

Office of the Inspector General

Commonwealth of Massachusetts

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Review of the Mount Hood Public Works Project in Melrose

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Executive Summary

Introduction

In June 2001, the Office of the Inspector General initiated a review of a public works project in Melrose, Massachusetts in response to a complaint alleging procurement law violations and mismanagement. The project, undertaken by the City of Melrose in May 2000, entailed the delivery by a private contractor to the Mount Hood Memorial Park and Golf Course of 690,665 tons of glacial till soils, or “fill,” excavated from the Central Artery/Third Harbor Tunnel (CA/T) Project for the purpose of constructing playing fields and golf course improvements. The CA/T Project had contracted with Modern Continental Construction Company, Inc. for excavation of the fill. The City contracted with Gator Hood, LLC for delivery of the excavated fill and related construction services. The fill was delivered to the site by Modern Continental under a separate contract between Modern Continental and Gator.

The Office’s review covered the period of April 2000, one month prior to the commencement of fill deliveries to Mount Hood, through August 2001, one month after fill deliveries to Mount Hood ended. This report also summarizes significant project-related contracts and events through December 2001. The principal focus of the Office’s review was the process by which fill deliveries and related construction services at Mt. Hood were procured, contracted for, and managed at Mount Hood. The Office’s review did disclose both procurement law violations and mismanagement.

A confidential draft of this report was provided to the Mayor of Melrose on September 27, 2002. The Mayor’s response is included in Appendix A of this report. During the course of this review, the Office sent three letters to the City. These letters are included in Appendix B of this report.

Findings

1. The City embarked on a project involving major alterations to Mount Hood without adequate planning, reliable cost estimates, or an executed contract protecting the City's interests.
 - The Park Commission authorized fill deliveries at Mount Hood without determining the scope, requirements, or cost of the improvement project.
 - The fill delivery agreement with Gator was not subject to any competitive procurement law.
 - The Park Commission authorized fill deliveries at Mount Hood for three months without executing a written contract.
2. The Park Department bypassed legal requirements and internal controls governing City contracts in order to expedite the acceptance of fill.
 - Prior to August 2000, the Park Department obtained CDM's services through an inappropriate contract between CDM and Gator.
 - Beginning in May 2000, the Park Department procured supplies and services for the project without the required appropriations by the Board of Aldermen.
3. Project accountability was undermined by the City's failure to establish a revolving account for the fill payments owed to the City by Gator.
4. The City's noncompetitive contract with Gator, although legally permissible, was ill advised.
5. The City's contract with Gator contained poorly drafted and unfavorable provisions that undermined the City's financial interests.
6. The City's contract with Gator did not include detailed plans identifying fill delivery locations and boundaries, nor did it include fill placement instructions or specifications.
7. The City's contract with Gator did not specify fill delivery schedules or limit fill delivery hours.
8. The City's contract with Gator lacked the prevailing wage rate schedule required by M.G.L. c. 149, §§26 and 27, the prevailing wage law.

9. The City did not obtain the contractually required performance and payment bonds securing Gator's satisfactory performance and securing full payment of its obligations to the City.
10. Shortly after being ordered to comply with environmental restrictions on the haul road construction work, the Park Department obtained contaminated loam for the golf course from another source.
11. Supervision of the fill deliveries at Mount Hood was inadequate.
 - The Park Department did not collect and maintain shipping tickets corresponding to fill deliveries, as required by the July 2000 contract with Gator.
 - The Park Department directed ELM to provide clerk of the works services without establishing systematic oversight procedures or executing a written contract specifying ELM's hours, duties, and compensation.
 - For seven months, trucks delivered more than 321,000 tons of fill to Mount Hood without supervision by a clerk of the works.
12. The Park Department authorized Gator to use funds owed to the City to pay for apparently illegal Park Department procurements of supplies and services at Mount Hood.
13. Lack of planning, supervision, and documentation by the Park Department contributed to the failure of a drainpipe installed on the twelfth fairway.
 - Installation of the drainpipe without final design documents violated the November 2000 Order of Conditions and exposed the City to construction problems.
 - The drainpipe installation contractor was hired on a no-bid basis, in apparent violation of Massachusetts construction bid law.
 - The drainpipe installation was conducted without a written contract between the City and Dami and Sons, in violation of municipal finance law and sound business practices.
 - City records provided to the Office contained no reports, analysis, or other documentation of the drainpipe failure.
14. Unsound contracting procedures and deficient internal controls undermined the City's capacity to resolve the ongoing problems at Mount Hood in a cost-effective, accountable manner.

- **Contractors hired without appropriations, bidding, or written contracts continued to perform construction work at Mount Hood after the release of the draft audit identifying procurement violations.**
 - **During the month following the Parks Superintendent's departure, fill deliveries and construction work at Mount Hood continued to be unsupervised.**
 - **The City made payments of more than \$56,300 in June and July of 2001 for services procured in apparent violation of public procurement laws.**
- 15. Contracts with two consultants were executed after contracted services had been performed.**
- 16. Resolution of Gator's financial obligations to the City was complicated by the City's incomplete project records.**
- **The City's calculation of Gator's outstanding financial obligation was inconsistent with the City's own records of the fill delivery project.**
 - **The City's fill delivery records did not comport with the records on file at the Central Artery/Tunnel Project.**
 - **Although Gator notified the City of a \$17,500 credit to be deducted from Gator's obligations to the City, the Office's review disclosed that no such credit was warranted.**
- 17. Throughout the review period, the City lacked consistent contract approval procedures that complied with municipal finance law for Mount Hood-related contracts.**

Conclusion and Recommendations

In May 2000, the City of Melrose authorized a contractor to begin delivering Big Dig fill at the Mount Hood Memorial Park and Golf Course for the purpose of constructing new playing fields and improving the golf course. The substantial revenues to be generated for the City by this arrangement would be devoted to the new fields and golf course improvements.

As of December 31, 2001, the project cost to the City was estimated to be \$1.8 million. This amount was far greater than anticipated and created a financial strain on the City. The report delineates many of the factors contributing to the unexpectedly high project

cost. However, the Office notes that the \$1.8 million estimate is lower than the cost that the City would have incurred if it had paid market rates for the fill. The Office's review indicates that the cost of purchasing 700,000 tons of fill would have been approximately \$3 million. Rather than paying for fill, the City agreed to receive \$0.70 per ton for the fill, translating to approximately \$490,000. Thus, the \$1.8 million cost to the City of a remediated site, a seeded athletic field, and completed golf course improvements may represent an economically fair cost, largely due to the avoidance of fill costs and receipt of fill revenues. Nevertheless, the unanticipated financial burden has had a deleterious effect on Melrose.

The Office's review found no evidence that any City official promoted or executed this project for any purpose other than to benefit the City of Melrose by taking advantage of an opportunity that had been presented. City records reviewed by the Office, and statements made to the Office by key participants in the decision-making process – including the former Mayor, the former Chairman of the Park Commission, and the former Parks Superintendent – imparted a clear sense of urgency and a perception that the Park Commission had to act quickly in order to take advantage of a unique opportunity to obtain fill and generate revenue for a public improvement project. To realize these benefits, the Park Commission accommodated the contractor's schedule by authorizing fill deliveries without first preparing environmental studies, project designs, or cost estimates; without testing the competitive marketplace; and without executing a written contract containing terms and conditions that protected the City's financial and environmental interests. By July of 2000, when the City executed a written contract with Gator, 199,449 tons of fill had already been deposited at Mount Hood.

By August of 2001, when fill deliveries ended, the Park Department had completed reconstruction of the thirteenth hole, prepared plans for a new baseball field, and developed the baseball field "pad." However, no funds remained from the fill revenues received from Gator to finish the playing fields or to complete the golf course improvements. Although the value of the delivered fill was \$483,466, the City had already spent more than this amount. The Office's review shows that as of August 31,

2001, the City's project-related costs and contractual obligations exceeded the value of the delivered fill by \$291,620. (See Appendix C.)

The public officials responsible for this massive public works project acknowledged that they underestimated its scope and complexity. Neither the Park Commission nor the three-person Park Department had the necessary resources to plan, execute, and effectively oversee this project. In interviews with the Office, the former Mayor, the former Chairman of the Park Commission, and the former Parks Superintendent acknowledged that, in hindsight, the Park Department should not have been expected to provide the necessary project supervision.

It is important to recognize that the decision to generate revenue for a public improvement project by accepting fill for that project can be advantageous. Jurisdictions often incur substantial costs for fill needed for construction projects. However, the unanticipated costs and problems encountered on this project illustrate some of the drawbacks of moving too quickly to accept an attractive offer. Careful planning, best value contracting, a well-drafted contract that protects the owner's interests, and full-time supervision are important owner protections for any major construction project, whether public or private. The decision to undertake a complex project entailing substantial alterations to public parkland without these safeguards was risky. As Melrose's experience makes clear, it is unlikely that the benefits of such a complex revenue-generating arrangement can be realized without prudent project planning, contracting, and management.

More broadly, the history of this project demonstrates the importance of adhering to legal requirements, sound contracting practices, and principles of public accountability. Fill revenues were spent without the required appropriations by the Board of Aldermen. Contractors were hired without competition and allowed to work at Mount Hood without written contracts. Consulting contracts were executed after contracted services were performed. Contract approval procedures were inconsistent and did not comport with municipal finance law. Project records were incomplete. If not corrected, the practices

documented in this report could continue to render the City vulnerable to waste and mismanagement on future projects.

Recommendations to the City of Melrose

To assist the City of Melrose in its ongoing and future contracting efforts relating to public improvement projects at Mount Hood and elsewhere, the Office offers the following recommendations:

- 1. The City should resolve any outstanding financial disputes with Gator.**
- 2. The City should resolve any outstanding financial disputes with other project contractors.**
- 3. The Park Commission should ensure that public works contracts at Mount Hood are subject to full-time supervision by trained professionals who are cognizant of the legal requirements governing these contracts.**
- 4. The City should take steps to ensure that all City officials with contracting responsibilities, including Park Commissioners and Park Department staff, are fully apprised of the legal requirements governing contract funding, procurement, execution, and administration.**
- 5. The City should take steps to strengthen administrative controls over major contracts.**

Recommendations for Other Public Jurisdictions

The problems created by the public works project at Mount Hood in Melrose offer some valuable lessons for other jurisdictions that may be contemplating revenue-generating contracts for the purpose of improving public property. It is important to recognize that this type of contract must be planned, executed, and overseen as carefully as any other major public works project. Melrose's experience underscores the importance of instituting the following measures to protect the public interest on such projects, regardless of the compensation terms or financing arrangements:

- Front-end planning by qualified professional staff or consultants should generate information on existing site conditions, a professional assessment of the potential environmental impacts, a well-defined project scope, and a detailed cost estimate. This information is essential to the development of a

realistic project budget that includes the cost of full-time professional oversight as well as a contingency for unforeseen circumstances.

- If the project is deemed logistically and financially feasible, the jurisdiction should establish the major contract terms and conditions and incorporate these provisions into the specifications for a competitive selection process.
- Both the solicitation and the final contract should include detailed plans and should comply with applicable laws, including procurement and prevailing wage laws.
- Before the contractor begins work, the jurisdiction should develop an oversight plan that clearly defines the roles, responsibilities, and reporting relationships of those responsible for project supervision.
- The jurisdiction should assign a project manager to serve as the locus of responsibility and accountability for the project. The project manager should be responsible for coordinating the contract, supervising the clerk of the works or other on-site supervisory personnel, monitoring the contract budget and contractor payments under the contract, and maintaining all project records.
- The jurisdiction should invest in full-time, professional project supervision. Detailed documentation of project activities and decisions in the field should be prepared by the designated clerk of the works or other on-site supervisory personnel and reviewed by the project manager.
- Significant changes to the contract price, scope, and/or schedule should be reflected in contract amendments signed by both parties. Instructions to the contractor issued by the project manager or his/her designee should also be recorded.
- The jurisdiction should ensure that all project participants are fully apprised of and held accountable for compliance with the legal requirements and administrative procedures governing the project.

Introduction

In June 2001, the Office of the Inspector General initiated a review of a public works project in Melrose, Massachusetts in response to a complaint alleging procurement law violations and mismanagement. The project, undertaken by the City of Melrose in May 2000, entailed the delivery by a private contractor to the Mount Hood Memorial Park and Golf Course (hereinafter, “Mount Hood”) of almost 700,000 tons of glacial till soils, or “fill,” excavated from the Central Artery/Third Harbor Tunnel (CA/T) Project for the purpose of constructing playing fields and golf course improvements. The CA/T Project had contracted with Modern Continental Construction Company, Inc. (hereinafter, “Modern Continental”) for excavation of the fill. The City contracted with Gator Hood, LLC (hereinafter, “Gator”) for delivery of the excavated fill and related construction services. The fill was delivered to the site by Modern Continental under a separate contract between Modern Continental and Gator.

The principal focus of the Office’s review was the process by which the City procured, contracted for, and managed the fill deliveries and related construction services at Mount Hood. The Office’s review did disclose both procurement law violations and mismanagement.

Background

Melrose is a city of 27,134¹ located approximately seven miles north of Boston and covering 4.76 square miles.² Under Melrose’s Mayor–Board of Aldermen form of government, the Mayor, the four Aldermen-at-Large, and the seven Ward Aldermen are elected every two years. The Board of Aldermen approves the City budget, all Mayoral appointments, and all appropriations by City departments.³ The City’s Park Department, overseen by the five-member Park Commission, manages Mount Hood Memorial Park and Golf Course as well as other City parks. The Park Department also provides

¹ U.S. Census Bureau, *Census 2000*.

² Massachusetts Department of Housing and Community Development website, 2001.

³ *Annual Report: City of Melrose – 2000*.

maintenance and oversight of all school fields and playgrounds.⁴ During the period covered by this review, the Park Department was staffed by three employees: a superintendent,⁵ a secretary, and a park maintenance worker.

Mount Hood is a 230-acre city park that includes an 18-hole golf course, a clubhouse, and various other recreational features including hiking trails, an observation tower, and a playground. The park is funded primarily through revenues from the golf course, leases, and grants. Under Chapter 124 of the Acts of 1936, the enabling legislation for Mount Hood, the Park Commission has exclusive control over the use and management of the park. The five Park Commission members are appointed by the Mayor with the approval of the Board of Aldermen. Chapter 124 requires all revenues from Mount Hood to be deposited into a separate City account and appropriated for park uses by the Board of Alderman, upon recommendation by the Park Commission and subject to approval by the Mayor.

The City completed a *Master Plan for Mount Hood Memorial Park and Golf Course* in April 1995. The *Master Plan*, which was prepared by the City's Office of Planning and Community Development, Camp Dresser & McKee, Inc. (CDM), and Armstrong Associates, identified "a critical need to address the overall state of disrepair in which most Park and Golf Course elements are found."⁶ The *Master Plan* recommended improvements to strengthen Mount Hood's "successful balance of passive, public recreation, golf and environmental education that is highly visible and publicly accessible."⁷ The City's 1998 and 1999 *Annual Reports*⁸ show that in recent years, the Park Department completed capital improvements consistent with those recommended

⁴ *Annual Report: City of Melrose – 1999* (p. 88).

⁵ This position was held in succession by two individuals during the review period: the Superintendent of Parks resigned on April 4, 2001, and an Interim Superintendent of Parks assumed responsibility for the Park Department on May 1, 2001.

⁶ City of Melrose, *Master Plan for Mount Hood Memorial Park and Golf Course*, 1995, p. 3.

⁷ *Ibid*, p. 8.

⁸ The City's *2000 Annual Report* contained no information on the Park Commission, the Park Department, or Mount Hood.

in the 1995 *Master Plan*, including construction of a parking lot and a new play structure, replacement of some irrigation lines, development of a well to ensure adequate water for irrigation, and reconstruction of several holes of the golf course.

The Park Commission has contracted out the operation and management of the Mount Hood park and golf course for many years. In March 2000, the Park Commission contracted with Environmental Landscape Management, Inc. (ELM) to manage Mount Hood, including the snack bar, pro shop, function hall, playground, ponds, and trails. Under the terms of its contract, ELM collected revenues from golf course operations and deposited them into a City account designated for Mount Hood. The City then paid ELM a portion of the monthly revenues in accordance with the terms and conditions of the management contract. Under the contract, the City was responsible for capital improvements to the Mount Hood golf course. In the 1999 calendar year,⁹ the City's portion of revenues from golf receipts – including memberships, greens fees, golf cart rentals, tournament cart rentals, and water fees – was \$220,037. In addition to the revenues collected through the golf course operations, Mount Hood receives approximately \$70,000 per year from lease agreements.

Scope and Methodology

The Office's review covered the period of April 2000, one month prior to the commencement of fill deliveries to Mount Hood, through August 2001, one month after fill deliveries to Mount Hood ended. This report also summarizes significant project-related contracts and events through December 2001.

During the course of this review, the Office obtained documents and information from the Park Commission, the Board of Aldermen, the Conservation Commission, the Park Department, the Department of Public Works, the City Auditor, the City Clerk, the City

⁹ The financial information that follows is drawn from the City's *1999 Annual Report*.

Solicitor, the CA/T Project, Gator, Modern Continental, CDM, and ELM.¹⁰ The Office conducted interviews with City officials and other project participants, including the former Mayor, the then-Chairman of the Park Commission, the former Superintendent of Parks, the Interim Superintendent of Parks, the Public Works Superintendent/Acting City Engineer, and representatives of the CA/T Project, Gator, Modern Continental, CDM, and ELM. The Office toured the project site in September 2001. The Office appreciates the cooperation and assistance provided by all of those listed above.

A confidential draft of this report was provided to the Mayor of Melrose on September 27, 2002. The Mayor's response is included in Appendix A of this report. During the course of this review, the Office sent three letters to the City. These letters are included in Appendix B of this report. This review was conducted in accordance with generally accepted government auditing standards.

¹⁰ The Office's review was impeded by incomplete project documentation. During the course of this review, the City was unable to locate some Park Department records that were reportedly moved to City Hall in April 2001. In some cases, the Office obtained project records from other sources that should have been on file at the Park Department. "Project records" referenced in this report include records obtained from the City, Gator, and Modern Continental.

Findings

Finding 1. The City embarked on a project involving major alterations to Mount Hood without adequate planning, reliable cost estimates, or an executed contract protecting the City’s interests.

On April 12, 2000, a principal of Gator Development Company, Inc.¹¹ (hereinafter, “Gator,”) sent a memorandum addressed to the Mayor of Melrose,¹² with a copy to the Deputy City Engineer, offering to deliver 200,000 cubic yards (approximately 300,000 tons) of material excavated from the Central Artery/Tunnel (CA/T) Project to the City of Melrose.¹³ The memorandum described the material as “Cohesive Glacial Till/Boston Blue Clay” and indicated that Gator was proposing to pay the City \$0.60 per ton to accept the material at a rate of 3,500 to 4,000 cubic yards per day over a six- to eight-month period. Attached to the memorandum were specifications for the material (hereinafter, “fill”) excerpted from the excavation contract between the CA/T Project and Modern Continental as well as the results of tests performed on the fill.

In a memorandum dated April 19, 2001 addressed to the Mayor, the Parks Superintendent summarized the outcome of the Parks Superintendent’s meetings with Gator and Modern Continental regarding the logistics of delivering the fill to Mount Hood. In the memorandum, the Parks Superintendent recommended to the Mayor that the City “hold out for at least 70 cents per ton or more,” noting that:

¹¹ According to corporate records filed with the Secretary of the Commonwealth, Gator Development Company, Inc. was a Melrose-based corporation originally organized in February 1995 as Gator, Inc. During the period covered by this review, its President, Treasurer, and Agent/Clerk was Charles F. Madden, Jr.

¹² Two individuals served in succession as Mayor of Melrose during the period covered by this review. In this report, “Mayor” refers to the individual holding the office of Mayor at the time of the reported events or activities. The current Mayor was elected in November 2001.

¹³ According to Gator principals interviewed by the Office, Gator had been seeking a site for CA/T Project fill, and a Gator principal had contacted the Mayor of Melrose to solicit interest in the fill. Based on the Mayor’s positive response, Gator forwarded the April 12 memorandum to the City.

We have to consider that no money was available for any reconstruction project from the Master Plan. Any project that we commit to must be fully funded by the income from the fill. . . . Ultimately we could live with 62 cents, but it would create a project that would be economically tighter than would be comfortable.

Attached to the memorandum was a list of tasks included in the project scope of work; all of the listed tasks related to the reconstruction of the twelfth fairway of the Mount Hood golf course. The Parks Superintendent's memorandum estimated the City's revenues from Gator at \$210,000 (300,000 tons at \$0.70 per ton) and itemized the tasks for which the City would be responsible under the proposed arrangement with Gator, including engineering, conservation permitting, wetland protection, and drainage irrigation.

According to the minutes of a Conservation Commission meeting held on April 20, 2000, the Conservation Commission read a letter at that meeting from the Superintendent of Parks (hereinafter, "the Parks Superintendent"),¹⁴ alerting the Commission to the Park Commission's plan to file a Notice of Intent¹⁵ (NOI) for a project at Mount Hood. The Parks Superintendent's letter stated that the project entailed improvements to the twelfth fairway of the golf course, which was located near an identified wetlands resource area. It also stated that some work was being proposed within the 100-foot buffer zone surrounding the resource area but that no work was being proposed in the resource area itself. The Parks Superintendent's letter advised the Conservation Commission: "It is probable that material will begin arriving on site for this and other projects as early as Monday, April 24, 2000." The letter stated that the

¹⁴ The Parks Superintendent also served as the Tree Warden. In an interview with the Office, the former Parks Superintendent stated that he reported to the Park Commission and the Mayor in his capacity as Parks Superintendent and that he also reported to the Public Works Commissioner in his capacity as Tree Warden.

¹⁵ According to a publication of the Massachusetts Association of Conservation Commissions entitled *The Massachusetts Wetlands Protection Act*, the Massachusetts Wetlands Protection Act, M.G.L. c. 131, §40, prohibits the removal, dredging, filling, or altering of any wetland or land within 100 feet of a wetland without a permit from the Conservation Commission. To obtain a permit, called an Order of Conditions, a project proponent must submit a Notice of Intent application to the Conservation Commission and the Department of Environmental Protection (DEP), according to the DEP website.

project work would commence on the opposite end of the fairway in relation to the wetland and that no work would be performed within the buffer zone for many months.

Gator sent a proposed Memorandum of Understanding to the City on April 21, 2000.

On April 21, 2000, Gator sent a proposed “Memorandum of Understanding” (MOU) to the Mayor, with copies to the Deputy City Engineer and the Parks Superintendent, listing 11 items purportedly reflecting discussions between the City and Gator over the previous week. The document set forth proposed terms under which Gator would pay the City \$0.70 per ton for the first 300,000 tons of fill originating from two specific CA/T Project contracts between Modern Continental and the CA/T Project and \$0.65 per ton for all additional fill generated under these contracts. The City would be responsible for all site preparation work, including tree clearing, installation of hay bales, and lighting.

On that same day, the Parks Superintendent sent letters to Gator and to Modern Continental, advising them that the City of Melrose intended to proceed with an agreement to accept no less than 300,000 tons of fill from the two CA/T Project contracts, that the Park Commission would vote on the proposal on April 24, 2000, and that an affirmative vote was expected. The Parks Superintendent’s letter stated that the City would be responsible for any required conservation permits and that “[a]t the present time and well into the foreseeable future no conservation permits are required to commence operations.”

