



METRO

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

Memorandum

DATE: November 27, 1992

TO: Metro Council
Executive Officer
Interested Staff

FROM: Paulette Allen, Clerk of the Council *PA*

RE: METRO COUNCIL ACTIONS OF NOVEMBER 24, 1992 (REGULAR MEETING HELD
ON A TUESDAY DUE TO THANKSGIVING HOLIDAY)

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 ABSENT: None.

AGENDA ITEM

ACTION TAKEN

- | | |
|--|--|
| 1. <u>INTRODUCTIONS</u> | None. |
| 2. <u>CITIZEN COMMUNICATIONS TO THE COUNCIL ON
NON-AGENDA ITEMS</u> | None. |
| 3. <u>EXECUTIVE OFFICER COMMUNICATIONS</u> | |
| 3.1 Briefing on Metropolitan Sports Authority | Will Glasgow, Metro Sports Authority Task Force chair, gave the briefing on the Metropolitan Sports Authority. |
| 3.2 Briefing on Facilities Funding Task Force | David Knowles, Facilities Funding Task Force chair, gave the briefing on the Facilities Funding Task Force. |
| 4. <u>CONSENT AGENDA</u> | Adopted (Devlin/Wyers; 11-0 vote; Councilor Buchanan was absent). |
| 4.1 Minutes of October 22, 1992 | |
| 4.2 Resolution No. 92-1708, For the Purpose of Approving a Contract Amendment and Extension with WM Benefits | |

(Continued)

4. CONSENT AGENDA (Continued)

- 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

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
- Referred to the Finance Committee for consideration.
- 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
- Removed from the agenda for first reading at the request of the Executive Officer.

6. ORDINANCES, SECOND READINGS

- 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
- Ordinance No. 92-471C adopted (Wyers/Hansen; 12-0 vote); missing language reinstated (Wyers/Devlin; 12-0 vote); Section 9 amended (McLain/Wyers; 12-0 vote).
- 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
- Adopted (McFarland/Wyers; 12-0 vote).

(Continued)

7. RESOLUTIONS

- 7.1 Resolution No. 92-1673, Greenspaces Willing Seller Policy at Sunset Light Rail Transit Station Resolution No. 92-1673A referred back to the Transportation & Planning Committee for further consideration.
- 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 Adopted (Washington/Hansen; 12-0 vote).
- 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 Resolution No. 92-1705A amended to include contract amount in Be It Resolved language (Moore/Devlin; 12-0 vote); Resolution No. 92-1705B adopted (Devlin/Hansen; 11-0 vote; Councilor Wyers was absent).
- 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 Adopted (Devlin/Buchanan; 12-0 vote).
- 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 Adopted (Buchanan/Wyers; 12-0 vote).
- 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 Adopted (McLain/Devlin; 9-3 vote; Councilors Gronke, McFarland and Van Bergen voted nay).

(Continued)

7. RESOLUTIONS (Continued)

- 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** Adopted (Devlin/Hansen; 11-0 vote; Councilor Buchanan was absent).

8. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

1) Councilor Wyers discussed issues related to the proposed Metro West Station, noted a report would be given on it at the Solid Waste Committee meeting December 1 and encouraged Councilors to attend. She said the Committee would discuss whether regional tonnage figures justified another regional transfer station; 2) Presiding Officer Gardner reminded the Council of the Metro Legislative Committee meeting to be held Wednesday, November 25 in Room C-124 at the Oregon Convention Center at 2:30 p.m. to discuss issues related to the Charter. He said all local governmental officials had been invited to discuss the impacts and implications of the Metro Charter on local governments.

Council
11/24/93

Report on
Portland Metropolitan Sports Authority 3.7

Background

In their final report last year, Metro's Public Policy Advisory Committee for Regional Convention, Trade, Performing Arts and Spectator Facilities recommended that Metro establish a sports commission. Executive Officer Rena Cusma then invited community business leaders and others interested in sports promotion to examine the merits of a sports commission and develop its structure.

These discussions resulted in introduction by the Executive Officer and approval by the Council of a resolution establishing an 11-member Metropolitan Sports Authority Task Force. During the past three months, the Task Force has met to develop a plan for creating a sports promotional body.

The Task Force held its first meeting in late April. Two subcommittees were formed -- a Structure Subcommittee and an Operations and Resources Subcommittee. Both subcommittees met twice to discuss issues under their purview. The full Task Force also met twice to organize and then to adopt recommendations and issue its final report. This report has been previewed with MERC and is being sent to the Metro Executive Officer and Metro Council, and will be made available to interested parties.

Executive Summary

In its deliberations, the Task Force concluded that a sports commission would be a great asset for this region and that our failure to have such a resource has (and, if the situation persists, will) put us at a serious disadvantage with a large number of other communities with whom we compete for sporting events. These conclusions are based in part on the following findings:

1. Sports is a huge business in this country, constituting an industry that generates almost \$100 billion in annual revenue.
2. Sports act as an economic development and diversification tool for many cities. Like conventions, sporting events attract large numbers of people who stay in hotels, eat at restaurants, shop at stores and visit attractions. Minnesota estimates that it has added at least \$30 million to its annual economy by focusing on amateur sports. The Tournament of the Americas alone is expected to bring in over \$10 million to the Portland economy.

3. Sports attract national and international media attention and publicity which in turn brings more tourists and businesses to the area. POVA reported that visitor counts to Portland increased by more than 50% following the Trail Blazers participation in the 1990 finals. Similarly, the Portland Chamber of Commerce received in excess of 2,000 calls per month more than normal following that same event.
4. Enhanced sports activities mean enhanced utilization of and, ultimately, better sports facilities. Development of these facilities can lead to urban revitalization and increase the kinds of entertainment and educational activities available to both residents and visitors.
5. Today, cities throughout the country have formed more than 50 sports commissions, with more being created every year. Clearly, as with most aspects of economic life, the level of competition is increasing rapidly, and if we fail to enhance our institutional ability to respond to opportunities, we stand in danger of not being able to compete for the most attractive events -- particularly those which have a long lead time and require a significant investment by the host community.
6. A sports commission offers the best vehicle for forging a public/private partnership to facilitate our community's efforts to attract sports events. Such a body optimizes the private sector's willingness to support sports events that benefit the community and will leverage the limited public resources that can be brought to bear to achieve these same results.

Having determined that a Sports Commission is desirable, the Task Force proceeded to examine what form of entity should be created. After consideration of all the options, it was decided that forming a 501(c)(6) private, nonprofit corporation (with a separate, but related, 501(c)(3) corporate fundraising arm) was the best solution for the following reasons:

1. A private entity provides the best vehicle for making the entity independently funded with support from both the private and public sectors.
2. While Metro and MERC have a clear stake in the success of the entity, neither should expressly assume the responsibilities of the commission. The sports commission will not be focussed solely on bringing events to facilities owned or operated by MERC, but rather will be focussed on facilitating the attraction of events and teams to the region that will inevitably result in greater utilization of MERC facilities. Because of this real, albeit indirect, relationship to MERC's activities, it is recommended that Metro/MERC's

role be played out through board representation and the provision of financial support through contract services in a manner analogous to MERC's relationship with POVA.

Based on these findings, we propose the formation of a sports commission on the terms and conditions set forth below:

Organizational Structure

The Task Force recommends that a private, non-profit (501(c)(6)) organization (the "Sports Authority") be established with the following mission statement and purposes:

The mission of the Portland Metropolitan Sports Authority is to facilitate attracting national and international amateur and professional sports events and activities to the region. Through this work, the Authority will increase the use of spectator facilities and enhance the economic vitality and liveability of the Portland metropolitan area.

Purposes

1. To attract national and international sporting events and activities to the region by:
 - (a) facilitating the region's ability to host such events and activities;
 - (b) supporting and encouraging the efforts of others to secure events and activities;
 - (c) coordinating the efforts of public agencies, private sector entities, and other appropriate constituencies within the region and adjacent areas to secure sporting events and activities that will benefit the region; and
 - (d) facilitating and encouraging efforts within the region to attract professional sports franchises.
2. To encourage the increased use of existing sports facilities and assist in the long-term planning for future sports facilities to enhance our region's ability to secure sporting events and activities.

A 7 to 15-member Board of Directors will be formed to oversee operations. The Board may establish such committees as necessary; however, the Task Force recommends the Board immediately form a Technical Advisory Committee composed of promoters, facility managers, and other professionals to provide the Board with access to necessary expertise within the community and a Committee on Volunteers to gain access to all recognized

sports groups and enthusiasts in the community. Lastly, the Board would expect to develop policies as needed addressing such issues as cultural diversity.

Budget and Staffing

The Task Force recommends the Sports Authority adopt a budget of \$200,000 as follows:

Personnel:

Executive Director	60,000
Administrative Assistant	20,000
Fringe @25%	20,000
Total Personnel	<u>100,000</u>

Materials and Services:

Office Supplies	4,000
Telephone	6,000
Office Rent	donated
Printing & Postage	5,000
Equipment	3,000
Travel & conference Fees	10,000
Bids	60,000
Professional Services	12,000
Total Materials and Services	<u>100,000</u>
Total Budget	<u>200,000</u>

Categories of Revenue

It is anticipated that five categories of funding will be sought -- grants from foundations, contributions from businesses, membership dues, funds from public sector sources and net proceeds from supporting sporting events. Except for one-time sources of support to assist in formation of the Sports Authority and its critical organizational tasks, it is expected that at least one-half of the annual budget will be met from private sector sources. It is anticipated that a separate 501(c)(3) corporation will be formed to receive foundation gifts that will be used exclusively for amateur sports and educational matters. It is anticipated that the Sports Authority will not commence operations until it has secured at least \$100,000 in funding commitments with participation from both the public and private sectors.

Tasks

The Task Force recommends that the following objectives be established for the first three years of operation.

- Secure 3-year commitment for funding
- Develop inventory of regional facilities

- Prepare master calendar of local sporting events
- Establish relationships with national and international sports governing bodies
- Develop inventory of volunteers
- Develop inventory of potential biddable events for next 10 years
- Categorize region's strengths and weaknesses
- Establish targeted events to attract based on strengths
- Bid on six events each year and secure on average a commitment for at least one major event per year
- Facilitate study of economic impact of sports on metropolitan region
- Assess need for new or renovated facilities
- Prepare public relations plan and outreach program

Miscellaneous

Attached as Exhibit A is a compilation of summary information relating to a number of sports commissions established throughout the country.

Attached as Exhibits B and C are draft articles and bylaws for the Sports Authority.

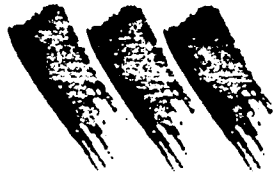
Respectfully Submitted:

Metropolitan Sports Authority Task Force

Will Glasgow, Chairman
 David Knowles, Vice Chair
 Len Bergstein
 Richard Donahue
 Sonna Durdell
 Jack Elder
 Steve Janik
 Nathan Jones
 Kevin Kelly
 Marty Rudolph
 Richard Waker

Staff:

Sherry Oeser
 Pam Erickson
 Jane Popple, Secretary



council
11/24/92
3.2

M E T R O P O L I T A N A R T S C O M M I S S I O N
MEMORANDUM

November 24, 1992

To: Metro Arts Funding Task Force
David Knowles, Chair

From: Funding Needs Subcommittee
Clark Worth, Chair

Subject: Funding Needs Subcommittee:
Report & Recommendations

Summary

The Funding Needs Subcommittee has completed its work and reports to the Task Force annual (1993-94) regional arts fundings needs as follows:

Arts Programs	\$ 6.23 million
Arts Facilities*	\$ 2.31 million
TOTAL	\$ 8.54 million

We find significant unmet funding needs across the region for arts facilities and programs. These arts fundings needs parallel, but surpass the needs which were defined earlier by Arts Plan 2000 Plus and the Metro Facilities Task Force.

We believe the region's arts funding needs, as recommended by the Subcommittee, have been carefully considered, and enjoy broad-based community support. Successful implementation of the region's vision for the arts relies upon full funding of our Subcommittee's recommended priorities.

This is not an overly ambitious "wish list," in our view. Even if the Task Force ultimately succeeds, and these needs are fully funded, public arts funding for the Portland Metropolitan area will remain modest. At best our region will rise only to the level of low average among peer communities. And the package is still very affordable -- just about the ticket price of one movie per resident annually.

The attachments detail the arts funding needs identified and recommended by the subcommittee.

* PCPA only

Metropolitan Arts Commission
1120 SW Fifth Avenue, Room 1023
Portland, Oregon 97204-1983
(503) 823-5111
TDD# (503) 823-6868
Member of the National
Assembly of Local Arts Agencies

Commissioners
Clark Worth
Chairperson
Annie Painter
Vice Chairperson
Jeffrey Alden
Richard J. Brown

Judy Bryant
Isabella Chappell
Nancy Chernoff
Mark Gardiner
Patrick Harrington
Marianne Mayfield Hill
Michael McKeel, DMD

Joan Shipley
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An agency of the
City of Portland
and Multnomah County

Executive Director
William D. Bulick
(503) 823-5405

Associate Director
Donna Milrany
(503) 823-5404

City Liaison
Commissioner Mike Lindberg

County Liaison
Commissioner Pauline Anderson

Funding Needs Subcommittee

A list of Funding Needs Subcommittee members is attached, along with the resource persons who attended regularly and participated in our fact-finding. On behalf of the Subcommittee, I want to express thanks in particular to: Pam Erickson, Sherry Oeser and Jane Poppel of Metro; Bill Bulick and Donna Milrany of Metropolitan Arts Commission; Robert Freedman of Portland Center for Performing Arts; and Tom Wolf. We could not have completed our work without the help they provided from meeting to meeting.

