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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

1404 05077

In the Matter of:

Case No.

**Validation Proceeding to Determine
the Regularity and Legality of
Metro's Contracts and Decisions in
Connection with the Oregon
Convention Center Hotel Project**

**COMMENCEMENT OF
VALIDATION PROCEEDING
UNDER ORS 33.710 AND
33.720**

**ORS 20.140 STATE FEES
DEFERRED AT FILING**

The Metro Council, acting in its capacity as the governing body of Metro, commences this proceeding pursuant to ORS 33.710 and 33.720 to determine the validity of certain contracts and the regularity and legality of certain government actions.

JURISDICTIONAL FACTS

1.

Metro is a municipal corporation for purposes of ORS 33.710 and 33.720. The Metro Council is the governing body of Metro for purposes of ORS 33.710 and 33.720. Metro is located in Multnomah, Washington and Clackamas counties, with its headquarters and the greater part of its territory in Multnomah County.

2.

Pursuant to ORS 33.720, the Circuit Court of the State of Oregon for the County of Multnomah will have jurisdiction over Metro and all interested persons for purposes of deciding this matter upon publication of a notice of these

1 proceedings once a week for three successive weeks in a newspaper of general
2 circulation published in Multnomah County.

3 BACKGROUND FACTS

4 3.

5 Metro was organized pursuant to ORS chapter 268 and the Metro Charter
6 adopted by district voters in 1992, as amended by district voters at the November
7 7, 2000, general election, and amended by the district voters at the May 21, 2002,
8 primary election. The legislature granted Metro full power to carry out the
9 objectives of its formation and the functions authorized pursuant to its home-rule
10 Charter.

11 4.

12 Under the Metro Charter, Metro has jurisdiction over matters of
13 metropolitan concern. Matters of metropolitan concern include the powers granted
14 to and duties imposed on Metro by current and future state law and those matters
15 the Metro Council by ordinance determines to be of metropolitan concern.

16 5.

17 Metro's statutory powers and charter powers include the power to acquire,
18 construct, alter, maintain, administer and operate major cultural, convention,
19 exhibition, sports and entertainment facilities.

20 6.

21 Metro owns and operates the Oregon Convention Center (the "OCC"), the
22 largest convention center in the Pacific Northwest. Although the OCC has a major
23 statewide and regional economic impact, the absence of an adjacently located
24 convention center hotel has prevented the OCC from reaching its full economic
25 potential to attract more lucrative national conventions to Portland.

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7.

In April 2012, the leaders of Metro, Multnomah County, the City of Portland and the Portland Development Commission adopted a Statement of Principles that included the goal of pursuing private sector development and ownership of a hotel near the OCC that will assist in marketing it for national conventions, to ensure that the facility’s long-term financial success and regional economic impact are achieved. The Statement of Principles provided that the “Convention Center Hotel” should be large enough to commit at least a 500-room block and also have amenities to support national conventions at the OCC. Metro was charged to act as the lead for the project, with support and involvement from the other jurisdictions.

8.

In May 2012, Metro issued a Request for Proposals for the development of a convention center hotel proximate to the OCC. In July and August 2012, an RFP Evaluation Committee evaluated proposals and interviewed development teams that responded to a request for proposals from private developers. In September 2012, the Metro Council adopted Resolution No. 12-4365, approving the RFP Evaluation Committee and staff recommendations to proceed with negotiations with a Mortenson/Hyatt development team.

9.

In August 2013, the Metro Council adopted Resolution No. 13-4453, approving a preliminary agreement with Mortenson Development, Inc. (the “Term Sheet”) setting out the parties’ mutual understandings, intentions and approach to planning, financing and developing the proposed Convention Center Hotel. The Term Sheet is non-binding, but is intended to define the project approach and general business terms for the Development and Financing Agreement. At the

1 time this proceeding is commenced, Metro and Mortenson Development are
2 negotiating the terms of the Development and Financing Agreement that
3 incorporates the terms of the adopted Term Sheet.

4 10.

5 In August 2013, the Metro Council adopted Resolution No. 13-4452,
6 approving Metro's entry into an Amended Visitor Facilities Intergovernmental
7 Agreement (the "Amended IGA") with Multnomah County and the City of
8 Portland. The Amended IGA, in part, dedicates a portion of Multnomah County's
9 transient lodging tax surcharge to pay for bonds to be issued by Metro to fund a
10 portion of the cost of development and construction of the Convention Center
11 Hotel.

12 11.

13 The Amended IGA also required Multnomah County to amend the
14 Multnomah County Code to conform to the Amended IGA. In December 2013,
15 the Multnomah County Board of Commissioners enacted Ordinance 1206 to
16 amend the county code to reflect the changes in the Amended IGA. The county
17 code amendments went into effect January 18, 2014.

18 12.

