



METRO

Agenda

MEETING: METRO COUNCIL
DATE: January 17, 2008
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the January 10, 2008 Metro Council Regular Meeting.

3.2 **Resolution No. 08-3890**, For the Purpose of Confirming the Appointment of Scott Keller to the Regional Solid Waste Advisory Committee (SWAC).

3.3 **Resolution No. 08-3900**, Authorizing Official Council Representation at an Event Under the Oregon Ethics Law.

3.4 **Resolution No. 08-3899**, For the Purpose of Amending the 2008-11 Metropolitan Transportation Improvement Program (MTIP) to Include the US30B: 122nd to 141st Safety Project and the I-205: Willamette River Bridge Project.

4. ORDINANCES - SECOND READING

4.1 **Ordinance No. 07-1165**, For the Purpose of Amending Metro Code Chapter 3.09 (Local Government Boundary Changes) to Implement 2007 Oregon Laws Chapter, and Update the Chapter, and Declaring an Emergency. Hosticka

4.2 **Ordinance No. 08-1170**, Amending FY 2007-08 Budget and Appropriations Transferring Appropriations in the MERC Operation Fund and Declaring an Emergency. TBA

5. RESOLUTIONS

5.1 **Resolution No. 08-3889**, For the Purpose of Considering the Release of Request for Proposal No. 08-1254 for the Procurement of Solid Waste Transportation Services. Harrington

6. CONTRACT REVIEW BOARD

- 6.1 **Resolution No. 08-3892**, For the Purpose of Approving a Sole Source Contract Liberty
With the Oregon Pacific Railroad For Railroad Track Realignment Services.
- 6.2 **Resolution No. 08-3903**, For the Purpose of Authorizing the Chief Operating Liberty
Officer to Execute an Intergovernmental agreement with the City of Portland
providing for funding and administration of a Public contract for railroad track
realignment services, and to grant an easement to the City of Portland for
Non-Park Use.

7. CHIEF OPERATING OFFICER COMMUNICATION

8. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for January 17, 2008 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.tvctv.org -- (503) 629-8534 2 p.m. Thursday, Jan. 17 (Live)	Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcmv.org -- (503) 288-1515 8:30 p.m. Sunday, Jan. 20 2 p.m. Monday, Jan. 21
Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 2 p.m. Monday, Jan. 21	Washington County Channel 30 -- TVC-TV www.tvctv.org -- (503) 629-8534 11 p.m. Saturday, Jan. 19 11 p.m. Sunday, Jan. 20 6 a.m. Tuesday, Jan. 22 4 p.m. Wednesday, Jan. 23
Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.	West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, (503) 797-1542. Public hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website www.metro-region.org and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

Agenda Item Number 3.1

Consideration of Minutes of the January 10, 2008 Metro
Council Regular Meeting

Consent Agenda

Metro Council Meeting
Thursday, January 17, 2008
Metro Council Chamber

Agenda Item Number 3.2

Resolution No. 08-3890, For the Purpose of Confirming the
Appointment of Scott Keller to the Regional Solid Waste Advisory
Committee (SWAC)

Consent Agenda

Metro Council Meeting
Thursday, January 17, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE	)	RESOLUTION NO. 08-3890
APPOINTMENT OF SCOTT KELLER TO THE)	
REGIONAL SOLID WASTE ADVISORY	)	Introduced by David Bragdon,
COMMITTEE (SWAC)	)	Council President

WHEREAS, Metro Code Chapter 2.19.130 established the Regional Solid Waste Advisory Committee (SWAC) to evaluate policy recommendations to the Metro Council regarding regional solid waste management and planning; and

WHEREAS, Metro Code Chapter 2.19.030 states that all members and alternate members of all Metro Advisory Committees shall be appointed by the Council President subject to confirmation by the Council; and

WHEREAS, Metro Code Chapter 2.19.130 authorizes representatives and alternates for the SWAC; and

WHEREAS, vacancies have occurred in the SWAC membership; and

WHEREAS, the Council President has appointed Scott Keller, with the City of Beaverton, for a two-year limited term as an alternate for Washington County Cities, subject to confirmation by the Metro Council; now therefore,

BE IT RESOLVED, that the Metro Council confirms the appointment of Mr. Keller to Metro's SWAC.

ADOPTED by the Metro Council this _____ day of _____, 2008.

David Bragdon, Council President

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3890 FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF SCOTT KELLER TO THE REGIONAL SOLID WASTE ADVISORY COMMITTEE (SWAC)

Date: January 17, 2008

Prepared by: Susan Moore

BACKGROUND

The 25-member Regional Solid Waste Advisory Committee (SWAC), representing recyclers, the hauling industry, disposal sites, ratepayers and local governments, evaluates policy options and presents recommendations to the Metro Council regarding regional solid waste management and planning.

Scott Keller, with the City of Beaverton, has been recommended to serve as an alternate representative of Washington County Cities on the SWAC. (See Attachment 1).

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition.

2. Legal Antecedents

ORS 192.610 "Governing Public Meetings", Metro Code Chapter 2.19.030, "Membership of the Advisory Committees" and 2.19.130, "Metro Solid Waste Advisory Committee", are the relevant legal documents related to these appointments.

3. Anticipated Effects

This resolution is intended to appoint the following individual for two-year term-limited service on the SWAC: Scott Keller.

4. Budget Impacts

None.

RECOMMENDED ACTION

The Council President has reviewed the qualifications of Mr. Keller and finds him qualified to advise Metro in the matters of solid waste management and planning. Therefore, Council confirmation of this appointment by adoption of Resolution No. 08-3890 is recommended.

Scott Keller
2323 NE Schuyler Street, Portland, OR 97212
503.314.4513 scott.k2@comcast.net

Resolution No. 08-3890
Attachment No. 1

OBJECTIVE: Continued work in a dynamic environment that allows personal professional growth and provides the opportunity to exercise administrative, planning and organizational skills in a field focused on sustainability issues

WORK HISTORY

City of Beaverton, Beaverton, OR 5/2000-Present

Auxiliary Services Program Manager, Office of the Mayor: Supervisor of Solid Waste & Recycling Program, Mailroom Operations, Graphic Services Program and Community Garden Program. Balanced competing priorities of multiple tasks and programs, ranging public outreach for recycling information, internal and external copying and printing services for City programs; layout and design of special projects, and various miscellaneous functions

Salem Academy High School, Salem, OR 9/1986 - 6/1999

Director of Student Activities; Social studies teacher and department chair; Publications adviser; Scholars Department chair; Accreditation Committee for Northwest Association of Secondary Schools and Colleges local evaluation

Energy Ill Home Insulation & Windows, Springfield, OR 8/1985 - 7/1986

Office manager, work crew schedule supervisor, inventory controller for home insulation and window business

AREAS OF EXPERTISE

Administrative

- Prepared and monitored program budgets over \$1.4 million annually
- Coordinated meetings, agendas and follow-up action plans
- Personnel management of outreach and support staff
- Developed, reviewed and implemented work plans, services, policies, procedures and reports

Organizational

- Planned and implemented public relations strategies of Solid Waste & Recycling Program
- Experienced giving presentations to public bodies (Beaverton City Council and Metro Council)
- Oversight of Beaverton's conversion to automated garbage collection and recycling roll-carts and expansion of commercial recycling program
- Experience in working with varied constituencies

Graphic Services

- Thorough knowledge of Adobe PageMaker 7.0, Microsoft Word and Excel
- Trained to use Adobe InDesign, Adobe Photoshop, Powerpoint
- Designed and produced newsletters, brochures, posters and pamphlets, reports

General

- Attentive to detail and proven experience in dealing with multiple projects at one time
- Ability to balance demands of a team environment and working independently
- Skilled educator of youth and adults
- Effective communicator to level of target audience

EDUCATION

Master of Science in Interdisciplinary Studies, Western Oregon State College, Monmouth, OR, June 1991

Bachelor of Arts in Social Science Education, Northwest Nazarene College, Nampa, ID, June 1983

Resolution No. 08-3900, Authorizing Official Council Representation
at an Event under the Oregon Ethics Law

Consent Agenda.

Metro Council Meeting
Thursday, January 17, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DESIGNATING A	)	RESOLUTION NO. 08-3900
METRO OFFICIAL AS THE OFFICIAL)	
REPRESENTATIVE OF THE METRO COUNCIL)	
	)	Introduced by Chief Operating Officer
	)	Michael J. Jordan, with the concurrence of
	)	Council President David Bragdon

WHEREAS, the 2007 Oregon Legislature adopted revisions to Oregon law relating to government ethics (Senate Bill 10) which took effect January 1, 2008; and

WHEREAS, the provisions of Senate Bill 10 require that the Metro Council authorize individual councilors as representatives of the Metro Council when they are on an official sanctioned trade promotion or a fact finding mission or when engaging in official designated negotiations or economic development activities or attending conventions, fact finding missions, trips or other meetings as representatives of the Metro Council; and

WHEREAS, Council President David Bragdon has been invited by the Portland Business Alliance ("PBA") to attend and speak at an economic development conference at Salishan Lodge, on the Oregon Coast, January 25-26, 2008, at PBA expense; now therefore

BE IT RESOLVED that the Metro Council designates Council President David Bragdon as the official representative at the Portland Business Alliance Economic Development Conference to be held at the Oregon Coast at Salishan Lodge on January 25-26, 2008.

ADOPTED by the Metro Council this _____ day of _____ 2008.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Resolution No. 08-3899, For the Purpose of
Amending the 2008-11 Metropolitan Transportation
Improvement Program (MTIP) to include the US30B:
122nd to 141st Safety Project and the I-205: Willamette
River Bridge Project.

Consent Agenda

Metro Council Meeting
Thursday, January 17, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE 2008-	)	RESOLUTION NO. 08-3899
11 METROPOLITAN TRANSPORTATION)	
IMPROVEMENT PROGRAM (MTIP) TO	)	Introduced by Councilor Rex Burkholder
INCLUDE THE US30B: 122 nd TO 141 st SAFETY)	
PROJECT AND THE I-205: WILLAMETTE)	
RIVER BRIDGE PROJECT)	

WHEREAS, the Metropolitan Transportation Improvement Program (MTIP) prioritizes projects from the Regional Transportation Plan to receive transportation related funding; and

WHEREAS, the Joint Policy Advisory Committee on Transportation (JPACT) and the Metro Council must approve the MTIP and any subsequent amendments to add new projects to the MTIP; and

WHEREAS, the JPACT and the Metro Council approved the 2008-11 MTIP on August 16, 2007; and

WHEREAS, the Oregon Department of Transportation has designated US30B (Sandy Boulevard) between 122nd and 141st Avenues to receive funding from the State Safety program to add a center turn lane, widen shoulders and other investments; and

WHEREAS, the Oregon Department of Transportation has designated the I-205 Bridge over the Willamette River (George Abernethy Bridge near Oregon City) to receive funding from the State Bridge program to overlay pavement on the bridge deck and repair bridge joints; and

WHEREAS, these are new transportation projects requiring amendment into the MTIP prior to funds being made available to the projects; and

WHEREAS, the US30B project has been determined through inter-agency consultation to not be of regional significance with regard to air quality; and

WHEREAS, the I-205 Bridge project is exempt from air quality conformity determination per federal regulations; and

WHEREAS, the projects are consistent with the Regional Transportation Plan; now therefore

BE IT RESOLVED that the Metro Council hereby adopts the recommendation of JPACT to include the US30B: 122nd to 141st and the I-205 Willamette River Bridge projects into the 2008-11 Metropolitan Transportation Improvement Program.

ADOPTED by the Metro Council this ____ day of January 2008.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3899, FOR THE PURPOSE OF AMENDING THE 2008-11 METROPOLITAN TRANSPORTATION IMPROVEMENT PROGRAM (MTIP) TO INCLUDE THE US30B: 122ND TO 141ST SAFETY PROJECT AND THE I-205: WILLAMETTE RIVER BRIDGE PROJECT

Date: January 17, 2008

Prepared by: Ted Leybold

BACKGROUND

Two new projects have been proposed by the Oregon Department of Transportation (ODOT) to receive funding since the adoption of the 2008-11 Metropolitan Transportation Implementation Program (MTIP) by JPACT and the Metro Council in August of 2007. All transportation projects to receive federal transportation funds must be included in the MTIP. The Joint Policy Advisory Committee on Transportation and the Metro Council must approve amendments to the MTIP.

1. The US30 (Sandy Boulevard): 122nd to 141st Avenue project is proposed to receive funding from ODOT's Safety Program. This project was originally proposed following 146 reported crashes reported between 1999 and 2004. The site became recognized as a top 10% Safety Priority Index System (SPIS) location. ODOT is working to add a center turn lane, shoulder/bicycle lane and sidewalks in an effort to improve safety along this road segment. This project has been identified by Region 1 staff as a priority for safety funds not already committed to projects in the existing 2008-11 MTIP.
2. The I-205 Willamette River Bridge project has been identified as priority for funding from ODOT's Bridge Program. The state bridge management system tracks the condition of all bridges in the state and recommends priorities for improvements. The proposed work associated with the I-205 Willamette River Bridge project includes joints replacement and deck overlay.

ANALYSIS/INFORMATION

1. **Known Opposition** None known at this time.
2. **Legal Antecedents** Amends the 2008-11 Metropolitan Transportation Improvement Program adopted by Metro Council Resolution 07-3825 on August 16, 2007 (For the Purpose of Approving the 2008-11 Metropolitan Transportation Improvement Program for the Portland Metropolitan Area).
3. **Anticipated Effects** Adoption of this resolution will make available federal transportation project funding for the construction of the US30B (Sandy Boulevard): 122nd to 141st Avenues safety project and to the I-205 Willamette River bridge project.
4. **Budget Impacts** None.

RECOMMENDED ACTION

Metro staff recommends the approval of Resolution No. 08-3899.

Ordinance No. 07-1165, For the Purpose of Amending Metro Code Chapter 3.09 (Local Government Boundary Changes) to implement 2007 Oregon Laws Chapter, and Update the Chapter, and Declaring an Emergency.

Second Reading

Metro Council Meeting
Thursday, January 17, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO CODE) Ordinance No. 07-1165
CHAPTER 3.09 (LOCAL GOVERNMENT BOUNDARY)
CHANGES) TO IMPLEMENT 2007 OREGON LAWS) Introduced by Chief Operating Officer
CHAPTER 173 AND UPDATE THE CHAPTER, AND) Michael Jordan with the Concurrence
DECLARING AN EMERGENCY) of Council President David Bragdon

WHEREAS, the Legislature enacted 2007 Oregon Laws chapter 173 (Senate Bill 615), which repealed the requirement in ORS chapter 268 that Metro provide a process for certain local governments to appeal boundary changes by other local governments to a Metro-established boundary appeals commission; and

WHEREAS, the Legislature concluded that the process for appeals to Metro's boundary appeals commission had become redundant with appeals of boundary changes to the Land Use Board of Appeals ("LUBA"), and a pre-requisite to appeal to LUBA; and

WHEREAS, other provisions in chapter 3.09 of the Code have become obsolete; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Chapter 3.09 of the Metro Code is hereby amended, as indicated in Exhibit "A", attached and incorporated into this ordinance, in order to implement 2007 Oregon Laws chapter 173 and to make other changes to bring the chapter up to date.
2. The Findings of Fact and Conclusions of Law in Exhibit "B", attached and incorporated into this ordinance, explain how these amendments comply with the Regional Framework Plan and statewide planning laws.
3. This ordinance is necessary for the immediate preservation of public health, safety and welfare because the effective date of 2007 Oregon Laws chapter 173 is January 1, 2008, and timely repeal of code provisions that establish the boundary appeals commission will save local governments time and money on redundant appeals. An emergency is, therefore, declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this ___ day of _____, 2008.

David Bragdon, Council President

Attest:

Approved as to form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

Exhibit A to Ordinance No. 07-1165

Proposed ~~Changes~~Amendments to Metro's ~~Boundary Change~~ Code Chapter
3.09 (Local Government Boundary Changes)

~~August 2~~September 24, 2007

3.09.010 Purpose and Applicability

The purpose of this chapter is to carry out the provisions of ORS 268.354. This chapter applies to all boundary changes within the boundaries of Metro ~~or~~ and any ~~urban reserve designated by Metro prior to June 30, 1997~~ annexation of territory to the Metro boundary. Nothing in this chapter affects the jurisdiction of the Metro Council to amend the region's Urban Growth Boundary (UGB).

3.09.020 Definitions

As used in this chapter, unless the context requires otherwise:

(a) "Affected entity" means a county, city, ~~or special~~ district for which a boundary change is proposed or is ordered.

(b) "Affected territory" means territory described in a petition.

(c) ~~"Approving entity" means the governing body of a city, county, city-county or district authorized to make a decision on a boundary change, or its designee.~~

~~—(d)—~~"Boundary change" means a major or minor boundary change, involving affected territory lying within the jurisdictional boundaries of Metro ~~and~~ or the boundaries of the urban reserves designated by Metro prior to June 30, 1997.

~~(e) "Contested case" means a boundary change decision by a city, county or district that is contested or otherwise challenged by a necessary party.~~

(d) "Deliberations" means discussion among members of a reviewing entity leading to a decision on a proposed boundary change at a public meeting for which notice was given under this chapter.

~~(f)~~ "District" means a district defined by ORS 198.710 or any district subject to Metro boundary procedure act under state law.

~~(g)~~ "Final decision" means the action by ~~an approving a~~ reviewing entity whether adopted by ordinance, resolution or other means which is the determination of compliance of the proposed boundary change with ~~all~~ applicable criteria and which requires no further discretionary decision or action by the ~~approving reviewing~~

entity other than any required referral to electors. "Final decision" does not include resolutions, ordinances or other actions whose sole purpose is to refer the boundary change to electors or to declare the results of an election, ~~or any action to defer or continue deliberations on a proposed boundary change.~~

(~~h~~g) "Major boundary change" means the formation, merger, consolidation or dissolution of a city or district.

(~~h~~i) "Minor boundary change" means an annexation or withdrawal of territory to or from a city or district or from a city-county to a city. "Minor boundary change" also means an extra-territorial extension of water or sewer service by a city or district. ~~"Minor boundary change" does not mean withdrawal of territory from a district under ORS 222.520.~~

(~~j~~i) "Necessary party" means ~~any county; city; or~~ district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory; Metro; ~~and~~ any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory.

(~~k~~j) "Petition" means ~~a petition, resolution or other~~ any form of ~~initiatory~~ action ~~for~~ that initiates a boundary change.

(k) "Reviewing entity" means the governing body of a city, county or Metro, or its designee.

(l) ~~"Uncontested case" means a boundary change decision by an approving entity that is not challenged by a necessary party to that decision.~~

(~~m~~) "Urban services" means sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit.

3.09.030 ~~Uniform~~ Notice Requirements ~~for Final Decisions~~

(a) The ~~following minimum~~ notice requirements in this section apply to all boundary change decisions by ~~an approving~~ a reviewing entity ~~except expedited decisions made pursuant to section 3.09.045. Approving entities may choose to provide more notice than required.~~ These ~~procedures~~ requirements ~~are~~ apply in addition to, and do not supersede, ~~the~~ applicable requirements of ORS ~~chapters~~ 197, 198, 221 and 222 and any city or county charter ~~for~~ provision on boundary changes. ~~Each approving entity shall provide for the manner of notice of boundary change decisions to affected persons.~~

(b) ~~An approving~~ Within 45 after a reviewing entity determines that a petition is complete, the entity shall set a time for deliberations on a boundary change ~~within 30 days after the petition is completed~~. The ~~approving~~ reviewing entity shall give notice of its proposed deliberations by mailing notice to all necessary parties, by weatherproof posting of the notice in the general vicinity of the affected territory, and by publishing notice in a newspaper of general circulation in the affected territory. Notice shall be mailed and posted at least ~~45~~20 days prior to the date of ~~decision~~ deliberations ~~for major boundary changes and for those minor boundary changes which are not within the scope of adopted urban service provider agreements and for which a shorter notice period has not been agreed to by all necessary parties~~. However, notice of minor boundary changes to special districts may be mailed and posted at least 40 days prior to the proposed date of decision. Notice shall be published as required by state law.

(c) The notice ~~of the date of deliberations required by~~ subsection (b) shall:

(1) ~~Describe~~ Describe the affected territory in a manner that allows certainty;

(2) ~~State~~ State the date, time and place where the ~~approving~~ reviewing entity will consider the boundary change; and

(3) ~~State~~ State the means by which any ~~interested~~ person may obtain a copy of the ~~approving~~ reviewing entity's report on the proposal. ~~The notice shall state whether the approving entity intends to decide the boundary change without a public hearing unless a necessary party requests a public hearing.~~

(d) ~~An approving~~ A reviewing entity may adjourn or continue its final ~~decision~~ deliberations on a proposed boundary change to another time. For a continuance later than ~~31~~ 28 days after the time stated in the original notice, notice shall be reissued in the form required by subsection (b) of this section at least ~~15~~ five days prior to the continued date of decision. ~~For a continuance scheduled within 31 days of the previous date for decision, notice shall be adequate if it contains the date, time and place of the continued date of decision.~~

(e) ~~An approving~~ A reviewing entity's final decision shall be ~~reduced to writing~~ written and authenticated as its official act within ~~5 working~~ 30 days following the decision and mailed or delivered to Metro and to all necessary ~~parties~~ parties to the decision. The mailing or delivery to Metro shall include payment to Metro of the filing fee required pursuant to Section ~~3.09.1103.09.060~~. ~~The date of mailing shall constitute the date from which the time for appeal runs for appeal of the decision to the Metro Boundary Appeals Commission.~~

~~(f) Each county shall maintain a current map and list showing all necessary parties entitled to receive notice of proposed boundary changes. A county shall provide copies of the map, list, and any changes thereto, to Metro.~~

3.09.040 Minimum Requirements for Petitions

(a) A petition for a boundary change ~~shall be deemed complete if it includes~~ must contain the following information:

- (1) The jurisdiction of the ~~approving~~ reviewing entity to act on the petition;
- (2) A ~~narrative, map and a legal and graphical~~ description of the affected territory in the form prescribed by the ~~Metro Chief Operating Officer~~ reviewing entity;
- (3) For minor boundary changes, the names and mailing addresses of all persons owning property and all electors within the affected territory as shown in the records of the tax assessor and county clerk; ~~and~~
- (4) ~~A listing of the present providers of urban services to the affected territory;~~ For boundary changes under ORS 198.855(3), 198.857, 222.125 or 222.170, statements of consent to the annexation signed by the requisite number of owners or electors.
- ~~(5) A listing of the proposed providers of urban services to the affected territory following the proposed boundary change;~~
- ~~(6) The current tax assessed value of the affected territory; and~~
- ~~(7) Any other information required by state or local law.~~

(b) A city, ~~or~~ county and Metro may charge a fee to recover its reasonable costs to carry out its duties and responsibilities under this chapter.

3.09.045 Expedited Decisions

(a) ~~Approving entities~~ The governing body of a city or Metro may ~~establish use an expedited decision the process set forth in this section that does not require a public hearing consistent with this section~~ for minor boundary changes for which the petition is accompanied by the written consents of one hundred percent of property owners and at least fifty percent of the electors, if any, within the affected territory. No public hearing is required. ~~Expedited decisions are not subject to the requirements of Sections 3.09.030(b)~~

~~and 3.09.050(a), (b), (c), (e) or (f). The expedited decision process may only be utilized for minor boundary changes where the petition initiating the minor boundary change is accompanied by the written consent of one hundred percent (100%) of the property owners and at least fifty percent (50%) of the electors, if any, within the affected territory.~~

(b) The expedited ~~decision~~ process must provide for a minimum of ~~20~~ 20 days' notice prior to the date set for decision to all ~~interested~~ necessary parties and other persons entitled to notice by the laws of the city or Metro. The notice shall state that the petition is subject to the expedited process. ~~The expedited process may not be utilized if unless a necessary party gives written notice of its intent to contest the decision prior to the date of the decision.~~ objection to the boundary change. A necessary party may not contest a minor boundary change where the minor boundary change is explicitly authorized by an urban services agreement adopted pursuant to ~~ORS 195.065.~~

(c) At least seven days prior to the date of decision the ~~approving entity~~ city or Metro shall make available to the public a brief report that ~~addresses the factors listed in Section 3.09.050(b).~~ The decision record shall demonstrate compliance with the criteria contained in Sections 3.09.050(d) and (g). includes the following information:

- (1) The extent to which urban services are available to serve the affected territory, including any extra-territorial extensions of service;
- (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (3) The proposed effective date of the boundary change.

(d) ~~Decisions made pursuant to an expedited process are not subject to appeal by a necessary party pursuant to Section 3.09.070.~~ To approve a boundary change through an expedited process, the city shall:

- (1) Find that the change is consistent with expressly applicable provisions in:

(A) Any applicable urban service agreement adopted pursuant to ORS 195.065;

(B) Any applicable annexation plan adopted pursuant to ORS 195.205;

(C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;

(D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and

(E) Any applicable comprehensive plan; and

(2) Consider whether the boundary change would:

(A) Promote the timely, orderly and economic provision of public facilities and services;

(B) Affect the quality and quantity of urban services; and

(C) Eliminate or avoid unnecessary duplication of facilities or services.

(e) A city may not annex territory that lies outside the UGB, except it may annex a lot or parcel that lies partially within and outside the UGB. A city may not extend water, sewer or storm-water services from inside a UGB to territory that lies outside the UGB. A district may annex territory outside the UGB if the district already includes territory outside the UGB. However, such a district may extend water, sewer or storm-water services to proposed development on land outside the UGB only if the development is authorized by acknowledged provisions of the county's comprehensive plan and land use regulations.

3.09.050 ~~Uniform~~ Hearing and Decision Requirements for ~~Final~~ Decisions Other Than Expedited Decisions

(a) The following ~~minimum~~ requirements for hearings on ~~boundary change decisions~~ petitions operate in addition to ~~all procedural~~ requirements for boundary changes ~~provided for under~~ in ORS chapters 198, 221 and 222 and the reviewing entity's charter, ordinances or resolutions. ~~Nothing in this chapter allows an approving entity to dispense with a public hearing on a proposed boundary change when the public hearing is required by applicable state statutes or is required by the approving entity's charter, ordinances or resolutions.~~

(b) Not later than 15 days prior to the date set for a ~~boundary change decision~~ hearing, the ~~approving~~ reviewing entity shall make available to the public a report that addresses the criteria in subsections (d) ~~and (g) below~~, and ~~that~~ includes ~~at a minimum the following~~ the following information:

- (1) The extent to which urban services ~~presently~~ are available to serve the affected territory, including any extra territorial extensions of service;
- (2) ~~A description of how the proposed boundary change complies with any urban service provider agreements adopted pursuant to ORS 195.065 between the affected entity and all necessary parties;~~
- ~~(3) A description of how the proposed boundary change is consistent with the comprehensive land use plans, public facility plans, regional framework and functional plans, regional urban growth goals and objectives, urban planning agreements and similar agreements of the affected entity and of all necessary parties;~~
- ~~(4)~~ Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (53) The proposed effective date of the ~~decision~~ boundary change.