Our Subcommittee began meeting in June, and we finished our work five months later, on November 19. The starting point for our research was to review the needs identified earlier by Arts Plan 2000 Plus and the Metro Facilities Task Force. We first clarified the needs pinpointed in these earlier studies, then updated and expanded upon them. At each stage, we sought to focus on the most critical needs.

In the end, the Subcommittee agreed on the statement of arts funding needs which follows.

Arts Facilities Needs

Beginning with the work of the earlier Metro Facilities Task Force study of the Portland Center for the Performing Arts (PCPA) the Subcommittee updated the figures and expanded the estimates to include items which had not been covered earlier, including:

- Reduced rent and user fees for PCPA tenants.
- Marketing and programming costs.
- Reduced ticket surcharge.

The PCPA's annual funding needs a total of \$ 2.31 million (See Table 1). This includes fully funding all capital projects listed in the PCPA's ten-year capital plan (See Table 2).

Beyond the PCPA, the Subcommittee explored the capital needs for other arts facilities not currently operated by Metro and MERC. Portland Art Museum's needs total \$ 6.64 million (See Table 3). A number of other potential long-term regional arts facilities needs have also been identified -- but detailed plans and cost estimates are not available at this time.

Arts Program Needs

Again, the starting point for the Subcommittee's study was Arts Plan 2000 Plus. After each individual proposed program was scrutinized, the AP2+ budget was modified to:

- Expand the dollar amount and share of regional funds invested directly in outlying communities.
- Provide additional funds that would raise the level of public support for the major arts organizations from about 5% of their budgets (in Arts Plan) to 10%

- of budgets -- in keeping with peer communities across the U.S.
- Fund a long-range facilities planning program to evaluate the feasibility of newly proposed arts facilities.
- Provide support to arts organizations operating their own facilities (e.g., Art Museum).
- Fund a small fellowship program for individual artists, along the lines of similar programs operated by National Endowment for the Arts (NEA) and Oregon Arts Commission (OAC).

Arts program needs identified by the Subcommittee total \$ 6.23 million annually (See Table 4).

Other Regional Cultural and Scientific Funding Needs

Our Subcommittee received an added assignment late in our fact-finding process. In the light of the Task Force's interest in developing a possible regional "quality of life" funding measure, we were asked to explore funding needs for cultural and scientific facilities and programs beyond the arts-related focus of our charge.

In response, we have developed a list of these other potential needs to be considered by the Task Force. The list includes new programs/facilities, expansions of existing programs/facilities, and continuation of programs where current funding is threatened.

A total of \$ 40.3 million in annual ongoing needs and \$ 403.5 million in one-time needs has been identified (See Table 5).

I will underscore that our Subcommittee is not prepared to recommend that any of these specific funding needs be included in a regional funding proposal. In fact, it seems probable to us that any funding measure will not be able to accommodate all of these needs.

While we're not recommending a specific list of funding needs to be met, we have prepared a set of criteria which might help the Task Force set priorities (Enclosed).

What's Missing?

While our report and recommendations covers the bulk of regional arts funding needs (plus some others), we believe that our report does not fully address two areas of needs. First, we were unable to compile complete information on the Art Museum's long-term capital needs. There may be immediate and/or long-term capital needs beyond the figures shown in our report. Also, we do not yet have a complete picture of Clark County's arts program and facilities needs.

Further research is needed to better define these needs for the Task Force.

CW/mah

FUNDING NEEDS SUBCOMMITTEE

Membership

Chair:

Clark Worth

Members:

Tim Estes

Alice Norris

Ed Washington

Ben Middleton

Bob Van Brocklin

Larry Cooper

(Visual Arts Program representative)

Others:

Bill Bulick, MAC

Robert Freedman, PCPA

Don Roth, Oregon Symphony

Linda Magee, Portland Arts Alliance

Kathy Condon, Columbia Arts Center, Vancouver

Kathleen Johnson-Kuhn, City of Portland

Mission/Goals

- To identify the total amount of funding needed and how much must be raised annually in new public funds by program category.
- To substantiate needs for new public funds.

Staff

Sherry Oeser, primary staff

Pam Erickson, backup staff

PCPA Annual Funding Needs

TABLE 1

Programs	PPAC Report 12/91 Annual Needs	1993-94 base year Revised Annual Needs
Operating Needs:		
PCPA Operational Support	420,000	637,500
Reduced rent to non-profit arts orgs	252,000	500,000
Capital Needs:		
PCPA Replacement & Renewal	280,000	206,000
PCPA Enhancements	520,000	356,000
TOTAL:	1,472,000	1,699,500
Program Improvements:		
*Reduced User Fees	0	225,000
*Marketing	0	50,000
*Education Coordination	0	18,000
*Presentation/Programming	0	75,000
*Additional Staff Support	0	100,000
PCPA Reimbursement/Overhead	0	40,000
PCPA Ticket Service Charge	0	100,000
Program Improvement Total:	0	608,000
GRAND TOTAL	1,472,000	2,307,500
* denotes need identified by PPAC study but not funded		
Note: Additional staff support includes marketing, development and education staff		

PCPA Annual Funding Needs Notes

PCPA Operational Support

This amount represents the estimated deficit for the 1993-94 fiscal year.

Reduced Rent to Non-Profit Arts Organizations

During the past year, PCPA and MERC management adopted a new three-tier rental rate policy for organizations using the facility. Separate rates are in place for major tenants, other non-profit arts organizations, and commercial groups.

Capital Improvements

Renewal and replacements are defined as basic maintenance. Enhancements include program upgrades and major capital needs. The amounts listed here represent an annualized need based on a nine-year project list which is attached.

Reduced User Fee

While the change in rent structure addressed much of the concern about the high cost of using the PCPA, the overall funding package desired by arts organizations was \$750,000, achieved by reducing both user fees and rent. This reduction to the user fee recognizes the need to further reduce the costs of the use of the PCPA to non-profit organizations, and represents approximately a 30% reduction in user fees.

Marketing

Both the Arts Plan 2000+ and Metro's Public Policy Advisory Committee for Regional Convention, Trade, Performing Arts and Spectator Facilities recognized the need for additional marketing efforts of the PCPA, both to enhance the image of the facility on a region-wide basis and to support the programs of tenant organizations.

Education Coordination and Programming

Again, both studies cited above recognized the growing need for arts education programs. This funding would enhance activities already in place (such as the summer educational workshops begun this past summer) and assist marketing and coordinating educational programs offered by resident/tenant companies. Such coordination can offer marketing efficiencies and a more effective delivery of program services.

Presentation/Programming

This amount is a net annual loss that might be experienced by the PCPA taking a more active role as a "presenter" of events, similar to the Hult Center in Eugene and many other performing arts centers. The idea is to carefully choose events that would complement and enhance the activities of resident/tenant companies. Particular attention would be paid to the kind of events that are currently bypassing Portland such as some jazz, family shows and Broadway shows.

Additional Support Staff

Staff positions that could be added include a Development Director, part-time Educational Coordinator, additional assistance in the Booking and Scheduling area, a full time Stage Hand for the New Theatre Building, and additional clerical support.

PCPA Overhead Reimbursement

Currently the PCPA charges a 25% overhead charge to users of all paid staff that are billed to the user. This amount would reduce the overhead charge to 20%, more accurately reflecting the direct costs of labor.

PCPA Ticket Service Charge

Currently, it is the practice to charge customers a service charge for purchasing tickets at PCPA box offices. This proposal eliminates the service charge for tickets for an event at any PCPA theatre. Service charges would still be charged to customers when purchasing tickets at other outlets or over the phone and for tickets sold for other venues such as Memorial Coliseum, Civic Stadium, and the Tacoma Dome.

PORTLAND CENTER FOR THE PERFORMING ARTS
Capital Projects Summary 1992-2001

ITEM#	DESCRIPTION	FY 92-93	FY 93-94	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	TOTAL
REPAIRS/REPLACEMENTS											
1. ✓	Dressing Room Renovation, CA	✓5,000	✓5,000	✓10,000		✓15,000					35,000
2. ✓	Hallway Carpeting, CA		✓12,000	✓13,000	✓60,000	✓30,000					115,000
3. ✓	Control Booth, CA										
4. ✓	Stage Dimmers, CA	✓50,000	✓100,000	✓50,000							200,000
5. ✓	Luminaries, CA					✓25,000				✓30,000	55,000
6. ✓	Video Monitoring System, CA	✓43,000					✓10,000				53,000
7. ✓	Exterior Painting, CA	✓24,000	✓24,000								48,000
8. ✓	Reupholster seating, CA	✓40,000	✓60,000	✓80,000				✓50,000			230,000
9. ✓	Elect., Mech., Plumbing, CA	✓15,000	✓10,000	✓15,000	✓15,000	✓10,000	✓20,000	✓20,000	✓20,000	✓20,000	145,000
10. ✓	Top Coat Roof, CA		✓25,000							✓20,000	45,000
11. ✓	Energy Retrofit, CA	✓10,000		✓10,000		✓10,000					30,000
12. ✓	General Remodel, CA	✓10,000				✓20,000			✓50,000		80,000
13. ✓	Sound System Upgrade, CA				✓50,000				✓25,000		75,000
14. ✓	Reel to Reel Tape Machine, CA				✓5,000					✓5,000	10,000
15. ✓	Lighting Board CA										
16. ✓	Asbestos Abatement CA						✓50,000				50,000
17. ✓	Carpet Cleaner				✓5,000					✓5,000	10,000
18. ✓	Stage Drapes, CA				✓20,000					✓25,000	45,000
19. ✓	Revamp Front House Light Sys., CA										
20. ✓	Front House Furniture, CA							✓20,000			20,000
21. ✓	Restroom Remodel, CA				✓20,000					✓10,000	30,000
22. ✓	Front House Drapes, CA					✓25,000					25,000
23. ✓	Hallway Carpeting, ASCH			✓25,000		✓30,000					55,000
24. ✓	Elect., Mech., Plumbing, ASCH	✓10,000	✓10,000		✓15,000	✓15,000	✓10,000	✓10,000	✓15,000	✓15,000	100,000
25. ✓	Top Coat Roof, ASCH				✓20,000					✓20,000	40,000
26. ✓	Energy Retrofit, ASCH										
27. ✓	Flooring Replacement, ASCH							✓15,000			15,000

PORTLAND CENTER FOR THE PERFORMING ARTS

Capital Projects Summary 1992-2001

(Page 2 of 2)

ITEM#	DESCRIPTION	FY 92-93	FY 93-94	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	TOTAL
Renewals and replacements											
28. ✓	General Remodel, ASCH	20,000					25,000				45,000
29. ✓	General remodel, NTB				25,000		50,000	15,000			90,000
30. ✓	Energy Retrofit, NTB			20,000				20,000			40,000
31. ✓	Elec., Mech., Plumbing, NTB	15,000	15,000		10,000	10,000	15,000	15,000	15,000	15,000	110,000
32.	Integrated Computer System, NTB				15,000				20,000		35,000
33. ✓	Top Coat Roof, NTB	10,000			5,000					5,000	20,000
TOTAL REPAIRS/REPLACEMENTS		252,000	261,000	223,000	265,000	190,000	180,000	165,000	145,000	170,000	1,851,000
34. ✓	Reroof, CA				200,000						200,000
35. ✓	Replace Lobby Carpet, CA		50,000								50,000
36. ✓	Graphics & Signage, CA			100,000							100,000
37. ✓	Accoustical Remodel, ASCH		100,000								100,000
38. ✓	Redesign Stage, NTB		100,000								100,000
39. ✓	Complete Rehearsal Hall, NTB			1,000,000							1,000,000
40. ✓	Stage Material, ALL		50,000			50,000				50,000	150,000
TOTAL IMPROVEMENTS/ENHANCEMENTS			200,000	1,100,000	200,000	50,000				50,000	1,600,000
GRAND TOTALS		252,000	461,000	1,323,000	465,000	240,000	180,000	165,000	145,000	220,000	3,451,000

Redesign Seating, ASCH

1,500,000

Enhancements
1700,000
1,500,000
3,200,000

Combined Total = 3,551,000

1,500,000
3,551,000

TABLE 2

OTHER FACILITIES IN THE PLANNING OR CONCEPTUAL STAGE

ArtsPlan acknowledged the aspirations of communities around the region to build and/or renovate facilities, from the Portland Art Museum to the Mount Hood Cultural Center. Below is a list of those facilities:

(Capital and annual operating expenses were not available for most projects on this list.)

Arts Component in future Union Station/River District Project

Portland Art Museum upgrade (\$1.5 million)

Portland Art Museum Masonic Temple purchase/renovation (\$5.1 million)

Portland Art Museum Expansion

Beaverton Arts and Community Center

Beaverton Outdoor Amphitheater

Mount Hood Cultural Center

Albina Community Arts Center

Artists' Initiative Contemporary Project Space

Classical Chinese Garden and Museum

Willamette River Band Shell/Outdoor Theatre

Artists live, work and exhibition space (loft renovation) could occur in many parts of the region

Hillsboro Arts Center/Expansion of Washington County Fairplex

Fox Theatre purchase and renovation

Tualatin Commons Cultural Center

Tears of Joy Puppet Theatre/Vancouver, Washington

Shared space for smaller theaters and other non-profits

Yamhill Market renovation for use as multi-cultural artisans marketplace

Sources: Wolf/ArtsPlan Reports, Community Meetings

TABLE 3

PORTLAND ART MUSEUM CAPITAL NEEDS

Repair and Replacement		\$320,000
Roof repair to Museum	\$150,000	
Auditorium furniture and equipment	100,000	
Landscaping	25,000	
Exterior repairs	<u>45,000</u>	
	\$320,000	
Enhancements		\$6,322,000
Climate control system	\$1,100,000	
Ventilation system	122,000	
Masonic Temple/parking lot purchase and upgrade	<u>5,100,000</u>	
	\$6,322,000	
		<u>\$6,642,000</u>

TABLE 4

Summary of Regional Public Funding Needs for Arts Programs		
Program	AP2+ Needs Estimate	Subcommittee Recommendations *
Operating grants for large arts organizations	\$1,500,000	\$3,045,000
Community programs outside of Portland	\$300,000	\$1,055,000
Grants to small arts organizations	\$300,000	\$285,000
Multi-cultural outreach and grants	\$200,000	\$240,000
Arts in Education programs	\$250,000	\$250,000
Business management assistance	\$500,000	\$250,000
Audience outreach/marketing	\$300,000	\$250,000
Facilities planning support **	\$0	\$260,000
Grants to Non-PCPA Facilities **	\$0	\$150,000
Individual Artists Programs **	\$0	\$165,000
Regional Arts Council overhead	\$700,000	\$280,000
Totals	\$4,050,000	\$6,230,000
Total annual funding when implemented. Does not include support for PCPA Operations		
Does not include programs and staff supported by program generated revenue.		
* Funding Needs Subcommittee recommendations includes allocation of staff to program areas.		
** Need identified in Arts Plan, but not costed.		