Finding 1a. The Park Commission authorized fill deliveries at Mount Hood without determining the scope, requirements, or cost of the improvement project.

The minutes of a Park Commission meeting held on April 24, 2000 show that the estimated quantity of fill to be delivered to Mount Hood had increased from 300,000 tons – the amount cited in Gator’s April 12 memorandum to the Mayor – to 790,000 tons. As the following excerpt from the minutes makes clear, there was no project plan, design, or cost estimate.

A total of approximately 790,000 tons of blue clay and glacial till will be delivered along with the machine time for all the rough and fine grading **for whatever the Park Commission constructs**. The 12th hole would be rebuilt which we had wanted to rebuild this year but at the time it was engineered we didn't have funds to do it. . . . **The Mayor thinks building new fields would be the best way to go. [The Parks Superintendent] proposed a full-sized baseball field and two full-sized soccer fields along with parking. . . . The exact configuration isn't important at the moment as we have six months before anything is decided. The elevations and the amount of fill will be the same no matter what is constructed. . . .** Tonight [the Parks Superintendent] wants to know if the Park Commission likes the theory and do they want to sign an agreement with Gator to take the fill. . . . They wanted to start to truck this week but won't actually start until May 8th. Modern Continental was given a letter of intent last Friday saying we did want to proceed.¹⁶ [Emphasis added.]

The Park Commission minutes also show that the Park Department had not yet commissioned professional engineering design services:

[The Parks Superintendent] will be getting someone in to do the engineering on the project but isn't sure if it will be Camp Dresser & McKee or someone else.

According to the minutes, members of the Park Commission raised questions about the impact on wetlands, and the Parks Superintendent stated that he had assured the Conservation Commission that "a small wetland area" would be protected. The Park Commission voted to proceed with the fill delivery project subject to a final vote.

The Park Commission again discussed plans to accept the fill at Mount Hood at a meeting held on May 1, 2000. The meeting minutes show that the Parks Superintendent described the scope of the proposed project as "massive":

[The Parks Superintendent] discussed the many meetings, problems, discussions and plans of the "Big Dig" project happening on a daily, hourly, etc. basis. . . . He discussed the engineering aspects of this entire project with the Mayor it being more than he and [his assistant] could handle in house. He will be bringing Camp Dresser and McKee in to see what input they could offer. If we contract with them it would be under the existing contract and it would be at the approval of the Commission. **The**

¹⁶ Records provided to the Office included a letter of intent dated April 21, 2000 from the Parks Superintendent to the Vice President of Modern Continental.

scope of this project is massive with roads, parking lots, electrical power, and irrigation. [Emphasis added.]

According to the meeting minutes, Modern Continental had already begun work on constructing the access road – referred to as the “haul road” in project records – to the fill delivery site on Mount Hood. The minutes reported that the Parks Superintendent advised the Commission that it had to “demonstrate to the Big Dig [the CA/T Project] that we have the ability to accept this material quickly and with easy access.” The unsigned MOU contained no reference to the haul road, nor were plans or specifications developed for the haul road.

The minutes also show that the Parks Superintendent advised the Commission that project oversight would be a significant task that he would be unable to perform without contracted assistance:

[The Parks Superintendent] discussed “oversight” of the project, as he doesn’t have time to personally do it. The most sensible way to go is to have ELM do the oversight because they are here all the time and manage the site anyway. Every truck has to have paper work, which needs to be checked, and directions given to the drivers as to where the load is to go. . . [The Parks Superintendent] said this project really needs “a project manager as he can’t devote all day every day to it.”

According to the minutes, the Parks Superintendent read a draft agreement between the City and Gator and requested that the Park Commission vote on the draft agreement. The Parks Superintendent told the Commission that the final agreement would include an indemnification clause to be provided by the City Solicitor and noted that he would request a \$5 million performance bond. The Park Commission voted to approve the agreement with the addition of the indemnification clause and the City Solicitor’s final review.

Fill deliveries to Mount Hood began on May 3, 2000.

On May 3, 2000, two days after the Park Commission’s vote, Modern Continental began delivering fill to Mount Hood, according to City records. The City had not executed the

April 21 MOU or any other written fill delivery contract with Gator. According to City records, 4,035¹⁷ tons of fill were delivered to Mount Hood on May 3.

The minutes of a Conservation Commission meeting on May 4, 2000 show that the Parks Superintendent read a letter at that meeting advising the Conservation Commission that the project plan had changed since the Parks Superintendent's April 24 letter to the Commission: the twelfth fairway improvements had been deferred until the fall to enable construction of a new ballfield complex. The letter advised the Conservation Commission that the Park Department had retained the services of Camp, Dresser & McKee, Inc. (CDM) as project engineer, that the Park Department was requesting a Negative Determination of Applicability¹⁸ for an area next to the haul road Modern Continental was building, and that the fill delivery project was "extremely time sensitive." According to the meeting minutes, the letter stated, in part:

The Notice of Intent for the 12th hole project will be filed at a later date as the project is now planned for this fall. The plan as it is now being formulated includes the construction of a ball field complex between the Slayton Tower and the easterly border of the park. We have retained the services of Camp Dresser & McKee as engineers for this project.¹⁹ As we have proceeded with the preliminary work in anticipation of accepting clean fill from the Central Artery/Tunnel Project we have encountered a

¹⁷ All fill quantities reported in these pages were derived from an analysis of fill delivery records provided to the Office by the Park Department in February 2002. In late 2001 the Office advised the City of discrepancies between the City's records of fill deliveries to Mount Hood and records on file at the CA/T Project and recommended that the City take steps to resolve these discrepancies. The Park Department subsequently conducted a detailed examination of CA/T Project excavation logs pertaining to the fill delivery project and produced the February 2002 analysis, which does not comport with either the City's previous fill calculations or the CA/T Project's fill calculations.

¹⁸ According to *The Massachusetts Wetlands Protection Act* (the previously cited publication of the Massachusetts Association of Conservation Commissions), project proponents submit a form called a "Request for Determination of Applicability" to the Conservation Commission in order to determine if an area is a resource area protected by the Wetlands Protection Act.

¹⁹ As will be discussed, the work CDM performed in May and June was billed and paid under a contract between CDM and Gator, which then was permitted to deduct its payment to CDM from fill payments owed to the City. The City did not execute a contract with CDM until August 4, 2000.

depressed area in close proximity to the access road that will be used to transport fill to the site. Although we are very confident that this small area is non-jurisdictional, we are always concerned about how our actions may be viewed by others. Therefore, we feel that a Negative Determination of Applicability by the Conservation Commission would be the proper way to proceed. The Park Department will file a plan and study with our application for this determination at the next meeting of the Conservation Commission. For the time being the area will be protected with hay bales and silt fencing until such time as the Conservation Commission properly makes this determination. This project has become a high priority for the city and the Mayor and it is our intention to proceed very cautiously yet very quickly as the agreement with the Central Artery/Tunnel Project is extremely time sensitive.

The minutes indicate that the Parks Superintendent emphasized the need to react quickly to the offer of Big Dig fill in order to allow the City to receive half a million dollars in revenues:

The plan is very conceptual. I had the first meeting today with my engineer from Camp Dresser McKee. But what we have to act on very quickly is the fill portion of it as other communities were vying for this fill. . . We really don't like to operate so quickly at the Parks Department. We like to take time to plan things and get them all on paper and get them done that way, but **when a project like this is given to us and the ability to take in 1/2 million dollars, we can't give it up. There was about a two week window and we had to react to this offer, and we did react.** [Emphasis added.]

In an interview with the Office, the former Mayor stated that he had been concerned that the City might lose the opportunity to obtain a great deal while state funds for accepting Big Dig fill were available. He stated that he knew that the timing was also important because of the difficulty of working during the winter months. In retrospect, however, he stated that it would have been more appropriate to proceed more slowly.

On May 5, 2000, Gator sent a letter to the Parks Superintendent accompanied by a \$437,500 purchase order for fill and a document labeled "Addendum to Purchase Order" setting forth amended terms of the fill delivery agreement that had been proposed by Gator in the unexecuted April 21 MOU. Gator's letter stated:

Pursuant to our discussion concerning the above referenced operation, I hereby submit for your review and execution the attached documents.

Please note that every effort has been made to incorporate all changes requested by you and [the Mayor]. Please sign both originals and return one copy to our office.

The May 5 Addendum contained the same fill prices as those stated in the previous MOU and stated that the City would be responsible for site preparation work. The Addendum also contained several new terms, including provisions stating that:

- “Melrose will only receive clean material pursuant to this contract.”
- Gator would pay Melrose “as and when paid by Modern.”
- Requisitions would be submitted to Gator on the first and fifteenth of every month.
- Melrose would receive “an advancement” of \$10,000 “upon execution of this contract.” This amount was to be deducted from the first submitted pay requisition.
- No other material would be allowed at Mount Hood location during the term of the agreement without the express written consent of Gator and barring the City from competing with Gator to obtain fill from the CA/T Project.

Like the previous MOU, the Addendum contained no reference to the haul road that Modern Continental was in the process of constructing on Mount Hood.

Finding 1b. The fill delivery agreement with Gator was not subject to any competitive procurement law.

The Park Commission accepted the financial terms of Gator’s proposal – and permitted Modern Continental to begin building a road on and delivering fill to City property – without testing the competitive marketplace through an open, advertised bid process. Under most circumstances involving work on public property by private construction contractors, public jurisdictions are legally required to conduct a formal, advertised bidding process. In this case, however, the Park Commission’s unsigned agreement with Gator to have Modern Continental deliver fill to Mount Hood and to construct a haul road for this purpose was not subject to competitive bid requirements. M.G.L. c. 30, §39M, the bid law governing contracts for public works construction services and materials, requires an advertised bid process but applies only to contracts costing

\$10,000 or more. Based on the language of the statute, the Office of the Attorney General has concluded that M.G.L. c. 30, §39M is not applicable to a contract resulting in a net payment to an awarding authority.²⁰ Because the City's agreement with Gator entailed no payment by the City, the requirements of M.G.L. c. 30, §39M did not apply. Nevertheless, the Park Commission could and should have attempted to foster competition in the private marketplace for the fill and public works construction services offered by Gator.

Finding 1c. The Park Commission authorized fill deliveries at Mount Hood for three months without executing a written contract.

City records provided to the Office show that the Addendum, like the MOU it had amended, was signed by a Gator representative but not by any City official. Thus, from May 3, 2000, when the fill deliveries began, until July 12, 2000, when the City executed a contract with Gator, the Park Commission allowed fill to be delivered to Mount Hood without an executed, enforceable contract. During this period, City records show that 199,499 tons of fill were delivered to Mount Hood.

In an interview with the Office, the Chairman of the Park Commission recalled that the Commission had voted to approve a fill delivery agreement with Gator and expressed surprise that the Commission had not signed any such agreement prior to July 2000.²¹ Similarly, the former Parks Superintendent told the Office that he believed at the time

²⁰ See *In Re: Town of Southbridge, Barefoot Road Sanitary Landfill*, A.G. Opinion dated December 7, 1999.

²¹ The minutes of a Park Commission meeting held on June 19, 2000 indicate that the Park Commission was erroneously informed that the agreement with Gator had been signed. The minutes stated, in part: "He [the City Solicitor] noted that a Memorandum of Agreement had been signed and is going forward with producing a contract that will protect the City. He noted that there were still several issues to be "hammered" out: i.e. provisions regarding bonding, insurance, protection against default of the contractor, hazardous materials, and monitoring of the site. He assured those in attendance that the final document will be proper and will protect the City."

that the agreement with Gator had been signed. In an interview with the Office, Gator's principals stated that they regarded the Park Superintendent's signed April 21 letter of intent as a sufficient basis on which to proceed with the fill deliveries to Mount Hood.

On May 18, 2000, the Melrose Conservation Commission issued a Cease and Desist Order and suspended enforcement of the Order provided that specific protective measures were implemented.

At a Conservation Commission meeting held on May 18, 2000, the Parks Superintendent provided a conceptual rendering of the project in support of the Park Department's request for the Negative Determination of Applicability for the resource areas near the haul road. The meeting minutes indicate that citizens attending the meeting expressed shock and outrage over the removal of trees and the dumping of fill at Mount Hood without a master plan, appropriation, or vote by Melrose citizens. Members of the Conservation Commission examined photographs of the site that reportedly showed encroachment of silt into a resource area. The Parks Superintendent acknowledged that trucks had been "coming in as fast as they could" and that "[w]e absolutely could have done a better job of protecting the beginning of that resource." According to City records, 47,467 tons of fill had been delivered to Mount Hood as of May 18, 2000.

After discussing the need to institute immediate measures to protect the resource areas, the Conservation Commission voted to issue a Cease and Desist Order barring further work at the site but suspending enforcement of the Order provided that specific measures were taken to protect the affected resource areas, including installation and maintenance of hay bales and jersey barriers, prior to performing further work on the site.

The minutes of a Park Commission meeting held on May 22, 2000 indicate that citizens attending the meeting again raised concerns about the removal of trees and the lack of a project appropriation. Citizens also voiced concerns about the lack of competition for the fill and the perceived conflict between the 1995 master plan – which had envisioned enhanced "passive recreation" facilities at Mount Hood – and the Park Commission's goal to create three playing fields.

According to the minutes, the Chairman of the Park Commission stated that the Mayor, through the Parks Superintendent, had presented an opportunity to get clean fill for the construction of playing fields. The Chairman noted that “there had been a ‘small window of opportunity’ on the part of the contractor and that we had to act quickly so as not to lose the fill.” In response to citizens’ concerns regarding the potential cost of the project, the Chairman stated that “the ½ million dollars we anticipate receiving would be used towards the building of the fields and not from the taxpayers of the City of Melrose,” according to the meeting minutes.

The former Chairman told the Office that the Park Commission was never provided with an estimate of the site preparation costs the City would incur in order to accept the fill. He stated that his understanding was that the City would pay for tree clearing and hay bales and that Gator would pay the cost of constructing the haul road. He assumed that fill revenues received by the City would be sufficient to pay for three playing fields.

In an interview with the Office, CDM representatives stated that two individuals from CDM examined the fill delivery site and the Isolated Land Subject to Flooding (ILSF)²² near the haul road on May 23, 2000. By that time, trees had been removed, the haul road had been constructed, fill deliveries had begun, and the Cease and Desist Order had been issued. CDM subsequently prepared and filed the NOI for the haul road. However, although the Conservation Commission had been told that CDM would be the “project engineer,” CDM did not prepare – and was not asked to prepare – estimates of required fill quantities, plans and specifications for the haul road, plans and specifications for the fill deliveries, or project cost estimates.

The former Parks Superintendent confirmed that CDM had not been asked to provide detailed planning information or specifications. He told the Office that he himself did quantity “takeoffs,” or estimates, from conceptual plans that had been prepared by CDM for the 1995 Master Plan in order to develop the rough estimate, provided to the Park

²² According to the DEP website, Isolated Land Subject to Flooding (ILSF) includes areas that flood due to ponding of run-off or high ground water. These resource areas are regulated under the Wetlands Protection Act.

Commission, that the City needed 790,000 tons of fill to complete the playing fields and golf course improvements that were contemplated. He also said that the construction of the playing fields and golf course improvements work was envisioned as an in-house project that could be completed by the Park Department without detailed engineering designs.

On June 2, 2000, CDM filed a Notice of Intent (NOI) for the Mount Hood haul road with the Conservation Commission and the DEP on behalf of the City's Department of Public Works.

The minutes of a meeting of the Conservation Commission on June 1, 2000, at which the previously filed Request for Determination of Negative Applicability for the resource areas near the haul road was discussed, show that a CDM representative accompanied the Deputy City Engineer to the meeting. According to the meeting minutes, some City officials and citizens once again raised concerns about the removal of trees, the lack of planning, and the lack of references to playing fields in the 1995 master plan for Mount Hood. The CDM representative advised the Conservation Commission that the resource areas in question were, in CDM's opinion, ILSF. The Conservation Commission subsequently voted to find a Positive Determination of Applicability for the resource areas. This finding required the City to file a NOI with the Conservation Commission and the DEP.

On June 2, 2000, CDM filed the Mount Hood Haul Road NOI. In a cover letter to the NOI, CDM stated:

On behalf of the City of Melrose Department of Public Works, Camp Dresser & McKee Inc. (CDM) is pleased to submit this Notice of Intent for the above referenced project. This NOI is submitted to authorize temporary deposition of fill into an isolated depression on Mount Hood property assumed to be regulated as Isolated Land Subject to Flooding (ILSF). This incidental filling occurred during construction of a gravel haul road adjacent to the isolated depression.

The NOI Project Narrative clarified that two depressions within the vicinity of the filling activity appeared to meet the definition of ILSF and that "placement of fill adjacent to the southerly depression for construction of a haul road resulted in the accidental

deposition of fill in approximately 300 square feet of the depression.” The NOI described the proposed project activity and listed several mitigation measures that had been instituted and would be instituted in the future “to prevent the sloughing off of soil off the haul road and into the southerly depression.”

At a June 19, 2001 meeting of the Park Commission, some citizens continued to raise questions about the project scope, the availability of other sources of fill, the manner in which CDM had been hired, the cost of the project, and the lack of planning preceding the clearing of trees on Mount Hood, according to the meeting minutes. The minutes show that other citizens expressed support for the City’s willingness to capitalize on an offer that could enable the construction of new playing fields. According to the minutes, City officials told those in attendance that the City had not yet decided what was to be built, that CDM would be brought on board “under an open contract,” that the City would be paid as fill was delivered, and that “with the funds generated which could amount to half a million dollars we should be able to finish the work.”

Finding 2. The Park Department bypassed legal requirements and internal controls governing City contracts in order to expedite the acceptance of fill.

Finding 2a. Prior to August 2000, the Park Department obtained CDM’s services through an inappropriate contract between CDM and Gator.

The Park Department did not execute a contract with CDM until August 4, 2000, two months after CDM filed the NOI for the Mount Hood haul road. Records reviewed by the Office showed that CDM and Gator signed a \$20,100 contract dated May 1, 2000 that required CDM to meet with Gator to “obtain input for recommended revisions to the Master Plan for conceptual design of Athletic Fields and Recreation Improvements” at Mount Hood, to prepare the NOI and obtain environmental permits for the haul road, and to:

Create an illustrative conceptual site plan that provides the OWNER with target final grade and related finish subgrade elevations for presently ongoing earth moving and filling operations.

Under the terms of the contract, the “owner” was Gator. Although Gator’s contract with CDM was dated May 1, 2000, CDM representatives advised the Office that CDM had worked without a contract for a period of time after May 1, 2000 and that the contract between CDM and Gator was backdated.

Gator officials provided the Office with several documents pertaining to the contract between CDM and Gator: a July 31, 2000 letter from the Vice President of CDM to the Parks Superintendent and an August 3, 2000 letter from a Gator Principal to the Parks Superintendent. CDM’s letter began:

In order to expedite this project, we negotiated and submitted an Agreement to Gator Development Company, Inc. (GDC) to lay out a conceptual arrangement of one baseball field and a multi-use soccer field to provide enough information for you to establish subgrade elevations for receipt of Central Artery fill. Also, assistance was requested to secure the necessary environmental permits for the haul road.

Attached to CDM’s letter was a copy of CDM’s invoice to Gator for \$20,100 as well as a breakdown of project hours and costs incurred. CDM’s letter was copied to the Deputy City Engineer and a Gator Principal. City records show that Gator paid CDM \$20,100 on August 2, 2000 and deducted this amount from the fill payments owed to the City.

Two days later, on August 3, 2000, a Gator Principal wrote a letter to the Parks Superintendent, with copies to the Deputy City Engineer, the City Solicitor, and the President of ELM, stating:

Attached please find an executed copy of the contract between Camp Dresser & McKee and Gator Development Company, Inc. dated May 1, 2000 (Contract). All costs associated with said Contract will be fully reimbursed by the City of Melrose, pursuant to our contract entitled “Contract for the Acceptance of Fill to create Recreational Facility at Mount Hood Memorial Park and Golf Course By and Between the City of Melrose and Gator Hood LLC.” Please sign below as acknowledgment of the above and return a copy to our Office.

The letter was signed by the Parks Superintendent and a Gator Principal. Gator's Principal told the Office that he wrote this letter in order to document that Gator had nothing to do with the contract with CDM and that Gator would be fully reimbursed by the City for the contract cost.

Under Chapter 124 of the Acts of 1936, the enabling legislation for Mount Hood, Mount Hood expenditures require appropriation by the Board of Aldermen. Also, under M.G.L. c. 43, §29, all contracts over \$5,000 must be in writing and approved by the department head and the Mayor. In this case, however, City funds were used to pay CDM without an appropriation from the Board of Aldermen and without an executed contract signed by the Mayor.²³ Although CDM attended Conservation Commission meetings and prepared the NOI on behalf of the City, CDM was being paid by Gator using funds owed to the City. In addition to bypassing the legal requirements and internal controls governing City contracts, this inappropriate arrangement created a potential conflict of interest for CDM.

Finding 2b. Beginning in May 2000, the Park Department procured supplies and services for the project without the required appropriations by the Board of Aldermen.

During the period between May 3, 2000, when fill deliveries began, and July 12, 2000, when the City executed a contract with Gator, private contractors invoiced the Park Department for site preparation supplies and services totaling more than \$33,000 relating to the project, including tree removal, land clearing, roadway paving, baled straw, and fencing. Table 1 lists these costs. There is no evidence that the Board of Aldermen appropriated funds for these procurements, as required by Chapter 124 of the Acts of 1936.

²³ Design services that do not entail work on a public building project are not subject to any procurement law, although the Office recommends such contracts be awarded using the competitive procurement procedures of M.G.L. c. 30B.

Table 1.
Park Department Procurements Lacking Appropriations
Prior to the July 2000 Contract with Gator

Invoice Date	Vendor	Supplies/Services	Amount Invoiced
5/4/00	Arbor Tree Service	Wood removal	\$ 2,800
5/13/00	Foley's Custom Sawmill	Unspecified	2,588
5/15/00	D&R General Contracting, Inc.	Roadway paving	8,857
5/15/00	Greenwood and Sons	Construction services	2,918
undated ⁽¹⁾	Dan Cappellucci, Jr.	Chain link fence	1,300
6/30/00	J.M. Cook Co., Inc.	Land clearing	12,000
6/30/00	Northeast Nursery, Inc.	Unspecified	2,556
Total			\$33,019

Source: Invoices provided by the City of Melrose.

(1) This invoice was date-stamped May 25, 2000.

The Park Department's \$12,000 procurement of land clearing services from J.M. Cook Co., Inc. appears to have violated other statutory requirements as well. City records contain no evidence that bids were solicited for this work under M.G.L. c. 30, §39M or M.G.L. c. 30B²⁴ and no evidence that the Park Department executed a written contract with this contractor in accordance with M.G.L. c. 43, §29.²⁵

City records show that the roadway paving services – for which the City was billed \$8,857 – were procured through a competitively bid contract awarded by the Department of Public Works.²⁶ A number of other procurements were below the \$5,000 threshold for written contracts and the \$10,000 threshold for construction bidding.²⁷

²⁴ Public works construction contracts costing more than \$10,000 but not more than \$25,000 must be competitively bid under either M.G.L. c. 30, §39M or M.G.L. c. 30B, §5. Public works construction contracts costing more than \$25,000 must be competitively bid under M.G.L. c. 30, §39M.