(c) ~~In order to have standing to appeal a boundary change decision pursuant to Section 3.09.070 a necessary party must appear at the hearing in person or in writing and state reasons why the necessary party believes the boundary change is inconsistent with the approval criteria. A necessary party may not contest a boundary change where the boundary change is explicitly authorized by an urban services agreement adopted pursuant to ORS 195.065. At any public hearing, the~~ The persons or entities entity proposing the boundary change ~~shall have the~~ has the burden to ~~prove~~ demonstrate that the ~~petition~~ proposed boundary change meets the applicable criteria ~~for a boundary change.~~

(d) ~~An approving entity's final decision on a boundary change shall include findings and conclusions addressing the following criteria:~~ To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (d) and (e) of section 3.09.045.

- ~~(1) Consistency with directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;~~
- ~~(2) Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;~~

- ~~(3) Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;~~
- ~~(4) Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;~~
- ~~(5) Whether the proposed change will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;~~
- ~~(6) The territory lies within the Urban Growth Boundary; and~~
- ~~(7) Consistency with other applicable criteria for the boundary change in question under state and local law.~~

~~(e) When there is no urban service agreement adopted pursuant to ORS 195.065 that is applicable, and a boundary change decision is contested by a necessary party, the approving entity shall also address and consider, information on the following factors in determining whether the proposed boundary change meets the criteria of Sections 3.09.050(d) and (g). The findings and conclusions adopted by the approving entity shall explain how these factors have been considered.~~

- ~~(1) The relative financial, operational and managerial capacities of alternative providers of the disputed urban services to the affected area;~~
- ~~(2) The quality and quantity of the urban services at issue with alternative providers of the urban services, including differences in cost and allocations of costs of the services and accountability of the alternative providers;~~
- ~~(3) Physical factors related to the provision of urban services by alternative providers;~~
- ~~(4) For proposals to create a new entity the feasibility of creating the new entity.~~
- ~~(5) The elimination or avoidance of unnecessary duplication of facilities;~~
- ~~(6) Economic, demographic and sociological trends and projections relevant to the provision of the urban services;~~

- ~~(7) Matching the recipients of tax supported urban services with the payers of the tax;~~
- ~~(8) The equitable allocation of costs to alternative urban service providers between new development and prior development; and~~
- ~~(9) Economies of scale.~~
- ~~(10) Where a proposed decision is inconsistent with an adopted intergovernmental agreement, that the decision better fulfills the criteria of Section 3.09.050(d) considering Factors (1) through (9) above.~~

~~(f) A final boundary change decision by an approving entity shall state the effective date, which date shall be no earlier than 10 days following the date that the decision is reduced to writing, and mailed to all necessary parties. However, a decision that has not been contested by any necessary party may become effective upon adoption.~~

~~(g) Only territory already within the defined Metro Urban Growth Boundary at the time a petition is complete may be annexed to a city or included in territory proposed for incorporation into a new city. However, cities may annex individual tax lots partially within and without the Urban Growth Boundary.~~

~~3.09.060 Creation of Boundary Appeals Commission~~

~~(a) The Metro Boundary Appeals Commission is created to decide contested cases of final boundary change decisions made by approving entities. The Metro Council shall appoint the Commission which shall consist of three citizen members, one each to be appointed from a list of nominees provided to the Metro Council President at least 30 days prior to the commencement of each term by Clackamas, Multnomah and Washington counties, respectively. The Council shall appoint two of the members for a initial four year term and one for a nominal two-year term, the initial terms to be decided by chance; thereafter, each commissioner shall serve a four year term. Each Commission member shall continue to serve in that position until replaced. Commission members may not hold any elective public office.~~

~~(b) The Metro Chief Operating Officer shall provide staff assistance to the Commission and shall prepare the Commission's annual budget for approval by the Metro Council.~~

~~(c) At its first meeting and again in its first meeting of each successive calendar year, the Commission shall adopt rules of procedure that address, among other things, the means by which a position is declared vacant and the means of filling a vacant~~

~~position; and, the Commission at that first meeting shall elect a chairperson from among its membership, who shall serve in that position until a successor is elected and who shall preside over all proceedings before the Commission.~~

~~3.09.070 How Contested Case Filed~~

~~— (a) A necessary party to a final decision that has appeared in person or in writing as a party in the hearing before the approving entity decision may contest the decision before the Metro Boundary Appeals Commission. A contest shall be allowed only if notice of appeal is served on the approving entity no later than the close of business on the 10th day following the date that the decision is reduced to writing, authenticated and mailed to necessary parties. A copy of the notice of appeal shall be served on the same day on Metro together with proof of service on the approving entity, the affected entity and all necessary parties. The notice of appeal shall be accompanied by payment of Metro's prescribed appeal fee. Service of notice of appeal on the approving entity, the affected entity and all necessary parties by mail within the required time and payment of the prescribed appeal fee shall be jurisdictional as to Metro's consideration of the appeal.~~

~~— (b) An approving entity shall prepare and certify to Metro, no later than 20 days following the date the notice of appeal is served upon it, the record of the boundary change proceedings.~~

~~— (c) A contested case is a remedy available by right to a necessary party. When a notice of appeal is filed, a boundary change decision shall not be final until resolution of the contested case by the Commission.~~

~~— (d) A final decision of an approving entity is subject to appeal to the Commission by a necessary party when it is the last action that needs to be taken by the approving entity prior to the referral of the boundary change to the electors in those cases where approval of the electors is required or permitted.~~

~~3.09.080 Alternate Resolution~~

~~— (a) On stipulation of all parties to a contested case made at any time before the close of the hearing before the Commission, the Commission shall stay further proceedings before it for a reasonable time to allow the parties to attempt to resolve the contest by other means.~~

~~— (b) A contested case that is not resolved by alternate means during the time allowed by the Commission shall be rescheduled for hearing in the normal course.~~

~~3.09.090 Conduct of Hearing~~

~~— (a) The Commission shall schedule and conduct a hearing on a contested case no later than 30 days after certification of the record of the boundary change proceedings.~~

~~— (b) The Commission shall hear and decide a contested case only on the certified record of the boundary change proceeding. No new evidence shall be allowed. The party bringing the appeal shall have the burden of persuasion.~~

~~— (c) The Commission shall hear, in the following order, the Metro staff report, if any; argument by the approving entity and the affected entity; argument of the party that contests the decision below; and rebuttal argument by the approving entity and the affected entity. The Commission may question any person appearing before it. Metro staff shall not make a recommendation to the Commission on the disposition of a contested case.~~

~~— (d) The deliberations of the Commission may be continued for a reasonable period not to exceed 30 days.~~

~~— (e) The Chairperson may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial testimony. The Chairperson shall cause to be kept a verbatim oral, written, or mechanical record of all proceedings before the Commission.~~

~~— (f) No later than 30 days following the close of a hearing before the Commission on a contested case, the Commission shall consider its proposed written final order and shall adopt the order by majority vote. The order shall include findings and conclusions on the criteria for decision listed in Section 3.09.050(d) and (g). The order shall be deemed final when reduced to writing in the form adopted, and served by mailing on all parties to the hearing.~~

~~— (g) The Commission shall affirm or deny a final decision made below based on substantial evidence in the whole record. The Commission shall have no authority to remand a decision made below for further proceedings before the approving entity, and may only stay its proceedings to allow for alternate resolution as provided for in this chapter.~~

~~3.09.100 Ex Parte Communications to the Boundary Appeals Commission~~

~~Commission members shall place in the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to them during the pendency of the proceeding on a contested case. A party to the proceeding at its request shall be allowed a reasonable opportunity to rebut the substance of the communication.~~

~~3.09.110~~ 3.09.060 Ministerial Functions of Metro

(a) Metro shall create and keep current maps of all service provider service areas and the jurisdictional boundaries of all cities, counties and special districts within Metro. The maps shall be made available to the public at a price that reimburses Metro for its costs. Additional information requested of Metro related to boundary changes shall be provided subject to applicable fees.

(b) The Metro Chief Operating Officer shall cause notice of all final boundary change decisions to be sent to the appropriate county assessor~~(s)~~ and elections officer~~(s)~~, the Oregon Secretary of State and the Oregon Department of Revenue. Notification of public utilities shall be accomplished as provided in ORS 222.005(1).

(c) The Metro Chief Operating Officer shall establish a fee structure ~~for~~ establishing the amounts to be paid upon filing notice of city or county adoption of boundary changes, ~~appeals to the Boundary Appeals Commission~~ and for related services. The fee schedule shall be filed with the Council Clerk and distributed to all cities, counties and special districts within the Metro region.

~~3.09.120~~ 3.09.070 Minor Boundary Changes to Metro's Boundary

(a) ~~Minor boundary changes~~ Changes to ~~the Metro Boundary~~ Metro's boundary may be initiated by Metro or the county responsible for land use planning for the affected territory property owners and electors in the territory to be annexed, or other public agencies if allowed by ORS 198.850(3). Petitions shall meet the ~~minimum~~ requirements of ~~S~~section 3.09.040 above. The Chief Operating Officer shall establish a filing fee schedule for petitions that shall reimburse Metro for the expense of processing and considering petitions. The fee schedule shall be filed with the Council.

(b) Notice of proposed ~~minor boundary~~ changes to the Metro ~~Boundary boundary~~ shall be given as required pursuant to Section 3.09.030.

(c) Hearings ~~will~~shall be conducted consistent with the requirements of ~~S~~section 3.09.050. ~~When it takes action on a minor boundary change, the Metro Council shall consider the requirements of Section 3.09.050 and all provisions of applicable law.~~

(d) ~~Minor boundary changes~~ Changes to the Metro ~~Boundary~~ boundary may be made pursuant to the expedited process set forth in ~~S~~section 3.09.045.

(e) The following criteria shall apply in lieu of the criteria set forth in subsections (d) ~~or (e)~~ of ~~S~~section 3.09.050 ~~to a minor boundary change to Metro's boundary~~. The Metro Council's final decision on a boundary change shall include findings and conclusions to demonstrate that:

- (1) The affected territory lies within the UGB; ~~and~~
- (2) The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; ~~and~~
- (3) The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS chapter 195.

~~(f) Contested case appeals of decisions regarding minor boundary changes to the Metro Boundary are subject to appeal as provided in Section 3.09.070.~~

~~3.09.130~~ 3.09.080 Incorporation of a City that Includes Territory Within Metro's Boundary

(a) A petition to incorporate a city that includes territory within Metro's boundary shall comply with the minimum notice requirements in ~~S~~section 3.09.030, the minimum requirements for a petition in ~~S~~section 3.09.040, the hearing and decision requirements in subsections (a), (c), and ~~(fe)~~ of ~~S~~section 3.09.050, ~~and if the incorporation is contested by a necessary party, the contested case requirements and hearing provisions of 3.09.070, 3.09.080, 3.09.090, and 3.09.100,~~ except that the legal description of the affected territory required by Section 3.09.040(a)(1) need not be provided until after the Board of County Commissioners establishes the final boundary for the proposed city.

(b) A petition to incorporate a city that includes territory within Metro's jurisdictional boundary may include territory that lies outside Metro's UGB. However, incorporation of a city with such territory shall not authorize urbanization of that territory until the Metro Council includes the territory in the UGB pursuant to Metro Code Chapter 3.01.

(c) The following criteria shall apply in lieu of the criteria set forth in ~~S~~section 3.09.050(d) ~~and (e)~~. An approving entity shall demonstrate that:

~~(1) Incorporation of the new city complies with the following criteria: applicable requirements of ORS 221.020, 221.031, 221, 034 and 221.035;~~

~~(1) At least 150 people reside in the territory proposed for incorporation, as required by ORS 221.020;~~

~~(2) No part of the territory proposed for incorporation lies within the boundary of another incorporated city, as prohibited in ORS 221.020;~~

- ~~(3) The petition complies with the requirements of ORS 221.031;~~
- ~~(4) The petitioner's economic feasibility statement complies with the requirements of ORS 221.035;~~
- ~~(5) If some of the territory proposed for incorporation lies outside the Metro UGB, that portion of the territory conforms to the requirements of ORS 221.034;~~
- (62) The petitioner's economic feasibility statement indicates that the city must plan for average residential density consistent with Title 1 ~~(one)~~ and Title 11 ~~(eleven)~~ of the Urban Growth Management Functional Plan; and
- (37) Any city whose approval of the incorporation is required by ORS 221.031(4) has given its approval or has failed to act within the time specified in that statute.

Exhibit B to Ordinance No. 07-1165

Proposed Amendments to Metro Code Chapter 3.09 Findings of Fact and Conclusions of Law

I. OVERVIEW

Ordinance No. 07-1165 amends Metro Code Chapter 3.09 and the processes and criteria for forming and changing the boundaries of cities and special districts in the region. The chapter does not affect the region's urban growth boundary, which is subject to Metro Code Chapter 3.01.

The intentions of the Council are to bring the Chapter 3.09 into conformance with changes in the law (both statutory and case law) and to make the processes more efficient and the criteria more understandable. The amendments eliminate the Metro Boundary Appeals Commission, pursuant to Senate Bill 615 from the 2007 legislative session and make numerous small changes to the code to accomplish the Council's intentions.

II. STATEWIDE PLANNING GOALS

Goal 1 – Citizen Involvement: The Council followed its customary procedures for enactment of ordinances, including notification of the public, consideration by advisory committees at public meetings that were preceded by public notice, and a public hearing before the Council. These procedures comply with Metro's public involvement policy and Goal 1.

Goal 2 – Coordination: These amendments to the boundary change code were developed with the assistance of city and county lawyers from the local governments of the region. The amendments were reviewed by the Metropolitan Technical Advisory Committee, composed largely of professional planning staff of cities and counties from the region, and by the Metropolitan Policy Advisory Committee composed largely of elected officials of cities and counties from the region. Both committees recommended adoption of the amendments.

Goal 3 – Agricultural Lands: Metro's chapter 3.09 applies to land both inside and outside the regional urban growth boundary (UGB) (within Metro's jurisdiction). Chapter 3.09 expressly limits development of land subject to a boundary change outside the UGB to uses allowed by acknowledged comprehensive plans. The chapter generally does not allow annexation to cities that involve land outside the UGB, with the exception that parcels partially within the UGB may be annexed, but not urbanized until added to the UGB. Any such portions of parcels annexed to a city that are subject to Goal 3 and retain forest zoning. These amendments are consistent with Goal 3.

Goal 4 – Forest Lands: Metro's chapter 3.09 applies to land both inside and outside the regional urban growth boundary (UGB) (within Metro's jurisdiction). Chapter 3.09 expressly limits development of land subject to a boundary change outside the UGB to uses allowed by acknowledged comprehensive plans. The chapter generally does not allow annexation to cities that involve land outside the UGB, with the exception that parcels partially within the UGB may be annexed, but not urbanized until added to the UGB. Any such portions of parcels annexed to a city that are subject to Goal 4 and retain forest zoning. These amendments are consistent with Goal 4.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 5 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 5 will apply to those changes. These amendments are consistent with Goal 5.

Goal 6 – Air, Land and Water Resources Quality: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 6 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 6 will apply to those changes. These amendments are consistent with Goal 6.

Goal 7 – Areas Subject to Natural Disasters and Hazards: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect natural disasters or hazards. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 7 will apply to those changes. These amendments are consistent with Goal 7.

Goal 8 – Recreational Needs: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 8 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 8 will apply to those changes. These amendments are consistent with Goal 8.

Goal 9 – Economic Development: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 9 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 9 will apply to those changes. These amendments are consistent with Goal 9.

Goal 10 – Housing: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect housing choices. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 10 will apply to those changes. These amendments are consistent with Goal 10.

Goal 11 – Public Facilities and Services: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not directly affect public facilities and services. Formations and boundary changes, however, are often followed by changes to plans and land use regulations, including changes to public facility plans and service providers. Goal 11 will apply to those changes. These amendments are consistent with Goal 11.

Goal 12 – Transportation: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not directly affect transportation facilities. Formations and boundary changes, however, are often followed by changes to plans and land use regulations, including changes to transportation plans. Goal 12 will apply to those changes. These amendments are consistent with Goal 12.

Goal 13 – Energy Conservation: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect Goal 13 resources. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 13 will apply to those changes. These amendments are consistent with Goal 13.

Goal 14 – Urbanization: Metro’s chapter 3.09 applies to land both inside and outside the regional urban growth boundary (UGB) (within Metro’s jurisdiction). Chapter 3.09 expressly limits development of land subject to a boundary change outside the UGB to uses allowed by acknowledged comprehensive plans. The chapter generally does not allow annexation to cities that involve land outside the UGB, with the exception that parcels partially within the UGB may be annexed, but not urbanized until added to the UGB. Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not directly affect urbanization of land within the UGB. Nonetheless, these boundary changes indirectly affect the use of land. These boundary changes and formations will be subject to the statewide planning goals, including Goal 14, when they are reviewed by cities and counties. These amendments are consistent with Goal 14.

Goal 15 – Willamette River Greenway: Formation of cities and special districts and changes to their boundaries under Metro Code chapter 3.09 do not change the plan designations or the zoning of the land involved and, hence, do not affect the Willamette River Greenway. Formations and boundary changes are often followed by changes to plans and land use regulations. Goal 15 will apply to those changes. These amendments are consistent with Goal 15.

III. REGIONAL FRAMEWORK PLAN

These amendments to Chapter 3.09 do not revise the criteria for formation of cities or districts or for changes to their boundaries. The amendments, therefore, do not invoke any of the policies of the Regional Framework Plan. Hence, following the amendments, Chapter 3.09 will remain consistent with the Plan.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 07-1165, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 3.09 (LOCAL GOVERNMENT BOUNDARY CHANGES) TO IMPLEMENT 2007 OREGON LAWS CHAPTER 173 AND UPDATE THE CHAPTER, AND DECLARING AN EMERGENCY

Date: October 3, 2007

Prepared by: Richard Benner

BACKGROUND

Metro Code Chapter 3.09 establishes procedures and criteria for changes to the boundaries of cities, districts and Metro, for formation of districts, and for incorporation of cities. Metro's principal statute – ORS Chapter 268 – gave this responsibility to Metro at the time the Legislature abolished the Portland Metropolitan Area Local Government Boundary Commission. Changes to the statutes on boundary changes and rulings from administrative and judicial tribunals have made Chapter 3.09 out of date. For example, the 2007 Legislature amended Metro's statute to eliminate the requirement that Metro provide an internal (to Metro) process for appeals of local government boundary changes (Senate Bill 615). The amendments proposed by the ordinance would eliminate this appeals process from the chapter, with the result that such appeals would go directly to LUBA.

The ordinance makes many minor changes to the chapter in order to bring it up to date and more user-friendly. A section-by-section explanation is attached to this report.

ANALYSIS/INFORMATION

1. **Known Opposition:** there was no known opposition to the amendments as of the time of this report.
2. **Legal Antecedents:** authority for Metro Code Chapter 3.09 (Local Government Boundary Changes) derives from ORS 268.347-268.354. 2007 Oregon Laws Chapter 173 (Senate Bill 615) amended ORS Chapter 268 to eliminate the requirement that Metro provide an internal process for appeals of boundary changes.
3. **Anticipated Effects:** the ordinance will (1) bring Chapter 3.09 up to date with appellate rulings and changes to the statutes on boundary changes; (2) eliminate a redundant process for appeals of boundary changes by local governments; and (3) make the chapter easier to understand and use.
4. **Budget Impacts:** the ordinance will eliminate a redundant process for appeals of boundary changes by local governments. For those local governments who contest boundary changes by other local governments, the elimination of the Metro process for appeals will remove an extra step in the normal process of appeal to LUBA and the appellate courts. Metro will no longer have to staff this appeals process.

RECOMMENDED ACTION

The Metro Attorney recommends that the Metro Council enact Ordinance No. 07-1165

ATTACHMENT TO STAFF REPORT
Ordinance No. 07-1165
Proposed Revisions to the Metro Code on Boundary Changes, Chapter 3.09
SECTION-BY-SECTION ANALYSIS
September 25, 2007

Background

Metro Code Chapter 3.09 sets forth the process and criteria for changes to the boundaries of cities and service districts within Metro, including their formation, and changes to Metro's own district boundary. Metro was given this responsibility by the state legislation that abolished the Portland Metropolitan Area Local Government Boundary Commission in 1997.

The Metro Code, however, is only one source of process and criteria for boundary changes. ORS Chapters 198 (special districts), 199 (boundary commissions), 221 (cities) and 222 (city boundary changes) all contain requirements for local government boundary changes. City and county charters and ordinances often provide direction, as well. This makes the law on boundary changes very complicated and explains the many references in the code to other sources of law.

Purpose of Revisions

These proposed revisions to the boundary change code are part of a series of updates undertaken by the Metro Council beginning in 2002. Amendments to statutes relating to boundary changes, experience with boundary changes and a desire to simplify and clarify the process for changing Metro's own district boundary led Metro to conclude that revisions were necessary. An advisory group of lawyers and other professionals with experience with boundary changes reviewed the entire boundary change code for inconsistencies with new laws and opportunities for greater clarity and process efficiency. Their recommendations provide the basis for the proposed revisions.

Of particular note, the 2007 Legislature amended Metro's statute – ORS Chapter 268 – to eliminate the requirement that Metro provide an internal process for appeals of certain boundary changes. Because LUBA ruled in a 2006 case that Metro's internal appeal process is a pre-requisite to appeals to LUBA – effectively making the Metro appeal process an additional step in an already complicated process - these code amendments repeal the internal appeal process.

Section 3.09.010 Purpose and Applicability

The revisions to this section clarify that the chapter also applies to changes to the Metro district boundary, and remove the reference to urban reserves adopted prior to June 30, 1997 (invalidated by Oregon Court of Appeals).

Section 3.09.020 Definitions

The revisions to the definitions reflect changes in the substantive sections of the chapter. Of note are the added definition of "deliberations" to clarify notification requirements when no hearing is required, and the broader definition of "petition" to cover any method of initiation of a proposed boundary change allowed by law. The definition of "approving entity" is replaced by the more accurate term "reviewing entity." The definition of "contested case" is no longer needed because the amendments eliminate Metro's internal appeals process.

Section 3.09.030 Notice Requirements

This section sets forth the notification requirements for a proposed boundary changes. The revisions to subsection (a) clarify that expedited decisions are not subject to the notice requirements in this section. To make the code easier to use, notification requirements for expedited decisions would be moved to the section on such decisions, 3.09.045.

Revisions to subsection (b) clarify the deadline by which a reviewing entity must set a time for its deliberations on a proposed boundary change and extend the deadline from 30 to 45 days (to accommodate less frequent meeting schedules of smaller cities). This gives reviewing entities more flexibility in scheduling, provides more effective notice (closer to the date of the deliberations), and conforms to ORS 198.730(4).

The revision to subsection (c)(3) removes language about decisions without a hearing because the provision no longer applies to expedited decisions (they are covered in section 3.09.045).

The revision to subsection (d) shortens the maximum time for adjournment without additional notice (from 31 to 28 days), and for new notice if required, to conform the times to ORS chapter 198.

The revision to subsection (e) extends the time for issuance of a written decision from five working days to 30 calendar days after a decision.

The amendments would eliminate subsection (f) because it is burdensome on counties and is rarely undertaken.

Section 3.09.040 Requirements for Petitions

This section specifies the contents of a petition for a boundary change. The revisions clarify and simplify the requirements and conform them to the requirements of ORS chapters 198 and 222. They also clarify the difference between the petition for a boundary change and the report on the proposed change [required by sections 3.09.045(c) and 3.09.050(b)], issued by the reviewing entity, that follows the petition.

Section 3.09.045 Expedited Decisions

Metro's statute (ORS chapter 268) requires Metro to offer an expedited process for proposed boundary changes that are not contested by a "necessary party." The revisions simplify and clarify by consolidating all requirements for expedited decisions into this section. The revisions also bring this section into conformance with other statutes on boundary changes, most importantly, with ORS chapter 198 governing special districts, which does not allow review of changes without a hearing.

The amendments remove the sentence which, in the absence of an internal appeals process, purports to have the effect of limiting appeals by "necessary parties" to LUBA, which the Metro code cannot do.

Subsection (d) of this section would now contain the criteria and factors to be met or considered in review of a proposed boundary change.

Subsection (e) clarifies the circumstances in which boundary changes or extension of services may involve territory outside the UGB. Cities may not annex outside the UGB except to include a portion of a lot or parcel split by the city boundary. Districts that already contain territory outside the UGB may annex new territory outside the UGB. But districts may extend services to property outside the UGB only if the uses to be served comply with an acknowledged comprehensive plan.

Section 3.09.050 Hearing and Decision Requirements for Decisions Other Than Expedited Decisions

As it stands today, this section sets forth the criteria and factors that must be addressed by entities reviewing a proposed boundary change (except for expedited decisions). The most important change made to this section by the revisions is to consolidate the criteria and factors and to make them clearer and more objective, as required by ORS 268.354(d). Because the revised criteria and factors appear first in revised section 3.09.045, subsection (d) of this section simply makes reference to them in section 3.09.045 rather than repeat them here.

The revisions also clarify the distinction between the contents of the report issued by the reviewing entity prior to its deliberations [subsection (b)] and the findings it issues following its decision [subsection (d)].

The amendments would eliminate subsection (f) because sections 3.09.045(c)(3) and 3.09.050(b)(3) clarify the effective date of a boundary change and because section 3.09.070 clarifies the deadline for appeals to the Metro Boundary Appeals Commission.

The amendments would also eliminate subsection (g) because the subject is covered by amendments to 3.09.045. The requirement in (g) is made applicable to boundary changes by the reference to 3.09.045(e) in 3.09.050(d).

Section 3.09.060 Creation of Boundary Appeals Commission

Section 3.09.070 How Appeals are Filed

Section 3.09.080 Alternative Resolution

Section 3.09.090 Conduct of Hearing

Section 3.09.100 Ex Parte Communications to the Boundary Appeals Commission

The amendments repeal these sections in the wake of passage of Senate Bill 615 by the 2007 Oregon Legislature, which eliminated the requirement that Metro provide an internal process for appeals of boundary changes.

New Section 3.09.060 Ministerial Functions of Metro

This section prescribes actions Metro must take after boundary changes are made. The revision to subsection (b) clarifies that notification to utilities of boundary changes is the responsibility of cities, not Metro, as provided in ORS 222.005(1).

New Section 3.09.070 Changes to Metro's Boundary

This section prescribes the process and criteria for changes by the Metro Council to the Metro district boundary. These revisions update and clarify the section, including repeal of subsection (f) to conform to elimination of the internal boundary appeals process.

New Section 3.09.080 Incorporation of a City that Includes Territory Within Metro's Boundary
These revisions simplify the references to requirements in ORS chapter 221 (cities).

Ordinance No. 08-1170, Amending FY 2007-08 Budget and Appropriations Transferring Appropriations in the MERC Operation Fund and Declaring an Emergency.