EXPLANATION OF LINE ITEMS

Operating grants for large organizations--MAC's current level of support for the 15-20 organizations with budgets over \$100,000 is 2% of operating budgets. ArtsPlan recommended 5%; the Subcommittee recommends 10%.

Community programs outside of Portland--This category is for community programs in Washington and Clackamas counties as follows: Annual Operating Support for Local Arts Councils: \$330,000; Community Assessment/Priority Planning \$40,000; Special Local Community Initiatives \$100,000; Community Project Grants \$60,000; Urban/Suburban Touring Collaborations, \$300,000; and Arts Education in Local Communities \$125,000; and staff support.

Grants to small arts organizations--Funding for small organizations, multi-cultural groups, artists, neighborhood groups and for publicly accessible events and one-time projects.

Multi-cultural outreach--grants to commission works of multi-cultural artists, support for audience development, publication of professional development information.

Arts in education--Grants to local arts councils and other groups for curriculum development, teacher training, field trips; artists in residence, and awards for excellence.

Business management assistance--Provision of training, support for shared office space and other office services, salary assistance for small and emerging organizations.

Audience outreach and marketing--grants for free and low cost events, marketing and audience development collaboration grants.

Facilities planning support--Funding for development of new or enhanced facilities: \$20,000 for technical assistance for initial planning; \$80,000 for feasibility studies; \$100,000 matching grants for capital/operating support; and, \$60,000 for staff and overhead.

Grants to non-PCPA facilities--rent relief to arts organizations that operate in non-PCPA facilities.

Individual artists programs--a fellowship program, \$100,000; funds for special projects, \$50,000; support for an artists organization, \$5000, and a marketing/product development program, \$10,000.

Regional Arts Council overhead--cost to Council for administration of all programs.

TABLE 5
OTHER REGIONAL/SCIENTIFIC CULTURAL FUNDING NEEDS CHART

PROGRAM	ANNUAL OPERATING NEEDS	ONE-TIME CAPITAL NEEDS
CURRENT PROGRAMS - PUBLICLY OWNED AND OPERATED		
Zoo*	\$3,000,000	\$38,000,000
Libraries		
Clackamas County**	\$5,010,000	\$10,000,000
Multnomah County* **	\$20,400,000	\$30,000,000
Washington County**	\$6,850,000	\$0
Oregon Public Broadcasting	\$2,400,000	\$0
Civic Stadium	\$379,830	\$0
Memorial Coliseum	\$0	\$2,000,000
Oregon Convention Center	\$0	\$60,000,000
TOTAL:	\$38,039,830	\$140,000,000
CURRENT PROGRAMS - PUBLICLY OWNED/PRIVATELY OPERATED		
Children's Museum*	\$500,000	\$7,300,000
TOTAL:	\$500,000	\$7,300,000
CURRENT PROGRAMS - PRIVATELY OWNED AND OPERATED		
OMSI	TBD	\$5,000,000
Oregon Historical Society*	\$700,000	\$0
TOTAL:	\$700,000	\$5,000,000
NEW PROGRAMS - PUBLICLY OWNED AND OPERATED		
Greenspaces	\$750,000	\$200,000,000
End of the Oregon Trail	\$350,000	\$38,500,000
TOTAL:	\$1,100,000	\$238,500,000
NEW PROGRAMS - PRIVATELY OWNED AND OPERATED		
Native American Cultural Center	TBD	\$4,191,000
Wash. Co. Hist. Society Territorial Farm	\$0	\$8,500,000
Lewis & Clark 2005 Project	TBD	TBD
TOTAL:	\$0	\$12,691,000
GRAND TOTAL:	\$40,339,830	\$403,491,000

* Faces critical funding problem within five years; possible closures, substantial curtailment of programs.

**These are total operating budgets. Each is funded by a serial levy and other local funds. Total cost of the three serial levies is \$16.1 million (see Explanations).

TDB = To be Determined. OMSI estimate expected in 1-2 weeks, others are unknown.

EXPLANATIONS

CULTURAL/SCIENTIFIC PROGRAMS:

Metro Washington Park Zoo--The Zoo was granted a tax base by the voters in 1990, but due to Measure 5 is unable to use the entire tax base. As a result, they are drawing down a fund balance. For 1992-93, the beginning fund balance was \$4.7 million and the ending balance was expected to be \$4.1 million. Since the tax base is regional, it may be further constrained as Clackamas and Washington counties reach the cap. The fund balance is expected to last about three to five years depending on how other revenue sources fair. Therefore, it would appear that the Zoo may be short as much as \$1 million per year. The property tax revenue constitutes 27.5% of revenue with a budget of \$17 million. As part of a package, the Zoo Director suggests that their Animal Management function be funded as it is always difficult to raise funds for it. That cost would be \$3 million per year.

The Zoo has some unfunded capital projects associated with the new light rail station. The Zoo and the other attractions at that location (OMSI and the World Forestry Center) will be assessed \$2 million as their contribution which will likely come from current Zoo operating funds. Other costs associated with the light rail involve reconstructing the parking lot, reorienting the Zoo entrance to align with the new station, and landscaping costs. The Zoo is developing a new masterplan. This plan calls for a 25-year, 5-phase approach for further development of the Zoo. The first phase would include the entrance realignment and a new Oregon Exhibit with total construction costs estimated at \$36 million. Costs for the parking lot reconstruction are estimated at \$2 million, for total capital needs of \$38 million. A possible source of funds to pay for a portion of these costs are parking fees that would be assessed to visitors.

Source: Metro 1992-93 Budget, Metro Financial Planning Manager, Chris Scherer; interview with Sherry Sheng, Zoo Director, and Kay Rich, Assistant Director.

Libraries

	<u>Serial Levy</u>	<u>Other Funds</u>	<u>Total Operating Budget</u>
Clackamas	\$ 3,230,000	\$ 1,780,000	\$ 5,010,000
Multnomah	8,200,000 *	7,800,000	16,000,000
Washington	<u>4,700,000</u>	<u>2,150,000</u>	<u>6,850,000</u>
	\$16,130,000	\$11,730,000	\$27,860,000

* Without Measure 5 cap, levy would have generated \$10.3 million.

Clackamas County--Clackamas County has a cooperative library system with 10 city libraries and 3 county branches in the unincorporated areas. Operations are financed by a county-wide Library Serial Levy and local funds. For the most recent fiscal year (91-92), the total budget was \$5,010,000. Of this amount, \$1,780,000 came from city tax revenues and the remainder (\$3,230,000) was raised by a serial levy. The current 3 year rate-based (.29/1,000) levy expires June 30, 1994. If the levy is not renewed at that time, some city libraries would close and most others would be in a funding crisis. In the current fiscal year, the estimated revenue raised by the library serial levy will be \$3,698,987. Distribution is estimated as follows: network services - \$808,568; to cities - \$1,855,526; to County Library branches - \$1,034,893. County Library operations are

in leased facilities with a need to locate to a full service library in the Sunnyside area at an estimated cost of between \$5 to \$10 million (pending actual site location and design requirements). City libraries are owned and developed by city governments with varying levels of capital need for remodeling or replacement.

Source: Joanna Rood, Administrator, Library Information Network of Clackamas County.

Multnomah County--The library's 1991-92 budget was \$16 million which represents curtailed operations. Full operation would cost \$20 million. Funding sources are the county general fund (\$5 million), a three year serial levy (\$8.2 million) and other funds. Without Measure 5 the levy would have generated \$10.3 million. The levy runs out in 1993. As a replacement tax the county has levied a utility tax, which was recently referred and will go to the voters in March 1993. If the tax is defeated, a critical shortfall will exist. Capital funds in the amount of \$29.6 million are needed to renovate and repair the Central Library and replace the Midland Branch. The utility tax is intended to fund that as well.

Source: Presentation by Ginny Cooper and the Library Board to the Regional Funding Task Force 6/16/92.

Washington County--Washington County has a cooperative library system that is financed by local and county funds. For the most recent fiscal year the total budget was \$6.85 million. Of the total, \$4.7 million came from a 3 year serial levy and the remainder from local funds (primarily city tax revenues with a small amount raised privately). This March the county will go for a new serial levy. Currently, their levy is 45 cents per thousand. Due to the large increase in assessed valuation in Washington County they are able to lower their request to 40 cents per thousand. If the levy does not pass, there will be a critical need. There are no current unfunded capital needs.

Source: Peggy Forcier, Administrator, Washington County Cooperative Library System.

Oregon Public Broadcasting--Oregon Public Broadcasting is Oregon's public television and radio network. Its mission is to improve the quality of life for all Oregonians by providing radio, television and other telecommunications services that inform and educate. State funding has decreased substantially during the past decade. In the early 1980s, the state provided about 65% of OPB's funding. For the 1993-94 fiscal year, state funding is estimated to be about 20% of OPB's budget. Because of Measure 5 cuts, a proposal to make OPB a private non-profit is now under consideration. The \$2.4 million identified here is about 20% of OPB's budget.

Source: Oregon Blue Book, 1991-92; Kim Duncan, Oregon Public Broadcasting.

Civic Stadium--Capital is included in operating cost. A higher estimate for capital was used to include an annual average of all needs for the next nine years. Included is anticipated turf replacement at a cost of \$1 million.

Memorial Coliseum--The \$2 million is an estimate for improvements needed to meet the new Seismic Code. Other improvements are part of the Trail Blazer deal.

Oregon Convention Center--Expansion for the Oregon Convention Center would cost an estimated \$60 million.

Children's Museum--The Children's Museum was formerly owned and operated by the City of Portland Parks Bureau. Presently, the building is owned and maintained by the city, but the program is operated by a private non-profit. For the year 1990-91, the City provided \$398,195 (general fund and rent allowance) out of a total operating budget of \$773,454. The Museum has a critical capital problem in that they will need to meet ADA standards by July 1, 1994. An assessment of costs is currently underway, but is likely to be expensive if it is even possible. The building is old (1905) with narrow halls. Even if it can be renovated, there is the additional need to meet seismic codes that may not be possible nor economically feasible. Plans for a new building that would have cost \$7.3 million over four years were abandoned due to inability to raise sufficient private funds. The city's general fund support may be at risk depending on the city's future budget position. Attendance at the Museum has grown to 133,500 visitors which is twice the attendance 10 years ago.

Source: Children's Museum Annual Report, 1990-91, and interview with Director Bob Bridgeford.

OMSI--OMSI has already exceeded their target for their most recent capital campaign. They will begin a new one for \$5 million to finish some of the aspects of the new site. Ticket prices have been set at \$6.50 for adults and \$4.00 for children. There are additional charges for the Omnimax and Planetarium shows. Operating costs are to be funded by meeting targets for attendance. Although it is difficult to project based on a few weeks since opening, they are not yet meeting targets. A deficit seems likely at this point. Parking is insufficient and people are staying longer which exacerbates the parking problem. They are presently working on trying to finance two or three days a year where admission is one-half price. The cost per each half-price day is \$7,000-10,000. They have extensive education programs for children, some of which may be affected by Measure 5. A total of 80,000 school children visit via field trips. The schools must pay a group fee for this activity. It is likely that this funding will be reduced or eliminated in a lot of schools. In addition, the state Department of Education provides some funding for programs. Whether this will continue is unknown.

Source: Marilyn Eichenger, Director; Dottie Wilson, OMSI Development Director.

Oregon Historical Society--The Society maintains the state's historical collections and research center. This center provides the research on historical authenticity that supports museums, tourist attractions and commemorative events. While this is a statewide function, an estimated 85% of the service is in the Metro region. The research function, which represents 25% of their operation, is financed by the state. This function has suffered from cuts due to Measure 5. The Society lost \$236,000 in state general fund dollars in the 1991-93 biennium (or \$118,000 per year). For the next biennium, the Governor's budget will most likely eliminate all of their funding. This amounts to about \$700,000 per year, or 25% of their total budget.

Source: Interviews with Chet Orloff, Society Director, and Myron Roberts, Finance Director.

Greenspaces--The Metropolitan Greenspaces program is a program to preserve wildlife habitat and open spaces for the Region. The \$200 million general obligation bond measure on the November ballot did not pass. It will likely be placed on a future ballot. At present, no funds are available for maintenance of the land once purchased. A recent study of the cost of maintenance for two options--"land banking" and "basic maintenance"--suggested that the cost for land banking will reach \$282,000 by the year 2000 and basic maintenance will be at \$759,000; the cost will continue to rise as land is acquired. Various possibilities are being explored as a source of funds.

Source: Metro Financial Planning Manager, Chris Scherer, and Financial Study conducted by Public Financial Management, Inc.

End of the Oregon Trail--The total capital cost for this project is currently estimated at \$46.5 million. Of that amount, Metro intends to place a general obligation bond measure on a future regional ballot to finance construction of the project. Federal, state and private funds will make up the difference. Operational support needed is currently estimated at \$350,000. While no source has been dedicated, the mostly likely source is revenue from the County's recently restructured hotel/motel tax.