²⁵ Public works construction contracts are subject to numerous other statutory requirements, some of which are discussed later in this report.

²⁶ This contract contained estimated quantities and specified that any City department could procure the contracted services at the bid price listed in the contract.

²⁷ As previously noted, local awarding authorities are not required to solicit competitive bids or quotations for public construction services costing less than \$10,000, although obtaining competitive quotations is a sound business practice recommended by the Office.

Finding 3. Project accountability was undermined by the City's failure to establish a revolving account for the fill payments owed to the City by Gator.

Although the City's stated intention was to use the fill payments from Gator to build playing fields and improve the golf course at Mount Hood, the City did not establish a revolving account into which to deposit Gator's payments and from which to appropriate project expenditures until June 2001 – more than a year after the fill deliveries began. In an interview with the Office, the former Parks Superintendent stated that he did not want Gator to pay the City until the revolving fund was established because any payments from Gator would have been deposited in the General Fund and, thus, would have been unavailable to the Park Department to pay for site preparation and other project-related expenses. Gator officials interviewed by the Office confirmed that Gator received no payment requisitions from the City for many months. According to City records, the City did not send a pay requisition to Gator until May 2001.

City records contained a copy of a signed letter from the Parks Superintendent to the Mayor dated July 6, 2000 in which the Parks Superintendent stated:

The Park Department respectfully requests that a revolving fund be created and authorized under MGL Chapter 44, Section 53N¹/₂ to receive and expend funds generated from the contract between the City of Melrose Park Department and Gator Hood, Inc. for the purpose of construction at Mount Hood. The Park Department requests a spending limit of FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000) with the Park Commission as the sole agent to expend funds from the account.

On January 31, 2001, six months after the Parks Superintendent's written request, the Mayor submitted a request to the Board of Aldermen to establish a revolving account for the purpose of constructing playing fields at Mount Hood. On June 27, 2001, five months after the Mayor's request, the Board of Aldermen approved the order. Thus, the fill delivery project proceeded for more than a year after fill deliveries began without the appropriate mechanism for accepting fill revenues owed by Gator.

In an interview with the Office, the former Mayor stated that his initial assumption, which proved to be mistaken, was that Gator would fund the project start-up costs and that fill

revenues would not be paid until the start-up phase was complete. He stated that, in retrospect, he should have submitted the order for the revolving fund early in the project so that the public could see that the project was generating revenue every month.

In the absence of a mechanism for accepting and expending funds paid by Gator, the Park Department procured project-related supplies and services and forwarded the invoices for these supplies and services to Gator. Beginning in July 2000, Gator paid the invoices and deducted the dollar amounts of these paid invoices from its calculation of fill payments owed to the City. This arrangement, which was not terminated until March 2001, circumvented the appropriation process required by the enabling legislation for Mount Hood. In addition, as will be discussed, some procurements made under this arrangement violated procurement and municipal finance laws.

The City received no payments from Gator until April 6, 2001, shortly after an independent audit commissioned by the Board of Aldermen found that the City had received no fill revenues from its contract with Gator. According to the City Auditor, the funds received from Gator after that date were deposited into a newly created reserve account pending the Board of Aldermen's approval two months later of the order establishing a revolving fund for the fill revenues.

Three months after fill deliveries began, the City executed a contract giving Gator Hood, LLC the exclusive right to deliver up to one million tons of fill to Mount Hood.

On July 12, 2000, the City executed a "Contract for the Acceptance of Fill to Create Recreational Facility at Mount Hood Memorial Park and Golf Course By and Between the City of Melrose and Gator Hood, LLC."²⁸ Corporate records on file with the Secretary of the Commonwealth show that Gator Development, Inc. and Gator Hood, LLC shared the same address and corporate officers. (The remainder of this report will refer to both Gator Development Company, Inc. and Gator Hood, LLC as "Gator.") The City's contract with Gator was signed by the Mayor, all five members of the Park Commission,

²⁸ According to corporate records on file with the Secretary of the Commonwealth, Gator Hood, LLC was a limited liability corporation organized on July 24, 2000. Its agent was listed as Charles F. Madden, Jr.

the City Solicitor, the Managing Member of Gator Hood, LLC, and a Vice President of Modern Continental Construction Company, Inc. The contract named Gator as the contractor and Modern Continental as the “guarantor.” A “Purchase Agreement” between Gator and Modern Continental was incorporated by reference into the contract.²⁹

The City’s July 2000 contract with Gator obligated the City to accept not less than 300,000 tons of fill material³⁰ from the contractor and provided that the City could, at its option, agree to accept up to one million tons of material. The contract gave Gator the exclusive right to deliver fill to Mount Hood.

Under the contract, Gator would pay the City \$0.70 per ton for each ton delivered to the site, measured as follows:

Measurements. All quantities are estimates only. Measurement is based on an agreed thirty three (33) tons per dump trailer load and twenty six (26) tons per triaxle load.

Upon execution of the contract, Gator would pay the City \$10,000, and that amount would be credited against the amount owed to the City from fill deliveries. On the first and fifteenth days of each month, the City would make application for payment, and Gator would pay the City within 10 days of receiving each application for payment. Gator’s fill delivery payments were to be calculated from shipping tickets generated and signed by Modern Continental at the CA/T Project and submitted by the City with the applications for payment to Gator.

²⁹ City records did not include a copy of the Purchase Agreement between Gator and Modern Continental; however, at the Office’s request, the City obtained and provided the Office with a copy of the agreement.

³⁰ The contract stated: “The material shall consist exclusively of natural soil material excavated pursuant to contract C17A1 between the contractor and Guarantor [Modern Continental]. All of the material received shall be tested and certified in accordance with the Contract Documents. The Contractor certifies that no material from any other location shall be delivered to the site and delivery of material from any other source or location shall constitute a material breach of this Agreement and grounds for immediate termination of this Agreement by the City.”

The contract provided that Gator would be responsible for all temporary haul road construction on the site and all machine grading of the fill. The City would be responsible for preparing the site to receive the fill, placing and maintaining any hay bales or silt fences, lighting, dust control and wheel washing, and providing survey and engineering services. The contract stated that the City would hire a clerk of the works/environmental monitor to supervise operations on a daily basis in order to ensure compliance with the contract terms and conditions. The contract required Gator to provide the City with a performance bond and a payment bond (discussed later in this report).

The Purchase Agreement between Gator and Modern Continental stated that it was “made and effective” on May 1, 2000 but was not signed by Modern Continental until July 13, 2001. However, Gator provided the Office with a four-page purchase order issued by Modern Continental to Gator on May 1, 2000 and signed by both parties. Schedule A of the Purchase Agreement provided the following cost breakdown for the work:

- Mobilization \$25,000
- Everett Land Development Coordination – Everett, MA \$7,249.48³¹
- Management Fee – Disposal of material at Mt. Hood Golf Course, Melrose, MA (300,000 tons @ \$1.35 per ton) \$405,000

Gator did not make the contractually required \$10,000 payment to the City upon execution of the July contract. In an interview with the Office, the former Parks Superintendent stated that this payment was not made because the City had not set up the revolving account into which to deposit the \$10,000 payment.

³¹ Officials of Gator and Modern Continental advised the Office that the line-item in the Purchase Agreement labeled “Everett Land Development Coordination” was unrelated to the fill delivery contract. They stated that Modern Continental owed Gator \$7,249.48 in connection with another business transaction between the two firms and that the Purchase Agreement was used as a vehicle for that payment.

According to City records, 199,449 tons of fill had been delivered to Mount Hood as of July 12, 2000.

Finding 4. The City's noncompetitive contract with Gator, although legally permissible, was ill advised.

As discussed in the previous Finding 1b, the City's contract with Gator was not subject to any competitive procurement law. Nevertheless, the City's decision to execute a formal contract entailing major alterations to Mount Hood without a competitive selection process was unwise. From a business perspective, competition is a key element of best value contracting. Research has consistently demonstrated that the discipline of the competitive marketplace promotes efficiency and cost-effectiveness in public contracts with the private sector. Thus, a public jurisdiction should undertake a public selection process for any contract of substantial value to private vendors, even if the contract is not subject to any public procurement law requiring advertised competition. Even where there appears to be only one vendor capable of fulfilling the contract, conducting a public selection process allows the jurisdiction to test that assumption by notifying the private marketplace of the availability of the contract. Thus, competitive contracting is a sound business practice.

The City's decision to forgo competition was also unsound from a public policy perspective. The public expects its elected and appointed representatives to conduct the public's business in an open, fair, accountable manner. When public contracts of substantial value are awarded without competition, the appearance of favoritism is created, and public trust is undermined.

Finding 5. The City's contract with Gator contained poorly drafted and unfavorable provisions that undermined the City's financial interests.

Reimbursements for site preparation work. The City's contract with Gator contained confusing and seemingly inconsistent language governing the issue of which party would pay for the site preparation work at Mount Hood. As the following provision indicates, the contract stated that the contractor would pay or reimburse the City for its

site preparation expenses; however, it also stated that the contractor would deduct those payments or reimbursements from its fill delivery payments to the City:

Site Preparation Expenses. The contractor shall pay and/or reimburse the City for any and all expenses incurred by the City for preparation of the site to receive the material, including but not limited to any costs incurred in connection with excavation, cutting or clearing of trees and/or removal of debris. The City shall provide the Contractor with documentation relative to any such expense and the Contractor shall be obligated to reimburse the City in accordance with subparagraph IV(B) [the contract provision governing Gator's payments to the City for fill deliveries] above. Any and all payments and/or reimbursements hereunder shall be deducted from payments made to the City pursuant to Section IV(A) [the contract provision requiring Gator to pay the City \$0.70 per ton] herein. [Emphasis added.]

Conditional payments. Under the following contract provision, Gator was required to pay the City only if and when Modern Continental paid Gator:

Receipt by the Contractor of payment from the Guarantor for any and all portions of the work, whether partial payments, progress payments, final payment or reimbursable amounts shall be a condition precedent to any payment to the City hereunder[. T]he Contractor shall only be obligated to make payment for any approved requisition to the extent of payment received by the Contractor from the Guarantor in respect thereof.

Thus, the City's payments from Gator were dependent upon Gator's success in obtaining payment from Modern Continental, even if the City fulfilled its contractual obligations to Gator.

Conditional indemnification for costs associated with contaminated or hazardous material. The City's contract with Gator provided that Gator would be responsible for and indemnify the City for costs associated with contaminated or hazardous material only if and to the extent that Modern Continental indemnified Gator. As with the previously cited provision, this conditional provision meant that the City's ability to protect its environmental and financial interests was dependent on a business arrangement over which the City had no control. The City should have insisted on strong and unconditional indemnification language.

Finding 6. The City’s contract with Gator did not include detailed plans identifying fill delivery locations and boundaries, nor did it include fill placement instructions or specifications.

The contract provided no written description of the fill delivery locations other than the following:

The parties hereby agree that the City shall receive the material as defined herein at the Mt. Hood Memorial Park and Golf Course, 100 Slayton Road, Melrose, Massachusetts; the location at which said material shall be received is further described in a plan attached as “Exhibit A” hereto and incorporated herein. Upon fifteen (15) day written notice to Contractor, the City may, upon Contractor’s written approval, change the location at which the material shall be received.

Exhibit A to the contract, reproduced on the following page, consisted of a map labeled “Figure 3. Haul Road Location.” The words “area to be filled” were printed in two places on the map, along with arrows pointing to general areas. The map showed the haul road and the area encompassing the proposed baseball field and soccer field locations. Other than Exhibit A, the City’s contract with Gator contained no fill placement instructions or specifications. Moreover, Exhibit A did not show the twelfth hole, where the City planned to receive fill and where Gator would later deliver large quantities of fill. Project records provided to the Office contained no written notices from the City changing the fill locations or written approvals from Gator of any fill location changes.

Exhibit A reportedly did not guide Modern Continental’s fill delivery operations. In an interview with the Office, Modern Continental’s Foreman, who oversaw the fill deliveries to Melrose on behalf of Modern Continental, stated that she had never seen a copy of Exhibit A.

Figure 1.
Exhibit A to Contract with Gator

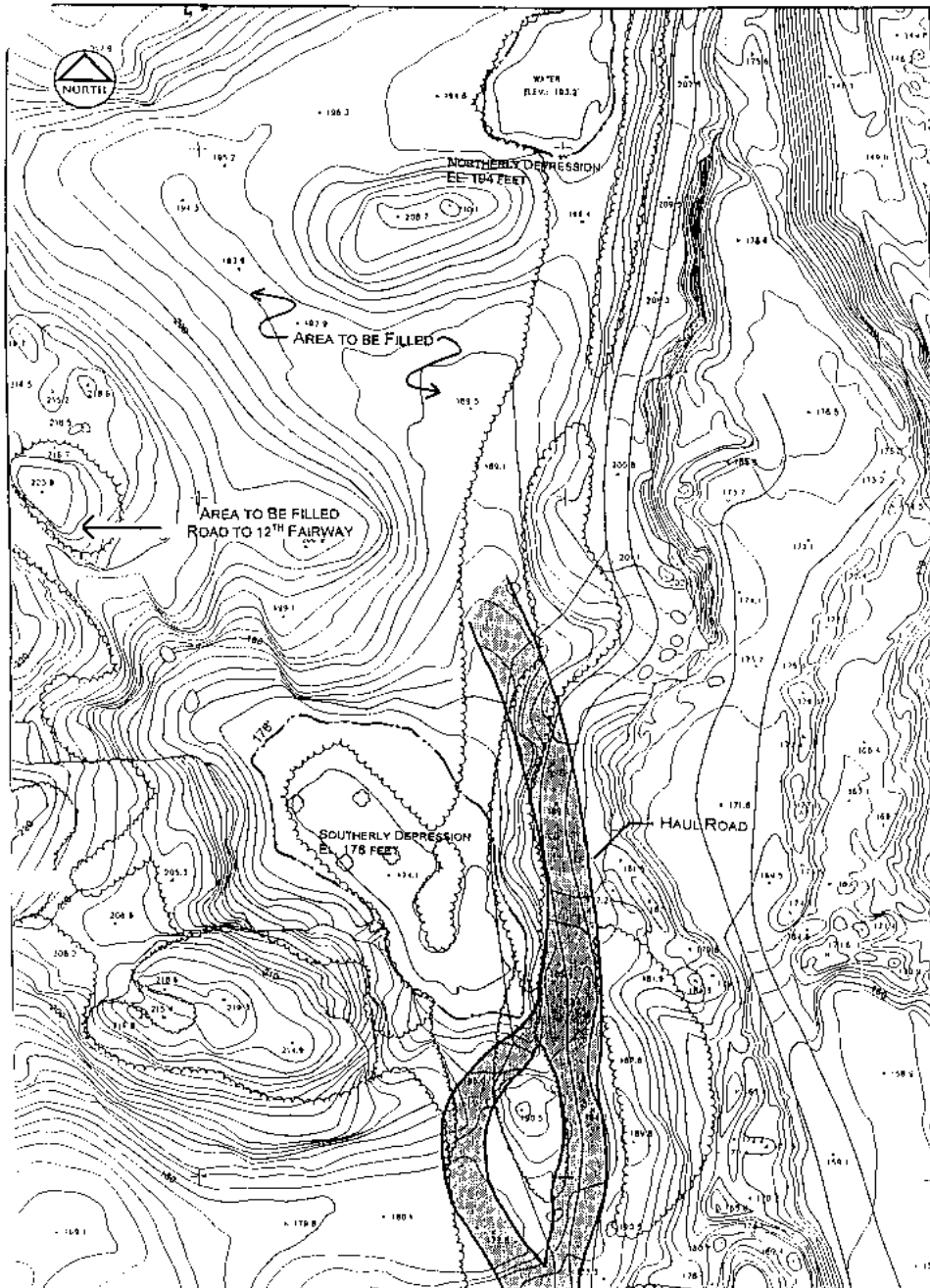


EXHIBIT A

Melrose, Massachusetts
MI Hood Haul Road

DDM Camp Dresser & McKee

Figure 3
Haul Road Location

Thus, two months after fill deliveries to Mount Hood commenced, the City still had not prepared a detailed site plan identifying fill delivery locations,³² nor had the City prepared fill delivery specifications to guide Modern Continental. City records show that the City did not prepare any project-related specifications until May 2001, when CDM prepared plans and specifications for a baseball field at Mount Hood (discussed later in this report).

Finding 7. The City’s contract with Gator did not specify fill delivery schedules or limit fill delivery hours.

The City’s contract with Gator set no limits on the hours during which fill would be delivered to Mount Hood nor on the days on which fill would be delivered. To the contrary, the contract required the City to ensure “uninterrupted,” round-the-clock access to the delivery site. With respect to the fill delivery schedule, Section V(A) of the contract stated:

City shall use its best efforts to ensure uninterrupted, twenty-four (24) hour, seven (7) day per week, access through the property occupied by Waste Management, Inc. [which leased property adjacent to the delivery site from the City].

The City’s decision to allow fill deliveries 24 hours per day, seven days per week would prove to have major negative repercussions. The only way for the City to ensure that all fill deliveries were supervised would have been to post a clerk of the works at the fill delivery site 24 hours per day, seven days per week – an approach that could have absorbed a major share of the fill revenues that the City had intended to use for the playing fields and other improvements. Had the contract specified a fill delivery schedule that met the City’s needs, rather than authorizing an unrestricted fill delivery schedule that reflected the contractor’s preference for unrestricted access to Mount Hood, effective supervision of the project by the City would have been more feasible

³² Project records provided to the Office by Gator and Modern Continental show that Gator developed its own procedures for identifying and referring to specific fill delivery locations on Mount Hood as Area “A,” “B,” “C,” and “D.”

and affordable. As will be discussed in Finding 10, the Park Department's on-site supervision of fill deliveries was inadequate.

Finding 8. The City's contract with Gator lacked the prevailing wage rate schedule required by M.G.L. c. 149, §§26 and 27, the prevailing wage law.

M.G.L. c. 149, §§26 and 27, the prevailing wage law, requires contractors performing work for public construction projects, including transportation of gravel or fill to the site of public works, to pay prevailing wages. The City's July 2000 contract with Gator contained the following provision:

Wage Rate. All services provided by the Contractor and the City pursuant to this contract must be in compliance with Massachusetts General Laws Chapter 149, Section 26 through 27F pertaining to prevailing wage rates as determined by the Massachusetts Department of Labor and Industries.³³

However, the contract did not contain the statutorily required prevailing wage schedule for the services to be provided by Gator.

Under the prevailing wage law, contractors to public awarding authorities are required to provide the awarding authorities with certified payroll reports on a weekly basis. These records must be maintained by the awarding authority for three years following completion of the contract. The Office requested copies of weekly payroll submitted by Gator and from all other Mount Hood contractors providing services subject to the prevailing wage law; however, the City advised the Office that the City had no such records. Gator officials interviewed by the Office acknowledged that no weekly payroll reports had been provided to the City under the July 2000 contract but pointed out that all workers delivering fill to Melrose were Modern Continental's responsibility. They noted that Modern Continental was required by its contract with the CA/T Project to pay prevailing wages to its workers.

³³ This reference to the Department of Labor and Industries (DLI) was obsolete: the DLI was abolished by Chapter 151 of the Acts of 1996. Prevailing wage rates are set by the state Department of Labor and Workforce Development's Division of Occupational Safety.

Finding 9. The City did not obtain the contractually required performance and payment bonds securing Gator’s satisfactory performance and securing full payment of its obligations to the City.

The City’s contract with Gator contained the following bonding provisions:

Bonding. The Contractor shall provide the city with a performance Bond in a form acceptable to the City securing its satisfactory performance, including payment of Liquidated damages,³⁴ of its obligations under the contract. Such bond shall be submitted to the city no later than seventy-two (72) hours after the execution of the contract. The performance bond shall be issued by a surety licensed to issue insurance in the Commonwealth of Massachusetts. The penal amount of the bond shall be equal to one hundred and twenty percent (120%) of the total cost of the contract.³⁵ **Failure to provide said performance bond shall be caused [sic] to immediately terminate the contract.**

The contractor shall also provide the city with a payment Bond in a form satisfactory to the city to secure full payment hereunder. Such bond shall likewise be issued from an insurance company licensed in the Commonwealth of Massachusetts. **Failure to provide said Bond shall be immediate cause for termination of the contract.**

This provision shall be satisfied in the event that an appropriate Bonds [sic] are provided by the Guarantor with a written acknowledgment that said bond would be enforceable by the city. [Emphasis added.]

Gator submitted a copy of a \$200 million performance bond guaranteeing Modern Continental’s performance under a contract with the CA/T Project; however, neither the City nor Gator was a party to this bond.³⁶ Gator also submitted a copy of a payment bond guaranteeing that Modern Continental would pay its own subcontractors and suppliers under Modern Continental’s contract with the CA/T Project; however, neither the City nor Gator was a party to this bond.³⁷ On their face, therefore, these bonds

³⁴ The City’s contract with Gator contained no liquidated damages provision.

³⁵ Since the City’s contract entailed no payment by the City to Gator, the intended amount of the performance bond is unclear.

³⁶ A performance bond is a bond obtained by the contractor, from a surety, that is payable to the awarding authority in the event that the contractor fails to perform under the contract.

³⁷ A payment bond is a bond obtained by the contractor, from a surety, that guarantees payment to materials suppliers and/or subcontractors in the event that the general contractor fails to pay the materials suppliers and/or subcontractors.

provided no protection to the City from Gator's failure to perform under the July 2000 fill contract or from Gator's failure to pay the City for the fill.

On July 25, 2000, the Conservation Commission issued an Order of Conditions for the Mount Hood haul road.

The Order of Conditions³⁸ listed the conditions established by the Conservation Commission for the haul road construction work, including submission of biweekly reports by the "Environmental Monitor" to the Conservation Commission, erosion control measures, proper disposal of petroleum products, and restoration of the ILSF and re-vegetation of the soil slopes. Under the heading of "Notification," the Order of Conditions contained the following directive:

While all activities regulated by this Order are being performed and during the construction phase of this project, an on-site foreman, directing engineer, or designated construction manager, shall have a copy of this Order at the site, familiarize himself with the conditions of this permit, and adhere to such conditions. This Order of Conditions shall be made part of all construction-related documents for this project.

The project was also subject to an Order of Conditions issued by the DEP on July 25, 2000. The DEP Order of Conditions, which was signed by the Conservation Commission, listed general conditions to be met by approved projects, including the requirement that any fill used in connection with the project be clean fill, containing "no trash, refuse, rubbish, or debris." The DEP Order of Conditions also stated that the work had to "conform to the plans and special conditions referenced in this order" and that the Conservation Commission had to be notified in writing of any changes to the plans in order for the Conservation Commission to determine whether the change was significant enough to require the filing of a new NOI.

³⁸ As previously noted, an Order of Conditions is a permit issued by a local Conservation Commission under the Massachusetts Wetlands Protection Act.

Finding 10. Shortly after being ordered to comply with environmental restrictions on the haul road construction work, the Park Department obtained contaminated loam for the golf course from another source.