Second Reading

Metro Council Meeting
Thursday, January 17, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

AMENDING THE FY 2007-08 BUDGET AND) ORDINANCE NO. 08-1170
APPROPRIATIONS SCHEDULE)
TRANSFERRING APPROPRIATIONS IN THE) Introduced by Mike Jordan, Chief Operating
MERC FUND AND DECLARING AN) Officer, with the concurrence of Council
EMERGENCY) President Bragdon
)

WHEREAS, the Metro Council has reviewed and considered the need to increase appropriations within the FY 2007-08 Budget; and

WHEREAS, the need for the increase of appropriation has been justified; and

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 2007-08 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of amending the MERC Fund.
2. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of _____, 2008.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

Exhibit A
Ordinance No. 08-1170

ACCT	DESCRIPTION	Current		Revision		Amended	
		FTE	Amount	FTE	Amount	FTE	Amount
MERC Fund							
MERC Fund							
Personal Services							
SALWGE	Salaries & Wages						
5010	Reg Employees-Full Time-Exempt						
	Account Executive	3.00	149,323	-	0	3.00	149,323
	Accountant	2.00	98,696	-	0	2.00	98,696
	Accounting Supervisor	1.00	66,084	-	0	1.00	66,084
	Admissions Staffing Mgr (Admin Scheduling	1.00	57,484	-	0	1.00	57,484
	Asst. Event Svcs Mgr. or Senior House Mgr.	1.00	63,170	-	0	1.00	63,170
	Asst. Executive Director	2.00	177,935	-	0	2.00	177,935
	Asst. Operations Mgr. (Asst. Tech Svcs. Mgr.)	2.00	118,851	-	0	2.00	118,851
	Audio Visual Supervisor	1.00	52,208	-	0	1.00	52,208
	Asst. Sales & Tkt Mgr	1.00	63,170	-	0	1.00	63,170
	Audio/Visual Technician Lead	1.00	42,619	-	0	1.00	42,619
	Audio/Visual Sales	1.00	46,717	-	0	1.00	46,717
	Booking Coordinator	2.00	97,516	-	0	2.00	97,516
	Building Maintenance Supervisor	1.00	45,760	-	0	1.00	45,760
	Budget Analyst	1.00	60,070	-	0	1.00	60,070
	Computer Systems Administrator	1.00	63,163	-	0	1.00	63,163
	Computer Business Systems Analyst	1.00	50,565	-	0	1.00	50,565
	Construction Coordinator	1.00	67,538	-	0	1.00	67,538
	Construction/Capital Projects Manager	1.00	88,273	-	0	1.00	88,273
	Director of Administration/CFO	1.00	114,275	-	0	1.00	114,275
	Director of Events & Special Services	1.00	84,074	-	0	1.00	84,074
	Director of Sales & Marketing	1.00	84,074	-	0	1.00	84,074
	Operations Manager II	1.00	84,074	-	0	1.00	84,074
	Event Manager II	4.00	229,716	-	0	4.00	229,716
	Event Services Manager	1.00	69,472	-	0	1.00	69,472
	Facility Services Sales Coordinator	1.00	44,346	-	0	1.00	44,346
	Expo Director	1.00	95,368	-	0	1.00	95,368
	General Manager	1.00	157,518	-	0	1.00	157,518
	Graphic Designer II	1.00	52,208	-	0	1.00	52,208
	Human Resources Director	1.00	73,320	-	0	1.00	73,320
	Info Systems Supervisor	1.00	69,481	-	0	1.00	69,481
	Maintenance Supervisor	1.00	54,954	-	0	1.00	54,954
	Marketing Info Serv's Manager	1.00	63,170	-	0	1.00	63,170
	OCC Executive Director	1.00	145,766	-	0	1.00	145,766
	Operations Accounting Coordinator	2.00	79,831	-	0	2.00	79,831
	Operations Manager I	3.00	209,227	-	0	3.00	209,227
	Director of Operations	1.00	85,904	-	0	1.00	85,904
	PCPA Director	1.00	113,553	-	0	1.00	113,553
	Public Affairs & Commucations Manager	1.00	68,085	-	0	1.00	68,085
	Public Affairs Coordinator	1.00	45,947	(1.00)	(35,000)	-	10,947
	Puchasing & Contract Analyst	1.00	50,544	-	0	1.00	50,544
	Sales & Events Manager	1.00	69,472	-	0	1.00	69,472
	Sales Manager	4.00	209,976	-	0	4.00	209,976
	Security Manager	1.00	60,133	-	0	1.00	60,133
	Senior Event Manager	1.00	63,170	-	0	1.00	63,170
	Set-up Supervisor	5.00	270,151	-	0	5.00	270,151
	Senior Set-up Supervisor	1.00	63,170	-	0	1.00	63,170
	Stage Supervisor	1.00	52,000	-	0	1.00	52,000
	Strategic Development Director	-	0	1.00	58,333	1.00	58,333
	Telecom & Information Systems Supervisor	1.00	58,323	-	0	1.00	58,323
	Ticketing/Parking Service Manager	2.00	133,972	-	0	2.00	133,972

Exhibit A
Ordinance No. 08-1170

ACCT	DESCRIPTION	Current		Revision		Amended	
		FTE	Amount	FTE	Amount	FTE	Amount
MERC Fund							
MERC Fund							
	Ticket Services Coordinator	1.00	41,496	-	0	1.00	41,496
	Ticket Services Supervisor	1.00	57,429	-	0	1.00	57,429
	Volunteer Coordinator	1.00	44,346	-	0	1.00	44,346
5015	Reg Empl-Full Time-Non-Exempt						
	Administrative Assistant	4.00	153,086	2.00	45,038	6.00	198,124
	Administrative Assistant II	2.00	86,068	-	0	2.00	86,068
	Administrative Assistant III	2.00	88,594	-	0	2.00	88,594
	Administrative Technician	1.05	31,860	-	0	1.05	31,860
	Administrative Technician II	3.95	110,240	-	0	3.95	110,240
	Audio Visual Technician	3.00	116,072	-	0	3.00	116,072
	Electrician	5.00	299,694	-	0	5.00	299,694
	Facility Security Agent	8.00	316,697	-	0	8.00	316,697
	Lead Electrician	2.00	129,082	-	0	2.00	129,082
	Lead Operating Engineer	1.00	57,314	-	0	1.00	57,314
	Management Technician	2.00	76,295	-	0	2.00	76,295
	Operating Engineer	7.00	397,621	-	0	7.00	397,621
	Operations Coordinator	3.00	150,588	-	0	3.00	150,588
	Painter	-	0	1.00	24,683	1.00	24,683
	Secretary II	1.00	32,406	-	0	1.00	32,406
	Lead Stagedoor Watchperson	1.00	34,515	-	0	1.00	34,515
	Telecom & Information Systems Tech	1.00	42,261	-	0	1.00	42,261
	Utility Lead	3.00	105,695	-	0	3.00	105,695
	Utility Maintenance	3.00	126,584	-	0	3.00	126,584
	Utility Maintenance Lead	1.00	44,088	-	0	1.00	44,088
	Utility Maintenance Specialist	3.00	127,555	-	0	3.00	127,555
	Utility Maintenance Technician	1.00	37,421	-	0	1.00	37,421
	Utility Worker II	38.00	1,249,519	-	0	38.00	1,249,519
5025	Regular Employees Part Time Non-Exempt		258,492		0		258,492
5030	Temporary Employees		125,565		0		125,565
5043	Part-Time, Non-Reimbursed Labor		796,994		0		796,994
5045	Part-Time, Reimbursed Labor-Stagehands	15.00	556,033	-	0	15.00	556,033
5045	Part-Time, Reimbursed Labor-Other		1,138,880		0		1,138,880
5080	Overtime		332,746		0		332,746
5089	Merit/Bonus Pay		424,880		0		424,880
FRINGE	Fringe Benefits						
5100	Fringe Benefits						
	Base Fringe (variable & fixed)		4,253,391		35,169		4,288,560
5190	PERS Bond Recovery		389,740		3,165		392,905
Total Personal Services		183.00	\$16,697,663	3.00	\$131,388	186.00	\$16,829,051
Total Materials & Services			\$17,899,491		\$0		\$17,899,491
Capital Outlay							
CAPCIP	Capital Outlay (CIP Projects)						
5715	Improve-Oth thn Bldg (CIP)		669,720		0		669,720
5725	Buildings & Related (CIP)		1,656,220		0		1,656,220
5755	Office Furniture & Equip (CIP)		71,462		50,000		121,462
Total Capital Outlay			\$2,397,402		\$50,000		\$2,447,402
Total Debt Service			\$18,352		\$0		\$18,352
Total Interfund Transfers			\$3,510,962	0.00	\$0		\$3,510,962

Exhibit A
Ordinance No. 08-1170

ACCT	DESCRIPTION	Current		Revision		Amended	
		<u>Budget</u>		<u>Budget</u>		<u>Budget</u>	
		FTE	Amount	FTE	Amount	FTE	Amount
MERC Fund							
MERC Fund							
	<u>Contingency and Ending Balance</u>						
CONT	Contingency						
5999	Contingency						
	* General Contingency		2,068,393		(181,388)		1,887,005
	* Renewal and Replacement		295,000		0		295,000
	* Prior Year PERS Reserve		1,277,579		0		1,277,579
UNAPP	Unappropriated Fund Balance						
5990	Unappropriated Fund Balance						
	* Restricted Fund Balance (User Fees)		972,162		0		972,162
	* Ending Balance		11,486,755		0		11,486,755
	* Prior Year PERS Reserve		1,277,580		0		1,277,580
Total Contingency and Ending Balance			\$17,377,469		(\$181,388)		\$17,196,081
TOTAL REQUIREMENTS		183.00	\$57,901,339	3.00	\$0	186.00	\$57,901,339

Exhibit B
Ordinance 08-1170
Schedule of Appropriations

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Revised</u> <u>Appropriation</u>
MERC FUND			
MERC	36,994,556	181,388	37,175,944
Non-Departmental			
Debt Service	18,352	0	18,352
Interfund Transfers	3,510,962	0	3,510,962
Contingency	3,640,972	(181,388)	3,459,584
Unappropriated Balance	13,736,497	0	13,736,497
Total Fund Requirements	\$57,901,339	\$0	\$57,901,339

All Other Appropriations Remain as Previously Adopted

STAFF REPORT

IN CONSIDERATION OF ORDINANCE #08-1170, AMENDING FY 2007-08 BUDGET AND APPROPRIATIONS TRANSFERRING APPROPRIATIONS IN THE MERC FUND AND DECLARING AN EMERGENCY

Date: December 13, 2007

Prepared by: Cynthia Hill

BACKGROUND

This action, forward from the Metropolitan Exposition Recreation Commission via their Resolution Number 07-29 requests amended appropriation authority for the following purposes:

Portland Center for the Performing Arts

1. PCPA Operations Painter 1.00 FTE

An experienced painter represents a long time need for the Portland Center for Performing Arts (PCPA). Given the size and age of the facilities there is a continuous need for painting, repairs and surface work. Overall this will enhance the patron experience while at the same time increase maintenance capacity for 330,000 sq. ft. of buildings that comprise the three venues of the Portland Center for the Performing Arts.

Total annual cost, including salary and fringe benefits, for the Painter position will be \$55,328, however, this request is for \$37,886, based on a partial year implementation. **\$37,886**

MERC Administration

2. Strategic Development Director 1.00 FTE (reclassify vacant public Relations position – new position approved in the 2007-08 Adopted Budget)

The new director will work on a variety of strategic initiatives with the CEO such as strategic public relations; political development; and industry business development.

Total annual cost, including salary and fringe benefits, of the Strategic Development Director will be \$133,576; however, this request is for \$25,106. First year implementation is off-set by the existing appropriation for vacant Public Relations position and by a partial year implementation. **\$25,106**

3. Administrative Assistant Construction Division 1.00 FTE

Position will support the construction management function. A full time position is needed for administrative project coordination and administrative duties such as assisting in the preparation of Requests for Proposals, Quotes and Bids, scheduling meetings, track Bureau of Labor and Industries (BOLI) compliance; preparing meeting minute and generating project financial reports. These duties are currently performed by a temporary employee.

Total annual cost, including salary and fringe benefits, of the Administrative Assistant position will be \$51,297; however, this request is for \$34,198 based on a partial year implementation. **\$34,198**

4. Administrative Assistant General Administration 1.00 FTE

The position will provide administrative support to all the functions of the administrative division such as Accounting, Finance, Human Resources, Information Technology, Procurement and Public Relations.

Total annual cost, including salary and fringe benefits, of the Administrative Assistant position will be \$51,297; however this request is for \$34,198 based on a partial year implementation.

\$34,198

5. Capital Outlay

Increase capital outlay to purchase software for the development of financial reports, budget development; forecasting, cash flow projections and scorecard capabilities.

\$50,000

Total \$181,388

ANALYSIS/INFORMATION

- 1. Known Opposition:** None known.
- 2. Legal Antecedents:** ORS 294.450 provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction.
- 3. Anticipated Effects:** This action provides appropriation authority necessary for MERC to meet its service demands.
- 4. Budget Impacts:** This action will transfer \$181,388 from contingency in the MERC Operating Fund to provide for necessary resources for effective operations of MERC facilities. The above numbers reflect a partial year need. A full annual budget impact is \$291,498.

RECOMMENDED ACTION

The Chief Operating Officer recommends adoption of this Ordinance.

Attachments:

MERC Resolution 07-29 and Staff Report

**Attachment 1
Staff Report to Ordinance 08-1170**

METROPOLITAN EXPOSITION RECREATION COMMISSION

Resolution No. 07-29

For the purpose of approving and transmitting a budget amendment to the MERC Fund for fiscal year 207-08.

WHEREAS, Metro Code 6.01.050 provides that the Commission shall annually prepare and approve an annual budget which shall, to the maximum extent permitted by law, consist of one commission-wide series of appropriations; and

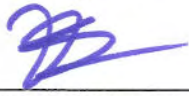
WHEREAS, Metro Code 6.01.050(d) further provides that once the Commission's budget has been adopted by the Metro Council, any changes in the adopted appropriations must be ratified in advance by the Metro Council; and

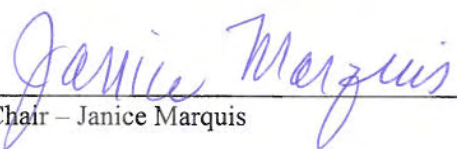
WHEREAS, the Commission previously approved and transmitted to the Metro Council the fiscal year 2006-07 budgets for the MERC Operating Fund; and

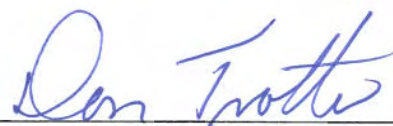
BE IT THEREFORE RESOLVED, that the Metropolitan Exposition Recreation Commission approves a budget amendment to the MERC Operating Fund that was submitted to the Metro Council, as described in the attached Staff Report and Exhibit A, for the fiscal year beginning July 1, 2007 and ending June 30, 2008 for inclusion as part of the total Metro budget for this period.

Passed by the Commission on November 28, 2007

Approved as to Form:
Daniel B. Cooper, Metro Attorney

By: 
Nathan A. Schwartz Sykes,
Senior Attorney


Chair – Janice Marquis


Secretary-Treasurer – Don Trotter

MERC Staff Report

Agenda Item/Issue: For the purpose of approving and transmitting budget amendments to the MERC Fund for FY 2007-2008

Resolution No.: 07-29

Presented By: Cynthia Hill

Date: November 28, 2007

Background and Analysis: Resolution 07-29 would approve proposed budget amendments for submission to the Metro Council by a duly adopted resolution at a regular public meeting of the Commission.

1. PCPA Operations Painter 1.00 FTE

An experienced painter represents a long time need for the Portland Center for Performing Arts (PCPA). Given the size and age of the facilities there is a continuous need for painting, repairs and surface work. Overall this will enhance the patron experience while at the same time increase maintenance capacity for 330,000 sq. ft. of buildings that comprise the three venues of the Portland Center for the Performing Arts.

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Position will support the construction management function. A full time position is needed for administrative project coordination and administrative duties such as assisting in the preparation of Requests for Proposals, Quotes and Bids, scheduling meetings, track Bureau of Labor and Industries (BOLI) compliance; preparing

meeting minute and generating project financial reports. These duties are currently performed by a temporary employee.

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\$34,198

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\$34,198

5. Capital Outlay

Increase capital outlay to purchase software for the development of financial reports, budget development; forecasting, cash flow projections and scorecard capabilities.

\$50,000

Total \$181,388

**Exhibit A Resolution 07-29
2007-08 FY Budget Amendment
MERC Operating Fund Summary**

	<u>Expo</u>	<u>OCC</u>	<u>PCPA</u>	<u>Admin</u>	<u>Total</u>
2006-07 Adopted Budget					
Adopted Budget Net	222,241	(763,554)	34,412	(71,462)	(578,363)
Adopted Budget Ending Fund Balance	5,453,029	5,770,863	5,776,480	377,098	17,377,470
 Amendment # 1 2007-08 FY:					
PCPA Operations Painter 1.00 FTE			(37,886)		(37,886)
Reclassify Vacancy to Strategic Development Director				(25,106)	(25,106)
Administrative Assistant Construction 1.00 FTE				(34,198)	(34,198)
Administrative Assistant - support all functions Administrative Division 1.00 FTE				(34,198)	(34,198)
Capital Outlay - Software for development of financial reports; budgeting; forecasting; cash flow.				(50,000)	(50,000)
MERC Admin Support Charges *	(14,350)	(78,926)	(50,226)	143,502	-
Total Amendments	(14,350)	(78,926)	(88,112)	-	(181,388)
 Budget Net, with Amendments	 207,891	 (842,480)	 (53,700)	 (71,462)	 (759,751)
 Ending Fund Balance, with Amendments	 5,660,920	 4,928,383	 5,722,780	 305,636	 16,617,719

* Decrease General Contingency

Resolution No. 08-3889, For the Purpose of Considering the
Release of Request for Proposal No. 08-1354 for the Procurement of
Solid Waste Transportation Services.

Metro Council Meeting
Thursday, January 17, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONSIDERING THE	)	RESOLUTION NO. 08-3889
RELEASE OF REQUEST FOR PROPOSAL NO. 08-)	
1254 FOR THE PROCUREMENT OF SOLID	)	Introduced by Chief Operating
WASTE TRANSPORTATION SERVICES	)	Officer Michael Jordan with the
	)	concurrence of Council President
	)	David Bragdon

WHEREAS, Metro is responsible for ensuring the proper disposal of the region's solid waste; and,

WHEREAS, in partial fulfillment of this responsibility, Metro owns the Metro Central and Metro South transfer stations; and,

WHEREAS, Metro contracts for the transportation of solid waste from its transfer stations to the Columbia Ridge Landfill in Arlington, Oregon; and,

WHEREAS, Metro's current solid waste transportation contract expires on December 31, 2009, at which time a replacement contract or contracts must be in place; and,

WHEREAS, Metro Code Section 2.04.056(c) requires that any procurement of a public contract exceeding \$100,000 shall be awarded in accordance with the provisions of either ORS 279B.055 (allowing competitive sealed bidding), ORS 279B.060 (allowing competitive sealed proposals) or ORS 279B.085 (allowing certain special procurements); and

WHEREAS, the Metro Contracts Manager has recommended the use of a competitive sealed proposal method for procuring a public contract with a solid waste transportation contractor; and

WHEREAS, the Director of the Solid Waste & Recycling Department and his staff have conducted substantial public outreach and have formulated the form of Request For Proposal No. 08-1254 set forth on the attached Exhibit A for the procurement of a public contract for the transport of solid waste from the region; and

WHEREAS the Chief Operating Officer has reviewed the Request for Proposal and recommends it to the Metro Council for approval, now therefore,

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer:

1) To release Request for Proposal No. 08-1254 in a form substantially similar to that set forth on the attached Exhibit A, thereby seeking procurement of a public contract for the transport of solid waste from the Metro Central and Metro South transfer stations to the Columbia Ridge Landfill in Arlington, Oregon; and

2) To accept and evaluate the proposals received in response to Request for Proposal No. 08-1254 and to conduct negotiations with proposers as provided therein; and

3) Following evaluation of the responses to the Request for Proposal and any negotiations, to recommend for the approval of the Metro Council (a) the responsible proposer whose proposal is the most advantageous to Metro and (b) an appropriate form of agreement with such proposer for the transport of solid waste from the Metro Central and Metro South transfer stations.

ADOPTED by the Metro Council this _____ day of _____, 2008.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney



Exhibit A to Resolution No. 08-3889

DRAFT

**REQUEST
FOR PROPOSALS**
for
**Solid Waste
Transportation Services**

RFP 08-1254-SWR

January 2008

Prepared by:

METRO

Solid Waste & Recycling Department
Engineering & Environmental Services Division

600 NE Grand Ave.

Portland, OR 97232-2736

(503) 797-1650

Fax (503) 797-1795

www.metro-region.org



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REQUEST FOR PROPOSALS

Solid Waste Transportation Services

SOLID WASTE & RECYCLING DEPARTMENT

600 N.E. Grand Avenue
Portland, OR 97232
(503) 797-1650, Fax (503) 797-1795

Project Manager:

Chuck Geyer
Principal Solid Waste Planner
Engineering & Environmental Services Division
Email: geyercc@metro.dst.or.us
Phone: (503) 797-1691

Procurement Officer:

Darin Matthews, CPPO, C.P.M.
Email: matthewsd@metro.dst.or.us
Phone: 503-797-1626

RFP 08-1254-SWR

Notice is hereby given that proposals for **RFP 08-1254** for: **Solid Waste Transportation Services** shall be received by Metro, 600 N.E. Grand Avenue, Portland OR 97232 until **3:00 PM** on _____. **It is the sole responsibility of the proposer to ensure that Metro receives the Proposal by the specified date and time. All late Proposals shall be rejected. PROPOSERS SHALL REVIEW ALL INSTRUCTIONS AND CONTRACT TERMS AND CONDITIONS.**

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I. INTRODUCTION

The Solid Waste & Recycling Department of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for Solid Waste Transportation Services. The work will involve the transportation of over 500,000 tons annually from Metro's two transfer stations to the Columbia Ridge Landfill in Gilliam County, Oregon. It is the intent of Metro to award a single contract to service both transfer stations.

Proposals will be due no later than 3:00 p.m. on _____, 2008 in the Solid Waste & Recycling Department's business offices at 600 NE Grand Avenue, Portland, OR 97232-2736. Details concerning the project and proposal process are contained in this document.

II. BACKGROUND/HISTORY OF PROJECT

General

Metro is a regional government providing a variety of services for the urbanized portions of Clackamas, Multnomah and Washington counties of Oregon. Solid waste planning and the disposal of solid waste generated within its jurisdictional boundary are two of Metro's principal responsibilities.

A system of public and private transfer stations currently receives mixed solid waste prior to transport and disposal at general-purpose landfills. This RFP addresses waste delivered to two public transfer stations (Metro South and Metro Central) that are owned by Metro and operated by a private contractor, Allied Waste Industries.

Both the general public and commercial haulers deliver waste to each Metro facility. Upon arrival at the facility, the waste is weighed by Metro at scalehouses, as described more fully herein. Metro staff collects payments from customers, at disposal prices established by Metro. The transfer station operator directs the unloading of the waste, removes recoverable materials for marketing, and then compacts and loads the residual into transfer trailers for disposal. Compactors are located at both Metro South Station (MSS) and Metro Central Station (MCS) to compact the waste into average payloads in excess of 30 tons.

The vast majority of the waste received at MSS and MCS destined for a general-purpose landfill is disposed at the Columbia Ridge Landfill (CRL) in conformance with the Waste Disposal Services Contract between Metro and Waste Management Disposal Systems of Oregon. The landfill is located in Gilliam County, Oregon, approximately 150 miles east of Portland.

CSU Transport, Inc., in conformance with the Waste Transport Services contract with Metro, currently transports the waste via long-haul tractor-trailers to CRL¹.

The Waste Transport Services contract² expires on December 31, 2009. The Waste Disposal Services contract expires December 31, 2019. The Transfer Station Operations contract is generally for a five-year period; the current contract is scheduled to terminate in early 2010.

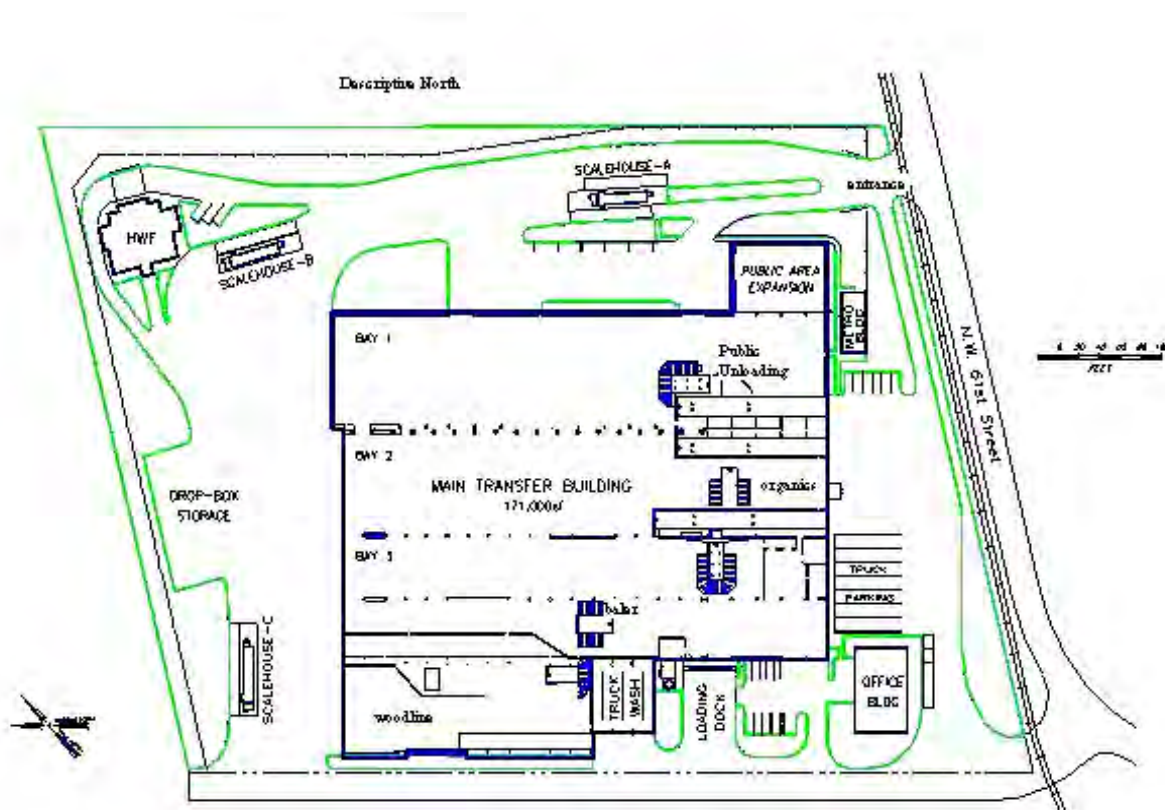
¹ See Annual Report: Waste Transport Services – a copy of the report is contained in the Appendix.

² See Waste Transport Services Contract also posted at the Metro's website www.metro-region.org/article.cfm?ArticleID=16805.