Source: End of the Oregon Trail Masterplan, Letter of Request from Clackamas County regarding regional funding of the project.

Native American Cultural Center--The American Indian Association of Portland Cultural Center is a proposed facility of 18,100 square feet to be built at Delta Park on land owned by the City of Portland. It will include a community center for gatherings and events, and a learning center with an arts program room, gallery and rentable studios.

Source: Stastny & Burke: Architecture.

Washington County Historical Society Northwest Crossroads Village and Farm--This is a major part of the Historical Society's long range plan. Over a period of ten years, they plan to recreate the village of Glencoe (near North Plains) and a small farm. It will be a living history exhibit circa 1890-1920. The focus will be on the history of agriculture. Financing will come through an \$8.5 million private fundraising campaign. Of that total, \$3 million will be for an endowment which will be the source of operating support. The \$8.5 million does not include land acquisition, as it is anticipated that this can be acquired through donations.

Source: Joan Smith, Executive Director.

Lewis and Clark 2005 Project--This is a project that is only in the conceptual stage at this point. The idea is to celebrate the 200th anniversary of the Lewis and Clark Expedition by inviting the best intellectual and artistic talent in the world to Portland for a brief period of time. For that time, Portland would be the intellectual and artistic center of the world. It would be a gathering place for lectures, concerts, exhibits of art, science history; opportunities would exist to show off Oregon's accomplishments and natural beauty.

Source: Interview with Chet Orloff, Oregon Historical Society.

METRO ARTS FUNDING TASK FORCE
CULTURAL/SCIENTIFIC FACILITIES AND PROGRAM FUNDING NEEDS

Funding Criteria

- Supports artistic, cultural, or scientific facilities and programs (vs. recreational or other facilities/programs).
- Supports operational needs of existing facilities and programs (vs. new capital facilities or new programs).
- Regional funding most appropriate level for public funding (vs. needs which are more appropriately funded at local, statewide, or federal level).
- Promotes access and special educational opportunities for children.
- Promotes tourism and/or economic development (jobs).
- Promotes geographic access, i.e., participation from citizens who live in all areas of four-county region.
- Promotes cultural diversity.
- Promotes access for underserved groups: seniors, disabled, low income.
- Enjoys broad public appeal (high attendance/usage/membership).
- Publicly owned facilities (vs. non-profit or private).
- Well defined need; ready to go.
- Leverages private financial support and other participation.
- Does not create any new unmet operating needs.

GOVERNMENTAL AFFAIRS COMMITTEE REPORT

RESOLUTION NO. 92-1708, APPROVING A CONTRACT AMENDMENT AND
EXTENSION WITH WM BENEFITS

Date: November 20, 1992 Presented by: Councilor Collier

COMMITTEE RECOMMENDATION: At its November 19, 1992 meeting the Governmental Affairs Committee voted 4-0 to recommend Council adoption of Resolution No. 92-1708. Voting were Councilors Collier, Devlin, Moore, and Wyers. Councilor Gronke was excused.

COMMITTEE DISCUSSION/ISSUES: Personnel Director Paula Paris introduced Benefits Manager Sarah Keele, who presented the staff report. Ms. Keele explained that Resolution No. 92-1708 would exempt from competitive procurement procedures a contract with WM Trust for recordkeeping services related to Metro's 401(k) retirement plan. She said the cost for these services is expected to increase by \$4,000, from \$33,000 to \$37,000 as a result of merging the 5% and 6% plans (authorized by Resolution No. 91-1506). A waiver of competitive bids is requested because it would be more costly to have a new contractor provide these services than to stay with WM Trust, which knows the Metro system and has performed adequately.

Councilor Van Bergen asked for clarification of what sort of organization WM Trust is - is it affiliated with a bank? Ms. Keele said it is a wholly owned subsidiary of Washington Mutual Savings Bank, whose headquarters are in Seattle.

Councilor Wyers asked whether the resolution required specific authorization to enter into a sole source contract. Ms. Paris said the resolution was reviewed and approved by General Counsel.

Councilor Moore asked about the membership of the advisory committee referred to on page 1 of the staff report. Ms. Keele said it consisted of herself and four department heads, with legal advice from Mark Williams of the Office of General Counsel. Councilor Moore asked if part of the work to be done was completing the merger of the 5% and 6% plans. Staff said the merger is complete, and that is not part of this contract work. Councilor Moore asked why the contract amount was increasing \$4,000. Ms. Paris said the increase reflects an increase in scope of services, including employee self-direction of funds, a larger number of funds to administer, and improved coordination of services with Metro. Councilor Moore suggested the resolution include reference to contract term and amount.

Chair Collier asked Council staff to see that Councilor Wyers' question was answered prior to Council's consideration of this resolution. (A response is attached.)

FINANCE COMMITTEE REPORT

RESOLUTION NO. 92-1710 APPROVING A RFP DOCUMENT FOR
PROPERTY/CASUALTY AGENT OF RECORD/BROKER AND AUTHORIZING THE
EXECUTIVE OFFICER TO EXECUTE THE CONTRACT SUBJECT TO CONDITIONS

Date: November 23, 1992 Presented By: Councilor Van Bergen

COMMITTEE RECOMMENDATION: The Committee initially considered this resolution at the November 5, 1992 meeting. It was continued to the next regular meeting so staff could make changes to the RFP document. At its November 19, 1992 meeting the Committee voted unanimously to recommend Council approval of Resolution No. 92-1710. All Committee members were present and voting.

COMMITTEE DISCUSSION/ISSUES: Mr. Scott Moss, Risk Manager presented the Staff Report. He indicated the RFP had been changed to reflect comments made by the Committee Chair at the November 5 meeting. The specific changes made are listed in Attachment 1 to this Committee Report. Chair Van Bergen expressed satisfaction that his concerns had been taken care of in the revised RFP document.

Chair Van Bergen requested that Mr. Moss respond to the question that was asked in the Governmental Affairs Committee earlier in regard to Resolution No. 92-1709 (an RFP for employee benefits services) regarding potential cost savings and other benefits of combining the two procurement documents and resulting contract. Mr. Moss said he was prepared to respond now or in writing prior to the Council meeting. Chair Van Bergen requested the response in writing which is attached to this report as Attachment 2.

**METRO**

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

Memorandum

DATE: November 23, 1992

TO: Don Carlson, Council Administrator

FROM: Scott Moss, Risk Manager *SM*

RE: Changes Made to Resolution #92-1710 -- Request for Proposal

Per our conversation, this memo is to clarify the changes made to Resolution #92-1710, Property/Casualty Agent of Record/Broker. These changes were made in response to the following Finance Committee concerns.

- With the development of a professional Risk Management Division, more activities should be incorporated in-house, with less reliance on external agents.
- The RFP was written in a manner which may have excluded smaller firms from providing bids.

In response to these concerns we made the following structural changes to the RFP.

- The RFP was redesigned to allow separate proposals on general agent of record duties or loss control consultant duties or combine both as a package proposal.
- The proposed scope of work was reformatted to list the specific tasks for the agent of record and the loss control consultant.
- We clarified that the following items have been excluded for the original RFP and will be absorbed internally effective January 1, 1992. The estimated cost savings is \$20,000 annually.
 - Market Liability Insurance
 - Claims Review
 - Market Workers' Compensation
 - Limited Contract Review
 - Allocation of Premium
 - Limited Risk Assessments
 - Limited Risk Management Consulting
- Risk Management will analyze marketing of property insurance proposals in-house depending upon the proposers; professional and clerical resources, insurance market availability, and cost proposed by agent of record. Therefore, the agent of record is required to submit a separate proposal for marketing property insurance. If absorbed internally, we estimate a cost savings of \$10,000 annually.
- The experience requirement was lowered to allow for a broader base of qualified proposers.

MEMO - Don Carlson

November 23, 1992

Page 2

We feel this revised request for proposal will meet the Finance Committee requirements.

If I can be of further service, please contact me.

c:\cameron\general\dcarlson.doc

cc: Jennifer Sims, Director of Finance & Management Information



METRO

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

Memorandum

DATE: November 23, 1992

TO: Finance Committee

FROM: Scott Moss, Risk Manager
Paula Paris, Personnel Manager

RE: Combining Agent of Record Services for Property/Casualty Insurance and Employee Benefits

This memo is in response to a question raised by the Finance Committee on Resolution No. 92-1710, Property/Casualty Agent of Record/Broker and/or Loss Control Consultant. It also responds to a question raised by the Governmental Affairs Committee on Resolution No. 92-1709, Agent of Record for Employee Benefits. The question is, "Are there financial savings and other benefits derived from combining these two RFP's and having one agent provide these services?"

Financial Benefits

Five of the six largest brokers in Portland provide property/casualty and employee benefit services. Each of these firms have specialized consultants offering these services. As a matter of practice, property/casualty insurance consultants have little interface with employee benefit consultants.

Of the five firms, one has experience with public entities in both insurance and employee benefits. We informally asked them and one other firm if discounts would be provided if they were chosen to be the consultant in both areas. They both said a discount would be offered, but not more than 5% of the total. This may result in a savings of approximately \$3,500 annually.

We are aware of one medium-size firm that offers both services, but does not have public entity experience. They do not provide loss control services.

Limited Agents

As was mentioned above, combining the two RFP's would significantly limit the number of brokers able to respond. Due to the technical nature and the differences between property/casualty insurance and employee benefits, firms tend to specialize.

MEMO - Finance Committee
November 23, 1992
Page 2

At the request of the Finance Committee, Risk Management's request for proposals for insurance consultants was significantly modified to allow for a wider range of qualified proposers. The request for proposals for employee benefits currently provides for a wide range of proposers. Due to limited competition, combining the two will limit qualified proposers and may increase costs.

Recommendation

Risk Management and Personnel will invite firms known to provide both property/casualty insurance and employee benefits agent of record services to bid separately or jointly on the two RFP's. Any qualified proposers bidding on both RFP's will be jointly interviewed by Risk Management and Personnel and rated in accordance with the established criteria.

RSM:kc

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cc: Jennifer Sims, Director of Finance and Management Information

FINANCE COMMITTEE REPORT

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

Date: November 23, 1992 Presented By: Councilor Van Bergen

COMMITTEE RECOMMENDATION: At it's November 19, 1992 meeting the Committee voted unanimously to recommend Council approval of Resolution No. 92-1707. All Committee members were present and voting.

COMMITTEE DISCUSSION/ISSUES: Chris Scherer, Financial Planning Manager, presented the Staff Report. He indicated that the resolution authorizes staff to restructure the escrow account for the Convention Center Refunding Bonds to purchase state and local government investments (SLGS). It is estimated by the District's financial advisors that such action will provide a net benefit of \$24,000 for the Convention Center Debt Service Fund. Such additional funds would be applied to the debt service requirements in FY 1993-94 and would provide a slight reduction in the property tax levy for that fiscal year.



METRO


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

Memorandum

Metro Council
Agenda Item No. 6.1
November 24, 1992

Date: November 24, 1992

To: Clerk of the Council

From: Todd Sadlo, Senior Assistant Counsel 

Regarding: PROPOSED ORDINANCE NO. 92-471B, CORRECTED
SECOND READING, NOVEMBER 24, 1992

Attached is a corrected version of proposed Ordinance No. 92-471B. The copy of this proposal included in the agenda packet omitted a line of text that is currently in the Code, and is not being deleted through amendment (Section 5.05.030(a)(8), following the semicolon).

My apologies for any inconvenience this may have caused.

dr
1206

Attachment

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.; 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.

(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 *or detriments* 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

**SCHWABE
WILLIAMSON
& WYATT**



ATTORNEYS AT LAW

JAY T. WALDRON

DIRECT LINE: 503 796-2945

PACWEST CENTER, SUITES 1600-1950

1211 SOUTHWEST FIFTH AVENUE • PORTLAND, OREGON 97204-3795

TELEPHONE: 503 222-9981 • FAX: 503 796-2900 • TELEX: 4937535 SWK UI

Council
11/24/92
6.1

November 24, 1992

VIA MESSENGER

GOEY

Jim Gardner, Presiding Officer
Metropolitan Service District
2000 S. W. First Avenue
Portland, Oregon 97201-5398

Re: Finley Buttes Landfill Company
Our File No. 14638/81926

Dear Mr. Gardner:

On August 14, 1992, Finley Buttes Landfill Company requested that the Metro Council and its Executive Officer add Finley Buttes Regional Landfill to Metro's Designated Facility List. Shortly thereafter, Metro staff visited the landfill and indicated they were impressed with the quality of the facility. Attached is a copy of our request.

On November 23, 1992, we obtained the agenda for today's Metro Council meeting. Under the section on Ordinances, First Readings, Subsection 5.2 provides for adding the "Roosevelt Regional Landfill to the List of Designated Facilities and Declaring an Emergency (Action Requested: Referral to the Solid Waste Committee)."

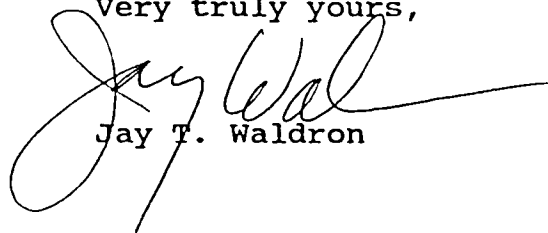
We believe the Finley Buttes Regional Landfill was inadvertently omitted from Ordinance 92-476, and request that Finley Buttes Regional Landfill be given equal consideration with the Roosevelt Regional Landfill and the Columbia Ridge Facility by adding it to the ordinance for first reading and referral to the Solid Waste Committee.

(14638/81926/JTW/122332.1)

Jim Gardner
November 24, 1992
Page 2

Thank you in advance for your courtesy in this matter.