The Office's review found that loam from a Malden site was transported to Mount Hood in late July of 2000. According to Modern Continental's Foreman, she observed the loam being spread over fill material on the thirteenth fairway by an ELM employee and stockpiled at the City's compost area. She told the Office that she saw bricks, a shopping cart, tires, and gas cans mixed in with the loam, which she said smelled like gasoline. She stated that no one from the City was present at the site on that day; accordingly, she contacted Gator to express concerns about the loam.

Project records obtained by the Office include a field report dated August 17, 2000 prepared by Modern Continental's Foreman documenting her observations at Mount Hood between July 27, 2000 and August 7, 2000. Her report stated, in part:

On July 27, 2000 I observed foreign material that had been dumped and spread out over CA/T material in Area A [the thirteenth hole of the golf course]. The material contained a lot of trash, wood, stumps, brick etc.

The operator in area A running D-3 dozer for Environmental Landscaping [ELM] stated to me that it was free loam coming from a development in Malden to Mt. Hood per [the Parks Superintendent]. . . .

Two triaxles hauling material continued to dump into a stockpile in compost area.

At this point I took pictures and contacted. . . "Gator." Gator contacted City of Melrose – see enclosed letter with test results of material. I received documents on 8-15-00.

Gator raised strong objections to the material in a letter to the Parks Superintendent dated July 27, 2000. The Parks Superintendent then hired an environmental consultant, Simmons Environmental Services, Inc., to test the loam. Project records include a letter dated August 4, 2000 from Simmons Environmental Services, Inc. to the Parks Superintendent summarizing the results of the tests conducted on three composite soil samples from the loam stockpile. The letter stated, in part:

[T]he soil analyses detected elevated concentrations of TPHs [total petroleum hydrocarbons] and lead that were above the applicable Reportable Concentration RC-S1 as defined in the Massachusetts Contingency Plan (MCP) codified as 310 CMR 40.0000. In addition, low concentrations of pesticides and other metals were detected, but were below the MCP RC-S1 standards. Based upon the results of the soil analyses, SIMMONS does not recommend acceptance of this soil by the City of Melrose. [Emphasis added.]

The Modern Continental Foreman's August 17, 2000 field report documented her observation that the stockpiled loam was transported off site by Greenwood and Sons during the period of August 4-7, 2000:

On August 4, 2000 – Observed material being transported from stockpile off site. One triaxle and 966 loader Greenwood & Sons contractor for city.

On August 7, 2000 – Material continued to be loaded out. End of day material in stockpile was gone.

The Foreman's report made no reference to the loam that had been spread in the thirteenth hole area.

City records include two invoices totaling \$12,645 from Greenwood and Sons for work performed between July 18, 2000 and August 14, 2000 and an invoice from ELM for \$24,835 for construction work on the thirteenth hole. Because the invoices did not provide detailed information on the services provided and City records contained no executed contracts corresponding to these invoices, the precise cost to the project of transporting the loam from the Malden development, spreading the loam on the golf course, and subsequently removing the stockpiled loam cannot be determined from the available records. City records also contained a \$1,943 invoice to the Park Department from Simmons Environmental Services for the loam tests.

The Park Department forwarded all four invoices to Gator, which paid them using fill revenues owed to the City. As in the case of the services provided by CDM over the

previous months, City funds were used to pay these contractors without an appropriation from the Board of Aldermen and without written contracts.³⁹

Finding 11. Supervision of the fill deliveries at Mount Hood was inadequate.

The July 2000 contract with Gator authorized fill deliveries to Mount Hood 24 hours per day, seven days per week. Project records show that fill deliveries took place at varying times during the day and overnight, on weekdays and on weekends. Modern Continental's Foreman told the Office that fill deliveries took place over both a day shift and a night shift for the first six months of deliveries. For the next five months, deliveries took place on the night shift with occasional day shifts. In the final four weeks of deliveries, in June and July 2001, fill deliveries took place during the day shift.

Massive quantities of fill were delivered to Mount Hood on this variable schedule: City records show that more than 100 truckloads of fill were delivered every day during high-activity months.⁴⁰ Modern Continental's variable and often intensive fill delivery schedule meant that full-time supervision of the contract by the City was logistically difficult and financially burdensome.

Under the July 2000 contract with Gator, the City was required to hire a clerk of the works/environmental monitor who would supervise fill operations on a daily basis, report on a daily basis to the City Engineer, and submit biweekly status reports to the Melrose Conservation Commission. The contract stated:

Supervision. The City shall hire a Clerk of the Works/Environmental Monitor who shall supervise all operations on a daily basis in order to ensure compliance with all of the terms and conditions set forth in this contract. Said Clerk of the Works shall act as an Agent of the City of Melrose; he or she shall have the authority upon written notice to Contractor identifying cause and source to halt delivery of material for a period of up to seventy-two (72) hours in the event that there is any

³⁹ Finding 12 addresses the Park Department's procurements of supplies and services in apparent violation of multiple statutory requirements.

⁴⁰ For example, City records show that 183 truckloads of fill were delivered to Mount Hood on June 21, 2000, before the City had even signed the July 2000 contract with Gator.

contamination or a credible threat of contamination on the site or any other substantial or material breach of the terms of this Agreement by the Contractor. Said Clerk shall report not less than daily his observations to the City Engineer or his designee and shall submit written bi-weekly status reports to the Melrose Conservation Committee [*sic*] with a copy to the Contractor. The appointment of said clerk shall be in accordance with all ordinances of the City of Melrose.

Although the Park Department initially hired ELM to provide clerk of the works services, the Park Department terminated this arrangement after six months. For the next seven months, no clerk of the works was assigned to supervise the fill deliveries.

In an interview with the Office, the former Mayor stated that he had assumed that the fill deliveries were being supervised. He stated that, in retrospect, the Park Superintendent could not have been expected to monitor the fill deliveries on Modern Continental's schedule. He noted that the lack of a clerk of the works for the project was later corrected.

Finding 11a. The Park Department did not collect and maintain shipping tickets corresponding to fill deliveries, as required by the July 2000 contract with Gator.

Project records show that beginning on May 3, 2000 (the first day of fill deliveries to Mount Hood), Modern Continental maintained detailed logs of truck departures from the excavation site, arrivals at Mount Hood, departures from Mount Hood, and arrivals back at the excavation site.⁴¹ Under the July 2000 contract, Gator's payments to the City were to be calculated on the basis of 33 tons of fill per "dump trailer load" and 26 tons per "trixle load." The contract specified the following procedure for tracking fill deliveries and documenting Gator's financial obligations to the City:

Measurement/payment will be calculated from shipping tickets as generated and signed by Guarantor [Modern Continental] at Project

⁴¹ The unexecuted Addendum forwarded to the City by Gator on May 5, 2000 contained a provision stating that all trucks to the site would "submit a signed slip from CA/T and Modern to verify origin" and that these slips would be used "for payment purposes." As noted earlier, the Addendum was not signed by the City.

jobsite and collected and submitted by the City with the City's applications for payment. No payment will be made for unexecuted or missing shipping tickets.

Thus, it appears that the tickets were intended to serve as the City's documentation of the number and the type of trucks delivering fill to Mount Hood and to enable the City to compute Gator's financial obligations to the City. As the contract provision states, the City was supposed to submit the tickets along with its payment requisitions to Gator.

However, the Office's review shows that the Park Department did not retain the shipping tickets collected at the fill delivery site. Although ELM reportedly collected the shipping tickets from trucks arriving at Mount Hood, the tickets were turned over to Modern Continental rather than being retained by the Park Department and submitted to Gator along with requisitions for payment. After ELM's clerk of the works services were discontinued, no one collected tickets on behalf of the Park Department until May 2001, when the Park Commission hired a new clerk of the works. This individual supervised the project until fill deliveries ceased in July 2001 and collected some tickets during this period.

Project records show that shipping tickets were collected from the trucks arriving at Mount Hood. In interviews with the Office, project participants described the ticket system as follows: before leaving the CA/T Project excavation site, each truck was given a numbered ticket by Modern Continental. The ticket showed the name of the trucking company,⁴² truck number, truck type (tractor trailer or triaxle), excavation site number, excavation date, shift number, and time of the truck's departure from the excavation site. When the truck arrived at Mount Hood, the arrival time was marked on the ticket, and the ticket was collected by someone at the site, such as ELM, a Park Department employee, or Modern Continental's Foreman. The Foreman advised the Office that she retained all tickets collected from trucks arriving at the site, whether or not the tickets were collected by a representative of the Park Department or by Modern Continental. According to the Foreman, she called Modern Continental's field personnel

⁴² According to Modern Continental officials, Modern Continental had subcontracts with private trucking companies to deliver the fill to Mount Hood.

in Boston at the end of her shift in order to reconcile the number of tickets collected at Mount Hood during the shift with the information recorded at the excavation site in Boston. She stated that she then delivered the tickets to Modern Continental's Boston office. CA/T Project officials advised the Office that Modern Continental submitted the tickets to the CA/T Project, which recorded the ticket information in a log and returned the tickets to Modern Continental.

City records provided to the Office show that the Park Department did not maintain its own logs or other records of fill deliveries until May 2001, when the City hired a new clerk of the works. An independent audit commissioned by the Board of Aldermen in early 2001 (discussed later in this report) found that the Park Department did not retain or make copies of the shipping tickets collected at the fill delivery site during the nine-month audit period of May 2000 to January 2001. The Office's review of the City's fill delivery records from the period of January 2001 through June 2001 identified tickets corresponding to nine days in May 2001. In interviews with the Office, the former Parks Superintendent and ELM's President acknowledged that the Park Department did not implement systematic monitoring and documentation procedures but stated that they used informal methods of tracking and verifying the number and type of trucks arriving at Mount Hood.

Finding 11b. The Park Department directed ELM to provide clerk of the works services without establishing systematic oversight procedures or executing a written contract specifying ELM's hours, duties, and compensation.

ELM submitted a one-page proposal to the Parks Superintendent on April 29, 2000 to provide clerk of the works services for the fill delivery project at a rate of \$900 per week. The proposal outlined a series of tasks but did not specify the number of hours on which the weekly rate of \$900 was premised.

The Park Department did not execute a written contract with ELM. However, the Office's review indicates that the Park Department did hire ELM in May 2000 to provide

clerk of the works services as well as other project-related services. Between May and October 2000, ELM submitted two invoices to the Park Department that included charges totaling \$28,184 for clerk of the works services. ELM's first invoice, which was dated August 11, 2000 and covered a 13-week period between May 6, 2000⁴³ and October 1, 2000, contained charges of \$11,640 for "day/night clerk" services — approximately \$900 per week — but did not specify an hourly rate or the total hours billed for these services. ELM's second invoice, which was dated October 31, 2000 and covered the 10-week period between August 1, 2000 and October 6, 2000, billed the Park Department \$16,544 — approximately \$1,650 per week — for 661.75 hours of "day/night clerk" services at a rate of \$25 per hour. The second invoice thus billed an average of 66 hours per week for clerk of the works services over the ten weeks between August 1, 2000 and October 6, 2000.⁴⁴

In an interview with the Office, ELM's President confirmed that ELM billed the Park Department and was paid by Gator for a variety of tasks performed at the direction of the Park Department, including monitoring fill deliveries and collecting fill delivery tickets from Modern Continental's trucks, hiring a private security company to provide security services at the site, paying "safety starters" that provided shuttle service to golfers in a fill-impacted area between the twelfth and thirteenth holes of the golf course, reporting on erosion control measures,⁴⁵ and performing construction work on the golf course. He

⁴³ ELM's first invoice did not show the date on which services commenced. ELM's President advised the Office that ELM began providing these services on May 6, 2000.

⁴⁴ According to ELM's President, the high number of hours billed for clerk of the works services in this invoice reflected the work performed by three or four people simultaneously assigned by ELM to the project at certain times during the period covered by the invoice.

⁴⁵ City records reviewed by the Office included several handwritten site reports prepared by ELM during this period. City officials and other project participants interviewed by the Office provided conflicting accounts of the nature and extent of reporting by ELM during this period. In the absence of a written contract or other document specifying the scope of ELM's clerk of the works duties, the Office was unable to determine whether ELM's assigned tasks included preparation of the biweekly status reports referenced in the contract between the City and Gator. The Office was also unable to reconcile the discrepant accounts offered by project participants.

acknowledged that all services were provided by ELM without a written contract. He stated that ELM billed the Park Department on a time and materials basis and took the risk that the invoices might not be paid.

The Park Department's unwritten arrangement with ELM for clerk of the works services and related project services⁴⁶ did not comply with Chapter 124 of the Acts of 1936, the enabling legislation for Mount Hood, which requires Mount Hood expenditures to be appropriated by the Board of Aldermen, or with M.G.L. c. 43, §29, which requires all contracts over \$5,000 to be in writing and approved by the department head and the Mayor.

City records show that ELM billed a total of \$97,717 for the above-cited clerk of the works, construction, and other services between August 11, 2000 and July 30, 2001. Of this amount, the Park Department forwarded ELM invoices totaling \$75,760 to Gator, which paid them out of the fill revenues owed to the City. Later ELM invoices totaling \$17,148 were paid directly by the City. As of August 31, 2001, a \$4,810 invoice from ELM for construction services remained unpaid.

Finding 11c. For seven months, trucks delivered more than 321,000 tons of fill to Mount Hood without supervision by a clerk of the works.

City records show, and ELM's President confirmed, that ELM provided no clerk of the works services to the Park Department after October 6, 2000. Asked why ELM's clerk of the works services were discontinued, the former Parks Superintendent stated that Modern Continental's round-the-clock fill deliveries were difficult for the Park Department's staff to cover; and paying ELM to work both days and nights proved to be very expensive, raising concerns that the cost of supervision might exceed the fill revenues. Thus, for approximately seven months beginning on October 6, 2000, no clerk of the works was assigned to monitor the fill delivery project on behalf of the Park

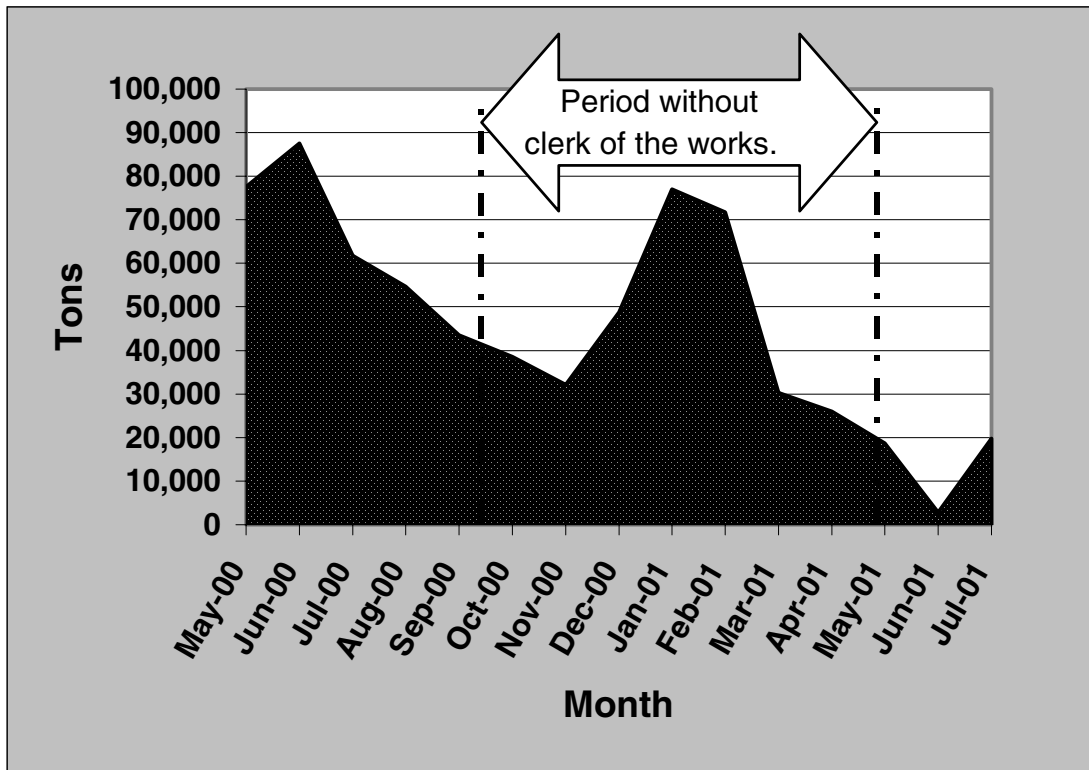
⁴⁶ ELM's invoices to the Park Department for construction services during the fill delivery period totaled \$59,905. The Park Department's apparently illegal procurements of construction services from ELM and other contractors are discussed later in this report.

Department. Project records show that a new clerk of the works began work on May 14, 2001 and that the Park Commission executed a written contract with the new clerk of the works on May 16, 2001.

Both the former Parks Superintendent and the park maintenance worker employed by the Park Department told the Office that they attempted to supervise the fill deliveries during the period of October 2000 to May 2001 to the extent they were able and that the fill delivery project often required them to work overtime, in addition to performing their regular duties. In an interview, Modern Continental's Foreman told the Office that during this seven-month period when the Park Department had no clerk of the works, her practice was to collect the tickets and log the deliveries that had taken place over the night shift when she arrived for the day shift.

Massive quantities of fill were delivered to Mount Hood over this seven-month period of unsupervised fill deliveries: approximately 321,208 tons, which amounted to nearly half of the total amount of fill delivered to Mount Hood, according to City records. Figure 1 shows the fill delivered to Mount Hood during each month of the project, based on City records. As the figure shows, fill deliveries declined significantly in the fall of 2000, when the Park Department discontinued ELM's clerk of the works services, but they increased again beginning in December 2000, peaking at more than 75,000 tons delivered in February 2001. Modern Continental's excavation logs show that trucks departed for Mount Hood approximately every five minutes on peak fill delivery days.

Figure 2.
Fill Deliveries to Mount Hood By Month



Source: City of Melrose records.

At a meeting on May 15, 2001, the Park Commission voted to approve a ten-week contract with the new clerk of the works requiring a minimum of 40 hours of service per week at a compensation rate of \$1,400 per week, which amounted to \$35 per hour. The contract, which was executed on May 16, 2001, required the clerk of the works to work during a “core of time” at the construction site between 4 a.m. and 8 a.m. and then report to the Public Works Superintendent for daily reassignment during the balance of the workday.⁴⁷ The contract scope of services included a range of oversight tasks, including on-site observations of the progress and quality of the work, monitoring of the contractor’s construction schedules, maintaining records at the construction site,

⁴⁷ Clerk of the works services in connection with a public works construction project are not subject to any competitive procurement law. Although the value of the contract exceeded \$5,000, the Mayor did not sign the clerk of the works contract, as required by M.G.L. c. 43, §29.

maintaining a “logbook” of activities at the site, submitting daily written reports to the Superintendent of Public Works, and assisting with inspections. As Figure 1 shows, fill deliveries had declined to the lowest fill amounts quantities since the inception of the project when the new clerk of the works began work.

City records show that the new clerk of the works maintained a log of fill deliveries and prepared written reports containing site observations, as required by the contract, until early June 2001.⁴⁸ In total, the new clerk of the works was paid \$19,600.

As noted earlier, the contract with Gator required the City to hire a full-time clerk of the works with a clearly defined set of responsibilities, including site control, monitoring of the type and placement of delivered fill, collection and verification of delivery slips, documentation, and record-keeping. As has been discussed, the Park Department did not provide the staff-intensive level of supervision necessitated by the round-the-clock fill deliveries authorized by the City’s contract with Gator. The Park Department’s makeshift approach to supervision was inadequate to protect the City’s interests on the fill delivery project – and would have been inadequate on any major public works project.

ELM and the clerk of the works hired in May 2001 were paid a total of \$47,784 to supervise the project. Because of the unrestricted fill delivery schedule authorized by the July 2000 contract, the cost of full-time clerk of the works services would have consumed a much larger share of the fill revenues owed by Gator. Correspondingly, the fill revenues available to pay for site preparation work or to fund the promised playing fields and golf course improvements would have been substantially reduced.

Two weeks after executing the contract with Gator, the Park Commission voted to issue a request for proposals (RFP) for clean fill at Mount Hood.

According to the minutes of a Park Commission meeting held on July 25, 2000, the Parks Superintendent told the Commission at that meeting that he had recommended to the Mayor that a competitive solicitation for fill be issued when the amount of fill

⁴⁸ City records show that fill deliveries ceased on July 20, 2001.

delivered to Mount Hood approached 300,000 tons. (As previously discussed, the City's contract with Gator required the City to accept not less than 300,000 tons of fill and provided that the City could, at its option, accept up to one million tons.) The Parks Superintendent advised the Commission that the Mayor had agreed with his recommendation, the minutes stated. The Park Commission then voted to issue an RFP to accept clean fill at Mount Hood when the amount of delivered fill "approached" 300,000 tons.

In an interview with the Office, the former Mayor stated that, although the City Solicitor had advised him that the contract with Gator did not require bidding, he ordered the RFP in order to dispel the impression that the City was not obtaining a good deal on the fill. He stated that he believed that a competitive process would help to restore public trust in the project.

In August 2000, the Parks Superintendent signed a contract with CDM to prepare a site plan of modifications to the golf course and of the proposed athletic fields.

Prior to August 2000, CDM had provided services to the Park Department under a contract between CDM and Gator (discussed in the previous Finding 2a). However, on August 4, 2000, the Parks Superintendent signed a \$25,000 contract with CDM that required CDM to:

Meet with OWNER to discuss project objectives and obtain input for recommended revisions to the Master Plan for conceptual design of Athletic Fields and Recreation Improvements at Mt. Hood Memorial Park and Golf Course.⁴⁹ The overall initial intent is to create an illustrative conceptual site plan that provides the OWNER with target final grade and related finish subgrade elevations for ongoing earth moving and filling operations. Delivery of fill materials, quality control and compaction activities are hereby presumed to be proper for intended site uses and will be performed as approved by OWNER.

⁴⁹ However, CDM officials advised the Office that CDM's work products under this contract did not include recommendations for Master Plan revisions.

The contract also required CDM to document existing physical conditions at the site, assess the need for and extent of any relative wetland delineation survey, and develop a “preliminary illustrative conceptual site plan for Phase I work. . . .”

In an interview, CDM officials advised the Office that the scope of the contract entailed further development of the conceptual site plan that CDM had already prepared and for which CDM had received payment under the May 1, 2000 contract with Gator.

The Park Department advertised for fill proposals in September 2000 but received no responses.

On September 11, 2000 – approximately two months after executing the July 12, 2000 contract with Gator – the Park Department published a solicitation in the *Goods and Services Bulletin*⁵⁰ for “procurement of clean fill for golf course construction” under a 12-month contract for up to 350,000 tons of clean fill. The request for proposals (RFP), which was issued by the Park Department on behalf of the Park Commission, did not include the convoluted reimbursement procedure, the conditional payment provision, or the conditional indemnification provision contained in the July 12, 2000 contract between the City and Gator.