Current Metro Central Station Operations

Metro Central Station (MCS) is located at 6161 NW 61st in Portland, Oregon, and can be reached by taking St. Helens Rd (HWY 30) to Kittridge Ave., left on Front Avenue, and left on 61st Avenue. The facility is open for the general public from 8:00 a.m. to 7:00 p.m. during PDT and from 8:00 a.m. to 6:00 p.m. during PST, seven days a week. The facility is open for commercial and industrial accounts with automation tags at 2:00 a.m. except on Sundays when it opens at 8:00 a.m. for all customers. The facility is closed for all business on Christmas and New Year's days.

As shown in the figure below, there are three bays available for use. Each bay is equipped with a compactor. Material is tipped on the floor, sorted if appropriate, and then moved to the compactor conveyors by front-end loader. A compactor operator loads the compactor, builds the load and extrudes the load (bale) into the transport contractor's trailers.



In 2006, approximately 55% of the waste handled by Metro's transfer stations was received at MCS. Detailed historical and projected tonnage/load information is available in the Appendix.

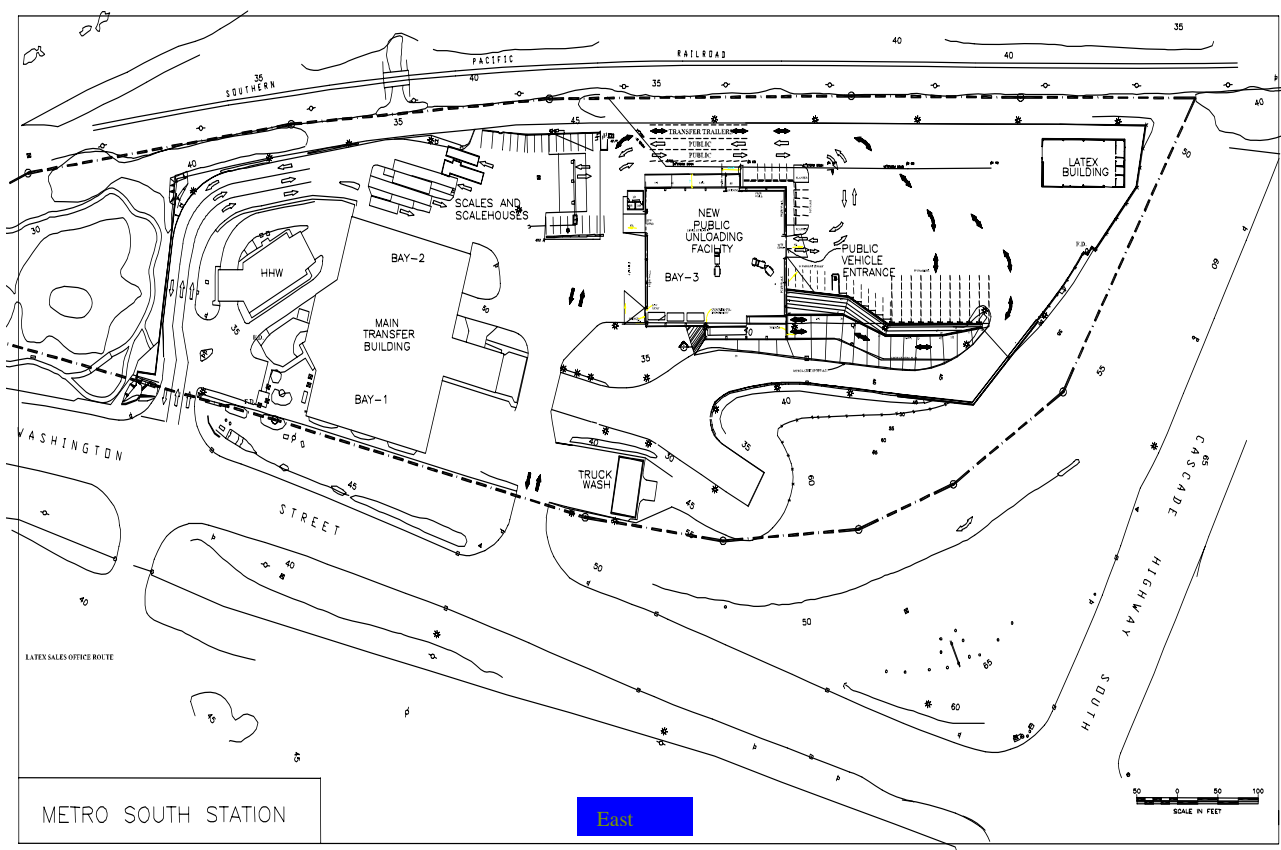
Three parking spaces for transport equipment at MCS are provided on-site. Additional parking is available at an area adjacent to the facility under a lease agreement between the waste transport contractor and the Burlington Northern and Santa Fe Railway Co. (A copy of the agreement is contained in the Appendix.) Transfer trailers are shuttled to and from the compactors to the parking spaces by Metro's Waste Transport Services Contractor. No permanent space for waste transport contractor's equipment is available at MCS.

An on-site scale is dedicated for use by the transport contractor. It is shown on the diagram directly east of the “Office Building.”

Current Metro South Station Operations

Metro South Station (MSS) is located at 2001 Washington Street, in Oregon City, Oregon, and can be reached by taking the Oregon City/Molalla exit (Exit 10) off I-205. The facility is open for the general public from 7:00 a.m. to 7:00 p.m. during PDT and from 7:00 a.m. to 6:00 p.m. during PST, seven days a week. The facility opens at 3:00 a.m. for commercial and industrial accounts with automation tags, except on Sundays when it opens at 7:00 a.m. for all customers. The facility is closed for all business on Christmas and New Year’s days.

As shown in the figure below, three Bays are available for handling waste at MSS.



Historically, Bay #1 has been used to unload commercial customers directly into the pit located between Bay #1 and Bay #2. Two compactors are located at the north end of the pit, with openings into which the track loader operator pushes waste. The operator builds the loads with a remote control device. A compactor operator extrudes loads into the transport contractor’s trailers.

Bay #3 is currently being used to accept and sort dry waste received from commercial haulers and overflow self-haul traffic. Residual from this bay is trucked to the pit in the main transfer building.

Transfer trailers are shuttled to and from the compactors by Metro’s Waste Transport Services Contractor. The contractor has 10 spaces in which full and empty trailers are staged. An on-site, dedicated scale for use by the contractor is located at the area under the bridge north of the main transfer building.

Other On-Site Transfer Station Activities

Metro personnel operate the on-site scalehouses for receiving waste from Metro's customers. There are four scalehouses at MSS and three at MCS.

Each site has a hazardous waste facility (HWF) operated by Metro that receives household hazardous waste from the general public. Conditionally-exempt generator (CEG) waste is also received at the facilities. These facilities are also used to appropriately manage and process unacceptable waste found by the station operator prior to disposal.

Metro's contract for operation of the transfer station contains an incentive (and corresponding disincentive) for its transfer station operations contractor to maximize payloads. The target payload is 29 tons. If loads of waste exceed 29 tons and are road legal³ the transfer station operator receives half the projected savings to Metro. Metro saves money because it pays the current transport contractor on a per-load basis, based on an average projected payload of 28 tons contained in their original bid. A similar arrangement is anticipated in the contract resulting from this procurement.

Maintenance of transport contractor's vehicles or other activities such as cleaning trailers/containers is not permitted at the transfer stations.

Waste Disposal Contract

The Columbia Ridge Landfill (CRL) is located at 18177 Cedar Springs Lane in Gilliam County, Oregon. It can be reached by taking Exit 137 off I-84 and then proceeding on State HWY 19 approximately 8 miles, right on Cedar Springs Lane for 2.5 miles. The landfill is owned and operated by Waste Management Disposal Services of Oregon (WMDS), a subsidiary of Waste Management, Inc. The site consists of approximately 2,000 acres, approximately 700 of which are currently scheduled for landfill development. The landfill currently accepts approximately 2.3 million tons of waste per year; Metro and the City of Seattle, Washington are its largest customers. Waste is delivered to CRL by both truck and rail. Metro's agreement with WMDS began operations in 1990 and expires in 2019.

At the landfill, the disposal contractor (WMDS) currently provides at no cost a staging/storage area for the transport contractor that can accommodate approximately 200 trailers. The disposal contractor also provides an on-site pole building for heating trailers to thaw loads during winter so they can be tipped. The transport contractor must provide the heating source for this operation. WMDS has offered the continued use of these areas as set forth in the letter from its CRL site general manager contained in the Appendix.

Currently, entry to the landfill is permitted through radio contact between the transport driver and the WMDS scalehouse. The next waste transport contractor will be required to adhere to the landfill entrance policies contained in the Appendix. Operating hours for purposes of tipping the waste are 7 a.m. to 4 p.m. weekdays.

While at present the transport contractor is responsible for tipping the waste, WMDS will offer waste tipping services to prospective proposers. Detailed information for the interface with the disposal contractor (including proposed tipping prices and contact information) is provided in the Appendix. Per the contract between Metro and WMDS, WMDS must provide "reasonable access" for unloading.⁴

³ Metro, the transport contractor and transfer station operator have agreed on the calculations to compute when a load is road legal. It is anticipated that a similar computation will be used for the next transport contract based on the equipment configuration of the next contractor(s).

⁴ See Item #13 of the Specifications of the Waste Disposal Services contracted posted on the project's website.

Overview of Current Waste Transport Contract

Operations for the existing Waste Transport Services contract began in January 1990 and will cease on December 31, 2009. The contractor providing services under the agreement is CSU, Inc. Under the contract, CSU shuttles an empty container to one of the compactors at each site and receives a load of waste from the transfer station operator. CSU then weighs the vehicle and generates a ticket that becomes the basis of payment. If CSU determines the vehicle is overloaded, the transfer station operator is responsible for correcting the load. This may involve shifting the load while working with CSU, or unloading the vehicle. The transfer station operator incurs a penalty for each overload.

Once a legal payload has been achieved, the trailer is shuttled by CSU back to its staging area for pickup by a driver with an over-the-road tractor. The ticket generated at the on-site scalehouse accompanies the load.

The following summary of activities is derived from the 2006 annual report for the Waste Transport Services contract:

“During the period of January 1 through December 31, 2006, CSU transported a total of 571,095 tons of solid waste from Metro’s transfer stations to the Columbia Ridge Landfill⁵ (260,240 tons from Metro South Transfer Station, and 310,854 tons from Metro Central Transfer Station). A total of 18,604 loads, averaging 30.70 tons per load, were hauled during 2006.

The costs for waste transport services in 2006 were as follows: Per-load payments to CSU totaled \$7,019,682, an average of \$377.32 per load or \$12.29 per ton. Total costs to Metro, including fuel⁶, shuttle operations, overloads, weighing, parking, etc. were \$9,787,863, an average of \$526.12 per load or \$17.14 per ton.

During 2006, CSU trucks traveled a total of 5.7 million miles hauling solid waste from Metro’s transfer stations to the Columbia Ridge Landfill. CSU had one reportable accident related to the Metro transport contract. Six speeding tickets were issued to CSU drivers. No other traffic citations were issued. There were 57 overweight citations issued to CSU.

CSU currently utilizes 34 tractors, 180 trailers, one track-mounted tipper and ten shuttlecraft in performing its solid waste transport services. As of December 31, 2006, CSU employed 66 drivers, seven office personnel, and 20 shuttle operators, tipper operators, and maintenance personnel⁷.”

The majority of equipment and drivers are based at the landfill end of the trip. Drivers typically make two turns per day, ending their shift either at the landfill or at a staging yard based in Rufus, Oregon⁸. Loads from the Rufus yard are then taken to the landfill. A staging yard is located at the landfill where full and empty trailers are parked and repaired at an adjacent maintenance facility⁹. Full trailers are shuttled to the tipper by a CSU shuttle driver. The tipper operator unloads waste.

⁵ Detailed cost, tonnage and load information is contained in the Appendix.

⁶ The purchase of fuel was originally the responsibility of the contractor. Metro began the purchase of fuel in 1994 to take advantage of federal excise tax savings. Detailed information concerning fuel consumption and prices are contained in the Appendix.

⁷ It should be noted that equipment and drivers are used to perform other contracts such as Kennewick, WA. and Troutdale Transfer Station in the Portland area.

⁸ The Rufus yard was initially needed because of driving time limitations in force at the time of the contract. Subsequent increases in allowable driving times resulted in a portion of the driver’s working maximum shifts. A copy of the Rufus lease is contained in the Appendix.

⁹ No maintenance facility will be available at the landfill for the next transport contractor.

III. PROPOSED SCOPE OF WORK/SCHEDULE

Generally, the work for which Metro is soliciting proposals includes the provision of all labor, equipment, materials and facilities needed to transport waste from the Metro South and the Metro Central transfer stations to the Columbia Ridge Landfill located in Gilliam County, Oregon; including the unloading of the waste at the landfill. Details concerning specific operational and contractual requirements will be developed based on the successful proposal for this project in conjunction with Metro's proposed contractual terms as attached to this RFP.

In addition, Metro has conducted an analysis of transportation options concerning this project and resulting opportunities for maximizing the values important to Metro concerning this project¹⁰. The analysis should be consulted for Metro's assumptions concerning certain elements of the scope of services necessary in accomplishing the work generally described below.

1. Contractor shall be responsible for receiving a load of waste from the Metro South and Metro Central transfer station whenever a load has been prepared by the transfer station operator.
 - a. After receiving a load, the transfer operator will place a pre-numbered door seal on the container (container, as used herein, refers to both intermodal containers, their chassis and transfer trailers).
 - b. Contractor shall weigh the vehicle at the dedicated onsite scale and print a load ticket / manifest that becomes the basis of payment.
 - c. If the load is not road legal, the Contractor shall inform the transfer station operator, who must correct the overloaded container.
2. Contractor shall provide new containers that are leakproof and compatible with the preload compactors used at the transfer stations during the life of this contract¹¹.
 - a. Contractor shall maintain/replace equipment as necessary to ensure continued compliance with these requirements.
 - b. Any repair or replacement shall not decrease payload weights.
 - c. Containers and shuttle equipment shall be equipped with RFID technology provided by Metro to facilitate weighing.
 - d. All trucks and containers shall be equipped with a real-time GPS data device such that Metro can determine the location, travel path and current status of each piece of equipment.
3. Tractors shall be new as of the start of operations and maintained/replaced to ensure compliance with emission requirements in place at the time of contract execution, and applicable requirements for the duration of the contract. Shuttle vehicles shall be equipped to meet similar emission requirements.
4. Barge/rail equipment shall comply with all emission standards for such equipment.
5. Contractor shall deliver loads of waste to the CRL¹².
 - a. Contractor shall comply with CRL entrance policies.
 - b. Contractor shall be able to access on-site staging area outside normal CRL operating hours.
6. Contractor shall be responsible for unloading waste at the working face of the landfill as instructed by the landfill operator utilizing its own tipper or the services of the landfill operator.
7. Contractor shall be responsible for providing Metro a written contingency plan for the transport of waste, and for implementing such plan in the event that normal operations are disrupted.
8. Contractor shall begin operations January 1, 2010 and cease operations December 31, 2019.

¹⁰ See the "White Paper" contained <http://www.metro-region.org/article.cfm?ArticleID=16805>

¹¹ Specifications for existing compaction equipment are contained in the Appendix.

¹² Details concerning the interface with the CRL contractor (WMDS) are contained in its letter in the Appendix.

9. Metro shall pay the contractor on a per load basis.¹³
10. Metro reserves the right to provide fuel for a portion or portions of this project should it determine it is in Metro's best interests.

IV. EXPERIENCE/QUALIFICATIONS

Experience:

The Proposer or, if applicable, a parent company, a partner of the Proposer, or a principal on the project team who will be active in the project, must have been in existence as a going concern for no fewer than three years, and possess no fewer than two years of actual operating experience in transportation projects of a similar nature and scale.

"Similar nature and scale" shall mean annually transporting a minimum of 250,000 tons of time-sensitive freight a one-way distance of at least 75 miles.

Proposers who do not submit documentation demonstrating sufficient experience in accordance with this section of the RFP may have their proposals rejected.

V. PROJECT ADMINISTRATION

The Engineering & Environmental Services Division of Metro's Solid Waste & Recycling Department will manage the resulting contract. Metro will make payment in accordance with the appropriate contract provisions after authorization by the Division's manager.

VI. PROPOSAL INSTRUCTIONS

A. Submission of Proposals

One (1) original and five (5) hard copies of the proposal together with one (1) electronic copy in PDF format shall be furnished to Metro. Hard copy proposals should be double-sided, and printed on recycled-content paper with a minimum of 30% post-consumer content. Any non-recycled or non-reusable bindings, section dividers or covers should be omitted. Proposals should be addressed to:

Metro- Solid Waste & Recycling Department
Attn: Chuck Geyer, Principal Planner
600 NE Grand Avenue
Portland, OR 97232

Please mark the envelope:

"Waste Transport Project Proposal - RFP 08-1254-SWR".

Proposals may also be hand delivered to the Solid Waste & Recycling Department's front desk.

¹³ As described in Section VII of this RFP, proposers may request a separate payment or adjustment for the fuel component of the project.

B. Proposal Deadline

Proposals are due no later than 3:00 p.m., _____, 2008. Late proposals will not be considered.

C. RFP as Basis for Proposals

This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any verbal information that is not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be addressed to Chuck Geyer - Principal Planner, 600 NE Grand Ave, Portland Oregon 97232-2736 at (503) 797-1691 or geyer@metro.dst.or.us. Answers to any questions which in the opinion of Metro warrant a written reply or addendum, will be furnished to all parties receiving this RFP. **Metro will not respond to questions after _____, 2008.**

D. Information Release

All Proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a proposal all Proposers agree to such activity and release Metro from all claims arising from such activity.

E. Minority, Women and Emerging Small Business Program

In the event that any subcontracts are to be utilized in the performance of this agreement, the Proposer's attention is directed to Metro Code provisions 2.04.100, which encourage the use of minority, women and emerging small businesses (MWESB) to the maximum extent practical. Copies of these MWESB requirements are available from the Metro Procurement Office, 600 NE Grand Avenue, Portland, OR 97232, (503) 797-1816.

VII. PROPOSAL CONTENTS

The proposal should contain the items and be in the order as described below.

- A. Transmittal Letter: As part of the proposal, submit a transmittal letter. The letter should provide an overview of the approach that will be used to accomplish the work. Include in the overview who is to be the contact for the project, and who in the firm has authority to sign the agreement with Metro if a contract is awarded to the firm. State that the proposal will be valid for a minimum of one hundred eighty (180) days. List other firms that will be involved in the project and describe their roles.
- B. Proposal Questionnaire: The "Proposer's Questionnaire" is to be filled out and submitted as part of the proposal. Failure to complete the forms fully may result in the rejection of a proposal. Attachments may be included as part of the questionnaire.

The information included in the questionnaire will be used to evaluate proposals and determine whether the proposal is responsive. Information submitted should demonstrate the ability of the proposer to accomplish the work requested in this RFP. Please be thorough and complete.

- C. Exceptions and Alternative Proposal Conditions: A firm wishing to take exception to, comment on, or offer alternative approaches to any proposed terms within this RFP is encouraged to document its concerns in this part of its proposal. Exceptions, comments or alternatives should be succinct, thorough and organized. Please include any exceptions or alternative conditions you wish to substitute for Metro's proposed contractual terms as attached to this RFP. Please describe if, and

how, the exception or alternatives would benefit Metro. Exceptions raised during contract negotiation that were not raised in contractor's proposal are not required to be considered by Metro.

- D. Confidentiality: This paragraph shall apply to information that the Proposer is submitting to Metro which Proposer considers to be confidential and proprietary, and which Proposer does not want Metro to disclose to third parties. To protect such information from disclosure, Proposers should specifically identify the pages of the proposal containing such information by marking the applicable pages "**CONFIDENTIAL.**"¹⁴ Provided that, in Metro's sole discretion, such information should reasonably be considered confidential, and to the extent otherwise permitted by law, Metro obliges itself in good faith not to disclose such properly identified confidential information to any person outside of Metro. However, Proposers should be aware that Oregon Law (ORS chapter 192) requires public disclosure of most records deemed to be "public records." Metro cannot, therefore, guarantee to protect the confidentiality of any records submitted to Metro, even if the Proposer believes them to be exempt from disclosure. If properly identified confidential information is requested, and if Metro determines that such information should reasonably be considered confidential, Metro will not disclose it unless ordered to do so by the Multnomah County District Attorney, and, if Metro receives such an order, Metro will provide Proposer with the opportunity to appeal the District Attorney's decision to the State courts.

Metro shall not release for public inspection proposals received until it concludes negotiations and issues a Notice of Intent to Award.

VIII. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP, in accordance with ORS 279B.100.
- B. Validity Period and Authority: The proposal shall be considered valid for a period of at least one hundred eighty (180) days and shall contain a statement to that effect. The proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the proposal.
- C. Conflict of Interest: All persons or entities filing a proposal thereby certify that neither Metro, nor any of its officers, agents or employees, has a pecuniary interest in the proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; and the Proposer is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.
- D. Equal Employment and Nondiscrimination Clause: Metro and its contractors will not discriminate against any person(s), employee or applicant for employment based on race, creed, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status. Metro fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. For more information, or to obtain a Title VI Complaint Form, see www.metro-region.org.

¹⁴ Proposers shall not identify the entire proposal "CONFIDENTIAL".

- E. Changes Subject to Future Negotiations: Based on feedback from potential proposers during the public comment period for this project, Metro is committed to negotiating changes in the final agreement that accomplish the contractual conditions listed below. Proposers should assume such terms when preparing their proposals.
1. Metro Obligations Metro will provide the waste from its two transfer stations that requires disposal at CRL under our disposal agreement, to the successful contractor for this project.
 2. Payment Rate Adjustment
 - a. A one-time CPI adjustment that accounts for changes in costs that occur during the period between proposal submission in 2008 and the beginning of operations in 2010.
 - b. If container and fuel prices are reimbursed separately, per Article 7-2, then Metro will adjust fuel prices monthly rather than the quarterly adjustment described in the draft agreement (cf. Article 7-2C).
 - c. Metro will pay Contractor for unit price work in the same month that Contractor submits an invoice for said work, i.e., “Net 17,” not in the month following invoice submission.
 - d. Metro will eliminate the restrictions on reimbursement for changes in local and county laws in Article 7-3A.1.
 3. Additional or Deleted Work Metro will negotiate Force Account procedures that specify how payment will be made in the event the Contractor and Metro cannot agree on prices for additional or deleted work but where Metro orders the work to be performed.
 4. Insurance Metro intends to negotiate specific insurance coverages with the selected contractor, keeping in mind provisions that best protect the agency as well as industry standards. Article 13 of the services contract included in the RFP specifies current Metro requirements.
 5. Penalties Metro intends to negotiate the imposition of penalties in Article 15-3, such that penalties will only be applicable during a 12 hour period weekdays and an 8 hour period on weekends as mutually agreed to by the Contractor and transfer station operator, subject to the approval of Metro. Prior to the imposition of penalties, Metro will consider notifying contractor of its intention to impose penalties and Contractor will have time to remedy the situation.

IX. EVALUATION OF PROPOSALS

- A. Evaluation Process: Proposals received that conform to the proposal instructions will be evaluated. The evaluation will be conducted using the evaluation criteria identified in the following section. The evaluation committee will also use the detailed analysis contained in the “White Paper” as a guide to identify and apply relevant factors during the evaluation process, together with the information and any additional analysis presented in proposals. The interpretation and application of the evaluation criteria is at the sole discretion of the evaluation committee. If the committee believes that information contained in any proposal is inaccurate, the committee reserves the right, after requesting clarification from the proposer, to adjust the data for purposes of evaluation, or to reject the proposal as nonresponsive.

The evaluation committee will rank proposals based on the evaluation criteria and points described below. Interviews with the top ranked firm or firms may be conducted at Metro’s sole discretion.

- B. Evaluation Criteria: This section provides a description of the criteria that will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP. Additional information:

1. Cost

45 points

Proposers shall submit the following information in the Questionnaire that will be used to evaluate the total cost of the proposal:

- a. The per container payload (in tons) on which the proposal is based.
- b. The price per load and whether the price includes compensation for fuel.
- c. The percent of the CPI (as stipulated in the Contract Terms and Conditions) the Proposer will accept to annually adjust per-load prices.
- d. The price per load for fuel (unless contained in item “b” above).

The total cost of the proposal will be computed by Metro by applying the above information to the tonnage projections over the life of the contract¹⁵.

The lowest total cost proposal will receive all 45 points for this criterion. Proposals that are not the lowest cost will be allocated points based on a percentage of the lowest cost proposal. The formula to allocate points to proposals other than the lowest cost is as follows:

“Other” total cost \$___ minus “Lowest” total cost \$___ = Difference

Percentage = 1 – (Difference divided by “Lowest” total cost)

Percentage times 45 points = Points for other than lowest cost proposal

A simple example is provided for the purpose of illustration. If two companies were to submit proposals, and the total cost for Company A’s proposal is \$100, and the total cost for Company B’s proposal is \$110, then Company A, as the low-cost proposer, would receive all 45 points in the category of cost. Company B would receive 40.5 points. Per the preceding formulae, Company B’s points would be calculated as follows:

Difference = \$110 - \$100
= \$10

Percentage = 1 – (\$10/\$100)
= .90 or 90%

Percentage x 45 points = 90% x 45
= 40.5 points

2. Environmental Impacts

20 points

The evaluation committee will use information provided by proposers and information and assumptions contained in **Section 4.3** of the *White Paper* to analyze the environmental impacts of each proposal. The analysis will include both the overall impact from emissions and specific impacts on the Columbia River Gorge National Scenic Area (NSA). The types of emissions that will be examined include:

¹⁵ Metro will assume an annual inflation rate of 3% for evaluating per load costs, and if fuel per load costs are proposed separately, 5% for fuel costs. An electronic spreadsheet that calculates total cost will be provided to potential proposers.

- a. Generation of particulate matter (including fine particulates), particularly as they impact the Metro area.
- b. NOx and SOx emissions affecting visibility in the Columbia River Gorge NSA.
- c. Total emissions of carbon dioxide and other greenhouse gases.

3. Socioeconomic Impacts

10 points

The socioeconomic impacts (both positive and negative) of the proposals will be assessed and scored. The committee will examine both Metro regional impacts, as well as the impacts along transportation routes and in Gilliam County, Oregon. Some of the impacts that will be considered include:

- a. Noise and traffic effects on neighborhoods.
- b. Enhancement of regional freight mobility in the Metro area.
- c. Support economic development in Gilliam County.
- d. Positive/negative effects on the Columbia River Gorge NSA.
- e. MWESB utilization of subcontractors and suppliers.

4. Operational Considerations/Reduction of Risk to Metro

25 points

The efficiency, reliability and flexibility of the proposed transportation system will be evaluated in light of the following factors:

- a. Ability to move waste in timely manner by providing sufficient equipment and personnel.
- b. Operational procedures/location of supervisory personnel to ensure the coordination of the waste movement in delivering reliable, timely service.
- c. Likely effectiveness of contingency plans for dealing with planned and unplanned disruptions to normal service such as inclement weather, lock closures, strikes, etc.
- d. Equipment maintenance procedures and facilities.
- e. Equipment replacement schedules.
- f. Ability to maximize payloads over time.
- g. Emphasis on safety procedures/training and employee evaluation.
- h. Emergency procedures for dealing with accidents and releases to the environment.
- i. Flexibility of the system in adapting to changes in technology, fuel supplies or transfer station relocations/additions.
- j. Financial strength of proposing entity as determined by, but not limited to, corporate credit ratings, common financial ratios, management continuity, reputation, and ability to support indemnification and performance guarantees.
- k. Sustainable practices proposed.