Very truly yours,



Jay T. Waldron

JTW:bc

cc: Rena Cusma, Executive Officer
Bob Martin, Solid Waste Director
Todd Sadlo
Council Members
Wes Hickey
Len Bunes

Council
11/24/92
6.1

CABLE, HUSTON, BENEDICT,
HAAGENSEN & FERRIS
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DON K. LLOYD
LORY R. LYBECK
GREGORY S. McELROY*
LAURA J. WALKER

SUSAN S. FORD
THOMAS M. GRIM
JAMES S. KINCAID
LINCOLN D. SIELER*

OF COUNSEL
GEORGE B. HEILIG
STEPHEN B. HILL
DAVID K. McADAMS

* WASHINGTON BAR ONLY

November 2, 1992

Ms. Judy Wyers
1127 S.E. Lambert Street
Portland, Oregon 97202

Re: Amendment to Metro Code to Establish Criteria for
Designating Additional Disposal Facilities
Ordinance No. 92-471A

Dear Ms. Judy Wyers:

I represent Oregon Waste Systems, Inc. ("OWS") and on their behalf have reviewed the proposed amendment to the Metro Code to establish criteria for adding or deleting designated system facilities, Ordinance No. 92-471A. This ordinance is scheduled to come before the Metro Council Solid Waste Committee on Tuesday, November 3, 1992.

We understand that the purpose, in part, of the proposed ordinance is to establish criteria for designating additional system facilities to allow such facilities to receive waste directly from the Metro region. As we expressed at the previous hearing on this ordinance, we are very concerned about the possible impacts on Metro's 90% volume guarantee to OWS of designating additional general purpose landfills. OWS recognizes that the staff does not totally agree with OWS' interpretation of the contract obligation. However, OWS feels very strongly about its position and believes the contract issues should be resolved before actions are taken by Metro which OWS believes could be in violation of their contract and could result in contract damages.

Even assuming that the ordinance and subsequent designations deal only with the percentage of waste not committed to OWS, OWS does not believe that the ordinance should be adopted in its present form because:

- (1) The proposed ordinance does not consider, and will seriously disrupt Metro's system planning;

Ms. Judy Wyers
November 2, 1992
Page 2

- (2) The proposed ordinance does not include adequate procedures (e.g., clear standards for denial, modification or revocation procedures, appeal or renewal procedures); and
- (3) A mechanism is already in place, the non-system license, to accomplish staff's objectives.

If additional facilities contemplated for designation are to be designated for limited purposes, (e.g., certain special wastes that cannot be handled by current Metro facilities) OWS continues to wonder why the existing non-system license mechanism, already in place, is not sufficient.

System Planning.

Facility designation will allow direct haul of waste from within the Metro region to the designated facility for the types of waste authorized. The proposed ordinance would allow ad hoc, rather than comprehensive, system planning based solely upon the criteria established in the proposed ordinance. Ad hoc planning would result because Metro would have to respond to individual applications for the inclusion of facilities as designated system facilities. Proper system analysis will be difficult with only the criteria in the proposed ordinance.

The proposed ordinance does not include criteria critical to the decision of whether facilities should be included. For example, criteria in the ordinance do not include consideration of:

- (1) Type of waste;
- (2) Need for the facility in the system;
- (3) The impacts on other system facilities;
- (4) An acceptable level of impact on the other system facilities; or
- (5) Consistency with the Solid Waste Management Plan.

The need for an additional designated facility is the most critical criteria that is not addressed. Metro should consider the capability of the existing system facilities before designating additional facilities. Are the present facilities adequate for the system requirements or is there a need to designate additional general purpose landfills?

As proposed, the system planning function would become driven by applications for system designation. The Council

Ms. Judy Wyers
November 2, 1992
Page 3

obviously retains the ultimate decision but it may be difficult for the Council to deny an application when the criteria are not uniform, objective standards. For example:

- What is an acceptable impact on regional recycling?
- What is an acceptable impact on Metro's revenue?
- What type of operational practice will be sufficient

to deny an application?

Moreover, the criteria need only be considered; there is no clear guidance to either the applicant or the Council as to what would be an adequate basis for approval or denial. The lack of clear standards will lead to the potential for inconsistent decisions between applications over time and between various applicants even at the same time. This does not seem to be the best way to make important decisions regarding incorporation of facilities into the Metro system.

In the past Metro has decided that an additional facility was necessary, then selected the appropriate facility. The proposed ordinance turns the process around and makes the Metro decision reactive.

Procedural Issues.

Designating a system facility as a part of the Metro solid waste system is an important decision similar in many respects to the granting of a franchise. A Council decision on designation is as, and probably more, significant than the granting of a specific, individualized non-system license. However, both the franchise and the non-system license sections of the Metro Code have much more detailed procedures governing the granting, denial or revocation of those privileges. Similar procedures should be included in the proposed ordinance for additional designations.

Prior to adoption the Council should have answers to the following questions:

- What is the application process for designation?
- What information is required for an application?
- What is the revocation or modification process?
- What procedures and standards apply to revocation or denial?
- What are an applicant's rights to appeal denial or revocation? Is a contested case required? (We believe it would be.)
- What is the term of the designation?
- What are the provisions for renewal?
- What are the obligations of the owner and operator of a designated facility?

CABLE, HUSTON, BENEDICT,
HAAGENSEN & FERRIS

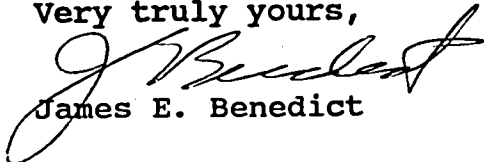
Ms. Judy Wyers
November 2, 1992
Page 4

The designation of a facility should be accorded at least the same procedural safeguards accorded the other privileges granted by Metro and included in the Metro Code. The proposed ordinance does not address in any way these procedural considerations. These differences can be seen by comparison of the non-system license section of the Code with the proposed ordinance. See attached Metro Code Section 5.05.035 for comparison. If Metro does not address these procedural issues, substantial disputes are inevitable.

OWS understands that one of the reasons for additional designations is to allow certain waste streams of the special waste stream to go to the designated facilities. This limited circumstance seems to be exactly the circumstance for which a non-system license could be issued. OWS continues to wonder why the non-system license is insufficient for this purpose. Contrary to the staff's view, we do not believe that the non-system license provision of the Metro Code is limited to waste transporters or generators. A non-system license can be obtained by any person or corporation to "utilize or cause to be utilized for disposal or other processing of any solid waste generated within the service area, any non-system license facility . . ." Metro Code Section 5.05.035. This language allows any disposal facility, facility owner, transportation or generator to obtain approval for disposal or processing of a designated waste stream.

OWS agrees that the current code does not provide clear guidance for designation of additional facilities. However, OWS is very concerned about the impact of the additional designations on the 90% waste flow guaranteed by the OWS' contract with Metro. Metro should delay adoption of the proposed ordinance until the impacts on contractual obligations are fully understood. Metro should also delay adoption because the ordinance does not include standards adequate to fully consider system planning, facility need or necessary procedural protections for Metro or the applicant.

Very truly yours,



James E. Benedict

JEB/kma

Attachment

cc: Metro Solid Waste Committee

Rena Cusma

Bob Martin

Dan Cooper

Todd Sadlo

Doug Coenen

Officer shall consider the following factors to the extent relevant to such determination:

- (1) Whether the solid waste proposed to be covered by the non-system license is of such a nature as to be valuable to the efficient operation of the system or is likely to cause problems for or disruptions in the efficient operation of the system;
- (2) Whether the facilities of the system are capable of processing or otherwise dealing with solid waste of the nature or quantity proposed to be covered by the non-system license;
- (3) Whether any changes to the operation of the system or the system facilities would be necessary or appropriate in order to efficiently process or otherwise deal with the solid waste proposed to be covered by the non-system license.
- (4) The extent to which the solid waste proposed to be subject to the non-system license has previously been processed or otherwise dealt with through the system and the impact thereof on the efficient operation of the system;
- (5) The impact of the proposed non-system license, either singly or in conjunction with all other non-system licenses theretofore issued in effect, on:
 - (A) The continued safe and efficient operation of the system;
 - (B) Metro's plan for the development of the system; and
 - (C) The revenues generated by the system; and
- (6) Such other factors as the Executive Officer deems appropriate for purposes of making such determination.

At the discretion of the Executive Officer, the Executive Officer may impose such conditions on the issuance of a non-system license as the Executive Officer determines are necessary or appropriate under the circumstances.

(c) Issuance of Non-System License; Contents. In the event the Executive Officer determines to issue a non-system license, then upon payment by the applicant of a five hundred dollar (\$500.00) issuance fee such non-system license shall be issued by the Executive Officer. Each non-system license shall be in writing and shall set forth the following:

- (1) The name and address of the waste hauler or other person to whom such non-system license is issued;
- (2) The nature of the solid waste to be covered by the non-system license;
- (3) The maximum weekly, monthly or annual quantity of solid waste to be covered by the non-system license;
- (4) The non-system facility or facilities at which or to which the solid waste covered by the non-system license is to be transported or otherwise processed;
- (5) The expiration date of the non-system license, which date shall be not more than two (2) years from the date of issuance of such non-system license; and
- (6) Any conditions imposed by the Executive Officer as provided above which must be complied with by the licensee during the term of such non-system license.

(d) Requirements to be met by License Holder. Each waste hauler or other person to whom a non-system license is issued shall be required to:

- (1) Maintain complete and accurate records regarding all solid waste transported, disposed of or otherwise processed pursuant to the non-system license, and make such records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three (3) days written notice from Metro;
- (2) Report in writing to Metro, not later than the fifteenth day of each month, commencing the fifteenth day of the month following the month in which the non-system license is issued and continuing through the fifteenth day of the month next following the month in which the non-system

license expires, the number of tons of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month;

- (3) Pay to Metro, not later than the fifteenth day of each month, commencing the fifteenth day of the month following the month in which the non-system license is issued and continuing through the fifteenth day of the month next following the month in which the non-system license expires, a fee equal to the user fee multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month.

(e) Failure to Comply with Non-System License. In the event that any waste hauler or other person to whom a non-system license is issued fails to fully and promptly comply with the requirements set forth in Section 5.05.035(d) above or any conditions of such non-system license imposed pursuant to Section 5.05.035(b), then, upon discovery of such non-compliance, the Executive Officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within twenty (20) days following the date of such notice of non-compliance or such longer period as the Executive Officer may determine to grant as provided below, the licensee fails to:

- (1) Demonstrate to the satisfaction of the Executive Officer either that the licensee has at all times fully and promptly complied with the foregoing requirements and the conditions of such non-system license or that the licensee has fully corrected such non-compliance; and
- (2) Paid in full, or made arrangements satisfactory to the Executive Officer for the payment in full of, all fines owing as a result of such non-compliance;

Then, and in such event such non-system license shall automatically terminate, effective as of 5:00 p.m. (local time) on such twentieth day or on the last day of such longer period as the Executive Officer may determine to grant as provided below. If, in the judgment of the Executive Officer, such non-compliance cannot be corrected within such twenty (20) day period but the licensee is capable of correcting it and within such twenty (20) day period diligently commences such appropriate corrective action as shall be approved by the Executive Officer, then and in

such event such twenty (20) day period shall be extended for such additional number of days as shall be specified by the Executive Officer in writing, but in no event shall such the local period as so extended be more than sixty (60) days from the date of the notice of non-compliance.

(f) Effect on Existing Arrangements for Use of Non-System Facilities. Notwithstanding the foregoing provisions of this Section 5.05.035, any agreements or authorizations which permit any waste hauler or other person to transport solid waste generated within the service area to, or to 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 and which were entered into or given prior to the effective date of Metro Ordinance No. 89-319 shall remain in full force and effect for a period of one hundred and eighty (180) days following said effective date, subject in all respects to the terms and conditions of such agreements or authorizations, at the end of which one hundred eighty (180) day period all such agreements shall automatically terminate and all uses of non-system facilities shall only be allowed pursuant to a non-system license obtained as provided above; provided that the foregoing shall in no way prevent Metro from exercising during such one hundred eighty (180) day period any right it may have to terminate any such agreement or authorization.

(g) Executive Officer to Recommend License Application and Issuance Fee Schedules. Within six (6) months from the date of enactment of this Chapter, the Executive Officer shall recommend to Council non-system license application and issuance fee schedules which vary for each applicant and licensee based on the type and quantity of solid waste subject to the non-system license and other appropriate factors.

(Ordinance No. 89-319; amended by Ordinance No. 91-388, Sec. 2)

5.05.038 Limitations on Treatment or Disposal of Petroleum Contaminated Soil:

Effective January 1, 1992:

(a) No person shall treat, process or dispose of petroleum contaminated soil generated within the District at any location other than a facility franchised by Metro under Code Chapter 5.01 or a landfill that is constructed with a geomembrane liner and otherwise designed to contain petroleum products and by-products. Aeration, ventilation or other processing of petroleum contaminated soil at its site of origin shall continue to be allowed under permit from DEQ. A person wishing to dispose of petroleum contaminated soil at a landfill that meets the

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

Council
11/24/92
7.1

GREENSPACES WILLING SELLER
POLICY AT SUNSET LIGHT RAIL
TRANSIT STATION

) RESOLUTION NO. 92-1673A
)
) 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]~~ all planning and proposed development actions 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

dr
1104a

Council
11/24/92
7.1

WASHINGTON COUNTY CITIZENS EMPOWERMENT COMMITTEE
10907 NW Copeland St.
Portland, OR 97229
643-4008

The Washington County Citizens Empowerment Committee is a coalition of neighborhood groups seeking to have three newly passed land use and transportation ordinances placed on the ballot so Washington County citizens can vote on them in spring, 1993.

The ordinances were adopted at midnight on October 27, 1992 after being introduced in final form on October 13, 1992. The ordinances go into effect on November 27, 1992.