Moreover, the RFP required the contractor to assume logistical and financial responsibility for a number of tasks that were either unspecified or specified as City obligations in the June 2000 contract with Gator. For example, the RFP explicitly stated that the contractor would be required to control mud and dirt generated by hauling activities and, if deemed necessary by the City, to remove access roads at the completion of the contract. The July 2000 contract with Gator did not address these issues. In addition, the RFP stated that the contractor would be responsible for dust control and lighting, whereas the July 2000 contract assigned these responsibilities to the City. In these respects, a contract executed pursuant to the RFP would have been more advantageous to the City than the July 2000 contract.

⁵⁰ *The Goods and Services Bulletin*, which advertises public contracting opportunities in Massachusetts, is published by the Secretary of the Commonwealth.

However, the Park Department reportedly received no proposals in response to the RFP, and Gator continued to deliver fill under the July 2000 contract.⁵¹ According to the former Mayor, the RFP process showed that there was no other fill available to the City that would generate more revenue than the amount Gator was required to pay.

By the time the Park Department issued the RFP, more than the 300,000 tons of fill had been delivered to Mount Hood under the July 2000 contract with Gator. Although the contract allowed the City to accept additional fill up to a total of one million tons “at its option,” the City was under no obligation to do so. At this point, the City could have taken steps to renegotiate its contract with Gator to better protect the City’s interests. Instead, the City elected to continue accepting fill under the terms of the July 2000 contract.

CDM submitted a Notice of Intent to the Conservation Commission in September 2000.

On September 21, 2000, CDM submitted a Notice of Intent (NOI) to the Conservation Commission on behalf of the Park Department to authorize clearing, grading, and filling “to accommodate new sports fields and relocate fairways on the golf course.” According to the NOI, some work would take place within the 100-foot buffer zone to three wetland resource areas located in the twelfth fairway area.⁵² The NOI contained the following description of the project to be constructed:

- One baseball field;
- One soccer field;
- One parking lot for the proposed fields;
- Access road improvements;

⁵¹ Gator officials advised the Office that Gator prepared a proposal in response to the RFP; however, when Gator’s Principal arrived at the designated location for proposal submissions and learned that there were no other proposers, Gator’s Principal decided not to submit the proposal.

⁵² The twelfth fairway was not denoted for fill deliveries on the map attached to the City’s July 2000 contract with Gator.

- Drainage facilities; and
- Grading and contouring to relocate the twelfth tee and green.

In October and November of 2000, CDM submitted additional information refining the scope of work. An October 19, 2000 letter from CDM stated that the work within the 100-foot buffer zone to Wetlands 2 and 3 would be limited to “clearing; placing fill; grading; placing drainage material and loam; seeding the loam; and installing a drain line to maintain on-site drainage patterns.” The other project work, including construction of a baseball field and associated grading, a parking lot, and a detention basin, would not impact the buffer zone, according to CDM’s letter.

A November 2, 2000 conceptual site plan filed with the Conservation Commission was stamped by CDM and labeled: “Plan for Permitting Purposes Only.”⁵³ One of the improvements shown on the conceptual site plan was a drainpipe, 24 inches in diameter, extending from Wetland 2 to a field drain and from the field drain to Wetland 3. According to an internal CDM memorandum dated November 2, 2000, the pipe length between Wetlands 2 and 3 was estimated at 540 feet. Subsequent problems concerning this drainpipe are discussed later in this report.

On November 2, 2000, the Conservation Commission issued an Order of Conditions in response to the revised NOI. The Order spelled out nine conditions governing the work outlined in the NOI, including required erosion control measures, limitations on use of pesticides and fertilizers, and measures relating to the storm drainage system. The Order of Conditions stated that the contractor responsible for filling and grading activities would be “jointly responsible” for any violation of the Order as well as any associated penalties.

It appears that the Conservation Commission incorrectly believed that the project was being supervised by a clerk of the works. The Order of Conditions stated:

⁵³ According to CDM representatives interviewed by the Office, no fill was delivered to the twelfth fairway area prior to the preparation of the November 2000 conceptual site plan.

A written report may be requested from the Clerk of the Works from time to time by the Melrose Conservation Commission and submitted to the Melrose Conservation Commission within 7 days.

However, when the Order of Conditions was issued on November 2, 2000, the project lacked a designated clerk of the works. As previously discussed, no clerk of the works was assigned to supervise the project until the following May.

The nine conditions cited in the Order of Conditions also included reporting and documentation requirements that, had they been adhered to by the Park Department, would have strengthened project controls.⁵⁴ However, City records show that several key conditions were not met. For example, the Order of Conditions required preparation of construction documents – i.e., detailed plans showing a 100 percent complete design – and submission of these documents to the Conservation Commission before any work could begin. The Order of Conditions stated:

No work shall begin on site until the Melrose Conservation Commission has received copies of the construction documents to be used for field construction.

Any variance between the conceptual site plan and the final design documents will require the filing of a revised notice of intent.

However, City records contain no evidence that the Park Department ever prepared additional designs beyond the conceptual site plan prepared by CDM or that the Park Department submitted construction documents of any kind to the Conservation Commission.

The Order of Conditions also contained the following requirement:

While all activities regulated by this Order are being performed and during the construction phase of this project, an on-site foreman, directing

⁵⁴ As in the case of the previous Order of Conditions for the haul road, the project described in the September 2000 NOI was subject to DEP conditions as well as the Order of Conditions issued by the Conservation Commission. As before, the November 2000 DEP Order of Conditions required the work to conform to the “plans and special conditions referenced in this order” and required that the Conservation Commission be notified in writing about any change to such plans.

engineer, or designated construction manager shall have a copy of this Order at the site, familiarize himself or herself with the conditions of this permit, and adhere to such conditions.

As previously discussed, the project was administered by the Parks Superintendent, with assistance from the park maintenance worker assigned to the Park Department, between October 2000 and May 2001; no clerk of the works was assigned to supervise the project during this period.

The Conservation Commission issued a second Cease and Desist Order in February 2001.

At its meeting on February 1, 2001, the Conservation Commission discussed environmental problems caused by the fill in the twelfth fairway area of Mount Hood. According to the meeting minutes, some of the streams and wetlands in the area had been contaminated with silt. Accordingly, the Conservation Commission issued a “12th Fairway Enforcement Order” prohibiting further filling operations within 100 feet of Wetlands 2 and 3 and on or over the steeply sloped fill areas between the twelfth fairway and the area designated for the future soccer field. The Order specified ten requirements, including fortification of erosion controls and installation of a rock retaining wall adjacent to Wetland 2, compliance inspections by Conservation Commission members, and the preparation by a professional wetland scientist of an environmental assessment and wetland restoration plan for all resource areas abutting the project.⁵⁵

The City commissioned an audit of Mount Hood in early 2001.

At a meeting of the Board of Aldermen on February 7, 2001, an alderman introduced an order requesting a full audit of Mount Hood municipal receipts, according to the meeting minutes. Pursuant to this order, the City commissioned the services of a CPA firm, Powers & Sullivan, to examine the contract with ELM to manage Mount Hood and the

⁵⁵ As will be discussed, funds were appropriated for this purpose in April 2001, and a contract with a wetland specialist, Epsilon Associates, Inc., for preparation of a wetland restoration plan was executed in August 2001.

contract with Gator for acceptance of fill at Mount Hood.⁵⁶ With respect to the contract with Gator, the engagement letter identified two major areas for examination:

- Revenue activity related to the City's contract with Gator from inception through January 31, 2001; and
- Internal controls over the revenue generated at Mount Hood as they related to reporting, record-keeping, and fiscal safeguards.

Beginning in early 2001, Gator repeatedly requested a "closure plan" from the City showing the remaining scope of work at Mount Hood.

Documents provided to the Office by Gator indicate that Gator requested a complete closure plan for all of the fill areas at Mount Hood in a January 30, 2001 letter to the Parks Superintendent, copied to the Mayor and the Public Works Superintendent. The letter from Gator's Principal stated:

Gator Hood, LLC has recently received notice that within the next 30-45 days, all excavation on the Modern Continental/CA/T Contract #C17A1 will be completed. Subsequently, all deliveries of CA/T material to MT Hood shall cease within the same period. In order to facilitate a seamless transition, please furnish Gator Hood, LLC with a complete closure plan for all of the fill areas. Please take some time to review the project and compile all necessary information. Within 15 days of your receipt of his notice, please furnish Gator with a draft closure plan for our review. Thank you for your attention to this matter.

Beginning in early February 2001, Gator directed its written and e-mail correspondence to the Public Works Superintendent, while copying the same correspondence to the Mayor and the Parks Superintendent. On February 13, 2001, a Gator Principal wrote to the Public Works Superintendent, with copies to the Mayor and the Parks

⁵⁶ The engagement letter for the work was prepared and submitted to the City by Powers & Sullivan on February 23, 2001 but was not signed by the City until March 23, 2001, by which time the draft audit was nearing completion. Although the \$12,000 fee specified in the engagement letter exceeded the \$5,000 threshold contained in M.G.L. c. 43, §29 for contracts requiring the Mayor's signature, the engagement letter was signed only by the City Auditor. City records show that Powers & Sullivan submitted an \$8,000 invoice to the City on May 25, 2001 for its audit services pertaining to the City's fill delivery contract with Gator.

Superintendent, notifying him that deliveries of CA/T material would cease on or about March 15, 2001. The letter stated:

[I]t is imperative that Gator receives a closure plan of the entire facility ASAP. Gator would like to review the proposed closure plan prior to its completion, in order to accurately determine our scope of work.

Gator's letter cited a series of outstanding issues affecting the remaining fill operation, including the Conservation Commission's Cease and Desist Order restricting fill deliveries in the twelfth fairway area, drainage-related construction being undertaken on the twelfth fairway (discussed in the next finding), and Gator's need for direction as to where to place fill that was being delivered at an average rate of 2,800 tons per night.

Documents provided by Gator show that the Gator Principal wrote to the Public Works Superintendent again on March 9, 2001, with copies to the Mayor and the Parks Superintendent, advising him that "regular delivery" of CA/T material to Mount Hood would cease on March 14, 2001 but that "sporadic deliveries" would continue through May 1, 2001. The letter stated that the total remaining fill amounted to 60,000 tons and reiterated Gator's need for direction:

We still await a "punch list" of closure items to be performed prior to final demobilization.

On April 10, 2001, a Gator Principal sent a letter to the Public Works Superintendent requesting – for the fourth time – a closure plan for the Mount Hood fill operation. The letter stated:

Said closure plan should include, but not be limited to, elevations and limits of material. It is imperative that Gator/Modern fully and clearly understand what is required of them over the remaining three weeks of the contract.

Gator officials interviewed by the Office stated that the City never provided the requested closure plan. City records reviewed by the Office contained no documents responding to Gator's requests.

Finding 12. The Park Department authorized Gator to use funds owed to the City to pay for apparently illegal Park Department procurements of supplies and services at Mount Hood.

As has been discussed, the Park Department forwarded invoices to Gator for payment at various points during the fill delivery project. Gator then returned these invoices to the Park Department along with notification that Gator had paid the invoices and deducted the payments from Gator's calculations of its payment obligations to the City. The former Parks Superintendent told the Office that, from the inception of the project, the Park Department maintained detailed records tracking the amount of fill delivered, the dollar amount of the invoices from City vendors forwarded to and paid by Gator, and Gator's outstanding financial obligation to the City. Although the City advised the Office that it was unable to locate hard copies of any such records in response to the Office's request, the Office's examination of disks provided by the City containing some Park Department computer files confirmed that the Park Department maintained detailed spreadsheets tracking this information from the inception of the project until early March 2001.⁵⁷ The Park Department appears to have relied on Modern Continental's logs to generate this information.

Between May 20, 2000 and March 29, 2001, the total dollar value of the invoices that Gator sent back to the Park Department with notification that they had been paid out of funds owed to the City was \$278,308. The Office's review of these invoices revealed that they included payments totaling \$31,342 for supplies and services that the Park Department apparently procured from four contracts that had been competitively bid by the Department of Public Works.⁵⁸ However, the invoices paid by Gator also reflected expenditures of City funds that violated numerous statutory requirements. Table 2 is a partial list of Gator payments to Park Department vendors from funds owed to the City. The supplies and services listed in Table 2 were procured by the Park Department in apparent violation of one or more of the following laws:

⁵⁷ The computer files did not contain project information beyond that date.

⁵⁸ These contracts, which contain estimated quantities, specify that any City department may procure the contracted supplies or services at the bid prices listed in the contracts.

- **Chapter 124 of the Acts of 1936, §3** requires all income from Mount Hood to be paid to the City Treasurer and kept in a separate account. Appropriations for the development, maintenance, and operation of Mount Hood must be made by the Board of Aldermen, upon recommendation by the Park Commission and subject to the approval of the Mayor.
- **M.G.L. c. 43, §29** requires all contracts over \$5,000 to be in writing and approved by the department head and the Mayor.
- **M.G.L. c. 30, §39M** requires advertised, sealed bidding for public works construction contracts estimated to cost more than \$10,000. **M.G.L. c. 30B** bid procedures may be used for construction contracts estimated to cost more than \$10,000 but not more than \$25,000.
- **M.G.L. c. 149, §§26 and 27** requires contractors performing work for public construction projects, including the transportation of fill to the site of public works or the removal of surplus gravel or fill from the site, to pay prevailing wages. Before soliciting bids for any public construction project, an awarding authority must obtain a prevailing wage sheet. Awarding authorities are responsible for monitoring contractors' compliance with the prevailing wage law, collecting weekly payroll records, and maintaining these records for three years following completion of the construction project. Prevailing wage requirements also apply to all equipment leased or rented by an awarding authority to be engaged in public works.⁵⁹ The prevailing wage law has no minimum dollar threshold.

It should be noted that Table 2 provides only a partial summary of apparent violations of procurement and contracting laws. All of the listed procurements violated the Mount Hood enabling statute (Chapter 124 of the Acts of 1936, §3). In addition, public construction contracts are subject to other statutory requirements not listed below or in Table 2, including provisions governing payment procedures (M.G.L. c. 44, §31C); change orders (M.G.L. c. 30, §39F(1)(a)-(h)); claims (M.G.L. c. 30, §39O); submission of payment bonds (M.G.L. c. 149, §29); financial record-keeping by contractors (M.G.L. c. 30, §39R(b)(1)-(3)); and certification of tax compliance (M.G.L. c. 62C, §49A(6)).

⁵⁹ M.G.L. c. 149, §27F.

**Table 2.
Gator Payments to Park Department Vendors from Fill Revenues:
Partial Summary of Apparent Procurement Violations by the Park Department**

Invoice Date	Vendor	Supplies/Services	Gator Payment from Funds Owed to City	VIOLATION OF:		
				M.G.L. c. 43, §29 (Written contract)	M.G.L. c. 30, §39M or M.G.L. c. 30B, §5 (Bidding)	M.G.L. c. 149, §§26-27 (Prevailing wage)
6/30/00	J.M. Cook Co., Inc.	Land clearing	\$12,000	X	X	X
7/19/00	S.R. Dodge, Inc.	Installation of volt service	7,750	X		X
8/1/00	Camp Dresser & McKee, Inc.	Engineering services	20,100	X ⁽¹⁾		
8/1/00	Greenwood and Sons	Machine rentals	5,375	X		
8/1/00	Nitro Dynamics, Inc.	Drilling, blasting ledge	7,100	X		X
8/11/00	Environmental Landscape Management, Inc.	Clerk of the works and other services	20,008	X		
8/11/00	Environmental Landscape Management, Inc.	Hole #13 construction	24,835	X	X	X
8/14/00	Greenwood and Sons	Machine rentals	7,270	X		
10/2/00	MDR Construction Co., Inc.	Water truck rental	9,900	X		
10/31/00	Environmental Landscape Management, Inc.	Clerk of the works and other services	17,804	X		
11/1/00	Millennium Maintenance and Power Sweeping	Construction sweeping	10,455	X	X	X
11/16/00	Nitro Dynamics, Inc.	Drilling, blasting ledge	22,900	X	X	X
12/7/00	Greenwood and Sons	Hauling, dozer rental	5,340	X		X
1/12/01	Greenwood and Sons	Construction services	5,698	X		X
3/2/01 -- 3/15/01	Dami and Sons	Construction services	23,188	X	X	X
3/28/01	Environmental Landscape Management, Inc.	Ballfield irrigation installation	13,112	X	X	X
		Totals	\$221,692	\$221,692	\$106,490	\$141,235

Source: City of Melrose records.

(1) This invoice, paid from funds owed to the City, was addressed to Gator and referenced CDM's May 1, 2000 contract with Gator. (See the previous Finding 2b.)

Finding 13. Lack of planning, supervision, and documentation by the Park Department contributed to the failure of a drainpipe installed on the twelfth fairway.

The November 2000 conceptual site plan depicted a proposed drainpipe that would drain water from Wetland 2 to Wetland 3 in the twelfth fairway area. During the course of this review, the Office was told by the former Superintendent and other project participants that the Park Department had hired a private contractor, Dami and Sons, to install the pipe; that in early 2001, Dami and Sons partially installed the pipe in an area where peat⁶⁰ was present; and that portions of the installed pipe became dislodged when the peat moved, or “heaved” underneath the drainpipe. Dami and Sons’ efforts to reinstall the pipe were reportedly unsuccessful, and the pipe was abandoned and ultimately covered over with fill at the direction of the Park Department. Over the months following the failure of the pipe, the City hired professional engineers and wetlands specialists to assess and redesign the drainage system in the area, among other tasks.

Although the construction work was subject to legal requirements mandating certain public protections, these legal requirements were not met. From a management perspective, the failure of the pipe – with the attendant costs, schedule delays, and environmental problems – illustrates the risks associated with the previous failures to institute effective project safeguards, such as adequate planning, design specifications, written contracts, supervision by a full-time clerk of the works, and effective record-keeping procedures.

Finding 13a. Installation of the drainpipe without final design documents violated the November 2000 Order of Conditions and exposed the City to construction problems.

As previously discussed, the plans accompanying the September 2000 NOI were conceptual drawings labeled “for permitting purposes only.” The November 2000 Order

⁶⁰ The term “peat” refers to a dark-colored mass of partially decomposed plant debris that is often found in wet areas such as marshes and bogs.

of Conditions issued by the Conservation Commission required preparation of detailed design documents prior to the commencement of work on the Mount Hood site. However, City records show that the Park Department directed Dami and Sons to install the pipe without providing Dami and Sons with detailed design documents. Indeed, Park Department records reviewed by the Office contained no written instructions to Dami and Sons concerning the pipe installation. Without a detailed design, the Park Department had no assurance that the pipe installation work would meet the City's drainage objectives, and the Park Department's ability to hold Dami and Sons accountable for proper installation of the pipe was weakened.

Finding 13b. The drainpipe installation contractor was hired on a no-bid basis, in apparent violation of Massachusetts construction bid law.

Public works construction contracts of \$10,000 or more are subject to numerous statutory requirements, including advertising, bidding, performance and payment bonds, and payment of prevailing wages. However, City records contained no evidence that the pipe installation work was competitively bid or that any other statutory requirements were met.⁶¹ The contractor responsible for this work, Dami and Sons, invoiced the City for more than \$216,096 over the course of the fill delivery project, but 67 of the 70 invoices submitted by Dami and Sons contained no information on the tasks corresponding to the invoiced amounts. On January 26, 2001, Dami and Sons did submit a \$7,276 invoice for 520 feet of 24-inch drainage pipe and related supplies. Although the Office was unable to determine the amount charged for the pipe

⁶¹ This agreement did not constitute an emergency contract under M.G.L. c. 30, §39M. An awarding authority may dispense with the normal bid process for M.G.L. c. 30, §39M only in cases of "extreme emergency caused by enemy attack, sabotage, other such hostile actions or resulting from explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe." Only work necessary for "temporary repair and restoration to service of any and all public work in order to preserve health and safety of persons and property" may be performed under an emergency contract. [M.G.L. c. 30, §39M(a)] The awarding authority must obtain a written waiver of the public notice requirements from the Division of Capital Asset Management (DCAM). [M.G.L. c. 149, §44J(6)]

installation work, it is highly improbable that the combined cost of labor and materials fell below the \$10,000 threshold for bidding under M.G.L. c. 30, §39M.

Finding 13c. The drainpipe installation was conducted without a written contract between the City and Dami and Sons, in violation of municipal finance law and sound business practices.

The Park Department allowed Dami and Sons to undertake major construction work on City property without an essential protection: a written contract specifying the scope of services Dami and Sons was required to perform and the major terms and conditions governing the arrangement. This arrangement afforded the City no protection against poor performance or excessive charges. It also violated M.G.L. c. 43, §29, which requires all municipal contracts in the amount of \$5,000 or more to be in writing and approved by the department head and the Mayor.

Finding 13d. City records provided to the Office contained no reports, analysis, or other documentation of the drainpipe failure.

City records provided to the Office contained no design documents, written contracts, written instructions, meeting notes, or project logs documenting the installation of the pipe or the pipe failure. The interviews conducted by the Office indicate that no City official was present at the site when the installed pipe first moved out of position. These interviews also indicated that project participants held differing views of the causes of the pipe failure. Because the City lacked the detailed documentation that would normally be kept by a public jurisdiction on a public construction project, the Office was unable to reconstruct the specific actions and events preceding the pipe failure.

Unlike the City, Gator and Modern Continental did prepare and retain records from the period during the pipe failure occurred. Their records indicate that the pipe failure took place shortly after March 27, 2001. In a March 27, 2001 e-mail addressed to Gator and copied to the Public Works Superintendent, the Parks Superintendent advised Gator

that the Park Department's contractor would be covering the pipe to allow Modern Continental to fill over it. His e-mail to Gator stated, in part:

As of today the walls are complete and the pipe connections made. Material can be pushed onto the 12th fairway. Use only the existing disturbed areas to access the fairway. On Thursday I will be marking the fairway areas and providing a plan for the fill there. In the meantime all material pushed onto the 12th *will have to be kept away from the drainage pipe*. Our contractor will be covering the pipe to allow Modern's equipment to fill over it. [Emphasis in the original.]

Gator also provided the Office with undated photographs showing the installed pipe covered with sand and stone, an excavator mired in peat, and fill on the slope of the twelfth fairway.

Project logs maintained by the Modern Continental Foreman for March 28, 2001 indicate that the foreman met with a Gator principal, the Park Superintendent, and the Park Department laborer on that day to discuss the plan for covering the pipe. The Foreman's notes, excerpted below, indicate that the plan called for Dami and Sons to "backfill" the pipe and build a ten-foot bridge sufficient to enable Modern Continental's bulldozer to cross over the pipe. The notes also state that the foreman requested a written release from the City before crossing the pipe:

Was told we could push material up to pipe. . . . [Dami and Sons] on excav[ator] and D5 will back fill pipe -- also build bridge min. 10' for D6 dozer to cross over. I told. . . [the Park Superintendent and Gator's principal] etc. I will not cross over pipe until we get a release from city that pipe is secure and in place. . . .

The foreman's log for March 29, 2001 stated that Dami and Sons' excavator was "buried" in the fairway and that Modern Continental was continuing to push material to build a road to the excavator. The log noted that the foreman had taken photographs of the excavator and the pipe:

Went to get camera to take pictures of the pipe before we fill over it.

The foreman's log for April 2, 2001 recorded a problem with the pipe on the fairway and reiterated:

I'm not crossing it without a release from liability from city.