- C. Simultaneous Negotiation Process: A negotiating committee will meet with the evaluation committee and review the results of the evaluation process. Based on the quality of the proposals received, a short list of proposers may be selected for further consideration by the negotiating committee. Metro reserves the right to request supplemental information from the short-listed proposers.

Metro will conduct interviews/oral presentations with short-listed proposers if deemed necessary. During the interviews/oral presentations, specific aspects of the project and elements of each of the proposers' offers will be discussed as appropriate. Metro reserves the right to request best and final offers (BAFO) from some or all of the short-listed firms, including additional performance and financial guarantees such as guarantees from parent companies. In

the event negotiations are unsuccessful with the short-listed firms, Metro may enter into negotiations with firms not originally short-listed.

Based on the results of the proposal evaluation and negotiation process, and consistent with the criteria listed in the RFP, Metro will make its contract award recommendation(s).

- D. Contract Award: In accordance with state law and Metro Code, contract award(s) will be made to the firm(s) submitting the most advantageous proposal(s). This determination will be made solely by Metro and in accordance with the criteria listed in the RFP.

X. APPEAL OF CONTRACT AWARD

Aggrieved proposers who wish to appeal the award of this contract must do so in writing within seven (7) days of issuance of the notice of intent to award by Metro. Appeals must be submitted to the Metro Procurement Officer, 600 NE Grand, Portland, OR 97232 and must state the specific deviation of rule, law, or procedure upon which the appeal is based. Any disagreement with the judgment exercised by the evaluation committee is not a basis for appeal.

Upon receipt of an appeal, the Procurement Officer will notify the Solid Waste & Recycling Director and the Chief Operating Officer. Within ten (10) days of receipt of the appeal, Metro will issue its notice of rejection or acceptance of the appeal. The appellant may appeal the decision to the Metro Council, acting as the agency's local public contract review board. Such appeals must be received within five (5) working days from the postmarked date of the appeal response. The appeal will be considered by the Metro Council, whose decision on the matter shall be considered final.

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APPENDICES

Proposal Questionnaire

Proposed Solid Waste Transportation Services Agreement

Scope of Work

Approved Bond Forms

Historical Transport Payments/Fuel Consumption

Tonnage Projections/Historical Tonnage Patterns

Annual Report: Waste Transport Services

White Paper- Metro Solid Waste Transportation Study- Sections 4.3 and 5

Information on Metro Compaction Equipment

CRL Entrance Policies/Contact Information

Contact Information for Port of Portland and Port of Arlington

CSU- BNSF and Rufus Leases

PROPOSAL QUESTIONNAIRE

PROPOSAL QUESTIONNAIRE

The following Questionnaire asks for information concerning the Proposer's organization, operations and fleet maintenance plans, and emissions profile. The Proposer should submit responses to the Questionnaire in the exact order as listed below with the same headings and numbering system. Do not write directly on the questionnaire; rather, submit answers as part of your proposal.

Generally, the Proposer shall include information for the specific single business organization or entity that is submitting a Proposal for the work described in the RFP and which would be the signatory on the Contract. If the information being submitted is not for the specific proposing entity, please note such in the response. If a major portion of the work, including but not limited to material recovery is being subcontracted, information for that subcontractor should be submitted and specifically referenced.

All answers shall be specific and complete in detail. Metro reserves the right to make independent inquiries concerning the information submitted herein, to conduct any additional investigation necessary to determine the Proposer's qualifications, and to require the Proposer to supply additional information. Information submitted in response to this Questionnaire will be considered binding on the successful Proposer, and any substitutions or deviations shall be allowed only if approved by Metro.

Use of Attachments

Schedules, résumés, reports, diagrams, and other forms of information may be used as attachments, provided that the information provided by the Proposer in response to this Questionnaire clearly references the attachments. The purpose of this Questionnaire and any attachments is to supply information about the Proposer to Metro so that Metro may evaluate each proposal¹.

¹ Confidentiality- See Section VII.(D) of the RFP for any materials proposers' desire to remain confidential.

A. ORGANIZATIONAL INFORMATION

1. Name of firm that will enter into an agreement, type of firm (corporation, partnership, individual, LLC, or other – if “other,” please describe).
2. Please provide the following information for the firm:
 - Address, phone number, email address and website
 - Federal tax ID#
 - project manager for the proposal and direct contact information
3. How many years has your firm used its present name?
4. List all names your firm has used to conduct business (include dates and states of incorporation for each corporate name).
5. Please submit an organizational chart showing ownership percentages and management arrangements between the firm that would enter into an agreement, and any other entities participating in the execution of this proposal.
6. Describe the supervisory structure that will be used to perform the work, list the names of supervisory personnel if available, and where there offices will be located.
7. Please list and explain the status of any lawsuit(s) material to your ability to carry out the functions outlined in this RFP for Waste Transport Services, and in which you or a company affiliated with you (i.e. a parent corporation, a corporation in which you own an interest, or a corporation in which your parent corporation owns an interest, as applicable) are a party.

B. EXPERIENCE/QUALIFICATIONS

1. Comparable Projects : Please list the projects you have undertaken similar to the work for which the proposal is being submitted. Include contacts and phone numbers, a description of your role (i.e. prime or subcontractor or owner) and how the project was similar to the work called for in this RFP 08-1254-SWR. If you have not had similar experience, include experience from affiliated entities and indicate how the proposer would access the expertise. Include enough information to, at a minimum, satisfy the “Experience” requirements in section IV of the RFP.
2. Financial Capability and Risk: For the purpose of determining financial risk, Metro will conduct an assessment of the financial capability of proposing companies, including, but not limited to, an assessment of each company’s recent performance, short-term liquidity, and long-term solvency.

Please provide the three most recent years’ financial statements for the entity or entities who will guarantee execution of the services outlined in this RFP. In the case of a joint venture or general partnership of more than one company, please submit such statements for each joint venture party or general partner. Financial statements should be audited or, if audited financials are not available, then independently reviewed by a certified public accountant. You may submit such additional information and supporting documentation as you deem adequate to demonstrate the financial capability of your company.

The completeness of the information you submit, its veracity, and the extent to which it has been independently verified will impact Metro’s judgment of financial risk.

C. COST PROPOSAL

1. What is your proposed cost per load? (Please express in both numbers and words.)
 - a. Does the per-load cost include fuel costs?
 - b. If the answer to 1(a) is no, please complete item #4 of this section.
2. What is the payload size of each load on which your cost per load is based?²
3. What percentage (i.e., 100%, 75%, etc.) of the consumer price index (West All Urban Size Class A- as more fully described in the Contract Terms and Conditions appended to the RFP) do you propose for annual adjustment to per load prices?

(Item #4 must be completed only if you responded “No” to item 1a.)

4. What is your proposed fuel cost per load? (Please express in both numbers and words.)

D. ENVIRONMENTAL IMPACTS

Metro has estimated total emissions for various transportation configurations using the assumptions detailed in Section 4.3 of the “Metro Solid Waste Transportation Study - Final White Paper,” May 2007 by CH2M HILL. The assumptions used reference factors such as engine types, the emission standards that the equipment will meet, types of fuels, etc. for each mode and any associated drayage.

Metro will use this information, and the information supplied in the proposals (primarily fuel consumption), to estimate the overall environmental impact of a proposal, as well as specific impacts on the Columbia River Gorge NSA. In particular, the analysis of impacts will focus on the generation of PM, NO_x, SO_x and greenhouse gases. Please provide the following information:

1. Describe any alternative assumptions from the White Paper that you believe should apply.
 - a. Include technical backup for why the alternative assumptions apply.
 - b. Describe the effects of the alternative assumptions on the generation of the targeted pollutants.
2. What is the total amount and type of fuel consumed per load?
 - a. If multiple types of fuel are consumed:
 - Provide a break-out of the amount and type, by percentage of the total gallons per load.
 - Describe the type of equipment associated with each percentage.
 - b. What provisions will be implemented to minimize fuel consumption (i.e., equipment design, backhauls, etc.)?
3. Supply an estimate of the amount of time and fuel consumed while in the Columbia River Gorge NSA ³.
4. Truck emission standards are known: Explain how you will conform with those standards. Locomotive and marine standards are proposed: State any commitments you are willing to make in advance of any federal requirements to reduce emissions for these modes.
5. Describe whether renewable fuels will be used and in what amounts.

² (NOTE: Proposals will need to include sufficient documentation under Section “H” to verify that the equipment will be road legal when hauling the proposed payload size utilizing existing compactors at Metro facilities. Metro reserves the right to adjust payload size in calculating the total cost of a proposal.

³ The scenic area extends from the Sandy River on the west, to the Deschutes River on the east.

E. SOCIOECONOMIC IMPACTS

1. Describe the proposed travel route(s) in detail (street level) from transfer stations to the landfill and back.
2. The Appendix contains information related to the amount of waste received at the two transfer stations, as well as when waste is loaded into the transporter's container and weighed (outbound). Describe when loads of waste will move through the system described above for a typical weekday.
3. List the location (and provide a map) of any staging/storage areas and describe how they will be used.
4. Give your assessment of how your proposed activities will:
 - a. Impact noise and traffic in neighborhoods.
 - b. Enhance regional freight mobility in the Metro area.
 - c. Support development of economic activity in Gilliam County.
 - d. Produce positive/negative effects on the Columbia River Gorge NSA.
 - e. Utilize MWESB subcontractors and suppliers.

F. OPERATIONAL CONSIDERATION - Logistics

1. For the travel route(s) presented in E(1) above, provide the following:
 - a. A description (including drawings) of sites for staging equipment and any terminals, their current status in terms of ownership/permitting, and any development required to use (i.e. paving, etc.).
 - b. What equipment will be staged at each site.
 - c. Proposed schedules for staging equipment in relation to the movement described in E(2), above.
 - d. Fueling locations and fueling schedules.
 - e. Describe where supervisory personnel will be located.
2. Describe any proposed backhaul opportunities. Include:
 - a. The commodity being backhauled, its origin and the frequency of the backhaul.
 - b. How the backhaul will affect Metro schedules.
 - c. The benefit to Metro, including any rate reduction being offered to Metro.
 - d. A description of how you could continue to profitably offer services at your proposal price should this backhaul no longer be available to you.

G. OPERATIONAL CONSIDERATIONS - Mobilization Plan

1. Provide a timeline with critical path items described, beginning with contract award.
2. Provide the name and title of your contact person during mobilization and for other key personnel, including their roles throughout contract mobilization and implementation.
3. Provide an inventory of permits you will be responsible for and will have to obtain, and include the schedule for permits in the timeline requested in 1, above.

H. OPERATIONAL CONSIDERATIONS - Equipment

1. For proposals using tractor-trailer combinations only to perform the work:
 - a. Describe the number of tractors and trailers to be used in the project.
 - b. Include drawings (specifications) of tractor/trailer combinations, with sufficient detail to allow Metro to independently determine feasible payloads, including the calculations showing the maximum road legal payload for the over-the-road equipment configuration. Include assumptions for:
 - Bale size and weight
 - Placement in container
 - c. Document if the equipment will be dedicated to the project.
 - d. Provide make and model year of proposed over-the-road equipment.
 - e. Provide make and model year of shuttle equipment; include drawings (specifications).
 - f. Describe the tipper(s) (specification, manufacturer and year built) or whether you will contract for tipping services with WMDS or others.
 - g. Describe delivery/mobilization schedules for the proposed equipment.
2. For any barge portion of the work:
 - a. Describe the number of barges proposed, their dimensions; and the container capacity.
 - b. Document if barges will be dedicated to this project.
 - c. Describe the tugs that will be used, including make, model year, quantity of engines, engine types and rated horsepower.
 - d. Document if the tugs will be dedicated to the project.
 - e. Describe the terminals (and loading/unloading equipment) proposed for the project.
 - f. Describe the number of tractors/chassis and containers to be used in the project.
 - g. Include drawings (specifications) of tractor/chassis/container combination with sufficient detail to determine feasible payloads, including the calculations showing the maximum road legal payload for the over-the-road equipment configuration. Include assumptions for:
 - Bale size and weight
 - Placement in container
 - h. Provide make and model year of proposed over-the-road equipment.
 - i. Provide make and model year of shuttle equipment, include drawings (specifications).
 - j. Describe the tipper(s) (specification, manufacturer and year built) or whether you will contract for tipping services with WMDS or others.
 - k. Provide delivery/mobilization schedules for the proposed equipment.
3. For any rail portion of the work:
 - a. Describe the number of railcars proposed, their dimensions, manufacturer, year built, rated payload capacity and projected payloads (both by railcar and by individual intermodal containers).
 - b. Describe how many railcars are projected to be used per train.
 - c. Describe the locomotives that will be used, including make, model year, quantity of locomotives per train, engine types and rated horsepower.
 - d. Describe the terminals (and loading/unloading equipment) proposed for the project and their status (i.e., are they currently constructed?).
 - e. Describe the number of tractors/chassis and containers to be used in the project.

- f. Include drawings (specifications) of tractor/chassis/container combination, with sufficient detail to determine feasible payloads, including the calculations showing the maximum road legal payload for the over-the-road equipment configuration.
Include assumptions for:
 - Bale size and weight
 - Placement in container
- g. Provide make and model year of proposed over-the-road equipment .
- h. Provide make and model year of shuttle equipment, include drawings (specifications).
- i. Describe the tipper(s) (specification, manufacturer and year built) or whether you will contract for tipping services with WMDS or others.
- j. Provide delivery/mobilization schedules for the proposed equipment.
- k. Document which equipment will be dedicated to the project.

I. OPERATIONAL CONSIDERATIONS - Equipment and Equipment Maintenance

Describe in detail your approach to maintenance on the equipment, buildings, and grounds during the life of the contract. Please distinguish between Contractor-supplied and Metro-supplied items as appropriate. Also address the following detailed items:

1. Maintenance Plan- General
 - a. Inspection Plans and Procedures
 - b. Forms
 - c. Reporting
 - d. Documentation
 - e. Coordination with Metro
 - f. Sustainable practices
2. Preventative maintenance plan (equipment, facility, grounds)
 - a. Schedule
 - b. Testing
 - c. Reporting
3. Replacement
 - a. Schedule for replacement of major equipment and containers
 - b. Schedule and methods for replacing major components (engines, container floors, etc.)
4. Miscellaneous - Describe how the following elements will be accomplished, and what resources will be subcontracted and when:
 - a. Major Repairs
 - b. Emergency Repairs
 - c. Use of Subcontractors
 - d. Spare Parts Utilization
 - e. Fleet equipment cleaning and frequency
5. Safety- Describe the following elements of your safety program:
 - a. Training
 - b. Reporting
 - c. Inspections
 - d. Investigations

J. STAFFING PLAN

Provide a staffing plan that shows the following elements and contains the following information:

1. Number and type of positions, and where each will be based.
2. Management résumés.
3. Describe how fluctuations in activity/waste flow will be accommodated.
4. Schedules by position.
5. Position descriptions.
6. Training specifications for each position.
7. Discuss dedicated (full time) positions vs. dual role, temporary positions and/or part time positions.
8. Location of support activities.
9. How you will attempt to integrate existing CSU drivers into your operations.
10. Indicate which positions will be shared between facilities.

K. GENERAL CONTINGENCY PLANS

Describe how you plan to deal with the following:

1. Site/ External communications during service outages.
2. Work stoppages.
3. Inclement weather.
4. Equipment failure.
5. Route Closure (routine or otherwise).
6. Spill response/control procedures.
7. Accident/Incident investigation.

L. PERFORMANCE MEASURES

Provide the following information about how you will measure performance:

1. What is measured and how you will measure it.
2. How you will establish baselines.
3. How you will use this information to improve service to Metro.
4. How often you will calculate or measure the activity.
5. How you plan to present data from the required GPS tracking system.

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**PROPOSED
SOLID WASTE TRANSPORTATION SERVICES AGREEMENT**

SCOPE OF WORK

APPROVED BOND FORMS

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SOLID WASTE TRANSPORT SERVICES AGREEMENT

This Solid Waste Transport Services Agreement (the "Agreement") is made by and between Metro, an Oregon Metropolitan Service District organized under the laws of the State of Oregon and the Metro Charter, located in Portland, Oregon, and _____.

RECITALS

Metro is the owner of two Solid Waste Transfer Stations in the Portland Metropolitan Region and has contracted for disposal of solid waste from the Metro Region at the Columbia Ridge Landfill ("CRL") in Arlington, Oregon.

Metro wishes to procure, and Contractor wishes to provide transportation services for solid waste to be disposed at the above-named landfill.

ARTICLE 1 - DEFINITIONS

Any words or terms in this Agreement describing material or work that has a well-known technical or trade meaning recognized by solid waste and transportation professionals, engineers and trades shall be construed in accordance with such well-known meaning. Unless the context indicates otherwise, the capitalized terms used herein shall have the meanings defined as follows:

A. "Acceptable Waste" means all waste which is sealed into Contractor's containers at Metro-designated transfer stations.

B. "Back-up Transport System" or "Back-up System" means that transportation system plan which Contractor has designated and Metro has accepted as the method Contractor will utilize in any circumstance in which the Primary Transport System is unavailable.

C. "Container" means the receptacle, including intermodal containers and their chassis, and transfer trailers, meeting the performance standards set forth in the Scope of Work used to transport waste from the transfer station to a disposal site.

D. "Contract Manager" means Metro's representative for all purposes of this Agreement, designated as such by Metro. The Contract Manager is also the liaison between Contractor and Metro's consultants. The Contract Manager has no authority to approve increases in the cost of this Agreement; all such changes must be approved under the procedures in this Agreement and by Metro pursuant to applicable provisions of the Metro Code.

E. "Contractor" means the person, firm, corporation or other entity which executes the Agreement with Metro.

F. "Disposal Site" means the Columbia Ridge Landfill which is located in Gilliam County, Oregon to which "acceptable waste" is transferred and disposed.

G. "Force Majeure" means riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, and federal or state government orders, any of which is beyond the reasonable anticipation of the applicable party and which prevents performance of this Agreement, but only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time. Both parties agree that no other events, however catastrophic or uncontrollable, including, but not limited to, changes in laws or regulations, strikes, lockouts, other labor disturbances, breakage or accidents to machinery, equipment or plants, scheduled lock closures, or government order due to inclement weather, shall be considered force majeure.

H. "Scalehouse" means those facilities the purpose of which is to determine and collect charges from public, commercial and industrial users of a transfer station. The term "scalehouse" shall include both the buildings used for this purpose and the weighing system.

I. "Load of Waste" means the quantity of waste transported by container(s) during each trip from a transfer station.

J. "Metro" means the Metropolitan Service District, its officers, employees, contractors, or authorized agents or servants; the term Metro does not include Contractor, Contractor's officers, employees, subcontractors, agents or servants.

L. "Primary Transport System" or "Primary System" means that mode of transportation which Contractor has designated and Metro has accepted as the principal transport method Contractor will utilize.

M. "Rate" refers to the unit costs associated with the transport of a load of waste.

N. "Request for Proposal" or "RFP" means a request by Metro for a proposal on contemplated changes in this Agreement. Such Request(s) for Proposals shall be numbered consecutively in chronological order.

O. "Separate Contract" means a contract between Metro and a party other than the Contractor.

P. "Transfer Station" means the Metro Central Station and/or Metro South Station

ARTICLE 2 – TERM OF AGREEMENT

This Agreement shall take effect upon execution and remain in full force and effect through and including December 31, 2019, as more fully described in this Agreement. The Contractor agrees to begin waste transport services on January 1, 2010, and to terminate such disposal services on December 31, 2019, subject to the provisions set forth below. The term of this Agreement may be extended only by a written amendment to the Agreement signed by Metro and Contractor.

ARTICLE 3 - OBLIGATIONS OF CONTRACTOR

3-1. Contractor's Performance of Contractual Duties.

In consideration of Metro's payments described in Articles 5 and 7 of this Agreement, Contractor agrees to perform fully the duties and tasks described in the attached Scope of Work, which is incorporated by this reference as if set forth in full, and to provide all labor, tools, equipment, machinery, supervision, transportation, disposal, permits, and every other item and service necessary to perform such duties and tasks. Contractor further agrees to fully comply with each and every term, condition, and provision of this Agreement.

Contractor and its officers, employees, agents and subcontractors shall perform each and every service to be performed under this Agreement in a skillful and competent manner in accordance with the highest standards of the solid waste and transportation industries. Contractor shall be responsible to Metro for any and all errors or omissions in the performance of this Agreement and for any and all failures to perform this Agreement.

Contractor warrants that all personnel, workers or subcontractors used in the performance of this Agreement shall be skilled in their trades. Contractor shall furnish evidence of the skill of their employees, subcontractors and agents upon the request of Metro.

Contractor shall at all times enforce strict discipline and good order among its employees and all subcontractors. Contractor shall ensure that none of its employees, subcontractors or agents, nor any of its subcontractors' employees or agents, are permitted to participate in the performance of the work required under this Agreement if any such person has recently consumed or is under the influence of alcohol or other drugs, nor shall Contractor's employees, subcontractors or agents, nor any of its subcontractors' employees or agents, be permitted to bring alcohol, drugs or firearms onto the premises of a transfer station.

Contractor further warrants that all workmanship, materials and equipment used in the performance of this Agreement shall conform with any and all representations made by Contractor, and that such workmanship material and equipment shall be of the highest quality.

3-2. Contractor's Acquisition of Approvals.

The Contractor shall be responsible for obtaining all necessary approvals and permits for the services rendered under this Agreement including, but not limited to, complying with all applicable federal, state, local and Metro regulations. Contractor affirms that it has provided

Metro with copies of all current permits and conditions, together with a timetable for obtaining necessary permits not yet approved. All equipment shall comply with applicable local codes, state laws, and applicable federal requirements. Any trucks and containers used in the performance of this Agreement shall be equipped, at the Contractors' sole expense, with a real-time global positioning system data device approved by Metro and configured and implemented so that Metro can, using any internet connection, determine the location, travel path and current status of each piece of Contractor's equipment. Any software access licenses or maintenance agreements will be provided by the Contractor. All containers and vehicles used to weigh the loads shall be equipped with RFID tags provided by Metro.

3-3. Contractors Retention of Transaction Records.

In accordance with the provisions of Article 11, and in addition to all requirements of such Article, Contractor shall keep accurate records of all transactions in connection with this Agreement, including, without limitation, Metro Transaction Tickets received at transfer stations, any receipts or correspondence from transfer stations, and any communication from public agencies. Copies of such records shall be forwarded to Metro as requested, and Contractor shall inform Metro of all such communications or correspondence at the meeting required under Subarticle 3-4 of this Agreement.

3-4. Contractor's Coordination of Activities.

The Contractor shall coordinate with Metro's transfer station operators regarding a timely schedule for the availability of adequate labor, equipment and empty containers used to receive a load of waste. The Contractor shall also coordinate the unloading of the containerized waste with the landfill operator. Metro will act as the arbitrator of any disputes between the Contractor and all transfer station or landfill operators.

Commencing January 2010, coordination meetings will be held monthly to review the progress of the work, discuss operational problems and procedures, and complaints. Contractor shall prepare for and respond to complaints, charges, and allegations brought against it prior to such meeting. The Contractor shall present a monthly report summarizing activities during the prior month, and plans and schedules for future activities. The monthly summary report shall include, without limitation, a manifest of the tonnage by load from each transfer station; complaint forms and recommended actions; any extraordinary occurrences affecting the Contractor and/or Metro; the status of operating equipment; any correspondence between Contractor and any governmental body concerning in any way the performance of this Agreement; any proposed or performed transportation backhaul activities; and any accidents and incidents, including circumstances in which an accident or collision was narrowly avoided.

3-5. Additional Contractor Obligations.

In performing each and every service required under this Agreement, Contractor, its officers, employees, agents and subcontractors shall comply with all applicable laws, regulations, ordinances, orders and all other requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities, and Contractor shall accordingly give all notices and obtain all licenses and permits so required by law. The latter requirements of law include, but are not limited to, all applicable statutes, regulations and orders concerning minimum wage rates, nondiscrimination in the employment of

labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees and any similar subjects. Copies of all correspondence or any other documents sent from, or received by, the Contractor, its officers, employees, agents or subcontractors to any federal, state, regional, county or local government agency, relative to any and all of the requirements of law referred to by this paragraph shall be retained by the Contractor for a period of six years, and be available for inspection by Metro. Metro shall be informed of such correspondence at the monthly meetings required under Subarticle 3-4 of this Agreement. Examples of such correspondence include, but are not limited to, citations received from the State Highway Division. All agreements between Contractor and persons, firms, and corporations employed for this Agreement shall contain this paragraph's requirements. The requirements of this paragraph shall survive the expiration of this Agreement for a period of two years.

Contractor shall use its primary transport system in performing this Agreement unless Contractor has received prior written (or, in the event of an actual emergency, verbal) approval from Metro, to use an alternative transport system. Metro shall be under no obligation whatsoever to grant such approval. In the event that Metro approves Contractor's use of an alternative system, and except as provided in Article 18, Contractor shall not be entitled to any additional compensation or consideration but shall continue to faithfully perform every provision of this Agreement.

Contractor agrees to promptly pay all subcontractors, material persons, suppliers, or laborers engaged for purposes of this Agreement in accordance with any and all contracts between any such persons or entities and the Contractor. Contractor agrees to immediately remove any liens or encumbrances which, because of any act or default of Contractor, its officers, employees, or agents, or of Contractor's subcontractors or material suppliers of any tier, are filed against any property, real or personal, which Contractor, its officers, employees, subcontractors and other agents, interferes with the performance of this Agreement; and to defend, indemnify, and hold Metro harmless as required by Article 12 of this Agreement.

Contractor shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status. Contractor acknowledges that Metro fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities, and further acknowledges that Metro requires that all contractors comply with the aforementioned non-discrimination obligations.

Contractor shall use recycled and recyclable materials and products to the maximum, economically feasible extent in the performance of work set forth in this document. Contractor shall comply with Section 2.04.520 of the Metro Code regarding the use of recycled materials and products, particularly in the purchase of motor oil, antifreeze, and tires.

Contractor agrees that all services necessary to complete the Agreement in the manner established by this Agreement shall be considered as a part of the Agreement, and accordingly agrees that the Contractor will execute such services, without any extra compensation, in the same manner and with the same quality of material and services as required by this Agreement.

ARTICLE 4 -- TITLE TO WASTE

If the seal affixed to any load of waste in the Contractor's possession shall be broken after being affixed at the transfer station of origin or before unloading at the disposal site destination, title to that load of waste shall immediately pass to the Contractor. Nothing contained in this paragraph shall be construed to limit Contractor's responsibilities or liabilities as described elsewhere in this Agreement.