A brief summary of the ordinances:

Ordinance 419

- Within the urban growth boundary, allows siting of roads anywhere within 800 feet of centerline - a total of 1600 feet (1/3 of a mile)!!!
- In rural areas allows siting of roads anywhere within a 1/2 mile of centerline - a total of one mile!!!
- What this means is that Washington County government can site a road virtually anywhere within the county.
- This ordinance also removes the opportunity for citizen input from virtually all road decisions.

Ordinance 420

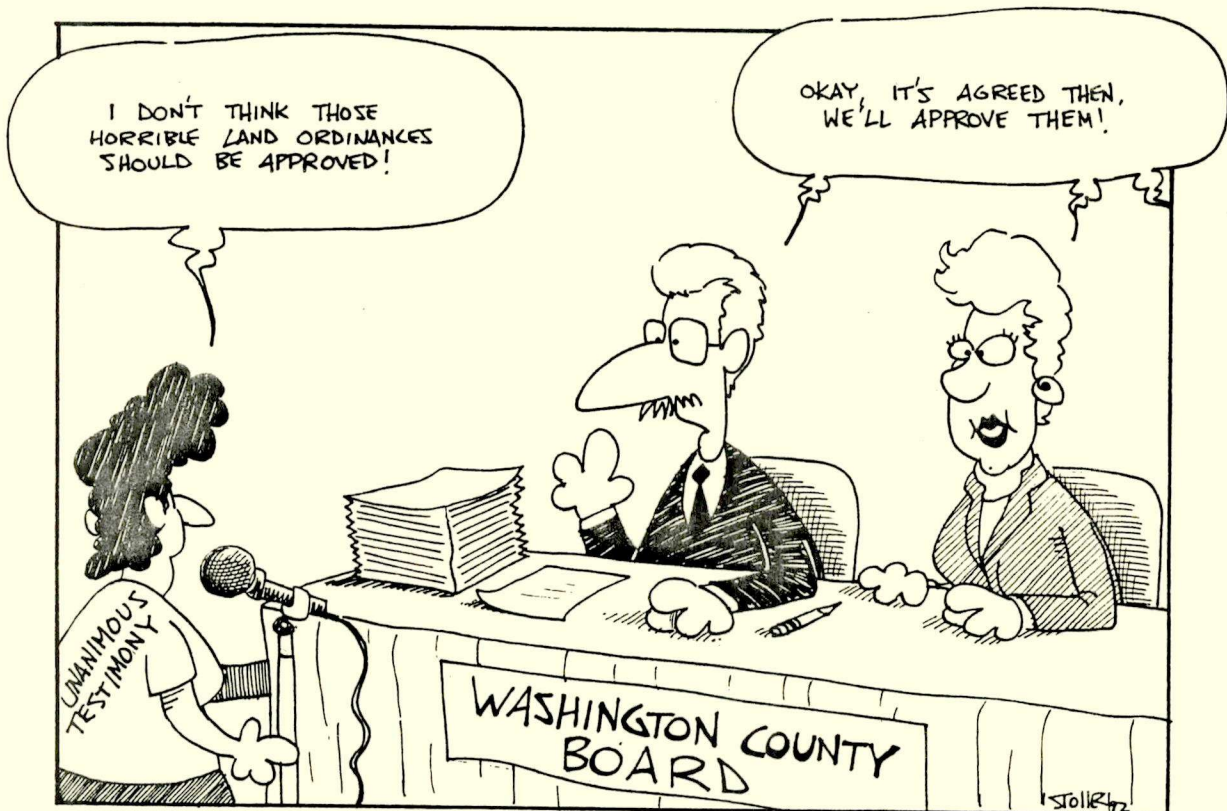
- Ties all language about now-protected natural areas identified on eleven separate community plans to the development code.
- This allows Washington County government to change local community plans across the board by simply changing the development code - without consulting with individual communities.
- The development code language weakens protection for designated natural areas, wetlands, floodplains, scenic areas, etc.

Ordinance 421

- Removes citizen input from most road and related land use actions.
- Sets vague performance standards for much road construction; making poor decisions very difficult to challenge.

Ordinances 419 and 421 do have a number of good points; however, they are seriously flawed and should not be implemented as now written. When they passed these ordinances, the County Commissioners agreed these ordinances had serious shortcomings.

To put these measures on the ballot, we need to collect 4809 signatures by January 27, 1992. We need volunteers to help collect signatures, donations of money to cover expenses, opportunities to get the word out - in local newsletters, meetings, etc. Call us, we'll come!!!



— Adam Stoller of Hillsboro Argus

Council
11/24/92
7.4

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ESTABLISHING)	RESOLUTION NO. 90-1361
A WORK PLAN FOR THE ANALYSIS OF)	
ISSUES RELATED TO THE TRANSFER)	INTRODUCED BY COUNCILOR
OF MASS TRANSIT SERVICES FROM)	JIM GARDNER
TRI-MET TO THE METROPOLITAN)	
SERVICE DISTRICT)	

WHEREAS, the Metropolitan Service District has the authority under ORS 268.370 to order transfer of the transit system of the Tri-County Metropolitan Transit District (Tri-Met) to the Metropolitan Service District; and

WHEREAS, the Metro Council adopted Resolution No. 90-1293A on July 12, 1990, "Supporting the Merger of Tri-Met with the Metropolitan Service District and Establishing a Process to Pursue the Merger," which established a five-member Tri-Met Merger Subcommittee (the subcommittee); and

WHEREAS, the Metro Council adopted Resolution No. 90-1322 on September 13, 1990, "Approving a Contract for the Provision of Metro/Tri-Met Merger Services to the Council and its Designated Committees," which authorized a contract with Cogan Sharpe Cogan pursuant to their August 27, 1990, proposal; and

WHEREAS, Cogan Sharpe Cogan has submitted its report, "Analysis of Issues Related to Possible Merger of Metro and Tri-Met" to the subcommittee on November 27, 1990 (attached as Exhibit A); and

WHEREAS, the Joint Policy Advisory Committee on Transportation (JPACT) submitted to the subcommittee on November 13, 1990, a report on the transit service and transportation planning implications of a merger (attached as Exhibit B), which included

among its conclusions that, "[t]he consideration of a Tri-Met merger should be delayed until the fall of 1991 after the completion of negotiations for the Westside Light Rail full funding agreement"; and

WHEREAS, the region's top priority transportation project is the construction of Westside Light Rail, which requires a commitment of funds from the 1991 Oregon Legislature and execution by September 30, 1991, of a full funding agreement between Tri-Met and the Urban Mass Transit Administration (UMTA) which stipulates 75% federal funding of the Westside Light Rail project; and

WHEREAS, efforts to secure full federal funding for Westside Light Rail should take precedence over other long-term transit issues until the full funding issue is resolved; and

WHEREAS, the transit service's governance structure is a legitimate issue within the broader discussion of how best to provide public services in the region; and

WHEREAS, the Metro Council recognizes the necessity of establishing a comprehensive and public process for examining the issues surrounding a transfer of the transit system, which process should include provisions for involving JPACT, local governments, citizens' groups interested in transit and transportation issues, and the general public in the identification and resolution of issues concerning transit service and transit governance; and

WHEREAS, Metro's ability to transfer the transit system from Tri-Met to the Metropolitan Service District now exists, and attempts to eliminate or modify the transfer provisions of existing

statutes in the 1991 legislative session may be counter-productive;
and

WHEREAS, the Tri-Met Merger Subcommittee recommends that a thorough analysis be conducted of the issues involved in a potential transfer of the transit district to the Metropolitan Service District; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service adopts the following work plan regarding the potential transfer of the Tri-Met transit system to the Metropolitan Service District:

1. The Executive Officer shall prepare, as part of her budget proposal for the 1991-92 fiscal year, a request for funding a comprehensive study of issues related to transfer of the transit system to Metro. The budget request shall include, but not be limited to, a proposed timeline for analysis of the issues listed below, and shall also include provisions for the involvement of JPACT, local governments, interested citizens' groups, and the general public.

2. Issues to be addressed in the study shall include:

- Development of a strategic plan to identify the relationship between the transfer and other immediate Metro agenda items, including development of a home rule charter, Metro's role in regional growth management, and resources needed to address multiple new initiatives concurrently.

- A detailed personnel study to identify what effect transfer would have on staffing and potential cost savings resulting from transfer.

- A determination of whether to refinance Tri-Met bonds, and the timing and financial effects of refinancing.

- Development of alternatives for long-range financing for the region's transit system.

- Identification of the positive and negative effects of transfer on transit service and planning.

- Effect of transfer on development and implementation of light rail expansion, particularly Westside Light Rail and Clackamas County Light Rail.

- Examination of the possibilities for reconfiguring the transit system to provide more flexibility in serving suburban areas.

- Development of local government concurrence on the structure of the region's Metropolitan Planning Organization following a transfer.

- Boundary issues, including a determination whether action by the legislature would be necessary to resolve boundary issues.

- Review of Metro's governance structure and contracting procedures in relation to carrying out transit responsibilities.

- Identification of time and costs required to absorb Tri-Met's control systems, including whether to fully or partially merge them.


3. The release of any Request For Proposals for performing any or all parts of the study shall occur upon resolution of the UMTA full funding issue.

4. The Metropolitan Service District's agenda for the 1991 Legislative Assembly shall include opposition to any efforts to repeal the existing provisions of ORS 267.020 or 268.370 pertaining to the relationship between Metro and Tri-Met. The Council and the Executive Officer shall encourage other governments in the region, including cities, counties, Tri-Met, and the Oregon Department of Transportation, similarly to pledge their opposition to repealing statutory language regarding the relationship between Metro and Tri-Met.

5. Metro will actively encourage local government participation in the review and analysis of the issues listed in #2 above, based on their recommendations in the JPACT report.

6. Upon completion of the study, Metro will conduct a series of public hearings throughout the district to solicit public comment on the study's findings. These hearings will precede consideration of the study by the full Metro Council and will be considered to be part of the process of reviewing the scope of issues related to a possible transfer.

ADOPTED by the Council of the Metropolitan Service District
this 13th day of December, 1990.


Tanya Collier, Presiding Officer

INTERGOVERNMENTAL RELATIONS COMMITTEE

MINORITY REPORT

RESOLUTION NO. 90-1361, ESTABLISHING a WORK PLAN for the ANALYSIS of ISSUES RELATED to the TRANSFER of MASS TRANSIT SERVICES from TRI-MET to the METROPOLITAN SERVICE DISTRICT

Date: December 13, 1990

Presented by: Councilor Devlin

RECOMMENDATION

I recommend Council adopt Resolution No. 90-1361 as originally published, without amendments.

DISCUSSION

The Resolution as originally published

Resolution No. 90-1361 is a decision to make a complete study of the transfer of Tri-Met to Metro during FY 91-92, with any Request for Proposals to be released upon resolution of the UMTA full funding issue.

The Resolution represents an exchange of assurances: the transfer study will continue after the full funding process is finished, and during that time other jurisdictions will not disturb the statutory basis for the transfer.

The Resolution responds appropriately to the widely-held belief that active study of transfer before full funding for LRT is resolved would hamper the region's ability to advocate in unity for full funding and would endanger full funding at the state and federal levels.

The Resolution ensures that Council will be able to pursue two of its top priorities - full funding for LRT and continuation of the transfer study process - without endangering either priority.

The Resolution confirms Council's intent to continue the transfer study, and it outlines a work plan to carry out that intent. It directs the Executive Officer to include in her FY 91-92 budget a proposal following certain guidelines. It specifies issues to be included in the study, outlining a much more thorough study than

was conducted previously.

The Resolution is the outcome of a process of participation, study and comment. It resolves that the participatory and public nature of the process shall continue. It received the unanimous support of the Tri-Met Merger Subcommittee, which disbanded upon approval of the Resolution.

The Tri-Met Merger Subcommittee was an inter-agency task force which Council appointed to establish a process to pursue the merger. It considered comment from numerous jurisdictions, elected officials, and others. It took into account the results of a study it commissioned. The Subcommittee included three members of the Intergovernmental Relations Committee.

On December 13, 1990, JPACT unanimously recommended Council adoption of Resolution No. 90-1371 as originally published, without amendments.

The Resolution as amended

The amendments proposed by the Intergovernmental Relations Committee do not well serve either the Committee's stated concerns nor the Council's interests.

The amendments remove the core of the Resolution. They remove the certainty and the timetable for funding the study. They endanger the assurances which Metro gained that the transfer power will not be challenged. And, they may contribute to endangering full funding for LRT at the state and federal levels.

TRI-MET MERGER SUBCOMMITTEE
COMMITTEE REPORT

RESOLUTION NO. 90-1361, FOR THE PURPOSE OF ESTABLISHING A WORK PLAN FOR THE ANALYSIS OF ISSUES RELATED TO THE TRANSFER OF MASS TRANSIT SERVICES FROM TRI-MET TO THE METROPOLITAN SERVICE DISTRICT

Date: November 30, 1990

Presented by: Councilor Gardner

COMMITTEE RECOMMENDATION: The Tri-Met Merger Subcommittee voted 5-0 to approve Resolution No. 90-1361 and forward it to the Intergovernmental Relations Committee with a recommendation that they forward it to the Council. Subcommittee members voting were Councilors Gardner, Devlin, and McFarland, Executive Officer Rena Cusma, and Tri-Met Board President Loren Wyss.

COMMITTEE DISCUSSION/ISSUES: Councilor Van Bergen attended the meeting, and was invited to participate in the subcommittee's discussion. He raised questions about references to the legislature's "intent" and "belief" regarding the benefits of consolidating regional services in general and transferring the transit system's governance from Tri-Met to Metro, specifically. He also asked whether the Executive Officer could actually perform all the tasks she would be directed to do in #1 and #2 of the Be it Resolved section of the resolution.

