith with DBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE firms;
- (6) Where applicable, the bidder must provide advice and assistance to interested DBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder;
- (7) Overall, the bidder's efforts to obtain DBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals; and
- (8) The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs.

(b) Bidders or proposers on locally-funded contracts to which DBE/WBE goals apply shall achieve the applicable contract goal or demonstrate that they have made good faith efforts to achieve the

goals. Good faith efforts shall include written documentation of at least the following actions by bidders:

- (1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform DBEs and WBEs of contracting and subcontracting or material supply opportunities available on the project;

Documentation required: Signature of representative of bidder or proposer on prebid meeting attendance sheet.

- (2) Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises;

Minimum documentation required: At least the documentation required under subsection (4) below.

- (3) Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due;

Documentation required: copies of ads published.

- (4) Providing written notice soliciting sub-bids/proposals to not less than five (5) DBEs or WBEs for each subcontracting or material supply work item selected pursuant to (2) above not less than ten (10) days before bids/proposals are due.

If there are less than five certified DBEs/WBEs listed for that work or supply specialty then the solicitation must be mailed to at least the number of DBEs/WBEs listed for that specialty. The solicitation shall include a description of the work for which subcontract bids/proposals are requested and complete information on bid/proposal deadlines along with details regarding where project specifications may be reviewed.

Documentation required: Copies of all solicitation letters sent to DBE/WBE along with a written statement from the bidder/proposer that all the letters were sent by regular or certified mail not less than 10 days before bids/proposals were due.

- (5) Making, not later than five days before bids/proposals are due, follow-up phone calls to all DBEs/WBEs who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so.

Minimum documentation required: Log showing a) dates and times of follow-up calls along with names of individuals contacted and individuals placing the calls; and b) results attained from each DBE/WBE to whom a solicitation letter was sent (e.g., bid submitted, declined, no response). In instances where DBE/WBE bids were rejected, the dollar amount of the bid rejected from the DBE/WBE must be indicated along with the reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

- (6) Using the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs; where applicable, advising and assisting DBEs and WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by DBEs and WBEs which could reasonably be expected to produce a level of participation sufficient to meet the goals.

Minimum documentation required: Letter from bidder/proposer indicating all special efforts made to facilitate attainment of contract goals, the dates such actions were taken and results realized.

- (7) Notwithstanding any other provision of this section, bidders and proposers on locally-funded contracts to which DBE/WBE goals apply need not accept the bid of a DBE or WBE on any particular subcontract or material supply item if the bidder/proposer demonstrates that none of the DBEs or WBEs submitting bids were the lowest responsible, responsive and qualified bidders/proposers on that particular subcontract item and that the subcontract item was awarded to the lowest responsible, responsive bidder/proposer.

Metro reserves the right to require additional written documentation of good faith efforts and bidders and proposers shall comply with all such requirements by Metro. It shall be a rebuttable presumption that a bidder or proposer has made a good faith effort to comply with the contract goals if the bidder has performed and submits written documentation of all of the above actions. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not performed or has not submitted documentation of all of the above actions.

(Ordinance No. 83-165, Sec. 13; amended by Ordinance No. 84-181, Sec. 6 and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.165 Replacement of DBE or WBE Subcontractors: Prime contractors shall not replace a DBE/WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE or WBE subcontractor shall replace such DBE/WBE subcontractor with another certified DBE/WBE subcontractor or make good faith efforts as described in the preceding section to do so.

(Ordinance No. 83-165, Sec. 14; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.170 Records and Reports:

(a) Metro shall develop and maintain a recordkeeping system to identify and assess DBE and WBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

- (1) Awards to DBEs and WBEs by number, percentage and dollar amount.
- (2) A description of the types of contracts awarded.
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All DBE and WBE records will be separately maintained. Required DBE and WBE information will be provided to federal agencies and administrators on request.

(c) The Liaison Officer shall prepare reports, at least semiannually, on DBE and WBE participation to include the following:

- (1) The number of contracts awarded;
- (2) Categories of contracts awarded;
- (3) Dollar value of contracts awarded;
- (4) Percentage of the dollar value of all contracts awarded to DBE/WBE firms in the reporting period; and
- (5) The extent to which goals have been met or exceeded.

(Ordinance No. 83-165, Sec. 15; amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.175 Counting Disadvantaged Business Participation Toward Meeting Goals:

(a) DBE/WBE participation shall be counted toward meeting the goals on each contract as follows:

- (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a prime contract or subcontract to be performed by DBEs or WBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
- (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged or female business partner in the joint venture.

- (4) Metro shall count toward its goals only expenditures to DBEs and WBEs that perform a commercially useful function in the work of a contract. A DBE or WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE or WBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (5) Consistent with normal industry practices, a DBE or WBE may enter into subcontracts. If a DBE or WBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE or WBE shall be presumed not to be performing a commercially useful function. The DBE or WBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by USDOT for USDOT-assisted contracts.
- (6) A DBE or WBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than DBE or WBE suppliers and manufacturers, provided that the DBE or WBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.
- (7) Metro shall count its entire expenditure to a DBE or WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- X (8) Metro shall count against the goals 60 percent of its expenditures to DBE or WBE suppliers that are not manufacturers, provided that the DBE or WBE supplier performs a commercially useful function in the supply process.
- (9) When USDOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any DBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project managers

responsible for administration of pass-through agreements shall include the following language in those agreements:

- (a) Policy. It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this agreement.
- (b) MBE Obligation. The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts."

(b) DBE or WBE participation shall be counted toward meeting annual goals as follows:

- (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a DBE or WBE is counted toward meeting annual goals.
- (2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 83-165, Sec. 16; amended by Ordinance No. 84-181, Sec. 8; and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.180 Compliance and Enforcement:

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by

a contractor prior to contract award pertaining to DBE and WBE participation in the contract.

(b) The Liaison Officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE and WBE participation.

(Ordinance No. 83-165, Sec. 17; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

Project _____
Contract No. _____

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the METROPOLITAN SERVICE DISTRICT, a municipal corporation organized under ORS Chapter 268, referred to herein as "Metro," located at 2000 S.W. First Avenue, Portland, OR 97201-5398, and _____, referred to herein as "Contractor," located at _____.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. **Duration.** This personal services agreement shall be effective _____ and shall remain in effect until and including _____, unless terminated or extended as provided in this Agreement.
2. **Scope of Work.** Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. **Payment.** Metro shall pay Contractor for services performed and materials delivered in the maximum sum of _____ AND _____/100THS DOLLARS (\$ _____), in the manner and at the time specified in the Scope of Work.
4. **Insurance.**
 - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering personal injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (2) Automobile bodily injury and property damage liability insurance.
 - b. Insurance coverage shall be a minimum of \$500,000 per occurrence, \$250,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, with any patent infringement arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for

payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

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

13. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

14. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

15. Modification. This Agreement is the entire agreement between the parties, and may only be modified in writing, signed by both parties.

CONTRACTOR

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____