ARTICLE 5 -- OBLIGATIONS OF METRO

In consideration of Contractor's performance of the work described in the attached Scope of Work, and the Contractor's performance of all duties, tasks and obligations of this Agreement, Metro agrees to pay Contractor in accordance with the provisions set forth in Article 7, and to perform any other obligation specifically enumerated in this Agreement.

Metro shall organize the coordination meeting described in Article 3, and shall inform the Contractor concerning the identity and authority of the Metro employees responsible for the routine inspections described in Article 11.

Notwithstanding any other provision of this Agreement, Metro shall have no obligation to notify Contractor when to begin, cease or resume services under this Agreement, nor to give early notice of rejection of faulty services, nor in any way to superintend so as to relieve Contractor of any liability, any responsibility or any consequences for neglect, negligence or carelessness, or for substandard or defective services, or for use of substandard or defective materials or equipment by Contractor, its officers, employees, subcontractors or agents.

ARTICLE 6 -- SEPARATE CONTRACTS

Metro reserves the right to enter into separate contracts for, and in connection with, the transportation of waste within and beyond Metro's boundaries and to enter any other separate contracts involving waste transfer or disposal from any facilities controlled by Metro.

Contractor shall cooperate with Metro and with other separate contractors engaged by Metro for the transportation or disposal of waste or the operation of transfer stations or resource recovery facilities or any related projects so that all portions of this Agreement may be completed in the most efficient and timely manner, without any interference with work on related projects and contracts.

Metro shall be the sole arbitrator of all disputes between the Contractor and any other contractors concerning performance of the work and interpretation of this Agreement and any other legally binding document affecting or related to this Agreement. All decisions of Metro relating to such Agreement and documents shall be deemed final. Contractor shall notify Metro of any such disputes within ten (10) working days of the occurrence of such dispute, or such dispute will be

deemed to have been resolved adversely to the interests of Contractor. Under no circumstances whatsoever shall Metro be liable for damages of any kind or nature resulting from or related to disputes between the Contractor and any separate contractor.

ARTICLE 7 - PAYMENT

7-1. Payment Provisions for Proposals Combining Transport and Fuel Costs into a Single Rate.

A. Rates. For all transport work and fuel required under this Agreement, Metro shall pay Contractor the sum of \$_____ per load.

B. Rate Adjustment. Commencing on January 1, 2011, and on January 1 of each year thereafter, the Rate set forth in Article 7.1A shall be adjusted by a percentage amount equal to the difference of the Consumer Price Index during the most recent July, and the Consumer Price Index for July of the previous year, multiplied by the percentage adjustment amount of _____.

The following formula will be used to calculate the unit price adjustment:

$$UPA = ((CPI_t / CPI_{t-1}) - 1) \times 100 \times Pct$$

UPA = Unit Price Adjustment (percentage)
CPI_t = Consumer Price Index for the most recent July
CPI_{t-1} = Consumer Price Index for July of the previous year
Pct = Actual Percent Adjustment proposed by the Contractor

The Unit Price Adjustment set forth herein shall be based on the Consumer Price Index for all urban consumers entitled "West-Size Class A" published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"). The Unit Price Adjustment percentage will be the July index directly preceding the current year divided by the July index for the previous year, minus one, multiplied by 100, multiplied by the Percent Adjustment.

Percentage changes in the index shall be calculated using the year in which the Agreement is executed as the base period, until the BLS publishes data based on a new base period. Calculations shall be made from data on the new base from that time forward. If the BLS series specified above is discontinued, a replacement index shall be agreed upon by the contracting parties. If the BLS designates an index with a new title and/or code number or table number as being the continuation of the index cited above, the new index will be used. If the specific index "West-Size Class A" is discontinued but the West Urban All Items remains, this latter index will be used. Otherwise, a substitute shall be agreed upon by the parties. The price adjustment shall be calculated as soon as data are available, and shall be effective beginning the first day of the first month in each year of the Agreement.

7-2. Alternative Payment Provisions for Proposals Separating Transport and Fuel Costs into Separate Rates.

A. Rates. For all work required under this Agreement, Metro will pay Contractor the sum of \$_____ per load, exclusive of fuel, together with the sum of \$_____ per load for fuel.

B. Rate Adjustment. Commencing on January 1, 2011, and on January 1 of each year thereafter, the Rate set forth in Article 7.1A shall be adjusted by a percentage amount equal to the difference of the Consumer Price Index during the most recent July, and the Consumer Price Index for July of the previous year, multiplied by the percentage adjustment amount of _____.

The following formula will be used to calculate the unit price adjustment:

$$UPA = ((CPI_t / CPI_{t-1}) - 1) \times 100 \times Pct$$

UPA = Unit Price Adjustment (percentage)
CPI_t = Consumer Price Index for the most recent July
CPI_{t-1} = Consumer Price Index for July of the previous year
Pct = Actual Percent Adjustment proposed by the Contractor

The Unit Price Adjustment set forth herein shall be based on the Consumer Price Index for all urban consumers entitled "West-Size Class A" published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"). The Unit Price Adjustment percentage will be the July index directly preceding the current year divided by the July index for the previous year, minus one, multiplied by 100, multiplied by the Percent Adjustment.

Percent changes in the index shall be calculated using the year in which the Agreement is executed as the base period until the BLS publishes data based on a new base period. Calculations shall be made from data on the new base from that time forward. If the BLS series specified above is discontinued, a replacement index shall be agreed upon by the contracting parties. If the BLS designates an index with a new title and/or code number or table number as being the continuation of the index cited above, the new index will be used. If the specific index "West-Size Class A" is discontinued but the West Urban All Items remains, this latter index will be used. Otherwise, a substitute shall be agreed upon by the parties. The price adjustment shall be calculated as soon as data are available and shall be effective beginning the first day of the first month in each year of the Agreement. There shall be no Unit Price Adjustment in the first year of this Agreement.

C. Per Load Fuel Price Adjustment. The per load price for fuel set forth in Article 7.2A shall be adjusted quarterly during this Agreement, beginning with April 1, 2010, to reflect changes in the cost of fuel. The quarterly fuel price adjustment beginning in the second calendar quarter of this Agreement shall be in a percentage amount equal to the change of the fuel price index between the previous calendar quarter and the current calendar quarter, as described below.

The following formula will be used to calculate the fuel price adjustment:

$$FPA = ((FP_q / FP_{q-1}) - 1) \times 100$$

FPA = Fuel Price Adjustment (percentage)
FP_q = Fuel Price in the current calendar quarter
FP_{q-1} = Fuel Price in the previous calendar quarter

The Fuel Price Adjustment will be based on the Portland, Oregon average rack price of No. 2 Ultra-low Sulfur Diesel published weekly by the Oil Price Information Service (OPIS) on the Thursday directly preceding the first day of the calendar quarter. The Fuel Price Adjustment percentage will be the one-week average price of the current calendar quarter, divided by the one-week average price for the previous calendar quarter, minus one, multiplied by 100. The first day of each calendar quarter is: January 1, April 1, July 1, and October 1.

If the price or OPIS report specified above is discontinued, replacement price data shall be agreed upon by the contracting parties. If OPIS designates an index with a new title as being the continuation of the price cited above, the new price will be used. If a different grade of fuel is used by the Contractor to perform this Agreement, and if the weekly OPIS report referenced above contains an average rack price for that actual fuel grade, then the Fuel Price Adjustment shall be calculated for the actual fuel grade used according to the procedure described in this section.

7-3. Additional Payment Provisions Applicable to all Proposals.

A. Petition for Increased Costs Due to Change in Law. For purposes of this Article, the term "change in law" means any new or revised laws, statutes, rules, regulations, ordinances, or a final judicial determination thereof rendered by a court of competent jurisdiction in the State of Oregon. Upon petition of the Contractor and subject to approval of Metro as described in this section, Metro shall pay, subject to the limitations, conditions and procedures stated below, one hundred percent (100%) of Contractor's reasonable, actual increased costs of performing this Agreement if such increased costs are directly attributable to changes in law which increase the cost of Contractor's performance of this Agreement, and if such changes in law become effective at any time after the effective date of this Agreement.

1. Local and County Law -- Limitations: Metro shall reimburse Contractor, subject to the terms and conditions of this section, for reasonable, actual increased costs due to changes in local and county laws if and only if such changes are applicable to all businesses in the relevant county or local area. Metro shall not compensate Contractor for any increased costs due to changes in local or county laws to the extent that such laws are applicable only to Contractor, Contractor's activities in connection with this Agreement, or to persons or entities engaged in the waste management or transportation industries.
2. Federal, State or Local Taxes, Fees or Surcharges: Metro shall not be obligated to reimburse Contractor for any cost increases or expenses Contractor may incur due to increase in the rates of federal, state or local taxes, fees or surcharges of whatever nature.

3. General Conditions and Limitations on Reimbursement: Reimbursement shall be allowed under this section only for any costs incurred which are the least costly means of ensuring full compliance with and which are directly necessitated by the relevant change in law. No reimbursement for cost increases shall be allowed for any cost increases which are in any way attributable to Contractor's operations or to Contractor-provided transfer stations or to conditions, operations, or activities at Contractor-provided transfer station(s), or conditions, operations or activities which are caused by Contractor or its subcontractors, employees, agents, or servants, or which are otherwise within Contractor's control.

Contractor must fully demonstrate and document the need for the requested reimbursement to Metro's satisfaction and approval as a condition precedent to Contractor's right to any payment under this section.

4. Cancellation of Reimbursement: Metro may at any time cancel any reimbursement made under this section which was made in error. Contractor shall at all times keep Metro informed as to whether any reimbursement remains necessary. Also, upon Metro's request, Contractor shall immediately provide Metro with all documents or information or other evidence in Contractor's possession or control which Metro requests to determine whether there is a continuing need for any and all reimbursements made under this section.
5. Schedule of Payment of Reimbursement: Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) which may include installment payments over an extended period of time which may extend beyond the termination or completion of this Agreement. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.

B. Deductions from Payments for Reduced Costs due to Changes in Law. Metro shall be entitled to reduce payments to Contractor subject to the conditions stated below, to reflect one hundred percent (100%) of the reduced costs of Contractor's performance under this Agreement which reduced costs are attributable to any categories of changes in law for which Contractor is entitled to reimbursement of increased costs under the previous section. Metro may at any time serve Contractor with notice and explanation of Metro's intent to reduce payments under this paragraph. Within thirty (30) days of service of such notice, Contractor shall respond in writing to such notice, and such written response shall state whether or not Contractor believes that any deductions from payments due Contractor are justified by the change in law and shall state any reductions in the costs of performing this Agreement due to the relevant change in law. Contractor shall fully document and otherwise support its response to Metro's notice under this section.

Upon written petition of Contractor, Metro may at any time cancel reductions made under this section if Metro determines that the need for the reduction has expired or that a reduction was made in error. Contractor shall at all times keep Metro informed as to both when any reduction due to change in law is appropriate, and as to when any reduction is no longer appropriate.

C. Partial payments shall not constitute acceptance by Metro of Contractor's work nor be construed as a waiver or surrender of any right or claim by Metro in connection with the work.

D. Contractor shall submit its invoices with a detailed cost breakdown in accordance with the procedures approved by Metro. In addition to the information provided to Metro in support of its monthly applications for payments, Contractor shall submit to Metro, concurrent with its monthly payment application, a detailed accounting of all sums paid to minority, women and emerging small business (MWESB) subcontractors during the previous calendar month. This accounting shall reflect the type of work being performed by the MWESB firms and the MWESB firms' name, address, telephone and contact person, previous calendar month's payment and total payments made to the subcontractor.

E. Conditions Precedent to Payment. It is a condition precedent to Contractor's rights to any payments under this Agreement that all bills for labor and materials, including labor and materials supplied by or to Contractor, are paid in full; and, if requested by Metro, Contractor shall submit receipted invoices and/or lien waivers, as evidence of payment in full of all such accounts. As a further condition precedent to Contractor's right to any payments under this Agreement, if requested by Metro, Contractor shall submit a lien waiver before any payment, and a final lien waiver stating Contractor has been paid in full prior to the final payment. Nothing in this section is meant to establish an exhaustive list of all the conditions precedent to payment in this Agreement. Any and all conditions precedent to payment established by this Agreement but not contained in this section remain valid.

F. Basis of Payment. On or prior to the eighth day of each month, Contractor will submit to Metro a billing which indicates the quantity of waste transported from each transfer station pursuant to this Agreement. The value of unit price work shall be based upon the number of loads of waste actually transported pursuant to this Agreement for the calendar month just completed. The Contractor shall furnish to Metro such detailed information as set forth in this Agreement (including records from transfer stations) and as Metro may request to aid in the preparation of monthly payments. After approval by Metro, Metro will pay the Contractor by the 25th day of the following month for the value of unit price work and lump sum work, less any previous payments.

ARTICLE 8 – ADDITIONAL OR DELETED WORK

8-1. Request for Proposal for Additional Work.

Within fourteen (14) calendar days after receipt of an RFP for additional work from Metro, Contractor shall submit to Metro an itemized proposal stating the actual and reasonable costs to Contractor for performing such additional work, a schedule for performing such work, and the effect, if any, on Contractor's performance of the existing contract work by reason of the additional work. Contractor's proposal shall be based on the least costly method for performing the additional work in accordance with all provisions of this Agreement.

No request for proposals by Metro shall be construed as authorization for Contractor to perform the additional work covered by such RFP. To obtain authorization to perform any additional work, Contractor must be notified in writing by Metro that Contractor is ordered to proceed with

the relevant additional work. In any such written notification Metro shall indicate whether it accepts or rejects Contractor's proposal. If Metro rejects Contractor's proposal but orders the additional work to be performed, Contractor shall perform the additional work. If Metro does not order Contractor to perform the relevant work, Contractor shall not be entitled to any reimbursement for the work in Contractor's proposal.

8-2. Request for Proposal for Deleted Work.

Within fourteen (14) calendar days after receipt of an RFP for deleted work from Metro, Contractor shall submit an itemized proposal stating the actual and reasonable costs which would be avoided by deleting work called for in this Agreement, a schedule for deleting the relevant work, and the effect, if any, on Contractor's performance of the remaining contract work by reason of the deleted work. Contractor's proposal shall be based on all current and future avoided costs to Contractor for deleting the work and any profit margins or markups which Contractor's proposal includes for such work.

No RFP by Metro shall be construed as authorization for Contractor to delete the work covered by an RFP for deleted work. Contractor shall not delete any work unless and until an order from Metro authorizing such deletion is served upon Contractor. In any such written notification Metro shall indicate whether it accepts or rejects Contractor's proposal. If Metro rejects Contractor's proposal but orders the work to be deleted, Contractor shall delete the work. However, Metro may make all appropriate deductions from payments, according to the formula below, if Metro has ordered Contractor to delete work, regardless of whether Contractor has complied with such order.

8-3. Amount of Deductions for Deleted Work.

The amount of any deductions from payments for deleted work shall be equal to all current and future avoided costs resulting from the deleted work plus any profit margin or markups which Contractor's proposal includes for such work. If the latter profit margin or markup figures are unavailable, the parties hereby agree that Contractor's profit margin on all work shall be deemed to be ten percent (10%) of the actual cost of performing the work. Contractor shall submit complete records of materials and labor usage to Metro for review. If Contractor and Metro cannot agree on the amount of the deduction for the relevant deleted work, that matter shall be submitted to arbitration under Article 25.

ARTICLE 9– CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor shall perform all work under this Agreement as an independent contractor. Contractor is not and shall not be considered an employee, agent or servant of Metro for any purposes, under this Agreement or otherwise; nor shall any of Contractor's subcontractors, employees or agents be, nor shall they be considered, employees, agents, subagents or servants of Metro for any purposes under this Agreement or otherwise.

Consistent with the provisions of this Agreement, Contractor shall have exclusive control of, and the exclusive right to control, the details of the services and work performed hereunder and all persons performing such work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this

Agreement shall be construed as creating a partnership or joint venture between Metro and Contractor.

Nothing in this Agreement shall be construed as giving Metro any duty to supervise or control any acts or omissions of any person, entity or party, which acts or omissions are in any way connected with the performance of services under this Agreement.

ARTICLE 10 – CONTRACTOR’S USE OF SUBCONTRACTORS

Contractor shall submit to Metro the names and addresses of proposed subcontractors and suppliers for each subcontract of this Agreement that is for payment of more than \$100,000 per year. Contractor shall provide copies of any subcontracts Contractor enters into to perform this Agreement within three (3) business days of receiving a request for such contracts from Metro.

All applicable provisions of this Agreement, and all applicable local, state and federal laws and regulations shall apply to all: 1) subcontracts entered into by Contractor in connection with this Agreement; and 2) leases, purchase agreements, or finance agreements for equipment or other material used in connection with this Agreement.

All subcontracts of whatever nature, including, but not limited to, leases and purchase and finance agreements, shall contain a clause which provides that if Contractor, in Metro’s sole opinion, defaults in performance of this Agreement and Metro accepts assignment of the subcontract, then subcontractor shall enter into a novation of the subcontract with Metro and, for purposes of interpretation of the subcontract, shall recognize Metro or its assignee as Contractor and shall further recognize that Metro or its assignee shall have all the rights, remedies and responsibilities of the Contractor under the relevant subcontract. Upon written notice from Metro, Contractor agrees to assign all of its rights in all such subcontracts to Metro upon Metro’s determination that Contractor has defaulted under the terms of this Agreement.

Contractor shall be as fully responsible to Metro for the acts and omissions of the subcontractors and suppliers, and of the subcontractors’ and suppliers’ employees, firms, agents and servants, as Contractor is for the acts and omissions of its own employees and agents. No provision(s) of this Agreement, nor of any contract between the Contractor and its subcontractors, shall be construed as creating any contractual relation between those subcontractors and Metro.

ARTICLE 11 – INSPECTIONS OF CONTRACTOR / RECORDS RETENTION

11-1. Inspections.

Contractor shall permit inspection of all facets of the work by Metro, Metro’s representatives, and all governmental authorities having jurisdiction over any parts of the work at all times. All inspectors shall be afforded all rights and courtesies granted to Metro. Any commands or directions issued by such inspectors shall not relieve the Contractor of any responsibility or obligation under this Agreement or of any liability associated with its operations. Contractor shall remain fully responsible for all injuries, accidents, and other mishaps associated with its operations.

Metro shall have the right to inspect and copy all records and documents, to interview any persons, and to review any evidence in Contractor's possession or control which may assist Metro in determining whether and by what amount 1) Contractor is entitled to reimbursement or increased payment under any applicable provision of this Agreement; or 2) Metro is entitled to credits or to make reduced payments to Contractor under any provision of this Agreement.

Metro shall also have the right to reasonably request any information it deems necessary to determine Contractor's ability to perform or to continue to perform this Agreement. Contractor shall comply with all such requests by Metro within ten (10) days of receipt of any such requests.

11-2 Records Retention.

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this Agreement are work products and are the property of Metro, including, but not limited to, drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon Metro's request, Contractor shall promptly provide Metro with an electronic version of all work products that have been produced or recorded in electronic media. Metro and Contractor agree that all work products are works made for hire and Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such work products.

Contractor and all of its subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:

A. The performance of the Contractor, including, but not limited to, Contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the Contractor or subcontractor under the terms of this Agreement or subcontract.

B. Any claims arising from or relating to the performance of the Contractor or subcontractor under a public contract.

C. Any cost and pricing data relating to this Agreement.

D. Payments made to all suppliers and subcontractors.

Contractor and subcontractors shall maintain records for the longer period of 1) six years from the date of final completion of this Agreement to which the records relate; or 2) until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

Contractor and subcontractors shall make records available to Metro and its authorized representatives including, but not limited to, the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made

available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro including, but not limited to, the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

Contractor and subcontractors authorize and permit Metro and its authorized representatives, including, but not limited to, the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Contractor shall submit to Metro at least annually, and more often at Metro's request, copies of such financial records and tax returns as are submitted to the surety or banking institution furnishing Contractor's Performance and Labor and Materials Bonds or Letter(s) of Credit (see Article 14). Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of the following paragraph.

Contractor and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

Contractor and subcontractors agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from Metro.

The failure of the Contractor or subcontractor to keep or disclose records as required by this document or any solicitation document may result in disqualification as a bidder or proposer for future Metro contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the Contractor or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

ARTICLE 12-- INDEMNIFICATION

Contractor agrees that for purposes of the Oregon Tort Claims Act (ORS 30.260 through 30.300) neither Contractor, nor its officers, agents and employees, nor any of Contractor's subcontractors of any tier or their officers, agents and employees are agents of Metro. Contractor, both for itself and its officers, agents, employees, as well as its subcontractors of any tier and all of their officers, agents and employees, will make no claim whatsoever against Metro for indemnification pursuant to ORS 30.260 to 30.300. In addition, Contractor hereby agrees to hold Metro harmless and indemnify Metro from any such claims.

In addition, Contractor shall indemnify, and hold Metro harmless from and against any and all claims, causes of action, demands, suits, damages, penalties, charges, judgments, liabilities, or losses of whatsoever character or kind (all hereinafter referred to as "claims") and all expenses arising from such claims including, but not limited to, attorneys' fees upon trial and upon appeal, and any and all costs, if such claims or expenses allegedly or actually arise or result from, directly or indirectly, or are in any way connected with: 1) the performance or nonperformance of any provision or requirement of this Agreement by Contractor, its officers, employees, subcontractors, agents or servants; 2) any of the acts or omissions of Contractor, its officers, employees, subcontractors, agents or servants at any transfer station; 3) the failure of Contractor, its officers, employees, subcontractors, agents, or servants to comply in any respect with the provisions and requirements of all applicable permits, licenses, laws, statutes, regulations, ordinances, codes, orders and all other legal requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities as is required by this Agreement; or 4) any release or emission, or threatened release or emission related to the waste occurring from the point in time that each load of waste is sealed until the disposal of such load of waste at the disposal site. The Contractor shall be solely responsible for all costs incurred from any release of solid waste, liquids or liquid wastes during transport and storage of such solid waste.

In addition, Contractor shall, upon demand of Metro, and at Contractor's sole cost and expense, defend and provide qualified attorneys acceptable to Metro in its sole discretion under service contracts acceptable to Metro to defend Metro, its officers, employees, agents and servants against any and all claims, causes of actions, suits, demands, damages, penalties, charges, liabilities, losses, awards of damages, or judgments, of whatsoever character or kind, arising or resulting from, directly or indirectly, or in any way connected with: 1) the performance or nonperformance of any provision or requirement of this Agreement by Contractor, its officers, employees, subcontractors, agents or servants; 2) any of the acts or omissions of Contractor, its officers, employees, subcontractors, agents or servants at or in connection with the Project; 3) the failure of Contractor, its officers, employees, subcontractors, agents, or servants to comply in any respect with the provisions and requirements of all applicable permits, licenses, laws, statutes, regulations, ordinances, codes orders and all other legal requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities as is required by this Agreement; or 4) any release(s) or emission(s), or threatened release(s) or emission(s) by any person(s), entity or entities occurring from the point in time that each load of waste is sealed until the disposal of such load of waste at the disposal site.

Contractor expressly agrees that it shall be held responsible for any damage attributed to its operations to any Metro-owned or privately-owned facilities including, but without limitation, equipment used in the loading and unloading of containerized waste. The Contractor shall repair or replace such equipment or provide recompense for any such damage at no additional charge to Metro in a timely manner.

In any and all claims against Metro, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of insurance obtained by Contractor.

ARTICLE 13 - INSURANCE

13-1. Contractor's and Metro's Liability Insurance

A. General. The Contractor shall provide (from insurance companies acceptable to Metro, or through self insurance arrangements acceptable to Metro) the insurance coverage designated hereinafter and pay all costs therefore.

Before commencing work under this Agreement, Contractor shall furnish Metro with certificates of insurance specified herein (or indemnity letter and 1) certificated copy of self-insurance Bond in the amount of \$15,000,000 or 2) \$15,000,000 Letter of Credit if self-insured) naming Metro as an additional named insured and showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statements:

1. This/These policy(ies) shall be considered as primary insurance and exclusive of any insurance carried by Metro and the insurance endorsed by this certificate shall be exhausted first, notwithstanding the fact that Metro may have other valid and collectible insurance covering the same risk.
2. This/These policy (ies) shall not be cancelled, reduced in coverage, nor materially altered until after sixty (60) days' written notice of such cancellation, reduction or alteration in coverage shall have been received by Metro.
3. No act on the part of the insured shall affect the coverage afforded to Metro under the insurance covered by this certificate.
4. This/These policy(ies) consist only of insurance on an occurrence basis, not on a claims made basis.

In case of any breach of any provision of this Article, Metro, at its option, may take out and maintain, at the expense of the Contractor, such insurance as Metro may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Contractor under this Agreement including funds held in retainage.

Designated Insurance Requirements			Limits
1.	(a)	Workers' Compensation covering all employees who are engaged in any work under the Contract Statutory (State/Federal) (including subcontractors' employees).	Statutory (State/Federal)
		The Contractor shall require its Workers' Compensation carrier to provide Metro with an endorsement for waiver of subrogation.	

Designated Insurance Requirements			Limits
	(b)	U.S. Longshoremen and the Harbor Workers Act (USL+H) coverage covering all employees who are engaged in any applicable work under this Agreement.	Statutory
	(c)	Federal Employees Liability Act (FELA) coverage, extended to include "Jones Act" -- i.e., captains and crews of vessels, covering all employees who are engaged in any applicable work under this Agreement.	
		Not less than	\$10,000,000
	(d)	Employers' Liability including bodily injury caused by disease.	
		Not less than	\$1,000,000
2.		Commercial General Liability, and Protection and Indemnity, if applicable:	\$1,000,000 per occurrence /aggregate combined single limit bodily injury and property damage
		This insurance shall include contractual liability to cover the liability assumed by the Contractor under Article 8 of the Agreement.	
3.		Automobile Liability including Owned, Nonowned and Hired Vehicles:	
		(i) Bodily injury (including death)	
		(ii) Property damage	
		(i and ii coverage)	\$1,000,000 per occurrence/ aggregate combined single limit bodily injury and property damage
4.		Umbrella coverage	to achieve a total coverage of \$15 million

B. When activities of the Contractor are to be accomplished within a public or private right-of-way requiring special insurance coverage, Contractor shall conform to the particular requirements and provide the required insurance. Contractor shall include in its liability policy all endorsements that the said authority may require for the protection of the authority, its officers, agents, and employees. Insurance coverage for special conditions, when required, shall be provided by Contractor.

C. Contractor shall maintain the above insurance at all times until completion of this Agreement or until the termination date of this Agreement, whichever is later.

D. Maintenance of insurance by Contractor as specified in this Article shall constitute the minimum coverage required and shall in no way lessen or limit the liability or responsibility of Contractor under this Agreement and Contractor may carry, at its own expense, such additional insurance as he/she deems necessary.

E. Metro shall have the right, at its sole option, to require Contractor to place all of the aforementioned insurance coverages through such Master Policy as Metro may obtain if such would reduce the premiums for such coverages and Contractor agrees that Metro may deduct from this Agreement Sum the amount of the premiums payable thereon, or, at Metro's discretion, pay the same directly to the insurance carrier, and Contractor further agrees to comply with such regulations as Metro may issue from time to time to improve the administration of the Master Policy.