Councilor Devlin spoke to the sections of the resolution dealing with Metro's position regarding possible attempts to tamper with the "marriage clause" in the statutes. He stated that it would be inappropriate to put additional hurdles in the way of a transfer, and that Metro's ability to assume Tri-Met's bonds, or other issues, should not be tampered with. He thought this idea was implicit, if not explicit, in the resolution. He further stated that the list of items to be studied should not be considered all-inclusive: other items could be added later.

Councilor McFarland agreed with Councilor Van Bergen on the legislative intent statements. She stated that legislative intent can only be found out by talking with the legislators who voted on a measure. The only person to address the subcommittee who had been in the legislature at the time was Commissioner Earl Blumenauer, who said that the legislature included language authorizing a transfer as a compromise, and intended to remove it later.

Mr. Wyss advised that in attempting to discern legislative intent, we should consider the status of Metro and Tri-Met at the time the statutes were adopted. Both agencies were less mature then, and no one could have envisioned how they would develop. He said the resolution was timely and supportable, but he had problems with some of the Whereas statements which drew conclusions not supported by the Cogan Sharpe Cogan report. Mr. Wyss added that it has never been on Tri-Met's agenda or plan to attempt to change the legislation as it currently exists.

Councilor Devlin then moved to eliminate Whereas clauses 10, 11, and 12* (see attached). He later added an amendment to his motion to include deletion of part of the subsequent Whereas.

After discussion of possible language of the latter amendment, the subcommittee voted 3-1 to delete Whereas clauses 10, 11, and 12. (Councilor McFarland was temporarily out of the room; when she returned, she stated that she supported the motion.) Councilor Gardner explained that he voted No because he supported a reference in the resolution to the potential benefits of a transfer.

Mr. Wyss moved an amendment to the next-to-last Whereas, as follows (words in [brackets] to be deleted, words underlined to be added):

WHEREAS, [retention of] Metro's ability to transfer the transit system from Tri-Met to the Metropolitan Service District [is in the best interests of the citizens of the region] now exists and attempts to eliminate or modify the transfer provisions of existing statutes in the 1991 legislative session [would] may be [inappropriate and] counter-productive; and

The amendment was approved unanimously, followed by approval of the main motion.

Mr. Wyss then voiced a concern that the resolution had no reference to the advantages and disadvantages of a governance change on Tri-Met riders and taxpayers.

* Much of the subcommittee's discussion concerned three Whereas statements which the subcommittee voted to delete. The text of those statements is attached to this report for reference.

#10. WHEREAS, the Oregon Legislature has established its intent that regional services be consolidated under one government wherever possible; and

#11. WHEREAS, the existence of the statutory provisions enabling Metro to transfer governance of the transit system demonstrates the Legislature's belief that transfer poses the potential long-term benefits of consolidating multiple regional services and providing direct accountability for transit service through an elected governing body which directly represents the citizens of all parts of the metropolitan region; and

#12. WHEREAS, transfer of the transit system's governance from Tri-Met to Metro poses additional potential benefits through improved coordination of land use and transportation planning, resulting in more effective management of the region's projected growth; and



METRO

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

Memorandum

DATE: November 26, 1990

TO: Tanya Collier, Don Carlson, Gwen Ware-Barrett

FROM: Casey Short *CS*

RE: Resolution No. 90-1361

Resolution No. 90-1361 is the Tri-Met Resolution, "establishing a work plan for the analysis of issues related to the transfer of mass transit services from Tri-Met to the Metropolitan Service District." It will be before the Tri-Met Merger Subcommittee tomorrow, 11/27. From there it needs to go to IGR and then the full Council.

I spoke with Jim Gardner today about the timing of this. He would like to schedule it for IGR at its December 11 meeting, and bring it to the full Council on December 13. Although that's only two days' turnaround from Committee to Council, he preferred that to waiting until the next Council meeting, which is two days after Christmas.

Please let me know whether this schedule meets with your approval or if it causes any problems.

Thank you.

cc: Jim Gardner
Martin Winch

INTERGOVERNMENTAL RELATIONS COMMITTEE REPORT

RESOLUTION NO. 90-1361, ESTABLISHING a WORK PLAN for the ANALYSIS of ISSUES RELATED to the TRANSFER of MASS TRANSIT SERVICES from TRI-MET to the METROPOLITAN SERVICE DISTRICT

Date: December 12, 1990

Presented by: Councilor Gardner

COMMITTEE RECOMMENDATION: At its December 11, 1990 meeting, the Intergovernmental Relations Committee voted 4-1 (Councilors Bauer, Gardner, Hansen and McFarland in favor, Councilor Devlin opposed) to recommend Council adopt Resolution No. 90-1361, with two amendments:

- 1 delete the phrase "as part of her budget proposal for the 1991-92 fiscal year" found at page 3, lines 10-11, and
- 2 delete all of paragraph number 3 at page 5, lines 1-3, "The release of any Request ... full funding issue."

COMMITTEE DISCUSSION/ISSUES: The Committee first considered Resolution No. 90-1361 with Councilor McFarland absent. Councilor Devlin moved approval. Councilors Hansen and Bauer were concerned about Metro blocking its ability to start the study until late 1991 because waiting that long could mean losing the initiative to the Charter Commission. Councilor Devlin explained the reasoning behind the Resolution: full funding for LRT is the top priority; the study could be perceived as endangering full funding by UMTA and the state; Metro won't have money for the study until next fiscal year; and, interested parties have promised not to interfere with the "marriage clause" in the interim. Councilor Gardner regretted the delay and said although the study should not affect full funding, the perception of harm was real; the study and possible transfer still remain the long-term goal. The motion failed 2-2 (Devlin and Gardner in favor, Bauer and Hansen opposed).

Councilor McFarland joined the meeting. The Committee agreed to reconsider. Commissioner McFarland moved approval of Resolution No. 90-1361, which she said is a decision to continue the study later. Councilor Hansen proposed the amendments described above. He said the issue is accountability of the transit governing board. Councilors Devlin and Gardner said the study remains Metro's top priority, and the Charter election probably would occur after mid-1992. Councilor Devlin said Council needs time to garner support for transfer. Councilor McFarland said the Councilors' role is to follow their own opinions of what is best. The Committee voted 4-1 (Bauer, Gardner, Hansen and McFarland in favor) to make the first amendment, and 3-2 (Bauer, Hansen and McFarland in favor) to make the second amendment. Councilor Devlin gave notice that he would file a minority report.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

Council
11/24/93

7.4

Correct version

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, 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-

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

Amalgamated Transit Union have been settled; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District agrees that negotiations with Tri-Met have, unfortunately, been unsuccessful and should be suspended; and

2. That the Council of the Metropolitan Service District, when they deem the timing to be appropriate, directs the Council Transportation and Planning Committee to proceed in development of a work program for an analysis of issues related to the transfer of mass transit services from Tri-Met to the Metropolitan Service District as set forth in Resolution 90-1361 and the 1992 Metro Charter; and

3. That the Council of the Metropolitan Service District, considers ORS 268.370 and Section (4) of the 1992 Metro Charter, to indicate the intention of the Oregon Legislature and the citizens of the region regarding such a transfer; and that any action, on the part of Tri-Met or any other party, to seek to alter the statutory and charter provided authority to transfer Tri-Met to Metro, is in opposition to the wishes of the Legislature and the constituency of the region, is singularly inappropriate, and will be strongly opposed by this Council.

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

Jim Gardner, Presiding Officer



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.

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.

COUNCILOR BUCHANAN COMMENTS

1% For Recycling Program

Sunflower/Pacific Bottle Regeneration request for fund increase of \$36,490

Sunflower Recycling received a grant for \$77,700 in the last 1% For Recycling Funding cycle to establish a wine bottle washing operation at its recycling center in southeast Portland.

The plant would ultimately process for reuse approximately 2 million bottles per year for resale to local Oregon vintners. This would represent about one-fourth of the some 9 million wine bottles consumed in Oregon each year.

The total project was expected to cost about \$100,000, of which Sunflower would provide a partial match of \$22,300.

The project has experienced unforeseen costs since the work began and the total cost is now estimated to be closer to \$162,000. Cost increases resulted from:

- Fluctuations in the U.S. dollar in the foreign currency market (the wine bottle washing machine was manufactured in Austria);
- Increases in shipping and U.S. Customs costs;
- Added costs to modify the recycling center facility in which the bottle washing operation would be housed;

- Pre-payment of supplies to package the cleaned bottles for delivery to Oregon vintners.

A portion of these cost increases, about \$50,000, has been borne by Sunflower. The additional funds requested from Metro will pay for expenses itemized in Attachment B. They include:

Final payment on the bottle washer	\$ 7,080
Shipping and U.S. Customs costs	6,780
Used forklift	800
Cases and boxes dividers	15,000
Site modifications	6,830
TOTAL	\$36,490

Funds for the grant increase are available in the 1% For Recycling Program budget from two projects which were not done because the proposed concepts proved to be unfeasible.

Sunflower will not be able to complete this project unless they receive an increase in funds. There are no other sources of funds for the project. The Council Solid Waste Committee voted unanimously at its meeting on November 17 to approve this request.



METRO

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

Memorandum

Council
11/24/92
7.6

DATE: November 24, 1992

TO: Metro Council

FROM: Paulette Allen, Clerk of the Council

RE: AGENDA ITEM NO. 7.6; RESOLUTION NO. 92-1714

Mr. Waldo Dixon, 316 SE 111th, Portland, called the Council Department to state he did not want Metro to give the Coliseum to the Blazers outright and would like to know all of the assets owned by the Blazer organization.



METRO

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

Memorandum

7.6

DATE: November 23, 1992
TO: Metro Councilors
FROM: Cheri Arthur, Council Secretary
RE: Issue of Giving Trail Blazers Control Over Coliseum

I received a call this morning from a Dr. Robert W. Vogelsang urging you to vote against giving the Portland Trail Blazers control over the Memorial Coliseum.



METRO

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

Memorandum

METRO COUNCIL
Agenda Item No. 7.6
November 24, 1992

DATE: November 20, 1992

TO: Metro Councilors

FROM: Jim Gardner, ^{JG/cs} Presiding Officer

RE: Proposed Amendments to MERC Consolidation Agreement

The Council will consider Resolution No. 92-1714 on Tuesday, November 24, which would amend the MERC Consolidation Agreement with the City of Portland. The principal purpose of the amendments is to fulfill the terms of the City's agreement with the Trail Blazers on construction of the new Oregon Arena.

Councilors expressed some dissatisfaction with proposed amendment language when we discussed this issue at our last Council meeting on November 12. I went back to the City on Wednesday to discuss modifications to the issues of further consolidation of facilities and City budget approval.

The result of that discussion was a clear expression from the City that they appreciate the difficulties inherent in administering MERC under the current structure, and they are very willing to significantly reduce the City's role in the budget process. To that end, we have agreed on language that commits Metro and the City to develop further amendments, by February 1, 1993, which "minimize formal City oversight and approval requirements" on the MERC budget. The City's principal interest is to have a voice in budget preparation discussions at the outset of the budget development process, rather than be an appellate body which can intervene at the end of the process.

The City also agreed that the two governments need to clarify the terms under which further consolidation of facilities under Metro will take place. We agreed to language that lays out a guideline for Phase 2 consolidation upon a demonstration by Metro that operational funding for PCPA and Civic Stadium is secure for a minimum of five years. We all recognized that details of Phase 2 consolidation could not be worked out in the short time we had, but that questions of title transfer and greater direct Metro authority over MERC operations could be resolved within the next few months.

It is my belief that Metro and the City share many common goals: construction of a new, state of the art arena funded primarily with private dollars should not be hindered or further delayed;

Consolidation Agreement Amendments

November 20, 1992

Page 2

operation of publicly-owned regional facilities is a proper arena for Metro, and Metro's authority as the governing body for budgetary decisions needs to be clarified and strengthened; further consolidation of the remaining City facilities remains in the interest of both agencies, and establishment of a funding source for facility operations should trigger further consolidation; and establishment of a stable long-term source of operating revenues for the PCPA is in the best interests of the citizens of Portland and the region as a whole. In order to come to agreement on the specific terms of budget review and implementation of Phase 2 of the Consolidation Agreement, I will take the steps necessary to ensure the negotiations with the City take place directly among policy-makers, with information provided regularly to the Council.

I will recommend on Tuesday your support of the resolution that will be before us, in order to further the interests of the citizens of the region in seeing the new arena is built and regional government's role in managing the regional facilities is clarified and streamlined.

Language Accepted by City

The parties agree to negotiate further amendments to this agreement in which the City minimizes its authority to approve or disapprove Metro budgets for ERC Facilities, and sets forth the terms under which further consolidation of the ERC Facilities is to occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and ongoing revenues will be sufficient to continue operation of the ERC Facilities at current levels for a minimum of five years. The specific language implementing these further amendments will be presented to the City Council and Metro Council for their consideration no later than February 1, 1993.

Possible Alternative Language

The parties agree to negotiate further amendments to this agreement which shall minimize formal City oversight and approval requirements related to Metro budgets for ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than March 31, 1993.

Amendment language shall also be prepared which sets forth the terms under which Phase 2 consolidation of ERC facilities shall occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and revenues will be sufficiently stable to continue fiscally sound and ongoing operation of ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than June 30, 1993.

REGIONAL FACILITIES COMMITTEE REPORT

Council
11/24/92
#7.6

RESOLUTION NO. 92-1714, AMENDING THE CONSOLIDATION AGREEMENT BETWEEN THE CITY OF PORTLAND AND METRO AND TRANSFERRING MEMORIAL COLISEUM FROM MERC TO CITY CONTROL AND AUTHORIZING AND ADMISSION TAX OFFSET AGREEMENT WITH OAC AND CITY

Date: November 24, 1992

Presented by: Councilor McLain

COMMITTEE RECOMMENDATION: At its November 24, 1992 meeting the Regional Facilities Committee voted 3-2 to recommend Council adoption of Resolution No. 92-1714. Voting in favor were Councilors McLain, Collier, and Washington. Councilors Gronke and McFarland voted no.