The foreman's log for April 3, 2001 recorded her concern that Modern Continental would be blamed for the pipe failure:

. . . [Dami and Sons] said that the pipe had moved because dozer was pushing material and it was too heavy. Funny that the pipe on Thursday [March 29, 2001] had already buckled up. Thank God I took pictures. . . .

In interviews with the Office, representatives of Dami and Sons, Gator, and Modern Continental stated that after Dami and Sons' efforts to reinstall the buckled pipe proved unsuccessful, the decision was made to abandon the failed pipe and to cover it with fill.

City records indicate that the Conservation Commission did not receive timely notification that the pipe had failed. A report to the Conservation Commission from the Public Works Superintendent dated April 19, 2001 stated: "The diversion drainage pipe is installed." However, the minutes of a Conservation Commission meeting held on May 3, 2001 reported that a Conservation Commission member had reported visiting the fill delivery site with another Commission member and that they had observed that the pipe was not functional and had not been completed. In a report to the Conservation Commission also dated May 3, 2001, the Public Works Superintendent reported that the pipe was no longer necessary and would be abandoned in favor of an alternative plan:

The drainpipe is no longer needed either as a construction feature or permanent feature. At my request and direction, CDM and EPSILON [the City's consultants] are preparing a modification request that will be submitted to the Conservation Commission. The request, supported by engineering and scientific data, will be to abandon a piped outlet and offer instead to make beneficial use of the newly expanded resource area at the ponded "Wetland 2." . . .

Members of the Conservation Commission advised the Office that the failure of the pipe contributed to flooding and silt deposits in the areas of Wetlands 2 and 3. Thus, in addition to wasting City funds, the mismanaged and undocumented drainpipe installation work appears to have led to unnecessary environmental problems.

The independent audit of the Mount Hood fill delivery project identified legal violations and internal control weaknesses in the City's management of the fill delivery project at Mount Hood.

On April 2, 2001, the independent auditors issued a draft report⁶² containing a series of findings of violations of law, internal control weaknesses, and other problems in connection with the fill delivery project. Among the findings reported by the independent auditors were the following:

- the City had procured fill without an approved contract until July 12, 2000;
- the City had executed a contract with Gator without following proper procurement laws;⁶³
- the City had not applied for or received any direct payments from Gator, as required by the July 12, 2000 contract;
- the City's internal control procedures had been circumvented by the arrangement under which City invoices were forwarded to Gator for payment and subsequent reimbursement by the City;
- City funds owed by Gator had been expended for site preparation work without appropriation by the Board of Aldermen.
- the City had relied on the records of Modern Continental to account for all fill deliveries; and
- the independent auditors had been unable to determine who monitored all aspects of the fill delivery project.

On April 4, 2001, the Mayor addressed the Appropriations Committee, the Parks Superintendent resigned, and the City received its first check from Gator .

According to the minutes of a meeting of the Appropriations Committee of the Board of Aldermen, held on April 4, 2001, the Mayor advised the Appropriations Committee at that meeting that the draft audit conducted by Powers & Sullivan had revealed serious

⁶² The final version of the audit provided to the Office was undated except for a cover letter from the auditors dated March 30, 2001. The information discussed in the audit included a payment dated May 9, 2001, indicating that the final audit was released after May 9, 2001.

⁶³ As discussed in the previous Finding 1c, the Office's position is that no public procurement law governed the City's fill contract with Gator.

flaws in the process used to build athletic fields on Mount Hood. According to the minutes, the Mayor characterized the contracting and internal control problems disclosed in the draft audit as “real, inexcusable, and unacceptable” and advised the Appropriations Committee that he had taken certain steps to address these problems. The minutes contained the following summary of the Mayor’s presentation to the Committee:

There are two substantial problems that have been made apparent. They are real, inexcusable, and unacceptable, and he [the Mayor] says that as the city’s chief executive he accepts responsibility for them. Internal controls were not followed – record keeping, day-to-day management, contracts. There is real accountability and consequences if the highest standards are not followed. All appropriations of funds should have come before this Board first. Looking back, there were orders filed in January to set up a revolving fund and to accept funds that should have been sent down long before that. He realizes that it will take some effort in restoring the Aldermen’s and the public’s trust in this process and has taken the following steps:

Asked for and received the resignation of [the] Park Superintendent . . .

All Park Commission matters with substance should come before the Board of Aldermen.

Funding mechanism to accept money is in place, currently in committee, and the Board should accept that it recommends passage of the Order.

Mount Hood budget works differently than any other department’s budget, and an annual breakdown will be provided.

Closure plan that will secure the ball fields and allow limited access to the back nine be completed, but no other work to be done until this Board deems it appropriate.

Things thought to be in place were not, and he apologizes. The project is a worthy one, but the process needs to be made better to restore the public’s trust.

In an interview with the Office, the former Mayor stated that it was the City’s standard practice to follow the bid laws wherever applicable. He expressed the view that the violations of law on the Mount Hood project were inexcusable and that public employees are legally and ethically bound to comply with public bidding laws. He told

the Office that, while the Mayor does not typically get involved in the details of a project, he should have handled the project differently at the outset by conducting a structural impact study, preparing a detailed project plan and design, soliciting bids for the fill, ensuring that a clerk of the works was assigned to the project, and establishing a revolving fund for the fill revenues. Nevertheless, he stated that because of the fill payments to the City, the final construction cost for the project will prove significantly lower than if the City had paid for the fill.

City records show that Gator paid the City \$106,635 on April 4, 2001– the same day on which the Mayor addressed the Appropriations Committee and the Parks Superintendent resigned. In an interview with the Office, the City Auditor stated that these funds, along with subsequent Gator payments to the City, were deposited in a new reserve account that he had created pending the Board’s approval of the order, requested by the Mayor in January 2001, establishing a revolving fund for the fill revenues.⁶⁴ According to City records, 631,489 tons of fill had been delivered to Mount Hood as of April 4, 2001.

Finding 14. Unsound contracting procedures and deficient internal controls undermined the City’s capacity to resolve the ongoing problems at Mount Hood in a cost-effective, accountable manner.

14a. Contractors hired without appropriations, bidding, or written contracts continued to perform construction work at Mount Hood after the release of the draft audit identifying procurement violations.

City records show that Dami and Sons and ELM continued to perform construction work at Mount Hood after April 4, 2001, although no funds had been appropriated for this work; the work had not been advertised and bid in accordance with M.G.L. c. 30, §39M; and no written contracts with these contractors had been executed. The City was billed more than \$86,000 for these services:

⁶⁴ According to the Board of Aldermen minutes, the Board granted approval for the revolving fund on June 27, 2000.

- Between April 5, 2001 and June 16, 2001, Dami and Sons submitted 22 invoices for construction services at Mount Hood totaling \$64,793. These charges included 104 hours of bulldozer time billed at \$125 per hour, 146 hours of excavator time billed at \$100 per hour, 566 hours of pump operation billed at \$55 per hour, and 175 laborer hours billed at \$35 per hour.⁶⁵
- Between April 27, 2001 and July 30, 2001, ELM submitted three invoices for construction services at Mount Hood totaling \$21,958. The services listed on these invoices included loam installation, final grading, tree installation, cart path installation, tee repair, irrigation work, and stabilization services.

14b. During the month following the Parks Superintendent's departure, fill deliveries and construction work at Mount Hood continued to be unsupervised.

According to the Public Works Superintendent and the park maintenance worker assigned to the Park Department, no City official or representative supervised fill deliveries to or ongoing construction work at Mount Hood during the month of April 2001 – i.e., after the departure of the Parks Superintendent on April 4, 2001 and before the Interim Superintendent of Parks began work on May 1, 2001. Nevertheless, City records show that fill deliveries continued during this period: according to City records, 17,940 tons of fill – 690 26-ton truckloads – were delivered between April 4, 2001 and May 1, 2001. City records also show that private contractors invoiced the Park Department for construction supplies and services totaling approximately \$99,000 during this same period. The invoices indicated that approximately \$75,000 of this amount was billed for supplies and services provided between April 4, 2001 and May 1, 2001. In addition to working without supervision, these contractors were working without written contracts.

⁶⁵ The Office's review of these invoices identified some questionable charges. For example, on 14 occasions between April 20, 2001 and June 11, 2001, Dami and Sons billed nine hours of a laborer's time for each 24-hour period of pump operation. When asked by the Office to explain these labor charges, Dami's principal stated that the labor charges reflected time spent checking and refueling the pump during the 24-hour period. However, 16 previous invoices submitted by Dami and Sons in March and early April had billed only three laborer hours for each 24-hour period of pump operation.

The Board of Aldermen appropriated \$87,000 to fund professional planning, design, and wetlands consulting services at Mount Hood.

The minutes of the meeting of the Board of Aldermen held on April 17, 2001 show that the Board of Aldermen appropriated a total of \$87,000 that day to fund professional services at Mount Hood. According to the minutes, the Public Works Superintendent stated that the funds would be used to prepare a design plan, drawings, and specifications in anticipation of construction bidding. The funds would also be used to procure professional services from engineers, biologists, and wetlands specialists. The minutes stated:

He [the Public Works Superintendent] said that he would almost certainly have to request additional funding but would not know the full cost until the design plan was complete. He stated that the concept plans were not detailed enough to be used for the actual construction of the site.

On April 23, 2001, a Gator Principal wrote to the Park Commission Chairman, with copies to the Mayor and the Public Works Superintendent, regarding the fact that Gator's contract with the City was scheduled to expire on May 1, 2001. On the same day, the Public Works Superintendent wrote to Gator regarding the contract expiration date, expressing the City's concern that Gator's plan to deliver up to 50,000 tons of additional fill within the short period of time remaining in the contract period could cause difficulty at the site. The letter raised the possibility of extending the contract to allow the same 50,000 tons to be delivered over a six- to ten-week period. The letter was copied to the Mayor, the Park Commission, the Board of Aldermen, and the City Solicitor.

The Interim Superintendent of Parks began work on May 1, 2001.

The City Auditor sent the first of four payment requisitions to Gator on May 3, 2001.

City records show that the City Auditor sent Gator a payment requisition on May 3, 2001 for \$52,703, which reflected the value of fill deliveries made between February 16, 2001 and April 18, 2001. This was the first payment requisition the City had issued since the fill deliveries began in April 2000. The City Auditor sent three subsequent payment requisitions to Gator over the following three months; as of August 31, 2001, the City

had received a total of \$175,043 from Gator. Gator made no further payments to the City during 2001. (Gator's financial obligations to the City are discussed in greater detail in Finding 16.)

On May 15, 2001, the Park Commission voted to extend the City's contract with Gator and to approve a contract for clerk of the works services at Mount Hood.

At a meeting of the Park Commission on May 15, 2001, the Park Commission voted to accept an amendment extending the City's contract with Gator, which had a termination date of May 1, 2001, for a 20-week period. City records show that the amendment, which was undated, was signed by four members of the Park Commission as well as the Gator representative.

The minutes indicate that one member of the Park Commission advocated for "plans that tell what tonnage we need." The minutes indicate that a Gator representative advised the Commission that it should "act within days because time lines are driven by Central Artery." The minutes stated: "[The Gator representative] wants to go on record saying there is a sense of urgency." The minutes also show that the Park Commission approved and executed a ten-week contract with a new clerk of the works, selected by the Public Works Superintendent, at a compensation rate of \$1,400 per week.

In late May 2001, Gator presented the City with a new fill delivery proposal under which the City would receive \$1 million to acquire one million tons of additional fill at Mount Hood.

The meeting minutes of the Park Commission's May 22, 2001 meeting show that a Gator representative distributed a document entitled "Mount Hood Fill Project – Phase II" to the Park Commission at that meeting. According to the minutes, Gator's proposal offered the City "[a]n additional million dollars plus and 2 to 3 years to bring in all the fill with no up front costs to the City." Documents provided to the Office show that Gator's proposal entailed the delivery of additional CA/T Project fill to the City's existing compost site. According to the meeting minutes, the Gator representative told the Park Commission that the timeline for delivering the additional fill was dictated by the Central Artery Project, that the City had two to three weeks to decide on Gator's proposal, and that it would take six months to "work out logistics."

The meeting minutes indicate that the Park Commission was supportive of Gator's Phase II proposal:

We are short of money to complete the field and we don't necessarily want fill but we do want the money and we do want a second field.

The Park Commission voted to accept the "concept" and "to make sure that we have an access route and that plans be developed and refined over the next five months regarding drainage and safety."

Finding 14c. The City made payments of more than \$56,300 in June and July of 2001 for services procured in apparent violation of public procurement laws.

The Office's review indicates that in June and July of 2001, the City paid \$56,303 for services procured in apparent violation of M.G.L. c. 30, §39M. Massachusetts law prohibits payment by a governmental body for services rendered in violation of a public procurement law.⁶⁶

- City records show that the City paid ELM \$15,298 on June 5, 2001. As previously discussed, ELM had invoiced the Park Department for construction services that had not been bid and for which no written contract was executed.
- City records show that the City paid Greenwood and Sons \$20,780 on June 5, 2001. There is no evidence that the construction services invoiced by Greenwood and Sons were bid or that a written contract was executed.
- City records show that the City paid Dami and Sons \$20,225 on July 9, 2001. On June 20, 2001, Dami and Sons had submitted an invoice totaling \$188,609 for construction services provided between December 2000 and June 2001. These services had not been competitively bid, nor had the City executed a written contract with Dami and Sons. The Interim Superintendent advised the Office that the City's \$20,225 payment reflected the amount of funds remaining in the revolving account containing Gator's fill payments to the City as of July 2001. In a letter to the City Auditor dated July 23, 2001, the Office advised the City to make no further payments to Dami and Sons.

⁶⁶ See *Majestic Radiator Co. v. Commissioners of Middlesex*, 397 Mass. 1002 (1986).

(A copy of this letter is included in Appendix B of this report.) As of December 2001, the City had made no further payments.⁶⁷

On June 14, 2001, an alderman wrote to the other members of the Board of Aldermen regarding the proposal under consideration by the Park Commission to accept one million tons or more of additional fill at Mount Hood. The alderman expressed concern that an advisory group created by the Park Commission to review this proposal lacked the necessary planning information to evaluate the need for and cost associated with delivery of additional fill to Mount Hood:

Although the Park Commission did decide to create an advisory group to look into the acceptance of this additional fill with members invited from our Board, the Conservation Commission, and citizen representation, the crux of the problem with this approach is that no comprehensive plan has been developed and costed out for this massive project. Without a detailed plan of what is being proposed, how it fits into the other uses of the park, and how much it will ultimately cost, there is absolutely no way that any advisory group can reasonably evaluate whether further acceptance of fill is in the best interests of the Park or the city as a whole.

The minutes of a Park Commission meeting held on June 18, 2001 show that a Gator representative warned the Park Commission at that meeting that other entities were interested in the fill being offered to the City and that, if the City issued a letter of intent, there would be substantial penalties for delays thereafter:

[The Gator representative] informed the Commission that there were other entities interested in fill (2.2 million tons of historic fill and 400,000 tons of glacial clay) to be delivered over a 2-3 year period beginning January/February. A letter of intent could get a commitment from the [Central] artery within 60-120 days. We would have until about January to come up with a definitive plan. We would be responsible for not causing a delay – delays could cost up to \$1 million per day.

The Park Commission had still not decided on the scope of the construction work to be undertaken at Mount Hood, as the following excerpt from the meeting minutes shows:

[W]hen the project was first presented a ball field and 2 soccer fields were proposed. We should at least be able to get one soccer field. We had

⁶⁷ City records show that in February and March of 2001, Gator had paid Dami and Sons a total of \$27,488 from fill payments owed to the City.

plans but because of Conservation issues we had to revise our plans. There is a lot of interest and there is room for a soccer field and it should be a priority.

Also on June 18, 2001, the Board of Aldermen ordered the Park Commission to cease and desist from accepting fill at Mount Hood. City records show that as of June 18, 2001 – the day the Board passed the order – there had been no fill deliveries on Mount Hood for 10 days.

The Park Commission solicited bids for construction of the baseball field on June 20, 2001.

On June 20, 2001, the Park Commission issued an invitation for bids (IFB) for the baseball field construction contract. The plans and specifications, which were prepared by CDM,⁶⁸ did not include an access road, parking lot, or amenities such as restrooms, bleachers, or concession stands. The notice of the project published in the *Central Register*⁶⁹ listed a project cost estimate of \$750,000. According to City records, the Park Commission received six bids, the lowest of which was \$737,350. However, the Park Commission did not award a contract for construction of the baseball field. According to the Interim Parks Superintendent, the Park Commission did not award the contract because it lacked a source of funding for the project.

On June 22, 2001, the Park Commission voted to extend the clerk of the works contract.

At a meeting held on June 22, 2001, the Park Commission voted to extend the clerk of the works contract at an estimated cost of \$8,000, according to the meeting minutes. City records contained no evidence that the contract with the clerk of the works was amended to reflect the extension. According to the Interim Superintendent, the contract extension covered a five-week period from July 23, 2001 through August 24, 2001.

⁶⁸ On June 28, 2001, the City executed a \$35,150 amendment to its contract with CDM for a baseball field design that CDM had already prepared. (The City's practice of executing contracts after receiving the contracted services is discussed in Finding 15.)

⁶⁹ Under M.G.L. c. 30, §39M, the City was required to publish a notice inviting bids on the baseball field project in the *Central Register*, a publication of the Secretary of the Commonwealth.

Fill deliveries, which had been suspended since June 8, 2001, resumed on July 2, 2001.

City records show that fill deliveries resumed on July 2, 2001, two weeks after the Board of Aldermen's June 18 order to stop fill deliveries.

On July 9, 2001, the interim Mayor was sworn in.

On July 10, 2001, the City Solicitor wrote to the President of the Board of Aldermen stating, in part:

It is my opinion that this order is beyond the authority of the Board of Aldermen and is not a lawful order.

On July 16, 2001, an attorney representing Gator wrote a letter to the Board of Aldermen regarding its June 18 order. In the letter, the attorney stated that the City Solicitor had informed the Board that its order was unlawful. On behalf of Gator, the attorney asked the Board to reconsider and clarify its order. The letter warned:

Otherwise, Gator will seek relief in Court . . . for the Board's admittedly intentional interference with Gator's ongoing business with the City.

City records show that 760 26-ton trucks delivered 19,760 tons of fill to Mount Hood between July 2, 2001, when fill deliveries recommenced, and July 20, 2001, when fill deliveries ended. A total of 690,665 tons of fill were delivered to Mount Hood over the course of the project, according to City records.

Finding 15. Contracts with two consultants were executed after contracted services had been performed.

City records show that contracts with CDM and Epsilon Associates were signed after some or all of the contracted services had already been completed.

- As noted earlier, the Park Commission issued an IFB on June 20, 2001 for construction of a baseball field on Mount Hood. The plans and specifications were dated June 1, 2001 and stamped by CDM, which also prepared the \$750,000 cost estimate that appeared in the *Central Register*. CDM apparently performed much or all of this work without a signed contract with the City. On June 28, 2001, the Park Commission executed a \$35,150 amendment to the August 2000 contract with CDM. The scope of services for the work included planning and designing the baseball field; preparing final

plans and specifications suitable for bidding; and assembling the final bid package. All of the foregoing tasks had apparently been completed by the time the amendment was executed.

- On August 8, 2001 the City executed a \$19,900 contract with Epsilon Associates, Inc. for wetland restoration consulting services. The contract itself indicated that several tasks within the contract scope of services had, in fact, been performed by Epsilon more than three months earlier. For example, the contract scope of services contained the following descriptions of the first two tasks:

Task 1: Wetland Delineation and Preliminary Erosion Control Recommendations Report. Under Task 1, Epsilon conducted a site visit at Mt. Hood, performed a wetland delineation in selected areas as directed by the Department of Public Works, and prepared a preliminary impact analysis report identifying three specific impacted wetland resource areas. . . . The letter report, dated May 2, 2001, also provided some short term recommendations for stabilizing areas of the site and preventing further erosion and sedimentation into the wetlands. . . .

Task 2: Meeting with Client. Also at your request, Epsilon attended a meeting on April 27, 2001 at the office of Camp Dresser & McKee, Inc. (CDM) to analyze the current site status and formulate project strategies such as slope grading and stabilization, final site layout and grades, construction access points, erosion and sedimentation controls, conceptual wetland restoration plans, and wetland hydrology details. This meeting established immediate site plan and survey needs as well as the responsible parties for performing each component.

Requesting or allowing private vendors to provide services to the City before executing written contracts with those vendors is an unsound business practice. In the absence of a written contract, there is no assurance that the vendor will provide the specific services needed, nor is there a binding agreement on the price for those services. Under this scenario, the execution of the contract is an after-the-fact exercise that deprives those signing the contract of the opportunity to exert control over the terms of the contract.

In August 2001, the Park Commission contracted with CDM for golf course design services.

On August 13, 2001, the Park Commission executed a second amendment to the August 2000 contract with CDM. This amendment specified a lump-sum fee of \$42,000

for professional engineering services relating to the design for golf holes 11 and 12 at Mount Hood. The scope of services included:

- Obtaining input for recommended revisions to the Master Plan;
- Engaging a professional golf course architect to perform specific work tasks;
- Preparing final plans and specifications for two separate bid packages: tees and fairway for hole 12 and green for hole 11; and
- Submitting a final draft of “the plans, specifications, cost estimate and list of qualified contractors” for review.

In October 2001, the Park Commission advertised for bids for golf course construction, wetlands restoration, drainage, and earth stabilization work.

The Park Commission issued an IFB in October 2001 for “construction of golf tees and a golf fairway with wetland restoration areas, drainage, and earth stabilization improvements” on a portion of Mount Hood. The October 17, 2001 *Central Register* notice of the IFB estimated the cost of the contract at \$1.5 million. City records show that the Park Commission received five bids, the lowest of which was \$1,199,875. As of December 31, 2001, the contract had not been awarded.

In October 2001, the Park Department filed a Notice of Intent for the golf course wetland restoration project.

On October 4, 2001, the Park Department filed a NOI for the Mount Hood Golf Course Wetland Restoration Project. The NOI, which was prepared by Epsilon Associates, Inc. in association with CDM, described the final wetland restoration plan relating to four resource areas impacted by the filling and grading operations at Mount Hood and addressed the final proposed grading and stabilization plans for all the filled and disturbed areas. The NOI provided descriptions of the impacts of sedimentation and filling on the four resource areas: two areas designated as ILSF adjacent to the baseball field “pad,” and Wetlands 2 and 3 along the twelfth fairway. For example, the NOI stated that in the upper terrace of the northerly ILSF, approximately 32 inches of sediments had settled on top of the natural topsoil horizons and that “[m]ature trees and shrub vegetation were observed to be dead or severely stressed.” With respect to Wetland 2, the NOI stated:

[D]ue to modifications from filling operations in the adjacent 12th Fairway, the area both received additional surface flows from the bare slopes and had its normal overland outlet swale cut-off by the fill placement. As a result, the wetland and adjacent upland area has been flooded above normal conditions since the filling operations have been underway. The height and duration of the flooding has caused some woody vegetation in the buffer zone to die-off or be stressed.