F. Pursuant to Article 7 and to the extent allowed by that section, Metro shall only reimburse Contractor for the actual increased cost of premiums which Contractor must pay to comply with insurance requirements not specified above which become effective after the effective date of this Agreement. No other reimbursement for costs associated with increased insurance requirements will be allowed under Article 7.

ARTICLE 14 - CONTRACTOR'S PERFORMANCE BOND / LABOR & MATERIALS BONDS

The initial term of the Performance and Labor and Materials Bonds or Letter(s) of Credit shall commence upon the execution of this Agreement. The amount of the Performance and Labor and Materials Bonds or Letter of Credit(s) shall be in the amount of \$2,000,000.

Not later than sixty (60) days prior to each irrevocable Letter of Credit or Performance and Labor and Materials Bonds expiration, Contractor shall execute and deliver to Metro Performance and Labor and Materials Bonds on the forms bound herewith, or an equivalent irrevocable Letter(s) of Credit acceptable to Metro, which shall secure and be conditioned upon the full, faithful and complete performance of this Agreement and prompt payment of all persons supplying labor and material for the performance of this Agreement and other protection to Metro, as provided in such Bonds or Letter(s) of Credit.

The surety or banking institution furnishing these Bonds or Letter(s) of Credit shall have a sound financial standing and a record of service satisfactory to Metro and shall have a rating of at least A, and be of the appropriate class for the relevant bond amount under Best's Rating System and shall be authorized to do business in the state of Oregon. The Attorney-in-Fact (Resident Agent) who executes these Bonds on behalf of the Surety must attach a notarized copy of her or his Power of Attorney as evidence of her or his authority to bind the Surety on the date of execution of each Bond.

Pursuant to the Contractor's commitments under Article 25 of Agreement, Contractor shall also enter into an agreement with its surety, and shall provide Metro with a copy of such agreement at any time that it must provide Metro with any bonds or letter(s) of credit pursuant to Section B of this Article, in which Contractor's Surety shall consent:

A. To accept jurisdiction of the courts of the state of Oregon for the purposes of commencing, conducting and enforcing arbitration proceeding pursuant to Article 25 of this Agreement.

B. To accept service of notice of the other party's intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party and Contractor's Surety, and such notice shall have the same effect as if the party had been personally served within the state of Oregon.

C. That any decision of an arbitrator pursuant to Article 25 of this Agreement shall be final, binding and enforceable upon the Contractor's Surety and that proper venue for any judicial proceeding to enforce any decision or award made by such an arbitrator shall be exclusively in the county of Multnomah in the state of Oregon.

Contractor shall from time to time take such additional actions and furnish to Metro such additional documents and instruments which Metro reasonably requests to secure performance of Contractor's obligations under this Agreement. None of the requirements contained in this Article are intended to, nor shall they, in any manner limit or qualify the liabilities and obligations assumed by Contractor under this Agreement.

ARTICLE 15 - METRO'S RIGHTS AND REMEDIES FOR CONTRACTOR'S DEFAULTS IN PERFORMANCE (INCLUDING PENALTIES FOR DELAYED LOADING)

15-1. Liquidated Damages.

A. In the event of any default of this Agreement by Contractor which default, in the sole opinion of Metro, substantially impedes the normal operations of any Metro Transfer Station, Contractor shall have one hour to remedy the situation such that, in Metro's sole opinion, operations at such transfer station are no longer substantially impeded. If in Metro's sole opinion, the Contractor fails to remedy the substantial imposition found by Metro, Contractor shall pay Metro liquidated damages at the rate of \$6,000 per hour or portion thereof until Contractor has, in Metro's sole opinion, removed the substantial imposition to transfer station operations. For purposes of this Agreement, a circumstance that "substantially impedes" or constitutes a "substantial imposition" shall include, without limitation, any circumstance affecting the ability of customers to unload waste within twenty minutes of the arrival of such customer at any Metro Transfer Station.

B. If a default as described in the preceding paragraph continues for a period in excess of twenty-four (24) hours, Metro shall not recover liquidated damages for periods beyond

the initial twenty-four (24) hour period, but Metro shall be entitled to all other remedies for Contractor's continued default that this Agreement or the law provides or permits.

C. It is expressly understood and agreed that these amounts are not to be considered in the nature of a penalty, but because of the difficulties of proof of loss, the parties have determined that these amounts are a reasonable forecast of just compensation in light of the anticipated or actual harm which would be caused by a breach or default on Contractor's part. Metro may deduct such damages from any amount due or which may become due, or from funds held in retainage, or the amount of such damages shall be due and collectible from the Contractor or the Surety or banking institution within fifteen (15) days of service of notice by Metro that liquidated damages have been imposed. This remedy shall be in addition to, and not a waiver or surrender of, any other rights or remedies Metro may have under this Agreement or any provision or provisions of law.

Nothing in this Article, and no actions taken pursuant to this Article shall constitute a waiver or surrender of any rights, remedies, claims or causes of action Metro may have against Contractor or its Surety under any other provision of this Agreement or any provision(s) of law.

D. Metro's Rights and Remedies for Contractor's Default which result in Liquidated Damages: For each and every event of default by Contractor which default, in Metro's sole opinion, results in liquidated damages and if neither Contractor nor Surety, within twenty-four (24) hours after written notice of such default has been served upon both Contractor and Surety, cures such default or gives Metro reasonable assurances that the default will be promptly cured, Metro shall have the unconditional right to all of the following remedies to the extent permitted by law.

1. Equitable Remedies. For each and every default under this Article, Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief and the taking possession and operation of any equipment or materials covered by Article 3.
2. Liquidated Damages. As an additional remedy for each and every default under Article 15, Metro is entitled to liquidated damages for the first fifteen (15) days of such default, as provided in Article 15.
- 3.. Actual Damages. For each and every event of default under Article 15 which lasts more than fifteen (15) days, Metro shall be entitled to recover its actual damages for the period of default beyond the fifteen (15) day period. Any disputes arising as to the amount of Metro's actual damages shall be resolved pursuant to arbitration under Article 25 of this Agreement.

15-2. Damages other than Liquidated Damages.

For each and every event of default other than a default resulting in Liquidated Damages, if neither Contractor nor it Surety nor its Banking or Commercial Lending Institution, within thirty (30) days after written notice of such default has been served upon both Contractor and Surety, cures such default or gives Metro reasonable assurances that the default will be promptly cured, Metro shall have the unconditional right to one or more of the following remedies to the extent permitted by law:

A. Equitable Remedies. For each and every default under this Article, Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief and the taking possession and operation of any equipment or materials covered by Article 3.

B. Actual Damages. As an additional remedy, for each and every default under Article 15, Metro shall be entitled to recover its actual damages during all periods of default. Any disputes arising as to the amount of Metro's actual damages shall be resolved by arbitration under Article 25. No liquidated damages remedy shall apply to defaults under this section.

C. Notice of Credit Default. Default by Contractor on any lending agreement with any lending institution utilized by Contractor shall be considered a default by Contractor under this Agreement. To the extent Contractor fails to cure a default under such lending agreement, under the terms for cure and in the time frame provided in such agreement, Metro shall have the right to terminate this Agreement. Contractor shall provide Metro, or require all of its lending institutions to provide directly to Metro, copies of all correspondence related to a loan default or alleged default under a lending agreement, upon receipt by Contractor or issuance by the lending institution, as the case may be.

15-3. Additional Penalty Provisions.

Contractor shall provide an empty container attached to the transfer station compactor and shall be ready to receive a load of solid waste when a load is ready. Failure to comply with this performance standard will be grounds for the imposition of penalties as described as described in this section. Likewise, if the Contractor exceeds container capacity of the staging area at either facility, Metro will have the right to impose the following penalties until the situation is remedied to Metro's satisfaction.

A. \$75 for each occurrence.

B. \$ 6 per minute after the first ten (10) minutes of each occurrence until the situation is corrected.

ARTICLE 16 - METRO'S RIGHT TO SUSPEND OR TERMINATE AGREEMENT

16-1. Termination or Suspension of Contractor's Contract.

For each and every event of default under Article 15-1A. which lasts longer than twenty-four (24) hours, Metro shall be entitled to terminate or suspend this Agreement in accordance with the provisions of this Article. Alternatively, for each and every event of default under Article 15-1A which lasts longer than thirty (30) days, Metro shall be entitled to terminate or suspend this Agreement immediately and without the necessity of notice to Contractor.

16-2. Termination or Suspension of Contractor's Performance of this Agreement.

For each and every event of default under Article 15-1B. which lasts longer than thirty (30) days, Metro shall be entitled to terminate or suspend Contractor's performance of this Agreement in accordance with Section 16-3. of this Article.

16-3. Procedure for Termination or Suspension of this Agreement by Metro.

A. To terminate or suspend this Agreement, Metro must notify in writing both Contractor and Contractor's Surety of Metro's intent to terminate or suspend this Agreement. Within ten (10) days of service upon Contractor of Metro's notice of intent to terminate or suspend this Agreement, Contractor shall either:

1. Cure any defaults in performance; or
2. Discontinue its work on this Agreement or such part thereof as Metro shall designate.

B. If Contractor does not cure any defaults within ten (10) days after service of the notice of intent to terminate or suspend this Agreement, Surety may, at its option, take over and assume full and complete performance of this Agreement or that portion thereof which Metro has ordered Contractor to discontinue, and may perform the same or may sublet the work or that portion of the work taken over by a contractor or contractors acting on behalf of Surety; provided, however, that the Surety shall exercise its option and begin performance of the work, if at all, within ten (10) days after Surety is served with a copy of the written Notice of Termination or suspension. The Surety shall be paid by Metro for all work performed by Surety in accordance with and subject to each and every term of this Agreement.

Contractor's Surety shall be subject to each and every term and condition of this Agreement.

C. If Contractor does not cure a default within the time allowed herein, and Contractor either does not have a surety or the surety elects not to exercise its option under this section, this Agreement shall terminate. For 90 days from the date Contractor ceases to provide service, and continuing subsequent termination, Contractor shall make available to Metro all tractors, trailer, and yard goats used or available for use in carrying out the Agreement at the time Contractor ceases to provide service. The provisions shall survive termination of this Agreement.

16-4. Metro's Remedies if Contractor Becomes Insolvent, Dissolved, Bankrupt, Files for Bankruptcy, Makes a General Assignment for Creditors.

The parties agree that if Contractor becomes insolvent, is dissolved, files for Bankruptcy, is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Metro shall be entitled to request of Contractor or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure of Contractor and Surety to comply with such request within ten (10) calendar days of service upon both Contractor and Surety of a

written request from Metro for such assurances shall entitle Metro to terminate or suspend Contractor's performance of this Agreement under Section 16-3 of this Article. To the full extent allowed by law, Metro shall not be bound to this Agreement by an insolvent Contractor's trustee or receiver.

16-5. Procedures and Remedies for Termination Under Force Majeure.

If an event or events of force majeure preclude the use of both Contractor's primary and back-up transport systems as described in Article 1B, then Metro shall have the right, in its sole discretion, to terminate this Agreement. Additionally, in the event that any single event of force majeure lasts longer than ninety (90) days, Metro shall have the right, in its sole discretion, to immediately terminate this Agreement. In the event that Metro chooses to terminate this Agreement under this section, Metro shall serve Contractor with written notice of such intent and shall reimburse Contractor for either: 1) all actual costs which Metro determines Contractor has incurred in performing this Agreement prior to service upon Contractor of the notice to terminate, plus an amount equal to ten percent (10%) of such costs less the total payments which Metro has paid Contractor prior to service of the Notice of Termination upon Contractor. It shall also be a condition precedent to any payments under this paragraph that Contractor fully demonstrate and document to Metro's satisfaction the costs Contractor actually incurred prior to receiving service of the Notice of Termination. Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) which may include installment payments over an extended period of time which may extend beyond the termination or completion of this Agreement. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.

16-6. Procedures and Remedies for Metro Termination in the Event that Landfill Agreement is Terminated.

In the event the agreement between Metro and Waste Management Disposal Services of Oregon for the disposal of waste at the Columbia Ridge Landfill is terminated, Metro shall have the right, in its sole discretion, to terminate this Agreement. Metro shall provide the Contractor written Notice of Termination under this section. In the event Metro exercises its right to terminate this Agreement under this section, Metro shall reimburse the Contractor for all actual costs which Metro determines Contractor has incurred in performing this Agreement prior to issuance of the Notice of Termination. It shall also be a condition precedent to any payment under this paragraph that Contractor fully demonstrate and document to Metro's satisfaction the costs Contractor actually incurred prior to receiving service of the Notice of Termination. Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) which may include installment payments over a period of time that may extend beyond the termination or completion of this Agreement. Any such determination with regard to payments shall take into consideration, but not be bound by, Contractor's reasonable and actual financing costs.

16-7. Procedures and Remedies for Metro Termination for the Convenience of the Government.

Notwithstanding any provision to the contrary in this Agreement, Metro shall have the right at any time after the effective date of this Agreement to terminate the Agreement by providing sixty (60) days written notice of such termination to Contractor. In the event Metro exercises its right

to terminate this Agreement under this section, Metro shall reimburse the Contractor for all actual costs which Metro determines Contractor has incurred in performing this Agreement prior to issuance of the Notice of Termination. It shall also be a condition precedent to any payment under this paragraph that Contractor fully demonstrate and document to Metro's satisfaction the costs Contractor actually incurred prior to receiving service of the Notice of Termination. Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) which may include installment payments over a period of time that may extend beyond the termination or completion of this Agreement. Any such determination with regard to payments shall take into consideration, but not be bound by, Contractor's reasonable and actual financing costs.

16-8. Provision of Equipment to Metro.

Notwithstanding any provision to the contrary in this Agreement, Contractor agrees that if this Agreement is terminated or if Contractor ceases to provide transport service as required herein, all equipment used in Contractor's solid waste transport operations shall immediately be made available to Metro at no additional cost and that the immediate provision of such equipment shall not be subject in any way to any 10-day cure of default provision of the Agreement, but shall be subject to any conditions of insurance, driver qualifications, licensing or other reasonable requirements made of Metro by the Contractor's primary equipment lien holder. Metro's right of use of the equipment shall terminate one year after such use commences, provided, however, that in no event shall Metro have any right of use of the equipment after December 31, 2019, unless Metro purchases the equipment from Contractor.

ARTICLE 17 -- CONTRACTOR'S RIGHT TO TERMINATE

Should Contractor be unable to perform this Agreement by using either its primary or back-up transportation system for a period of sixty (60) days or more by 1) a public authority other than Metro; or 2) by Metro (if Metro is acting in violation of Contractor's rights under this Agreement) and either inability is through no fault of Contractor, then Contractor, upon seven (7) days' written notice to Metro may stop the work or terminate this Agreement and recover from Metro that portion of this Agreement's payments, less the aggregate of previous payments, allowable to this Agreement completed as of the date of termination, plus its demonstrated actual damages; however, in such event, Metro will make no payments to Contractor for any work done on this Agreement after the date of termination.

ARTICLE 18 -- ALLOCATION OF RISK/FORCE MAJEURE

18-1. Representations of Parties.

Contractor acknowledges and warrants that it is fully acquainted with all aspects of the operations of the Metro transfer stations and all other conditions relevant to its performance of this Agreement, and has made all investigations essential to a full understanding of the difficulties which may be encountered in performing this Agreement.

Contractor acknowledges that Metro has not and does not warrant nor admit the correctness of any investigation, interpretation, deduction or conclusion relative to any condition or conditions of any transfer station or any other condition related to this Agreement. Contractor warrants that it has made and shall make its own deductions and conclusions as to any and all problems which may arise from such site conditions as they relate to this Agreement, and any other condition or requirement of this Agreement, and shall accept solely for itself full legal responsibility and liability for its performance of the Agreement.

18-2. Effect of Force Majeure on Obligations

A. Metro's Obligations. In the event that Metro is rendered unable, wholly or in part, by the occurrence of a force majeure to carry out any of its obligations under this Agreement, then Metro's obligations, to the extent affected by such occurrence, shall be suspended during the continuance of such inability.

B. Contractor's Obligations. Contractor shall ensure that a back-up transport system is available for use in performing this Agreement should a failure of its primary system occur due to the occurrence of a force majeure. The back-up system shall be that system proposed by Contractor and accepted by Metro.

In the event that a force majeure precludes the use by Contractor of its primary transport system in carrying out this Agreement, Contractor shall put into active use its back-up transport system not more than 24 hours from the point in time that waste ceases to be transported by Contractor's primary system. In the event of any question as to precisely when waste ceases to be transported by Contractor's primary system, Metro's decision shall be final.

C. As consideration for putting its back-up system into active use in performing this Agreement, Metro shall pay Contractor pursuant to Article 8-1; however, the amount of any reduced cost in not operating the primary system shall be calculated pursuant to Article 8-2 and 8-3; and shall be subtracted from the amount due Contractor.

D. For purposes of this Article, "active use" shall mean the extent of operation of the back-up system necessary to comply completely with this Agreement including, but not limited to, the transport of all waste required to be transported by Contractor pursuant to this Agreement.

Contractor's active use of the back-up system shall be for the period during which such force(s) majeure continues and shall then cease and be replaced by the primary system.

E. In the event that a force majeure or forces majeure preclude the use by Contractor of both its primary and back-up transport systems, Contractor shall, at Metro's request, use its best efforts to make available to Metro alternative transport arrangements which would allow full performance of this Agreement. In the event that Metro requests an alternative system and Contractor makes available such a system, Contractor shall be paid in the same manner as it would be paid for the active use of the back-up system as described above.

18-3. Notice of Force Majeure

In the event that either party intends to rely upon the occurrence of a force majeure to suspend or to modify its obligations, such party shall notify the other party in writing immediately, or as soon as reasonably possible, setting forth the particulars of the circumstances. Written notices shall likewise be given after the effect of such occurrence has ceased.

ARTICLE 19 -- CONTRACTOR'S ASSIGNMENT OF CONTRACTUAL OBLIGATIONS

Contractor shall not assign any rights or obligations under or arising from this Agreement without the prior written consent of Metro. Contractor shall not assign any amounts due or to become due under this Agreement without prior written notice to Metro.

This Agreement is executed with a certain qualified party to perform the duties, tasks and obligations set forth herein. The delegation of any such duties will require the prior written consent of Metro and of the Surety. Any such delegation of duties will not relieve the Contractor or its Surety of any liability and/or obligation to perform. In the event of any delegation of a duty, the delegate shall assume full responsibility for performance of that duty without affecting Contractor's liability.

ARTICLE 20 – CONTRACTORS ASSIGNMENT TO METRO OF ANTITRUST RIGHTS

Contractor, for consideration paid to the Contractor under this Agreement, does irrevocably assign to Metro an interest in any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future, including, at Metro's option, the right to control any such litigation on such claim for relief or cause of action, if Metro's interest, so assigned, exceeds fifty (50) percent of the total claim in a cause of action by reason of any violation of 15 USC 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person, which goods or services are used, in whole or in part, for the purpose of carrying out the Contractor's obligations under this Agreement. Metro's interest shall be a proportion of the total claim or cause of action equal to the percentage of the total claim proportional to the performance of this Agreement as measured against the total of Contractor's business affected by the violation.

In the event the Contractor hires subcontractors to perform any of the Contractor's duties under this Agreement, the Contractor shall require the subcontractor to irrevocably assign to Metro, as a third party beneficiary, any right, title or interest that has accrued or may accrue to the subcontractor by reason of any violation of 15 USC 1-15, ORS 646.725 or ORS 646.730, including, at Metro's option, the rights to control any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of this Agreement, in a like manner as provided in the above paragraph.

In connection with this assignment, it is an express obligation of the Contractor that it will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder to Metro.

It is an express obligation of the Contractor to advise the General Counsel of Metro:

A. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action.

B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action.

C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to Metro.

Furthermore, it is understood and agreed that in the event that any payment under any such claim is made to the Contractor, it shall promptly pay over to Metro its proportionate share thereof, if any, assigned to Metro hereunder.

ARTICLE 21 -- CHANGE OF CONTRACTOR'S OWNERSHIP

Any change in control of Contractor or the transfer of a controlling interest of Contractor shall require the prior written consent of Metro.

For purposes of this Article, the phrase "transfer of a controlling interest of Contractor" shall be interpreted to include, but not be limited to, the transfer of ten percent (10%) or more of the beneficial ownership of Contractor to or from a single entity. However, intracompany transfers, such as transfers between different subsidiaries or branches of the parent corporation of Contractor, shall not be construed as transfers of a controlling interest in Contractor, nor shall transfers required by operation of law be so construed.

If Metro approves a change in control of Contractor or a transfer of a controlling interest of Contractor, then Metro and the new ownership of Contractor shall execute a novation, requiring the new ownership of Contractor to assume all of the rights and duties of this Agreement and releasing the previous ownership of Contractor of all obligation and liability.

ARTICLE 22 -- PERMITS AND REGULATIONS

Contractor shall obtain, maintain and pay for all permits, licenses, certificates, inspection fees and surcharges and other approvals required by law, both temporary and permanent. Any such fees shall be included in the prices proposed in Contractor's Proposal. The Contractor shall obtain any necessary business license required by law. Metro will cooperate fully in securing all permits that by law may be secured in the name of the property owner.

Contractor shall be liable for all fines or civil penalties imposed by any regulatory agency for violations of permits, laws or regulations caused or allowed by Contractor. Metro shall not be liable for, and shall not reimburse Contractor for, payment of any such fines or civil penalties.

ARTICLE 23 -- ROYALTIES AND PATENTS

Contractor shall pay all royalties and license fees related to the performance of this Agreement. Contractor shall defend all suits or claims for any and all infringements of any patents which may occur in the performance of this Agreement and shall save Metro harmless from loss on account thereof; provided, however, that Metro shall be responsible for all such loss when a particular process or product is specified by it, unless Contractor shall have information that such particular process or product infringes a patent, in which event Contractor shall be responsible for loss on account thereof unless Contractor promptly and immediately provides such information to Metro.

ARTICLE 24 -- TAXES AND FEES

As between Metro and Contractor, Contractor shall be responsible and liable for payment of all federal, state, regional, county and local taxes and fees, and surcharges of every form, which apply to any and all persons, entities, property, income, equipment, materials, supplies, structures, or activities which are involved in the performance of this Agreement including, but not limited to, any and all income taxes, real property taxes, excise taxes, sales and use taxes, and fees which arise in connection with this Agreement. Any such taxes and fees, or any increases in such taxes and fees, shall be the responsibility of the Contractor with no increase in compensation from Metro.

ARTICLE 25 -- ARBITRATION

Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Agreement.

Subject to the conditions and limitations of this paragraph, any controversy or claim arising out of or relating to this Agreement which remains unresolved after negotiations under Paragraph 1 of this Article shall be exclusively settled by arbitration under the laws of the state of Oregon, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. All disputes shall be heard and decided by one arbitrator, and all arbitration proceedings shall be held in Portland, Oregon. However, all disputes concerning Metro's right to the equitable remedy of specific performance shall not be subject to arbitration, but shall be decided exclusively by a court of competent jurisdiction in Multnomah County, Oregon, under the laws of the state of Oregon.

Contractor agrees to consolidation of any arbitration between Metro and Contractor with any other arbitration involving, arising from or relating to this Agreement or otherwise involving the transfer, transport, collection or disposal of waste by Metro. In the event that Metro determines,

in its sole opinion, that the public interest requires a speedy resolution of any controversy or claim regardless of the amount, Metro shall have the option of electing resolution of the controversy or claim by the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association (Rules E-1 through E-10).

Each party hereto and the Contractor's Surety accept jurisdiction of the courts of the state of Oregon for the purposes of commencing, conducting and enforcing an arbitration proceeding pursuant to this Article. Each party hereto and the Contractor's Surety further agree to accept service of notice of the other party's intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party and Contractor's Surety, and such notice shall have the same effect as if the party had been personally served within the state of Oregon.

Any decision of an arbitrator engaged under this Article shall be final, binding and enforceable upon both parties and the Contractor's Surety. The parties agree that proper venue for any judicial proceeding to enforce any decision or award made by an arbitrator under this Section shall be exclusively in the county of Multnomah in the state of Oregon.

ARTICLE 26 -- ATTORNEY'S FEES

In the event that a suit or action or arbitration is instituted to enforce any right granted herein, the prevailing party shall be entitled to, in addition to the statutory costs and disbursements, a reasonable attorney's fee to be fixed by the trial court; and on appeal, if any, similar fees in the appellate court to be fixed by the appellate court.

ARTICLE 27 -- MINORITY, WOMEN AND EMERGING SMALL BUSINESS PROGRAM

In the event that any subcontracts are to be utilized in the performance of this agreement, Contractors shall follow, to the maximum extent possible, the provisions of Metro Code Section 2.04.100, to encourage the use of minority, women and emerging small businesses (MWESB). If subcontracts or supply contracts are identified as potential candidates for MWESB use, Contractor shall coordinate any outreach efforts with Metro's Procurement Office. Contractor acknowledges Metro's strong commitment to provide business opportunities for MWESB firms.

Contractor shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation, or marital status. Written approval by Metro shall be required in the event Contractor proposes to replace an MBE, WBE or ESB subcontractor or supplier. A good faith outreach effort to qualified MWESB firms shall be required of Contractor when selecting a replacement.

ARTICLE 28 -- HOURS OF LABOR FOR CONTRACTOR'S EMPLOYEES

The provisions set out in Oregon Revised Statutes ("ORS"), Chapters 187, 279A, and 279B, as amended or superseded, including the latest applicable additions and revisions, and all applicable provisions of the Metro Code, are incorporated by reference as part of this Agreement as if set forth in full. In addition, specific requirements of certain of these ORS Sections are set out below. These provisions are applicable to this Agreement unless or until they are superseded by federal law. If any of the specific State law requirements set out below in this Article are amended or superseded, then Metro may, at its option, notify Contractor that such a change has occurred and that the new or amended provision is thereafter applicable to all work performed pursuant to this Agreement. In such event, Metro may, to the extent applicable, reduce payments to Contractor as provided in this Agreement.

Pursuant to ORS 279B.220, Contractor shall make payment promptly, as due, to all persons supplying Contractor labor or material for the performance of the work as provided in this Agreement. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or any subcontractor incurred in the performance of this Agreement. Contractor shall not permit any lien or claim to be filed or prosecuted against Metro on account of any labor or material furnished. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

Contractor specifically agrees that if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Agreement as such claim becomes due, Metro may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor by reason of this Agreement. Metro's payment of such a claim in the manner authorized by this Article shall not relieve Contractor or Contractor's Surety from obligation with respect to any unpaid claims.