COMMITTEE DISCUSSION/ISSUES: General Counsel Dan Cooper presented the staff report. He highlighted the differences between the version of Consolidation Agreement amendments before the committee at this meeting and a version that had been discussed at committee and Council on November 10 and 12. Those differences included: specific listing of matters requested of MERC related to transition of Coliseum management, which had been presented to Council previously, in another form; modified terms of agreement as to the issues to be resolved in the coming months regarding further modifications to the Consolidation Agreement; and terms of an Admissions Tax Offset agreement.

Councilor Collier asked Presiding Officer Gardner and Don Rocks to clarify whether the City was committing to relinquish its right to approve or disapprove the budget for City-owned facilities under MERC management. Both said they believed it was the City's intent to reduce their role, but they did not think the City agreed to relinquish that approval authority at this time. Mr. Cooper discussed the language related to terms of further consolidation of the facilities.

Mr. Cooper then described the terms of the Admissions Tax Offset agreement. He noted changes from the previous draft, which has a clearer delineation of the length of the tax offset agreement.

1. Language Accepted by City

The parties agree to negotiate further amendments to this agreement in which the City minimizes its authority to approve or disapprove Metro budgets for ERC Facilities, and sets forth the terms under which further consolidation of the ERC Facilities is to occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and ongoing revenues will be sufficient to continue operation of the ERC Facilities at current levels for a minimum of five years. The specific language implementing these further amendments will be presented to the City Council and Metro Council for their consideration no later than February 1, 1993.

2. Possible Alternative Language

The parties agree to negotiate further amendments to this agreement which shall minimize formal City oversight and approval requirements related to Metro budgets for ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than March 31, 1993.

Amendment language shall also be prepared which sets forth the terms under which Phase 2 consolidation of ERC facilities shall occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and revenues will be sufficiently stable to continue fiscally sound and ongoing operation of ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than June 30, 1993.

3. LANGUAGE SUBMITTED BY COUNCILOR VAN BERGEN

Alternative Language by Metro

(deletions bracketed and additions underlined)

Language Accepted by City

The parties agree to negotiate further amendments to this agreement in which the City minimizes its authority to approve or disapprove Metro budgets for ERC Facilities, and sets forth the terms under which further consolidation of the ERC Facilities is to occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and ongoing revenues will be sufficient to continue operation of the ERC Facilities at current levels for a minimum of five years. The specific language implementing these further amendments will be presented to the City Council and Metro Council for their consideration no later than February 1, 1993.

Possible Alternative Language

The parties agree to negotiate further amendments to this agreement which shall [~~minimize formal~~] terminate City oversight and approval requirements related to Metro budgets for ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than [~~March 31~~] February 1, 1993.

~~[Amendment language shall also be prepared which sets forth the terms under which Phase 2 consolidation of ERC facilities shall occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and revenues will be sufficiently stable to continue fiscally sound and ongoing operation of ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than June 30, 1993.]~~

Specific language to implement this objective shall be approved by City Council and Metro Council no later than April 1, 1993.

Council
11/24/92
7.6

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), and the Oregon Arena Corporation (OAC).

RECITALS

A. The City and OAC 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 agreement, 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, or may subsequently 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, or their successors, 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, or their successors, on the issuance, purchase, sale or use of tickets for events at the "Project Facilities" as defined below. Admission taxes include any tax or imposition measured by the

gross receipts from tickets 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 to 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, or an equivalent portion, not to exceed the amount of such 6 percent additional charge on tickets, of any payment made by OAC to City in lieu thereof.

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, or any successor governmental agency of either 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, or their successors, 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, or their successors, 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, or their successors, 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, or its successor, 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 or the equivalent portion of any OAC payment in lieu thereof. 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. a. As to City and OAC 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.

b. Metro's obligation to either offset User Fees against admission taxes or to make payments to OAC pursuant to paragraph 7 hereof, continues so long as, but only so long as, City has obligations to pay costs directly related to the Project Facilities which have been incurred or reasonably will be incurred including, but not limited to debt service, OAC advances, reserves for demolition, and repayment of prior general fund loans. If prior to termination of this Agreement as to City and OAC, City no longer has such obligations then Metro's obligations to both City and OAC terminate. If City continues to have such obligations after the termination of this Agreement as to OAC and City, then Metro's obligation to offset continues until such time as City no longer has such obligations.

10. If Metro's obligation to offset terminates prior to the termination of this Agreement as to City and OAC, City shall allow OAC to offset against User Fee payments to be made to City the amount of any Metro imposed Admission Tax.

11. After termination of Metro's obligations to offset admission taxes under this Agreement, Metro agrees to discuss with City the effects any Metro Admission Tax might have on City's ability to finance replacement facilities.

DATED this ____ day of _____, 1992.

Oregon Arena Corporation

Metropolitan Service District

City of Portland

gl1128

RF 11.25.92
handed out
at RF 11/24/92
Council
11/24/92
#7.6

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(J) 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.

In addition Metro will ensure that Metro ERC shall accomplish the following commencing immediately and continuing until July 1, 1993:

1. All booking agreements entered into by Metro ERC covering the Coliseum will contain a waiver of claims by promoters and other users of the Coliseum arising out of construction on the Coliseum or on the Arena Project Site.
2. Metro ERC shall submit to OAC for prior approval all booking agreements and other contracts affecting the Coliseum, including without limitation modifications of existing agreements, which extend beyond June 31, 1993.
3. Metro ERC shall cooperate with OAC in the transition of Coliseum management, including without limitation designating specific personnel to carry out the transition and providing OAC with office space in the Coliseum.
4. Metro ERC shall continue to maintain and operate the Coliseum so that it remains in good condition and is fully functional, and so that necessary maintenance and repairs are not deferred.
5. Metro ERC shall supplement the list of existing contracts it provided OAC to include all booking agreements and other agreements entered into since the original list was provided.
6. Prior to December ____, 1992, Metro ERC shall conduct an inventory of personal property, equipment and fixtures located at the Coliseum.

7. Metro ERC shall work with the City, OAC, contractors and Coliseum users to schedule work and to minimize disruption and related financial impacts during construction on the Coliseum and on the Arena Project Site.

8. Metro ERC shall continue to aggressively market and book the Coliseum.

- 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 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.
- J. 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.

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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.

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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.

The parties agree to negotiate further amendments to this Agreement which shall minimize formal City oversight and approval requirements related to Metro budgets for ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than March 31, 1993.

Amendment language shall also be prepared which sets forth the terms under which Phase 2 consolidation of ERC facilities shall occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and revenues will be sufficiently stable to continue fiscally sound and ongoing

operation of ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than June 30, 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

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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

1101



METRO

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

Memorandum

Council
11/24/92
7.6

DATE: November 24, 1992

TO: Councilor Roger Buchanan

FROM: Casey Short

RE: Talking Points on Consolidation Agreement Amendments

You asked me to prepare some information for you on costs associated with the transfer of Memorial Coliseum to the City of Portland and the effect of the transfer on funding for the arts. I will do that by listing some points, in bullet form, that relate to those costs.

- Profits from Memorial Coliseum have supported the PCPA since PCPA was assigned to the City E-R Commission in 1987. PCPA operates at a deficit, and has done so since the two new facilities were opened (Arlene Schnitzer Concert Hall and the New Theaters Building).
- The Coliseum has continued to contribute to the operations of PCPA under MERC.
- Coliseum cash flow was projected to not be sufficient to support PCPA operations in the long term, even before the Trail Blazer arena project was announced; a source of stable long-term operational funding was identified as a need for PCPA.
- The Spectator Facilities Fund is projected to run a deficit this year of \$1.1 - \$1.2 million.
- PCPA capital needs are growing, as capital projects are delayed for a lack of short-term funding.
- PCPA's major tenants won rent concessions early this fiscal year, estimated at \$1.4 million over 3 years. Those organizations are seeking reduction, restructuring, or elimination of the MERC user fee, which is budgeted to generate \$845,000 this fiscal year. Many of those organizations (such as the Symphony, Opera, and Oregon Shakespeare Festival Portland) are in bad financial shape themselves.
- Current status of the Spectator Facilities Fund (which consists of PCPA and Civic Stadium) shows a \$5 million beginning balance as of July 1, 1992. This is \$1.5 million more than the budgeted beginning balance of \$3.5 million. This balance should support PCPA and the Stadium at least through FY 1994-95.

- The Memorandum of Understanding, approved by the Council last year, called for all surplus Spectator Facilities Fund moneys as of June 30, 1992 to go to support PCPA and the Stadium. All excess Coliseum profits from FY 1992-93 were to go to the City.
- Costs of transition of Memorial Coliseum (unemployment, workers' comp., liability and tort claim insurance, vacation payouts) are estimated to range as high as \$584,000. The figure could go that high in the worst case - no Coliseum employees are hired by the Trail Blazers/OAC, insurance costs go higher than expected, etc. It is expected that those costs will be closer to \$250,000.
- The agreement before the Council tonight calls for the Coliseum Fund to absorb those transition costs, up to the first \$300,000 (or the balance remaining in the fund, whichever is less). Any costs above that will accrue to the Spectator Facilities Fund.
- Current projections from MERC estimate the Coliseum will generate some \$350,000 this fiscal year, exclusive of the Fund's \$357,000 contingency. There is very little chance the Coliseum will have a fund balance of less than the \$300,000, which is their maximum obligation for transition costs. (The Coliseum was not expected to make money this year, but a very good summer and delay of construction on the new arena have combined to change that to a projected profit.)
- Loss of the Coliseum as a revenue source to support PCPA will accelerate the need to find operational funding for PCPA. It also does some damage to the idea of a consolidated system of regional facilities. Those points, however, became matters of fact that were pretty much out of Metro's control once the Trail Blazers announced their plans to build their own arena. The Council implicitly acknowledged those facts in approving the Memorandum of Understanding.
- The Council will be getting a report this evening from David Knowles about the status of his Task Force to identify funding for PCPA and regional arts programs. That group is focusing not only on funding for PCPA, but also to support PCPA tenant organizations and other arts programs and organizations throughout the region. The thought is that we need to ensure a fiscally healthy arts community, or there won't be anybody to use the facilities.



METRO

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

Memorandum

METRO COUNCIL
Agenda Item No. 7.6
November 24, 1992

DATE: November 20, 1992

TO: Metro Councilors

FROM: Jim Gardner, ^{JG/es} Presiding Officer

RE: Proposed Amendments to MERC Consolidation Agreement

The Council will consider Resolution No. 92-1714 on Tuesday, November 24, which would amend the MERC Consolidation Agreement with the City of Portland. The principal purpose of the amendments is to fulfill the terms of the City's agreement with the Trail Blazers on construction of the new Oregon Arena.

Councilors expressed some dissatisfaction with proposed amendment language when we discussed this issue at our last Council meeting on November 12. I went back to the City on Wednesday to discuss modifications to the issues of further consolidation of facilities and City budget approval.

The result of that discussion was a clear expression from the City that they appreciate the difficulties inherent in administering MERC under the current structure, and they are very willing to significantly reduce the City's role in the budget process. To that end, we have agreed on language that commits Metro and the City to develop further amendments, by February 1, 1993, which "minimize formal City oversight and approval requirements" on the MERC budget. The City's principal interest is to have a voice in budget preparation discussions at the outset of the budget development process, rather than be an appellate body which can intervene at the end of the process.

The City also agreed that the two governments need to clarify the terms under which further consolidation of facilities under Metro will take place. We agreed to language that lays out a guideline for Phase 2 consolidation upon a demonstration by Metro that operational funding for PCPA and Civic Stadium is secure for a minimum of five years. We all recognized that details of Phase 2 consolidation could not be worked out in the short time we had, but that questions of title transfer and greater direct Metro authority over MERC operations could be resolved within the next few months.

It is my belief that Metro and the City share many common goals: construction of a new, state of the art arena funded primarily with private dollars should not be hindered or further delayed;

operation of publicly-owned regional facilities is a proper arena for Metro, and Metro's authority as the governing body for budgetary decisions needs to be clarified and strengthened; further consolidation of the remaining City facilities remains in the interest of both agencies, and establishment of a funding source for facility operations should trigger further consolidation; and establishment of a stable long-term source of operating revenues for the PCPA is in the best interests of the citizens of Portland and the region as a whole. In order to come to agreement on the specific terms of budget review and implementation of Phase 2 of the Consolidation Agreement, I will take the steps necessary to ensure the negotiations with the City take place directly among policy-makers, with information provided regularly to the Council.

I will recommend on Tuesday your support of the resolution that will be before us, in order to further the interests of the citizens of the region in seeing the new arena is built and regional government's role in managing the regional facilities is clarified and streamlined.

Language Accepted by City

The parties agree to negotiate further amendments to this agreement in which the City minimizes its authority to approve or disapprove Metro budgets for ERC Facilities, and sets forth the terms under which further consolidation of the ERC Facilities is to occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and ongoing revenues will be sufficient to continue operation of the ERC Facilities at current levels for a minimum of five years. The specific language implementing these further amendments will be presented to the City Council and Metro Council for their consideration no later than February 1, 1993.

Possible Alternative Language

The parties agree to negotiate further amendments to this agreement which shall minimize formal City oversight and approval requirements related to Metro budgets for ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than March 31, 1993.

Amendment language shall also be prepared which sets forth the terms under which Phase 2 consolidation of ERC facilities shall occur. Such further consolidation will occur upon Metro's demonstration to City satisfaction that the combination of reserve funds and revenues will be sufficiently stable to continue fiscally sound and ongoing operation of ERC facilities. Specific language to implement this objective shall be completed for City Council and Metro Council approval no later than June 30, 1993.