The NOI proposed a restoration plan to address each of the impacted wetland resource areas. In general, the plan included installation of erosion and sedimentation controls, sediment removal, use of “equipment” (such as small, specialized excavation equipment and a truck-mounted sediment vacuum system) in the resource areas, replacement of soil and/or organic materials, and vegetative plantings. The proposed work would be completed by a site contractor with oversight and direction from a qualified wetlands scientist. With respect to the ILSF, the restoration plan included pumping water; removing sediment; replacing soil; and installing trees, shrubs, and herbaceous vegetation around the perimeters. With respect to the twelfth fairway, the plan called for grading and stabilizing the slopes; installing a new drainpipe⁷⁰; removing sediment from the Wetland 2 area; planting trees, shrubs and herbaceous vegetation in the Wetland 2 buffer zone; removing sediments from the stream channel in Wetland 3; replacing soil and installing trees, shrubs, and herbaceous vegetation in the Wetland 3 buffer area; and establishing a wetland replication area near Wetland 3.

Finding 16. Resolution of Gator’s financial obligations to the City was complicated by the City’s incomplete project records.

Although fill deliveries ended in July 2001, the financial status of the City’s contract with Gator was not resolved. During the course of the Office’s review, the Office identified discrepancies in the project records on file at the City and at the CA/T Project, and the Office notified the City of these discrepancies. The City’s incomplete project records contributed to the discrepant calculations of fill delivered to Mount Hood.

⁷⁰ The failed drainpipe discussed earlier in this report had been intended to connect Wetlands 2 and 3.

16a. The City's calculation of Gator's outstanding financial obligation was inconsistent with the City's own records of the fill delivery project.

The Office's analysis of records provided to the Office by the City as of October 12, 2001 indicated that Gator owed the City \$42,179 more than the amount reported to the Office by the City. A spreadsheet provided to the Office in August 2001 listed Gator's outstanding financial obligation to the City as \$20,821. However, the spreadsheet showed neither Gator's financial obligations to the City prior to February 16, 2001 nor any of Gator's payments to Park Department vendors from fill revenues owed to the City.

The Office's analysis of City records provided to the Office in July 2001 indicated that Gator had delivered 679,644 tons of fill to Mount Hood between May 3, 2000 and July 20, 2001. At \$0.70 per ton, the dollar value of the delivered fill totaled \$475,751. The City's records also showed that Gator's payments to the City totaled \$175,043 and that Gator's payments to Park Department vendors totaled \$237,708. Deducting those amounts from \$475,751 would have yielded an unpaid financial obligation to the City of \$63,000 – \$42,179 more than the \$20,821 listed in the spreadsheet.

16b. The City's fill delivery records did not comport with the records on file at the Central Artery/Tunnel Project.

The Office also compared the City's fill delivery records provided to the Office in July 2001 with Central Artery/Tunnel (CA/T) Project records of fill deliveries to Mount Hood. Both the City and the CA/T Project had computed total tonnage on the basis of daily delivery logs prepared by Modern Continental, which delivered the fill to Mount Hood under an agreement with Gator. However, there was a 7,697-ton discrepancy between the two sets of fill delivery records. The CA/T Project records, which constituted the basis for the CA/T Project's payments to Modern Continental, listed fill deliveries on certain days for which the City had no records of fill deliveries. The additional 7,697 tons of fill reported on the CA/T Project records represented a \$5,388 increase in Gator's financial obligation to the City.

In a letter to the Mayor dated October 12, 2001, the Office outlined its analysis of discrepancies in the City's financial analysis of funds owed by Gator and discrepancies between City records and Central Artery/Tunnel Project records of fill deliveries to Melrose. Based on City records and CA/T Project records of fill deliveries, the Office calculated that Gator's unpaid financial obligation to the City would be \$68,388. (A copy of this letter is included in Appendix B of this report.) In the letter, the Office recommended that the City review its fill delivery and payment records and take immediate steps to ensure that the City received full payment for all fill delivered to Mount Hood. On October 22, 2001, at the Mayor's request, the Office met with the Mayor, the City Auditor, and the City Solicitor to provide a detailed explanation of the Office's analysis.

In a letter to the Mayor dated October 13, 2001,⁷¹ Gator stated that it had paid City vendors \$40,600 between February 28, 2001 and March 30, 2001 and that these payments had not been factored into the calculations of Gator's financial obligations prepared by the City. Attached to Gator's letter were copies of the paid invoices, none of which had previously been provided to the Office by the City. The City Auditor advised the Office that he had been unaware of these invoices, which were billed to the Park Department and apparently approved for payment by the Parks Superintendent⁷² prior to his departure on April 4, 2001.

16c. Although Gator notified the City of a \$17,500 credit to be deducted from Gator's obligations to the City, the Office's review disclosed that no such credit was warranted.

Gator's letter to the City dated October 13, 2001 also discussed a "\$17,500 credit against the City of Melrose." The letter stated, in pertinent part:

⁷¹ This date appears to be a typographical error: the letter was apparently written after October 19, 2001.

⁷² The invoices were marked "OK to pay," and all were initialed or signed by the Parks Superintendent.

Finally, as we discussed in our last meeting on October 10th, the CA/T has taken a credit from Modern Continental against the total quantity of fill excavated from the job site and delivered to Mount Hood. The total amount of the credit is 25,000 ton[s] which translates into a \$17,500 credit against the City of Melrose. As discussed, the CA/T documentation on this matter is attached (see attachment). It is not clear to me if the Inspector General factored the 25,000-ton deduction into his findings.

Attached to this letter was a letter to Gator from Modern Continental, dated October 19, 2001, accompanied by a page taken from a CA/T Project report dated August 24, 2001. In the letter, Modern Continental's Senior Project Manager stated that the CA/T Project had taken a credit from Modern Continental due to an overrun of Type D material transportation and disposal. He stated that the adjustment represented "a quantity reduction of approximately 25,749 tons" and that, consequently, Modern Continental would reduce its payment to Gator by \$33,750.

In a letter dated December 14, 2001, the Office advised the Mayor of the Office's findings regarding Gator's proposed \$17,500 reduction in its payment to the City. (A copy of this letter is included in Appendix B of this report.) According to the information obtained by the Office, the CA/T Project had taken a credit from Modern Continental for payments erroneously made under an unrelated contract pay item: pay item 001.183. According to CA/T Project officials, that adjustment did not reduce the estimates of material delivered to Melrose under the pay item under which the CA/T Project paid Modern Continental for the transportation and disposal of Type D material to Melrose and other locations. Therefore, the adjustment in pay item 001.183 did not warrant a \$17,500 reduction in Gator's payment to the City.

In addition, the Office's letter advised the Mayor that, based on the Office's review of the contract between the City and Gator and the contract between Gator and Modern Continental, it appeared that any adjustment in the tonnage agreed to in the future by the CA/T Project and Modern Continental should have no bearing on the amounts due the City and Gator. The Office's letter noted that both contracts stated that the tonnage of material accepted at the disposal site would be calculated on the basis of the number and size of the trucks delivering material. Under the contracts, both the City and Gator were to be credited with 33 tons for each dump trailer load and 26 tons for each triaxle

load. Consequently, the Office's letter concluded, any negotiations between the CA/T Project and Modern Continental regarding the measurement of tonnage through other means appeared irrelevant to the amount owed to the City by Gator and to Gator by Modern Continental.

As of December 2001, the issue of Gator's financial liability to the City had not been resolved. In letters sent to the Mayor and City Auditor, Gator stated that it had been informed the City would not "sign off" on a final fill quantity on which payment would be made until after the Office had completed its review of the fill delivery project.

Finding 17. Throughout the review period, the City lacked consistent contract approval procedures that complied with municipal finance law for Mount Hood-related contracts.

In the course of this review, the Office requested copies of all executed memoranda of agreement and contracts (including all executed amendments) pertaining to Mount Hood during the review period. The documents provided to the Office by the City, which had been executed between March 2000 and August 2001, revealed major contract approval inconsistencies. For example, as has been noted, M.G.L. c. 43, §29 requires all City contracts of \$5,000 or more to be signed by the Mayor. Although the Mayor signed the March 2000 management contract with ELM and the July 2000 fill delivery contract with Gator, the Mayor's signature did not appear on the \$25,000 contract with CDM executed in August 2000; nor did it appear on either of the amendments to that contract executed in June 2001 (for \$35,150) and August 2001 (\$42,000), or on the \$14,000 contract with the clerk of the works executed in May 2001, or on the May 2001 contract amendment extending the contract with Gator.⁷³ However, the August 2001 contract with Epsilon Associates, Inc. for \$19,900 was signed by the Mayor.

The Park Commission signed all Mount Hood-related contracts reviewed by the Office with the exception of the City's August 2000 contract with CDM. There appears to have

⁷³ In an interview with the Office, the former Mayor stated that he was unaware that these contracts required his signature. He stated that he assumed that contracts requiring his signature would be put on his desk for his signature before the contracted work began.

been no consistent practice regarding the Parks Superintendent's signature on Mount Hood-related contracts. The Parks Superintendent did not sign either the March 2000 management contract with ELM or the July 2000 contract with Gator, but he did sign the August 2000 contract with CDM. The Interim Parks Superintendent signed the May 2001 clerk of the works contract but not the May 2001 amendment extending the contract with Gator; nor did he sign the June 2001 amendment to the CDM contract, either of the two amendments to that contract, or the August 2001 contract with Epsilon Associates.

Similarly, the City Solicitor's signature appeared on some contracts but not others. The City Solicitor signed the March 2000 management contract with ELM and the July 2000 fill delivery contract with Gator Hood, LLC. However, the City Solicitor did not sign either the August 2000 contract with CDM, the May 2001 clerk of the works contract or the May 2001 amendment to the contract with Gator. However, the City Solicitor did sign both amendments to the contract with CDM and the August 2001 contract with Epsilon Associates. The City Auditor signed no Mount Hood-related contracts other than the engagement letter with Powers & Sullivan and both amendments to the CDM contract.

These inconsistent practices have the potential to foster confusion and disorganization. They suggest the continuing need for improved control and accountability measures with respect to contracts involving Mount Hood.

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Conclusion and Recommendations

In May 2000, the City of Melrose authorized a contractor to begin delivering Big Dig fill at the Mount Hood Memorial Park and Golf Course for the purpose of constructing new playing fields and improving the golf course. The substantial revenues to be generated for the City by this arrangement would be devoted to the new fields and golf course improvements.

As of December 31, 2001, the project cost to the City was estimated to be \$1.8 million. This amount was far greater than anticipated and created a financial strain on the City. The report delineates many of the factors contributing to the unexpectedly high project cost. However, the Office notes that the \$1.8 million estimate is lower than the cost that the City would have incurred if it had paid market rates for the fill. The Office's review indicates that the cost of purchasing 700,000 tons of fill would have been approximately \$3 million. Rather than paying for fill, the City agreed to receive \$0.70 per ton for the fill, translating to approximately \$490,000. Thus, the \$1.8 million cost to the City of a remediated site, a seeded athletic field, and completed golf course improvements may represent an economically fair cost, largely due to the avoidance of fill costs and receipt of fill revenues. Nevertheless, the unanticipated financial burden has had a deleterious effect on Melrose.

The Office's review found no evidence that any City official promoted or executed this project for any purpose other than to benefit the City of Melrose by taking advantage of an opportunity that had been presented. City records reviewed by the Office, and statements made to the Office by key participants in the decision-making process – including the former Mayor, the former Chairman of the Park Commission, and the former Parks Superintendent – imparted a clear sense of urgency and a perception that the Park Commission had to act quickly in order to take advantage of a unique opportunity to obtain fill and generate revenue for a public improvement project. To realize these benefits, the Park Commission accommodated the contractor's schedule by authorizing fill deliveries without first preparing environmental studies, project designs, or cost estimates; without testing the competitive marketplace; and without

executing a written contract containing terms and conditions that protected the City's financial and environmental interests. By July of 2000, when the City executed a written contract with Gator, 199,449 tons of fill had already been deposited at Mount Hood.

By August of 2001, when fill deliveries ended, the Park Department had completed reconstruction of the thirteenth hole, prepared plans for a new baseball field, and developed the baseball field "pad." However, no funds remained from the fill revenues received from Gator to finish the playing fields or to complete the golf course improvements. Although the value of the delivered fill was \$483,466, the City had already spent more than this amount. The Office's review shows that as of August 31, 2001, the City's project-related costs and contractual obligations exceeded the value of the delivered fill by \$291,620. (See Appendix C.)

The public officials responsible for this massive public works project acknowledged that they underestimated its scope and complexity. Neither the Park Commission nor the three-person Park Department had the necessary resources to plan, execute, and effectively oversee this project. In interviews with the Office, the former Mayor, the former Chairman of the Park Commission, and the former Parks Superintendent acknowledged that, in hindsight, the Park Department should not have been expected to provide the necessary project supervision.

It is important to recognize that the decision to generate revenue for a public improvement project by accepting fill for that project can be advantageous. Jurisdictions often incur substantial costs for fill needed for construction projects. However, the unanticipated costs and problems encountered on this project illustrate some of the drawbacks of moving too quickly to accept an attractive offer. Careful planning, best value contracting, a well-drafted contract that protects the owner's interests, and full-time supervision are important owner protections for any major construction project, whether public or private. The decision to undertake a complex project entailing substantial alterations to public parkland without these safeguards was risky. As Melrose's experience makes clear, it is unlikely that the benefits of such a

complex revenue-generating arrangement can be realized without prudent project planning, contracting, and management.

More broadly, the history of this project demonstrates the importance of adhering to legal requirements, sound contracting practices, and principles of public accountability. Fill revenues were spent without the required appropriations by the Board of Aldermen. Contractors were hired without competition and allowed to work at Mount Hood without written contracts. Consulting contracts were executed after contracted services were performed. Contract approval procedures were inconsistent and did not comport with municipal finance law. Project records were incomplete. If not corrected, the practices documented in this report could continue to render the City vulnerable to waste and mismanagement on future projects.

Recommendations to the City of Melrose

To assist the City of Melrose in its ongoing and future contracting efforts relating to public improvement projects at Mount Hood and elsewhere, the Office offers the following recommendations:

- 1. The City should resolve any outstanding financial disputes with Gator.**
- 2. The City should resolve any outstanding financial disputes with other project contractors.**
- 3. The Park Commission should ensure that public works contracts at Mount Hood are subject to full-time supervision by trained professionals who are cognizant of the legal requirements governing these contracts.**
- 4. The City should take steps to ensure that all City officials with contracting responsibilities, including Park Commissioners and Park Department staff, are fully apprised of the legal requirements governing contract funding, procurement, execution, and administration.**
- 5. The City should take steps to strengthen administrative controls over major contracts.**

Recommendations for Other Public Jurisdictions

The problems created by the public works project at Mount Hood in Melrose offer some valuable lessons for other jurisdictions that may be contemplating revenue-generating contracts for the purpose of improving public property. It is important to recognize that this type of contract must be planned, executed, and overseen as carefully as any other major public works project. Melrose's experience underscores the importance of instituting the following measures to protect the public interest on such projects, regardless of the compensation terms or financing arrangements:

- Front-end planning by qualified professional staff or consultants should generate information on existing site conditions, a professional assessment of the potential environmental impacts, a well-defined project scope, and a detailed cost estimate. This information is essential to the development of a realistic project budget that includes the cost of full-time professional oversight as well as a contingency for unforeseen circumstances.
- If the project is deemed logistically and financially feasible, the jurisdiction should establish the major contract terms and conditions and incorporate these provisions into the specifications for a competitive selection process.
- Both the solicitation and the final contract should include detailed plans and should comply with applicable laws, including procurement and prevailing wage laws.
- Before the contractor begins work, the jurisdiction should develop an oversight plan that clearly defines the roles, responsibilities, and reporting relationships of those responsible for project supervision.
- The jurisdiction should assign a project manager to serve as the locus of responsibility and accountability for the project. The project manager should be responsible for coordinating the contract, supervising the clerk of the works or other on-site supervisory personnel, monitoring the contract budget and contractor payments under the contract, and maintaining all project records.
- The jurisdiction should invest in full-time, professional project supervision. Detailed documentation of project activities and decisions in the field should be prepared by the designated clerk of the works or other on-site supervisory personnel and reviewed by the project manager.
- Significant changes to the contract price, scope, and/or schedule should be reflected in contract amendments signed by both parties. Instructions to the

contractor issued by the project manager or his/her designee should also be recorded.

- The jurisdiction should ensure that all project participants are fully apprised of and held accountable for compliance with the legal requirements and administrative procedures governing the project.

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Appendix A: Response of the Mayor of Melrose

The attached response letter has been scanned for electronic publishing.



CITY OF MELROSE

ROBERT J. DOLAN
Mayor

OFFICE OF THE MAYOR

City Hall, 562 Main Street
Melrose, Massachusetts 02176
Telephone - (781) 979-4440
Fax - (781) 662-2182

October 24, 2002

Mr. Gregory W. Sullivan, Inspector General
Commonwealth of Massachusetts
John W. McCormack State Office Building, Room 1311
Boston, MA 02133

Dear Mr. Sullivan:

I am in receipt of and have reviewed all documents pertaining to the confidential Mt. Hood Report as presented by your office. I am not in a position to agree with or to dispute many of the specific issues mentioned in your report as I took office after the events covered by your report. Without this personal knowledge, I offer no additional comment on the report presented to me. I have, however, taken action to correct the weaknesses in the management and organization of City operations, which are cited in your report as having led to the series of circumstances noted. Upon receipt of this letter, I request the release of this report for public review and dialogue.

Sincerely,

Robert J. Dolan/B.A.L.
Robert J. Dolan
Mayor

RJD/bal

***Appendix B: Letters from the Office of the Inspector
General to the City of Melrose***

The attached letters have been formatted for electronic publishing.



The Commonwealth of Massachusetts
Office of the Inspector General

July 23, 2001

JOHN W. MCCORMACK
STATE OFFICE BUILDING
ROOM 1911
TEL: (617) 727-8140
FAX: (617) 723-2334

MAILING ADDRESS:
STATE HOUSE STATION
P.O. BOX 270
BOSTON, MA 02133

Mr. Joseph Tassone
Auditor
City of Melrose
562 Main Street
Melrose, Massachusetts 02176

Dear Mr. Tassone:

This letter confirms our telephone conversation on Friday, July 20, 2001, regarding a pending payment by the City of Melrose (City) to a private contractor, Dami Construction, in the approximate amount of \$170,000. You informed me that competitive bids were not solicited for the public works construction services for which the City intends to authorize the payment.

As you may know, Massachusetts law prohibits payment by a governmental body for services rendered in violation of a public procurement law.¹ Accordingly, this Office advises the City to make no further payments to Dami Construction.

This Office is currently reviewing the City's contracting practices with respect to payments to contractors in connection with the Mount Hood Memorial Park and Golf Course. This Office will advise the City of our findings and recommendations under separate cover when our review is completed.

Please feel free to contact me with any questions you may have in this regard.

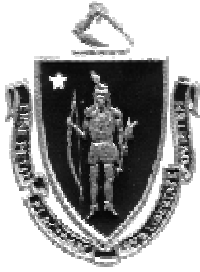
Sincerely,

A handwritten signature in cursive script that reads "Barbara J. Hansberry".

Barbara J. Hansberry
General Counsel

cc: Mayor Richard Lyons
Board of Aldermen
Donald Conn, Jr., City Solicitor
David Nalven, Chief, Bureau of Business and Labor Protection
Office of the Attorney General

¹ See Majestic Radiator Co. v. Commissioners of Middlesex, 397 Mass. 1002 (1986).



The Commonwealth of Massachusetts
Office of the Inspector General

JOHN W. MCCORMACK
STATE OFFICE BUILDING
ROOM 1311
TEL: (617) 727-9140
FAX: (617) 723-2334

MAILING ADDRESS:
STATE HOUSE STATION
P.O. BOX 270
BOSTON, MA 02133

October 12, 2001

Richard D. Lyons, Mayor
City of Melrose
Melrose City Hall
562 Main Street
Melrose, MA 02176

Dear Mayor Lyons:

As you know, my Office is reviewing a number of issues pertaining to the Mount Hood Memorial Park and Golf Course. Although our review is still ongoing, we have identified a matter with potential financial implications for the City: our analysis indicates that the City is still owed at least \$63,000 for fill delivered to Mount Hood, and may be owed more than \$68,000. I have decided to bring this matter to your attention at this time in order to enable the City to take prompt and appropriate action to protect its financial interests. A summary of our analysis is provided below.

According to records provided to this Office by the City, Gator Hood, LLC currently owes the City \$42,179 more than the amount reported to this Office by the City.

The City's agreement with Gator Hood, LLC (Gator) obligates Gator to pay the City \$0.70 per ton to deliver fill to the Mount Hood site and provide related construction services. The agreement authorizes Gator to deduct from its payments to the City the cost of site preparation expenses incurred by the City and paid by Gator.

A spreadsheet provided by the City on August 13, 2001 in response to the Office's request for documents and financial information concerning the City's agreement with Gator lists Gator's outstanding financial obligation to the City as \$20,821. However, the spreadsheet appears to be incomplete: it shows neither Gator's financial obligations to the City prior to February 16, 2001 nor any of Gator's payments to City vendors.

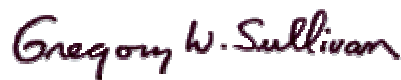
This Office's analysis of the records provided to this Office by the City shows that Gator delivered 679,644 tons of fill to Mount Hood between May 3, 2000 and July 20, 2001. At \$0.70 per ton, the dollar value of the delivered fill totals \$475,751. The City's records also show that Gator's payments to the City to date total \$175,043 and that Gator's payments to City vendors total \$237,708. Deducting these amounts from \$475,751 yields an unpaid financial obligation to the City of \$63,000.

According to Central Artery/Tunnel Project records, fill deliveries to Mount Hood exceeded the fill deliveries shown in the City's records by more than 7,000 tons. The value of the additional fill not shown in the City's records is \$5,388.

This Office has compared the City's fill delivery records with Central Artery/Tunnel (CA/T) Project records of fill deliveries to Mount Hood. Both the City and the CA/T Project have computed total tonnages on the basis of daily delivery logs prepared by Modern Continental Construction Company, which delivered the fill to Mount Hood under an agreement with Gator. However, there is a 7,697-ton discrepancy between the two sets of fill delivery records. The CA/T Project records, which constitute the basis for the CA/T Project's payments to Modern Continental, list fill deliveries on certain days for which the City has no records of fill deliveries. The additional 7,697 tons of fill reported on the CA/T Project records represents a \$5,388 increase in Gator's financial obligation to the City. Based on the CA/T Project records of fill deliveries, this Office calculates that Gator's unpaid financial obligation to the City would be \$68,388.

We recommend that the City review its fill delivery and payment records and take immediate steps to ensure that the City receives full payment for all fill delivered to Mount Hood. We would be glad to assist in this process by meeting with the City to provide a more detailed explanation of this Office's analysis. If you have questions or if you would like to schedule a meeting, please feel free to contact Pamela Bloomfield of my staff.

Sincerely,



Gregory W. Sullivan
Acting Inspector General

cc: Board of Aldermen
Park Commission
Joseph Tassone, City Auditor
Ray Blanchard, Interim Superintendent of Parks
Donald L. Conn, Jr., Esq., City Solicitor



The Commonwealth of Massachusetts
Office of the Inspector General

JOHN W. MCCORMACK
STATE OFFICE BUILDING
ROOM 1511
TEL: (617) 727-5140
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MAILING ADDRESS:
STATE HOUSE STATION
P.O. BOX 270
BOSTON, MA 02133

December 14, 2001

Richard D. Lyons, Mayor
City of Melrose
Melrose City Hall
562 Main Street
Melrose, MA 02176

Dear Mayor Lyons:

I am writing regarding the December 3, 2001 letter that you received from Michael J. Gill, Esq., who represents Gator Hood, LLC (Gator) in the matter of the Mount Hood fill project. This Office received a copy of Mr. Gill's letter on December 10, 2001.