19 In addition to the actions described in the preceding paragraphs, the Metro
20 Council and Metro intend to take the following actions during the pendency of the
21 proceedings on this validation action:

22 a. Metro will award a contract (the "Development and Financing
23 Agreement") for the financing and development of the Convention Center Hotel;

24 b. The Metro Council will authorize execution of the Development and
25 Financing Agreement;

1 c. Metro will execute the Development and Financing Agreement;
2 d. The Metro Council will adopt a resolution that: (1) authorizes the
3 issuance of revenue bonds pursuant to Section 10 of the Metro Charter in the
4 maximum principal amount of \$60,000,000; (2) secures such revenue bonds with
5 the TLT Net Revenues, as defined in the Amended IGA; (3) authorizes the grant
6 of the proceeds of such revenue bonds to the developer of the Convention Center
7 Hotel to pay for costs related to the Convention Center Hotel; and (4) authorizes
8 the sale of the bonds to one or more lenders or underwriters.

9 13.

10 In January 2014, Michele Rossolo commenced an action in Multnomah
11 County Circuit Court captioned *Rossolo v. Multnomah County Elections Division,*
12 *et al.*, CV 1401-00046, in which she challenged the Multnomah County Director
13 of Election’s decision that Ordinance 1206 was not subject to referendum by
14 petition. Metro intervened in the proceeding to defend the Multnomah County
15 Director of Elections’ decision. In March 2014, Circuit Court Judge Eric Bloch
16 ruled in favor of the Multnomah County Elections Division, confirming its
17 position that the county code amendments were not referable to the ballot. Ms.
18 Rossolo is represented by attorney John DiLorenzo in the matter.

19 14.

20 In March 2014, Paige Richardson commenced an action in Clackamas
21 County Circuit Court captioned *Richardson v. Metro*, CV 14-030408, in which she
22 seeks a judicial declaration that “Metro may not issue bonds or otherwise provide
23 the construction to the Convention Center Hotel without first obtaining approval
24 of the financing of the facilities” from Metro voters and an injunction preventing
25 Metro from doing the same. That action remains pending in the circuit court as of
26 the date of this filing. Ms. Richardson is a co-founder with Ms. Rossolo of a

1 public relations and communications consulting firm. Ms. Richardson also is
2 represented by attorney John DiLorenzo in the matter.

3 15.

4 On April 8, 2014, The Oregonian carried a column by Steve Duin reporting
5 the following:

6 Opponents of the project have gone to court to
7 challenge both the public subsidies and Metro's
8 authority to lend a hand in hotel construction without
9 voter approval.

10 "My main task is to keep Metro honest," said attorney
11 John DiLorenzo, who is representing the Coalition for
12 Fair Budget Priorities. * * *

13 16.

14 All actions taken and contemplated by Metro in connection with
15 development of the Convention Center Hotel are regular and legal, and all
16 contracts entered into by Metro in connection with the development of the
17 Convention Center Hotel are valid according to their terms. However, the
18 multiple challenges to Metro's efforts to promote the development of the
19 Convention Center Hotel and the stated intention of project opponents to continue
20 challenging Metro's efforts present a justiciable controversy for purposes of ORS
21 33.710(4). The Metro Council commences this validation proceeding for the
22 purpose of efficiently and effectively establishing the regularity and legality of the
23 actions and contracts described in this pleading, which involve a significant
24 expenditure of public funds and significantly affect the lives and businesses of a
25 significant number of persons within the Metro district.

26 WHEREFORE, the Metro Council seeks:

1. A judicial examination pursuant to ORS 33.720 as to the regularity
and legality of the Metro Council's actions, Metro's actions and the contracts
described above; and

**Page 6 – COMMENCEMENT OF VALIDATION PROCEEDING UNDER
ORS 33.710 AND 33.720**

1 2. Entry of Judgment pursuant to ORS 33.710 and 33.720 validating
2 the regularity and legality of the following actions taken by the Metro Council by
3 resolution:

- 4 a. Approval of the Term Sheet;
- 5 b. Authorization of the execution of the Development and
6 Financing Agreement;
- 7 c. (1) Authorization of the issuance of revenue bonds pursuant
8 to Section 10 of the Metro Charter (i) in the maximum
9 principal amount of \$60,000,000, (ii) secured by the TLT Net
10 Revenues, as defined in the Amended IGA, (iii) the proceeds
11 of which will be granted to the developer of the Convention
12 Center Hotel to pay for costs related to the Convention Center
13 Hotel; and (2) authorization of the sale of the revenue bonds
14 to one or more lenders or underwriters.

15 3. Entry of Judgment pursuant to ORS 33.710 and 33.720 validating
16 the regularity and legality of Metro's award of the Development and Financing
17 Agreement.

18 4. Entry of Judgment pursuant to ORS 33.710 and 33.720 validating
19 the regularity and legality of:

- 20 a. The Term Sheet, including Metro's authority to enter into a
21 contract containing the terms contemplated under the Term
22 Sheet; and
- 23 b. The Development and Financing Agreement, including each
24 related agreement for which a form is attached as an exhibit
25 to the Development and Financing Agreement.
- 26