At the outset, I want to reiterate that it is not this Office's purpose or role to engage in negotiations between the City and Gator regarding the amount of fill delivered, payments made by Gator, and any payments due the City. Instead, as we did in our October 12, 2001 letter to you, we are calling your attention to information we have obtained that may affect the City's financial interests.

Mr. Gill's December 3, 2001 letter to you stated, "It is not clear whether a credit taken by CA/T [the Central Artery/Tunnel project] against the total amount of fill delivered by Modern Continental was factored into the IG's analysis. The total amount of the credit was 25,000 tons, which translates into a \$17,500 credit against the City."

On this same point, Mr. Madden of Gator sent you a letter, a copy of which the City Auditor forwarded to this Office on October 25, 2001, stating, in part:

[A]s we discussed in our last meeting on October 10th, the CA/T has taken a credit from Modern Continental against the total quantity of fill excavated from the job site and delivered to Mount Hood. The total amount of the credit is 25,000 ton which translates into a \$17,500 credit against the City of Melrose. As discussed, the CA/T documentation on this matter is attached

The documentation attached to Mr. Madden's letter, dated October 19, 2001, consisted of a letter to Mr. Madden from Frank Trubiano, Modern Continental Senior Project Manager, accompanied by a CA/T Project report dated August 24, 2001. In the letter, Mr. Trubiano stated that the CA/T Project has taken a credit from Modern Continental due to an overrun of Type D material transportation and disposal. Mr. Trubiano's letter stated that the adjustment "represents a quantity reduction of approximately 25,749 tons" and that, consequently, Modern Continental will reduce its payment to Gator by \$33,750. Mr. Trubiano enclosed a copy of the CA/T Project report that, he said, verified the credit.

Last week, staff of this Office met with CA/T Project officials to review the CA/T Project report enclosed with Mr. Trubiano's letter. According to the information we obtained at that meeting, the CA/T Project report cited by Mr. Trubiano should have no impact on any calculation of payments due the City for receipt of fill. The information cited by Mr. Trubiano relates to pay item 001.183. However, the pay item under which the CA/T Project pays Modern Continental for the transportation and disposal of Type D material to Melrose and other locations is 126.184. According to CA/T Project officials, the CA/T Project has taken a credit from Modern Continental for payments erroneously made under pay item 001.183. This adjustment, according to the CA/T Project officials, does not reduce the estimates of material delivered to Melrose under pay item 126.184. Therefore, the adjustment in pay item 001.183 does not warrant a \$17,500 reduction in Gator's payment to the City.

This Office also learned from CA/T Project officials that the CA/T Project is reviewing information that may lead to an adjustment in the total tonnage for which the CA/T Project pays Modern Continental. Any such adjustment will be subject to negotiation and will not likely be completed in the near future.

Moreover, this Office's review of the contract between the City and Gator and the contract between Gator and Modern Continental suggests that any adjustment in the tonnage agreed to in the future by the CA/T Project and Modern Continental should have no bearing on the amounts due the City and Gator. The contract between the City and Gator states in pertinent part:

Measurements. All quantities are estimates only. Measurement is based on an agreed thirty three (33) tons per dump trailer load and twenty six (26) tons per triaxle load. Measurement/payment will be calculated from shipping tickets as generated and signed by [Modern Continental] at Project jobsite and collected and submitted by the City with the City's applications for payment. . . .

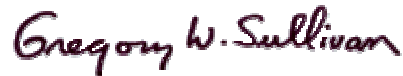
Similarly, the contract between Gator and Modern Continental states in pertinent part:

All Unit Price Contract Quantities are estimates only. Payment is predicated on the actual tonnage of material accepted at the disposal site as verified by a Modern Continental Project Manager. Payments will be calculated from received shipping tickets as generated and signed by MCC at the jobsite. . . . Measurement is based on an agreed 33 tons per load via Dump Trailer and 26 tons per load via Triaxle. . . .

Thus, both contracts state that the tonnage of material accepted at the disposal site will be calculated on the basis of the number and size of the trucks delivering material. The contracts specify that both the City and Gator will be credited with 33 tons for each dump trailer load and 26 tons for each triaxle load. Consequently, any negotiations between the CA/T Project and Modern Continental regarding the measurement of tonnage through other means appear irrelevant to the amounts owed to the City by Gator and to Gator by Modern Continental.

This Office met with you, the City Auditor, and the City Solicitor on October 22, 2001 to explain the analysis provided in our October 12, 2001 letter. We have also provided CA/T Project records to the Interim Superintendent of Parks. We continue to be available to City officials to answer any questions you may have.

Sincerely,



Gregory W. Sullivan
Acting Inspector General

cc: Board of Aldermen
Park Commission
Joseph Tassone, City Auditor
Ray Blanchard, Interim Superintendent of Parks
Donald L. Conn, Jr., Esq., City Solicitor
Michael Gill, Esq.

Appendix C: Project-Related Costs

As of August 31, 2001, according to City records, Gator had delivered 690,665 tons of fill to Mount Hood. At \$0.70 per ton, this fill had a value of \$483,466, of which Gator had paid a total of \$453,351 to the City and its vendors. As of the same date, project-related costs to the City amounted to \$775,086, according to City records. These project-related costs exceeded the value of the fill delivered to Mount Hood by \$291,620.

The table starting on the following page is a listing of all project-related costs through August 31, 2001. The table includes 226 invoice charges, not all of which had been paid by the City as of the August 31, 2001 date; payments for clerk-of-the-works services provided under a contract dated May 11, 2001; and the City's outstanding project-related contractual obligations as of August 31, 2001.

Appendix C
Project-Related Costs
(5/4/00-8/31/01)
Page 1 of 4

	Invoice Date	Vendor	Supplies/Services	Amount (\$)
1	5/4/00	Arbor Tree Service	Wood removal	2,800.00
2	5/13/00	Foley's Custom Sawmill	Unspecified	2,587.50
3	5/15/00	D&R General Contracting, Inc.	Roadway paving	8,856.64
4	5/15/00	Greenwood and Sons	Construction services	2,917.50
5	Undated	Dan Cappellucci, Jr.	Chain link fence	1,300.00
6	5/31/00	Community Newspaper Company	Legal notice	63.79
7	6/20/00	Community Newspaper Company	Legal notice	57.71
8	6/30/00	J.M. Cook Co., Inc.	Land clearing	12,000.00
9	6/30/00	Northeast Nursery, Inc.	Unspecified	2,555.50
10	7/14/00	Lion's Head Organics	Compost	1,600.00
11	7/17/00	B.M.C. Corporation	Loam	3,715.08
12	7/18/00	B.M.C. Corporation	Loam	1,107.81
13	7/19/00	B.M.C. Corporation	Loam	772.11
14	7/19/00	S.R. Dodge, Inc.	Installation of volt service	7,750.00
15	7/21/00	B.M.C. Corporation	Loam	1,152.57
16	7/24/00	B.M.C. Corporation	Loam	4,442.43
17	7/24/00	Kingstown Corporation	Mason sand, gravel	1,657.69
18	7/24/00	Kingstown Corporation	Gravel	276.64
19	7/28/00	B.M.C. Corporation	Loam	1,029.48
20	7/31/00	Kingstown Corporation	Gravel	553.28
21	8/1/00	Camp Dresser & McKee, Inc.	Engineering services	20,100.00
22	8/1/00	Greenwood and Sons	Machine rentals	5,375.00
23	8/1/00	Nitro Dynamics, Inc.	Drill, blast ledge	7,100.00
24	8/3/00	B.M.C. Corporation	Loam	839.25
25	8/4/00	B.M.C. Corporation	Loam	1,353.99
26	8/5/00	Simmons Environmental Services, Inc.	Soil testing	1,943.00
27	8/8/00	Massachusetts Electric Company	Power to site	261.75
28	8/8/00	B.M.C. Corporation	Loam	1,712.07
29	8/9/00	B.M.C. Corporation	Loam	1,119.00
30	8/10/00	B.M.C. Corporation	Loam	559.50
31	8/11/00	Environmental Landscape Management, Inc.	Clerk of works, other services	20,008.32
32	8/11/00	Environmental Landscape Management, Inc.	Hole #13 construction	24,835.25
33	8/14/00	Greenwood and Sons	Machine rentals	7,270.00
34	8/28/00	B.M.C. Corporation	Loam	559.50
35	8/31/00	B.M.C. Corporation	Loam	279.75
36	9/7/00	Massachusetts Electric Company	Power to site	144.55
37	9/19/00	Community Newspaper Company	Legal notices	106.31
38	9/27/00	Camp Dresser & McKee, Inc.	Engineering services	9,000.76
39	10/2/00	MDR Construction Co., Inc.	Water truck rental	9,900.00
40	10/3/00	Community Newspaper Company	Legal notice	60.75
41	10/10/00	Massachusetts Electric	Power to site	230.05
42	10/11/00	Melrose Police Department	Patrolman	136.00
43	10/31/00	Environmental Landscape Management, Inc.	Clerk of works, other services	17,803.75
44	10/31/00	Northeast Nursery, Inc.	Unspecified	2,607.00
45	11/1/00	Millennium Maintenance	Construction sweeping	10,455.00
46	11/6/00	MDR Construction Co., Inc.	Water truck rental	2,750.00
47	11/7/00	Massachusetts Electric Company	Power to site	326.56
48	11/8/00	Middlesex Materials	Stone	5,714.08
49	11/9/00	Middlesex Materials	Stone	8,151.52
50	11/10/00	Middlesex Materials	Stone	9,811.12
51	11/14/00	Camp Dresser & McKee, Inc.	Engineering services	14,441.84
52	11/15/00	J. Dillon	Truck rental	240.00
53	11/16/00	Nitro Dynamics, Inc.	Drill, blast ledge	22,900.00
54	12/1/00	Millennium Maintenance	Construction sweeping	3,740.00
55	12/7/00	Greenwood and Sons	Hauling, dozer rental	5,340.00
56	12/11/00	MDR Construction Co., Inc.	Water truck rental	3,506.00
57	12/12/00	Massachusetts Electric Company	Power to site	378.92

Appendix C
Project-Related Costs
(5/4/00-8/31/01)
Page 2 of 4

58	12/13/00	Dami and Sons	Construction services	600.00
59	12/14/00	Edward J. Farrell	Land surveying	340.00
60	12/15/00	Dami and Sons	Excavation of ledge	1,800.00
61	12/15/00	Dami and Sons	Excavation of ledge	2,500.00
62	12/18/00	Dami and Sons	Construction services	3,525.00
63	12/19/00	Dami and Sons	Construction services	2,802.50
64	12/19/00	Northeast Nursery, Inc.	Baled straw	797.16
65	12/21/00	Aggregate Industries	Stone	717.62
66	12/21/00	Aggregate Industries	Stone	118.66
67	12/21/00	Dami and Sons	Construction services	1,402.50
68	12/26/00	Aggregate Industries	Stone	637.88
69	12/26/00	Dami and Sons	Construction services	1,485.00
70	12/27/00	Dami and Sons	Construction services	1,567.50
71	12/28/00	Dami and Sons	Construction services	600.00
72	12/29/00	Dami and Sons	Construction services	600.00
73	12/29/00	Rent-A-Tool, Inc.	Equipment rental	1,990.00
74	Illegible	Rent-A-Tool, Inc.	Equipment rental	1,990.00
75	1/5/01	Dami and Sons	Construction services	495.00
76	1/12/01	Greenwood and Sons	Construction services	5,697.50
77	1/15/01	Shea Concrete Products, Inc.	Supplies	555.00
78	1/15/01	Massachusetts Electric Company	Power to site	579.78
79	1/26/01	Dami and Sons	Pipe and supplies	7,276.36
80	1/29/01	Dami and Sons	Construction services	990.00
81	1/29/01	Northeast Nursery, Inc.	Baled straw	550.00
82	1/29/01	Sweeney Farm	Hay	300.00
83	1/31/01	The Bruedan Corporation	Golf cart lease	1,000.00
84	2/3/01	Edward J. Farrell	Land surveying	610.00
85	2/7/01	Northeast Nursery, Inc.	Weed control	526.50
86	2/12/01	Aggregate Industries	Stone	690.85
87	2/12/01	Dami and Sons	Construction services	440.00
88	2/12/01	Kingstown Corporation	Gravel	1,482.00
89	2/12/01	Massachusetts Electric Company	Power to site	482.38
90	2/16/01	Northeast Nursery, Inc.	Baled straw	110.00
91	2/17/01	Dami and Sons	Construction services	700.00
92	2/19/01	Dami and Sons	Construction services	2,327.50
93	2/19/01	Kingstown Corp.	Gravel	889.20
94	2/20/01	Aggregate Industries	Stone	651.30
95	2/20/01	Dami and Sons	Construction services	3,810.00
96	2/20/01	Northeast Nursery, Inc.	Baled straw	110.00
97	2/21/01	Aggregate Industries	Stone	257.63
98	2/21/01	Dami and Sons	Construction services	3,875.00
99	2/21/01	Northeast Nursery, Inc.	Baled straw	220.00
100	2/22/01	Dami and Sons	Construction services	3,630.00
101	2/23/01	Aggregate Industries	Stone	275.86
102	2/23/01	Dami and Sons	Construction services	3,752.50
103	2/24/01	Dami and Sons	Construction services	1,910.00
104	2/26/01	Aggregate Industries	Stone	388.69
105	2/26/01	Dami and Sons	Construction services	495.00
106	2/27/01	Aggregate Industries	Stone	192.69
107	2/27/01	Dami and Sons	Construction services	495.00
108	2/28/01	Aggregate Industries	Stone	601.64
109	2/28/01	Aggregate Industries	Stone	147.68
110	2/28/01	Aggregate Industries	Stone	91.96
111	2/28/01	Dami and Sons	Construction services	675.00
112	3/1/01	Northeast Nursery, Inc.	Weed control	526.50
113	3/1/01	Dami and Sons	Construction services	750.00
114	3/2/01	Dami and Sons	Construction services	4,512.50
115	3/2/01	Wakefield Materials	Concrete blocks	2,100.00
116	3/3/01	Dami and Sons	Construction services	3,000.00
117	3/5/01	Kingstown Corporation	Gravel	2,667.60
118	3/10/01	Rent-A-Tool, Inc.	Equipment rental	1,990.00
119	3/13/01	Dami and Sons	Construction services	5,500.00
120	3/13/01	Wakefield Materials	Concrete blocks	1,590.00

Appendix C
Project-Related Costs
(5/4/00-8/31/01)
Page 3 of 4

121	3/14/01	Dami and Sons	Construction services	5,225.00
122	3/14/01	Wakefield Materials	Concrete blocks	1,620.00
123	3/14/01	Massachusetts Electric Company	Power to site	426.67
124	3/15/01	Dami and Sons	Construction services	4,950.00
125	3/15/01	Greenwood and Sons	Haul concrete blocks	1,000.00
126	3/15/01	Wakefield Materials	Concrete blocks	810.00
127	3/16/01	Dami and Sons	Construction services	3,520.00
128	3/19/01	Dami and Sons	Construction services	3,650.00
129	3/19/01	Kingstown Corporation	Gravel	5,335.20
130	3/20/01	Dami and Sons	Construction services	5,425.00
131	3/21/01	Dami and Sons	Construction services	4,892.50
132	3/21/01	Northeast Nursery, Inc.	Baled straw, stakes	285.00
133	3/22/01	Dami and Sons	Construction services	5,075.00
134	3/23/01	Aggregate Industries	Stone	1,985.53
135	3/23/01	Dami and Sons	Construction services	4,710.00
136	3/24/01	Dami and Sons	Construction services	4,345.00
137	3/25/01	Dami and Sons	Construction services	3,455.00
138	3/26/01	Dami and Sons	Construction services	5,075.00
139	3/26/01	Kingstown Corporation	Gravel	3,556.80
140	3/27/01	Dami and Sons	Construction services	4,675.00
141	3/28/01	Dami and Sons	Construction services	4,512.50
142	3/28/01	Environmental Landscape Management, Inc.	Construction services	13,112.46
143	3/29/01	Dami and Sons	Construction services	4,837.50
144	3/29/01	Northeast Nursery, Inc.	Weed control	175.50
145	3/30/01	Dami and Sons	Construction services	5,385.00
146	3/30/01	Shea Concrete Products, Inc.	Supplies	571.00
147	3/30/01	Wakefield Materials	Concrete blocks	1,080.00
148	3/31/01	Camp Dresser & McKee, Inc.	Engineering services	4,175.84
149	3/31/01	Dami and Sons	Construction services	4,037.50
150	3/31/01	Deering Lumber & Mason Supply	Sand	120.00
151	3/31/01	Kingstown Corporation	Gravel	2,667.60
152	4/1/01	Dami and Sons	Construction services	2,025.00
153	4/2/01	Dami and Sons	Construction services	4,512.50
154	4/2/01	Shea Concrete Products, Inc.	Supplies	440.00
155	4/3/01	Dami and Sons	Construction services	3,775.00
156	4/3/01	Federal Transportation Co., Inc.	Loam	2,380.00
157	4/4/01	Dami and Sons	Construction services	5,705.00
158	4/4/01	Federal Transportation Co., Inc.	Loam	2,380.00
159	4/5/01	Dami and Sons	Construction services	4,187.50
160	4/5/01	Federal Transportation Co., Inc.	Loam	3,360.00
161	4/6/01	Dami and Sons	Construction services	4,675.00
162	4/6/01	Greenwood and Sons	Machine rentals	20,780.25
163	4/7/01	Dami and Sons	Construction services	4,350.00
164	4/8/01	Dami and Sons	Construction services	3,700.00
165	4/9/01	Dami and Sons	Construction services	6,025.00
166	4/10/01	Dami and Sons	Construction services	7,175.00
167	Illegible	Rent-A-Tool, Inc.	Equipment rental	1,990.00
168	4/11/01	Cedar Associates	Loam	14,490.00
169	4/11/01	Dami and Sons	Construction services	5,475.00
170	4/11/01	Lesco, Inc.	Unspecified	1,083.18
171	4/12/01	Dami and Sons	Construction services	2,725.00
172	4/20/01	Dami and Sons	Construction services	1,635.00
173	4/20/01	Massachusetts Electric Company	Power to site	387.80
174	4/23/01	Dami and Sons	Construction services	1,635.00
175	4/26/01	Dami and Sons	Construction services	1,090.00
176	4/27/01	Environmental Landscape Management, Inc.	Construction services	15,297.50
177	5/3/01	Dami and Sons	Construction services	1,635.00
178	5/4/01	Dami and Sons	Construction services	1,635.00
179	5/9/01	Rent-A-Tool, Inc.	Equipment rental	1,990.00
180	5/10/01	Northeast Nursery, Inc.	Baled straw	203.50
181	5/11/01	Dami and Sons	Construction services	1,635.00
182	5/16/01	Dami and Sons	Construction services	1,635.00
183	5/21/01	Armstrong Golf Architects, LLC	Site visit	1,339.50

Appendix C
Project-Related Costs
(5/4/00-8/31/01)
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184	5/21/01	Dami and Sons	Construction services	3,270.00	
185	5/25/01	Deering Lumber & Mason Supply	Stakes	14.50	
186	5/25/01	Powers & Sullivan	Audit	8,000.00	
187	5/29/01	Dami and Sons	Construction services	1,635.00	
188	5/30/01	Deering Lumber & Mason Supply	Stakes	50.85	
189	5/31/01	Epsilon Associates, Inc.	Engineering services	1,028.37	
190	6/1/01	Dami and Sons	Construction services	4,905.00	
191	6/6/01	Mayer Tree Service, Inc.	Tree removal	2,700.00	
192	6/7/01	Dami and Sons	Construction services	1,635.00	
193	6/8/01	Jennian Enterprises LLC	Filter fabric	660.00	
194	6/8/01	Rent-A-Tool, Inc.	Equipment rental	995.00	
195	6/11/01	Dami and Sons	Construction services	1,635.00	
196	6/12/01	S.R. Dodge, Inc.	Disconnect wiring at tower	1,785.00	
197	6/12/01	Massachusetts Electric Company	Power to site	314.16	
198	6/13/01	Environmental Landscape Management, Inc.	Construction services	1,850.00	
199	6/14/01	Dami and Sons	Construction services	1,420.00	
200	6/16/01	Dami and Sons	Construction services	1,080.00	
201	6/18/01	Armstrong Golf Architects, LLC	Site visit	1,552.00	
202	6/19/01	Northeast Nursery, Inc.	Hay, silt fence	66.00	
203	6/21/01	Charrette ProGraphics	Printing	178.50	
204	6/21/01	Northeast Nursery, Inc.	Baled straw, stakes	330.00	
205	7/5/01	Northeast Nursery, Inc.	Unspecified	760.80	
206	7/9/01	Rent-A-Tool, Inc.	Equipment rental	995.00	
207	7/9/01	Massachusetts Electric Company	Power to site	60.68	
208	7/11/01	Northeast Nursery, Inc.	Unspecified	152.16	
209	7/16/01	Northeast Nursery, Inc.	Unspecified	136.22	
210	7/17/01	Sweeney Farm	Hay	750.00	
211	7/18/01	Deering Lumber & Mason Supply	Fence, stakes	161.50	
212	7/18/01	Deering Lumber & Mason Supply	Fence, stakes	161.50	
213	7/19/01	Sweeney Farm	Hay	600.00	
214	7/20/01	Deering Lumber & Mason Supply	Fence, stakes	98.00	
215	7/20/01	Northeast Nursery, Inc.	Unspecified	337.62	
216	7/26/01	Rent-A-Tool, Inc.	Equipment rental	563.84	
217	7/30/01	Environmental Landscape Management, Inc.	Construction services	4,810.00	
218	7/31/01	Camp Dresser & McKee, Inc.	Engineering services	35,150.00	
219	7/31/01	Epsilon Associates, Inc.	Engineering services	874.83	
220	8/7/01	Deering Lumber & Mason Supply	Oak stakes and line	71.35	
221	8/8/01	Deering Lumber & Mason Supply	Silt fence	103.50	
222	8/9/01	Sweeney Farm	Hay	600.00	
223	8/10/01	Jennian Enterprises LLC	Filter fabric	220.00	
224	8/14/01	Deering Lumber & Mason Supply	Oak stakes and paint	40.90	
225	8/16/01	Deering Lumber & Mason Supply	Fence, other supplies	44.48	
226	8/31/01	Epsilon Associates, Inc.	Engineering services	1,329.17	
		Total of all invoices			\$696,818.02
		Total payments for clerk of the works services under contract dated 5/1/01			\$19,600.00
		Outstanding contractual obligations (as of 8/31/01):			
		Epsilon Associates, Inc.	Engineering services	16,667.63	
		Camp Dresser & McKee, Inc.	Engineering services	42,000.00	
		Total outstanding contractual obligations			\$58,667.63
		Total project-related costs			\$775,085.65

Source: City of Melrose records.