Pursuant to ORS 279B.020 and ORS 279B.235 Contractor must give written notice to employees who perform work under this Agreement of the number of hours per day and per week that employees may be required to work, as specified in this Article. Such notice must be provided either at the time of hire, before commencement of work, or by posting a notice in a location frequented by employees. Except as permitted by federal law or other state statutes or regulations:

A. No person shall be employed under this Agreement for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases the employee shall be paid at least time and a half pay for all time worked in excess of ten (10) hours a day or in excess of forty (40) hours in any one week, whichever is greater; and

B. All persons shall be paid at least time and a half pay for all work performed under this Agreement on the legal holidays specified in a collective bargaining agreement, if applicable, or on the following annual legal holidays: New Year's Day on January 1, Memorial Day on the last Monday in May, Independence Day on July 4, Labor Day on the first Monday in September, Thanksgiving Day on the fourth Thursday in November, and Christmas Day on December 25. For purposes of this provision, each time a holiday falls on a Sunday, the succeeding Monday shall be recognized as a legal holiday, and each time a holiday falls on a Saturday, the preceding Friday shall be recognized as a legal holiday.

Pursuant to ORS 279B.230, Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for such services and all moneys and sums that Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services. Contractor shall ensure that all subject employers working under this Agreement shall either comply with ORS 656.017 or be exempt employers under ORS 656.126.

ARTICLE 29 -- PARTIES' REPRESENTATIVES AND NOTICES

Contractor shall address all correspondence for Metro to Metro's designated Contract Manager, and shall secure written instructions from Metro's Contract Manager before proceeding with services affected by omissions, discrepancies, conflicts or duplications in the provisions of this Agreement.

Contractor shall provide the services of a competent Contractor's Representative for the term of this Agreement. Prior to performing services under this Agreement, Contractor shall notify Metro in writing of the name, title, address and telephone number of Contractor's Representative.

The Contractor's Representative shall represent Contractor for all purposes of this Agreement, and all directions, instructions, or notices given to the Contractor's Representative by Metro shall be as binding upon Contractor as if delivered personally to Contractor. The Contractor's Representative shall be readily available, shall have authority to furnish estimates on behalf of the Contractor, and shall otherwise have full authority to bind the Contractor.

ARTICLE 30 -- NEWS RELEASES AND MEDIA RELATIONS

Any and all news releases and interviews with news media representatives concerning the operations or facilities at MSS or MCS shall be scheduled and conducted by and through Metro.

Contractor shall not issue news releases, conduct interviews with news media representatives, or otherwise release or disclose to news media representatives any information concerning the operations or facilities at MSS or MCS without the prior consent of Metro. Contractor shall promptly notify Metro of the identity of any news media representative who requests disclosure of such information, and in no event shall such notice be provided more than one business hour

after Contractor has received such a request. Metro, in its sole discretion, shall determine the response to any such request for disclosure of information in accordance with applicable law.

Contractor's Spokesperson shall be available at Metro's request for interviews scheduled by Metro with news media representatives.

ARTICLE 31 -- MISCELLANEOUS PROVISIONS

It is expressly understood and agreed that, by its execution of this Agreement, Metro does not waive or surrender any of its governmental powers.

No provision or provisions of this Agreement nor any authority granted by this Agreement is intended to create or result in any personal liability for any public official or employee or agent of Metro, nor shall any provision or provisions of this Agreement be construed to create any such liability. No approval given by Metro pursuant to this Agreement shall be construed to relieve Contractor of any of its obligations to perform this Agreement.

This Agreement shall be deemed to have been made in and shall be construed under the laws of the state of Oregon. Any and all disputes arising under this Agreement shall be decided under Oregon law. The parties agree that proper and exclusive venue for any and all actions under this Agreement or any subcontracts of any tier made pursuant to this Agreement shall be in the county of Multnomah, the state of Oregon, or if in federal court, the Federal District Court of Oregon.

Time limits stated in this Agreement are of the essence. No waiver of Agreement time limits or schedule dates is to be construed by Metro's failure to object to untimely performance under this Agreement. In any event, any waiver of such time limits or schedules shall not be construed as a waiver of any future time limits or schedules.

In the event any provision or clause of this Agreement is void, invalid, or unenforceable under any federal, state, regional or local laws, regulations or ordinances, the balance of this Agreement shall remain in effect and binding on the parties hereto.

Any written notice required or allowed under this Agreement shall be deemed to have been duly served if delivered in person to the individual, member of the firm, entity or an officer of the corporation for whom it was intended, or if delivered or sent by registered or certified mail to the last business address of the relevant person or party known to he/she who gives the notice. The date or time of service for purposes of all notices required or allowed under this Agreement shall be the time or date the relevant document was sent by mail or personally delivered to the proper address.

A waiver by either party of any breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance. Where the condition to be waived is a material part of this Agreement such that its waiver would affect the essential bargains of the

parties, the waiver must be supported by consideration and take the form of a modification to the Agreement as provided for elsewhere in this section.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CONTRACTOR

METRO

BY:_____

BY _____

TITLE:_____

TITLE;_____

DATE:_____

DATE:_____

CG:gbc
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SCOPE OF WORK
Waste Transport Services Contract

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Scope of Work

Metro Contract No. _____

1.0 GENERAL

This Scope of Work describes the technical responsibilities of the Contractor in performance of the Contract to transport mixed solid waste from Metro South Station (MSS) and/or Metro Central Station (MCS) to the Columbia Ridge Landfill (CRL) in Gilliam County, Oregon operated by Waste Management Disposal Services of Oregon (WMDS). To determine the full extent of the Contractor's responsibilities or any particular part of the work, the applicable information in the several parts of the Contract must be read together.

Performance of the work described herein will require the Contractor to interface with other Metro contractors. It is the Contractor's responsibility to coordinate its activities in a manner that maximizes the efficiencies of the Metro solid waste disposal system and minimizes disputes. Metro will act as the sole arbiter of any disputes arising amongst Metro's contractors.

2.0 OPERATING PLAN

Contractor shall be responsible for transporting all waste received at MCS and/or MSS each day that the transfer station operator designates for compaction and transport to the CRL. Waste volumes at each facility will fluctuate daily, weekly and monthly. Peak periods generally occur daily between 10:00 a.m. and 2:00 p.m. The Contractor must conduct its operations to accommodate these variations such that the operations of the transfer stations are not impeded and that all performance standards are met. Contractor and the transfer station operator shall meet as often as necessary to ensure these requirements are met.

Described below are the logistical responsibilities/constraints for the Contractor's activities at different points in the solid waste system that shall be incorporated into the Contractor's operations plan.

2.1 Transfer Station Operation

2.1.1 On-site staging

Metro will provide up to four spaces at MCS and up to ten spaces at MSS for the staging of containers. All on-site equipment staging shall occur in these Metro designated staging areas. Maintenance activities will not be permitted on-site. No loaded container shall remain on-site more than 36 hours. Any spillage of waste or other materials shall be cleaned up immediately.

2.1.2 Shuttle activities

The Contractor is responsible for shuttling the containers from the staging area to and from the compactors.

2.1.3 Equipment exchange and inspection

Contractor is responsible for providing, coordinating and documenting a container inspection procedure prior to receiving a load (bale) of waste. The transfer station contractor shall be responsible for documenting damage caused during the loading process.

2.1.4 Receiving the load

The Contractor is responsible for assisting the transfer station operator during the loading process such that the weight of the load is maximized, the waste is properly positioned within the container, and legal for transport. The Contractor is responsible for opening the container doors prior to connecting to the compactor. Containers must be attached to the compactors and a power unit (shuttle vehicle or tractor) at all times during the loading

Scope of Work

process. Once loading is complete, Contractor shall remove any waste obstructing the doors and close the doors of the container. A seal shall be installed on the rear door(s) of the container.

2.1.5 Custody of Waste

It is the responsibility of the Contractor to ensure the seal has been properly installed before the container leaves the staging area for transport to the CRL. Once the Contractor has verified that the seal is properly installed, the waste in the container is the responsibility of the Contractor until the seal is removed (broken) at the CRL, in accordance with the procedures of WMDS.

2.1.6 Weighing

Once loading is complete, the container must be moved by the Contractor to the Metro-designated scale, where an accurate weight ticket will be produced after data input by the Contractor's shuttle driver. Each transaction will produce a multiple copy ticket documenting the load and its weight. The load ticket shall serve as the load manifest for transport and disposal at the CRL. Contractor shall transport the manifest to the CRL.

If the container is over legal weight, the Contractor will move the container to an off-load area for payload adjustments by the transfer station contractor and then back to the scale for re-weighing. Contractor shall note on the manifest the corrected weights and that an adjustment occurred.

2.1.7 Equipment Tare Weights

The Contractor is responsible for providing labor and equipment to assist Metro in collecting new tare weights for the Contractor's equipment twice per year during the life of the Contract. In addition, the Contractor is required to report maintenance activity that would alter equipment tare weights by more than 100 lbs.

2.2 **Landfill Operations**

2.2.1 Entrance to the Landfill

The Contractor is responsible for following the WMDS/CRL entrance policy procedures to ensure proper coordination of site access and unloading activities.

2.2.2 Unloading Containers

Contractor is responsible for unloading the waste at the unloading area designated by WMDS and providing any equipment necessary to do so. WMDS must provide reasonable access and hours of operation¹ as necessary to permit the unloading of containers.

2.2.3 Coordination

Contractor is responsible for coordinating its activities with disposal operations conducted by WMDS at CRL. Metro will act as the arbitrator of any disputes between the parties.

2.2.4 Custody of Waste

The Contractor must provide a procedure for documenting that the containers have remained secure and sealed during transport to the landfill. Documentation must include exchange of custody between the Contractor and the landfill operator (WMDS), including the exchange of the transaction ticket for each load.

¹ Operating hours at CRL are 7 a.m. to 4 p.m. weekdays.

Scope of Work

3.0 PERFORMANCE STANDARDS

Below are performance standards for various aspects of the work. Generally, all contractor-furnished equipment shall be properly maintained in a safe working condition at all times. All equipment must be part of a continuous examination program that documents equipment repair needs and their completion. It is the intent of these standards to ensure that Contractor equipment is suitable for the arduous, heavy-duty service connected with solid waste transport.

Transfer tractors, shuttles, and containers shall be suitably painted and regularly cleaned so that they present an acceptable appearance in the opinion of Metro. All containers and vehicles used to weigh the loads shall be equipped with RFID tags provided by Metro.

3.1 Provision of Containers

The Contractor must have an empty container attached to the compactor and ready to receive a load when the transfer station operator indicates a load is ready. Failure to comply with this performance standard will be grounds for the imposition of penalties as described in the Contract. Likewise, if the Contractor exceeds container capacity of the staging area at either facility as contained in 2.1.1 of this Scope of Work, Metro will have the right to impose penalties until the situation is remedied to Metro's satisfaction.

3.2 Road Legal Payload

The Contractor will be required to haul any load that is determined to be a road legal load. Such determination will be based on a calculation performed when the loaded container is weighed per 2.1.6. The calculation will be based on the payload, equipment configuration and tare weights agreed to by Metro and the Contractor during execution of the Contract.

3.3 Container Performance Requirements

Waste will be compacted at transfer stations by compacting equipment such as an SSI Model 4500 or equal, designed to produce efficient payloads. The compaction chamber measures seven feet by seven feet by thirty-four feet. Currently, bales are built to measure twenty-eight to thirty feet long, with some expansion on extrusion. Standard bale density targets are currently set to 1,200 lbs/cubic yard.

Containers shall be of the rear-load design capable of receiving an extruded load (bale) from the compactor. Each container shall be watertight and shall be designed, constructed, loaded, operated, secured and maintained so as to prevent the escape of waste, liquids, and odors, and to prevent the loss or spillage of wastes in the event of an accident. Each container shall be completely enclosed, rigid, and constructed of non-permeable material. Each container must be certified as meeting applicable ISO, FRA (if shipped by rail) and CSC standards and bear a plate showing certification compliance and/or inspection information.

Each container shall meet all applicable U.S. Department of Transportation specifications.

Containers shall be of standard construction with smooth interior walls, roof and floor capable of withstanding the extreme abuse expected from receiving compacted solid waste.

Containers provided must be consistent in dimensions and tare weight such that the transfer station operator can maximize the weight of each load without special adjustments or delay. Contractor shall be fully responsible for replacing any container equipment which does not meet these standards.

Scope of Work

3.4 Container Testing Requirements

All containers utilized for this project shall be visually inspected after each unloading for damage on all sides, plus top, bottom, front, rear and shall have no visible holes, gaps, or structural damage affecting its integrity or performance. Containers that are damaged must be removed from use and fully repaired before being used again. Records of these activities must be kept and readily available for inspection by Metro staff.

Additionally, each container must be tested for water-tightness prior to acceptance from the container manufacturer. Testing shall include pumping a minimum 12 inches of water into the closed container, during which the container shall remain free from the escape of water. Such test waters shall be reused to the fullest extent possible to minimize the volume of waste water. Documentation of such testing shall be made available to Metro.

In addition, Metro may request the testing of any container it believes cannot meet the testing requirement at any time during the life of the contract. Contractor shall arrange and pay for such testing, and shall repair containers that do not meet the requirement.

3.5 Container Cleaning

The Contractor shall clean the interior and exterior of containers as often as necessary to prevent problems of malodor, unsightliness, or attraction of vectors. This standard also requires the Contractor to regularly remove build-up of dirt and snow that may alter the hauling capacity of the container.

3.6 Power Unit Standard

Trucks (tractors) and shuttle vehicles shall be uniform in appearance. Each power unit shall be equipped with a two-way radio capable of communicating with the Contractor's office and the appropriate personnel at the transport sites.

3.7 GPS Requirements

All trucks, shuttle vehicles, trains and barges shall be equipped, at the Contractors' expense, with a real time GPS data (or similar) device such that Metro can, using any Internet connection, determine the location, travel path and current status of each piece of equipment. Any software access licenses or maintenance agreements will be provided by the Contractor.

3.8 Sustainable Practices

Contractor shall maximize sustainable practices in conducting its activities. Examples of such practices include:

- Use of re-refined oil, lubricants and hydraulic fluids in equipment and rolling stock.
- Use of bio-based fuel for diesel operated equipment and vehicles or other low-polluting fuels and/or pollution control equipment minimizing emissions.
- Purchase of reused wood and other materials from the Rebuilding Center or use of Forest Stewardship Council-certified wood.
- Plastic lumber or Forest Stewardship Council-certified wood in place of treated wood.
- Minimum 30% post-consumer content recycled paper for all office use.
- Toilet tissue, paper towels, and napkins that meet minimum EPA post-consumer fiber standards.
- Reusable dishware, cups and utensils.

Scope of Work

- Metro recycled latex paint.
- A recycling system for paper, containers and other office activities.
- Duplexing whenever possible.
- Energy-efficient lighting (use of compact fluorescents).
- Use of remanufactured toner cartridges.
- Use of environmentally preferable cleaners .
- Use of storage containers, plastic and paper bags, and traffic management equipment with recycled content.

Contractor shall supply information during Metro's annual audit demonstrating compliance with these practices or upon request. Required sustainable practices shall be established through the proposal process.

4.0 NON- MCS/MSS CONTAINER STORAGE

Staging areas used in the operation should comply with all laws. Loaded containers shall not stay in any such storage area longer than 48 hours. Storage areas should be clean in appearance and free of litter and debris, including spare equipment and tires.

5.0 CONTINGENCY PLANS

5.1 General

90 days prior to start of Contract operations the Contractor will submit to Metro for approval, comprehensive plans for dealing with the following items. Plans must include a detailed time frame, sources for the implementation of the plan, and a description of replacement equipment.

5.1.1 Work Stoppage

Operating procedures in the event of a work stoppage by any of the Contractor's employees or subcontractors. Provided plan must include specific steps to remove waste from the transfer stations per the performance standards.

5.1.2 Breakdown or Accident

Procedures to continue the work in the event of breakdown or accident of any of the major equipment components directly involved in the loading, transport or unloading of waste controlled by the Contractor.

5.1.3 Inclement Weather

Procedures to continue work in the event of inclement weather, including identification of alternate routes to transport from the Metro facilities to the CRL.

5.2 Back-Up System

The Contractor shall submit to Metro for approval a comprehensive plan detailing the transportation back-up system which the Contractor will activate if events preclude the use of the primary system. The plan shall include, but not be limited to, the mode of transport, method of unloading and the length of time necessary to activate the back-up system. Equipment used in this back-up system must comply with the requirements contained in this Scope of Work.

Scope of Work

5.3 Emergency

Contractor will provide to Metro a comprehensive plan designed to minimize hazards (during storage and transit) to human health and the environment; damage to property; the interruption of waste transfer and/or traffic along transportation routes due to:

- A. Fires and explosions.
- B. Release of hazardous/unacceptable waste constituents.
- C. Release of any solid waste constituents.

The contingency plan must include:

- 1. A description of actions which transport personnel must take in response to A, B, and C above.

A description and location of equipment utilized to mitigate a spill or release, which shall include locating equipment at Metro transfer station staging sites .

- 2. Evidence of arrangements with local emergency response agencies setting forth what services will be rendered by each agency in the event of an emergency.

A description of the level of training required for any elements to be completed by the Contractor or non-government subcontractors.

The Emergency Contingency Plan in no way lessens the Contractor's full responsibility to comply with all applicable regulatory provisions for transporting or temporary staging of containers loaded with solid waste.

6.0 SAFETY AND EMERGENCY RESPONSE TRAINING PROGRAM

Contractor is responsible for the safety of his/her employees and must comply with all facility safety policies and procedures, including the emergency action plan. The Contractor will designate a staff member to serve as the transportation system safety coordinator, will coordinate training and ensure compliance with safety procedures at all locations.

If death or serious injuries or serious damages are caused by an accident related to this Contract, the accident shall be reported immediately by telephone or messenger to the Metro Solid Waste & Recycling Department. In addition, the Contractor must promptly report in writing to Metro all accidents whatsoever arising out of, or in connection, with the performance of the work, giving full details and statements of witnesses.

If a claim is made by anyone against the Contractor or any subcontractor as a result of any accident related to this Contract, the Contractor shall promptly report the facts in writing to Metro, giving details of the claim. All information reported regarding accidents shall be subject to the reporting requirements contained in the Contract.

BONDS

*Provided for informational purposes only.
Bonds are only required from the successful proposer.*



Labor and Material Payments Bond

(NOTE: CONTRACTOR MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW ALL MEN BY THESE PRESENT:

We the Undersigned _____ as PRINCIPAL and _____
_____ a corporation organized and existing under and
by virtue of the laws of the state of _____, and duly authorized to do surety business in
the state of Oregon and named on the current list of approved surety companies acceptable on federal bonds and
conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of
Accounts and the U.S. Treasury Department and which carries an "A" rating and is of the appropriate class for the bond
amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally, unto METRO, as OBLIGEE, in the sum of _____
_____ Dollars (\$ _____) in lawful money of the
United States of America, for the payment of that sum for the use and benefit of claimants as defined below.

The condition of this obligation is such that whereas the PRINCIPAL entered into a contract with METRO dated ____
_____, 20____, which contract is hereunto annexed and made a part hereof, for accomplishment of the
project described as follows: _____.

NOW THEREFORE, if the PRINCIPAL shall promptly make payments to all persons, firms, subcontractors,
corporations and/or others furnishing materials for or performing labor in the prosecution of the Work provided for in the
aforesaid _____, and any authorized extension or modification thereof, including all amounts due
for materials, equipment, mechanical repairs, transportation, tools and services consumed or used in connection with the
performance of such Work, and for all labor performed in connection with such Work whether by subcontractor or
otherwise, and all other requirements imposed by law, then this obligation shall become null and void; otherwise this
obligation shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is as specified in ORS 279C.600.
2. The above-named PRINCIPAL and SURETY hereby jointly and severally agree with the OBLIGEE and its
assigns that every claimant as above-specified, who has not been paid in full, may sue on this bond for the use
of such claimant, prosecute the suit to final judgment in accordance with ORS 279C.610 for such sum or sums
as may be justly due claimant, and have execution thereon. The OBLIGEE shall not be liable for the payment
of any judgment, costs, expenses or attorneys' fees of any such suit.



METRO
600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Labor and Material Payments Bond

PROVIDED, FURTHER, that SURETY for the value received, hereby stipulates and agrees that all changes, extensions of time, alterations to the terms of the _____ or to Work to be performed thereunder or the Specifications accompanying the same shall be within the scope of the SURETY's undertaking on this bond, and SURETY does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the _____ or to the Work or to the Specifications. Any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that the total of such increases shall not exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the SURETY.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted, or if the full amount of the obligation is not exhausted and no claim is pending resolution, until such time as no further claims can be made pursuant to law with regard to the above-described project, by any claimant specified in ORS 279C.600.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for all obligations of this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20____.

SURETY

By: _____

Title: _____

Street Address

City, State ZIP

Phone Number

CONTRACTOR

By: _____

Title: _____

Street Address

City, State ZIP

Phone Number



METRO
600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Performance Bond

(NOTE: CONTRACTORS MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW BY ALL MEN BY THESE PRESENT:

We the undersigned _____ as PRINCIPAL (hereinafter called CONTRACTOR), and _____ a corporation organized and existing under and by virtue of the laws of the state of _____ duly authorized to do surety business in the state of Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department and is of the appropriate class for the bond amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, to pay to METRO as OBLIGEE (hereinafter called METRO), the amount of _____ Dollars (\$ _____) in lawful money of the United States of America.

WHEREAS, the CONTRACTOR entered into a contract with METRO dated _____, 20____, which Contract is hereunto annexed and made a part hereof, for accomplishment of the project described as follows: _____.

NOW, THEREFORE, the condition of this obligation is such that if the CONTRACTOR shall promptly, truly and faithfully perform all the undertakings, covenants, terms, conditions, and agreements of the aforesaid _____, METRO having performed its obligations thereunder, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever CONTRACTOR shall be declared by METRO to be in default under the Contract Documents for the project described herein, the SURETY may promptly remedy the default, or shall promptly complete the _____ in accordance with the Contract Documents and the project Specifications. SURETY, for value received, further stipulates and agrees that all changes, extensions of time, alterations, or additions to the terms of the Contract or Specifications for _____ are within the scope of the SURETY's undertaking on this bond, and SURETY hereby waives notice of any such change, extension of time, alteration or addition to the terms of the _____ or to the Work or to the Specifications. Any such change, extension of time, alteration or addition to the terms of the _____ or to the Work or to the Specifications shall automatically increase the obligation of the Surety hereunder in a like amount, provided that such increase shall not exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the Surety.



METRO
600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Performance Bond

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

No right of action shall accrue on this bond to or for the use of any person or corporation other than METRO or its heirs, executors, administrators, successors or assigns.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____
day of _____, 20_____.

SURETY

By: _____

Title: _____

Street Address

City State ZIP

Phone Number

CONTRACTOR

By: _____

Title: _____

Street Address

City State ZIP

Phone Number

**HISTORICAL TRANSPORT PAYMENTS/
FUEL CONSUMPTION**

Metro Waste Transport Payments* and Fuel Usage
Fiscal Year 2006-2007

Month	Waste Transport **		Fuel ***	
	Loads	Cost	Gallons	Cost
Jul-06	1,491	\$574,348	87,289	\$211,711
Aug-06	1,609	\$619,803	96,371	\$266,426
Sep-06	1,549	\$596,690	89,546	\$200,832
Oct-06	1,543	\$594,379	88,105	\$168,691
Nov-06	1,543	\$594,379	89,835	\$207,855
Dec-06	1,472	\$567,029	88,866	\$214,266
Jan-07	1,522	\$602,712	88,607	\$181,961
Feb-07	1,393	\$551,628	82,501	\$173,825
Mar-07	1,577	\$624,492	91,953	\$198,700
Apr-07	1,544	\$611,424	89,497	\$205,373
May-07	1,707	\$675,972	98,176	\$223,436
Jun-07	1,530	\$605,880	88,398	\$197,704
<i>Totals</i>	<u><u>18,480</u></u>	<u><u>\$7,218,736</u></u>	<u><u>1,079,145</u></u>	<u><u>\$2,450,779</u></u>

* In June 1999 Metro prepaid approx. \$6.56 million in expenses and received a unit price reduction of \$30 per load.

** The data include loads transported from Metro South and Metro Central to the Columbia Ridge Landfill. Not included are 318 loads diverted to Riverbend during this period.

*** Metro currently purchases fuel directly. Metro's fuel cost reflects the government exemption from the Federal Fuel Tax of \$0.243 per gallon, or a savings of about \$14.09 per load.

**TONNAGE PROJECTIONS/
HISTORICAL TONNAGE PATTERNS**

FINAL DRAFT

LONG RANGE METRO LANDFILL TONNAGE FORECAST (Revised)

Prepared by Financial Management & Analysis,
Metro Solid Waste & Recycling

Prepared for the Metro Solid Waste
Transportation Study Group

March 2007
(Revised December 2007)

Summary of Revisions

This revised draft (December 2007) reflects changes made to the original Long Range Metro Landfill Tonnage Forecast produced in March 2007. The following is a summary of changes made since the publication of the original forecast:

- The model was re-estimated and re-calibrated using actual data through 2006, including new Oregon Department of Environmental Quality recovery and generation data published in *2006 Oregon Material Recovery and Waste Generation Rates Report (November 2007)*. The base year from which forecasts are made is therefore 2006, instead of 2005. Model predictions of Metro Central and Metro South landfill tonnage come within .73 and .36 points of actual landfill tonnage for the 2006 base year.
- The assumption of a tonnage diversion from Metro Central to Columbia Environmental was removed. The original model assumed that Columbia Environmental, a local transfer station, would open in 2008 with 23,000 tons diverted from Metro Central, followed by a ramp-up to a cap of 45,000 tons diverted per year by 2010. The diversion assumption was removed due to uncertainties in the opening of Columbia Environmental through the forecast horizon.
- Due to a 3 percent decrease in the regional recovery rate from 2005 to 2006, the assumption of meeting the state goal of a 58 percent recovery rate by 2011 was relaxed to 2013.
- The assumption of constant Metro Central and Metro South shares of regional delivery tonnage was changed to include modest increases in their proportions over time to keep pace with increasing waste generation.

Purpose

The purpose of this analysis is to provide the Metro Solid Waste Transportation Study group with a “best estimate” long-range projection of landfill tonnage from the Metro transfer stations. Custom software was developed and is included with this report.

Model Description

The forecasting model is based on one exogenous variable – population – and multiple parameters that convert population into waste quantities. The parameters are each projected independently using various assumptions. The suite of assumptions underlying each parameter projection forms the forecast scenario presented in this report.

A schematic and narrative description of the model is provided in Figure 1. The model parameters, assumptions and data sources that make up the forecast scenario are provided in Table 1.

Table 1 – Model Parameters, Assumptions and Data Sources

Parameter	Assumption	Data Source/Derivation & Rationale
Tri-County ¹ Population	Compound growth at 1.44% annually from 1,569,170 in base year 2006.	1,569,170 is the 2006 certified mid-year Tri-county population estimate from PSU Center for Population Research; 1.44% is the implicit population growth rate using a population projection time series (3a. Population, 1995-2015) submitted by Metro’s Data Resource Center.
Generation Rate per capita	Compound growth at 1.3% annually from 3,436 pounds per person in base year 2006.	One half the historical growth rate during 1992 – 2006. ²
Regional Recovery Rate	The state target of 58% ³ is met, but only by 2013; growth up to target is assumed linear.	Delay in meeting the target is based on delay in implementing key new programs. ⁴

¹ The Metro watershed is comprised of Clackamas, Multnomah and Washington counties.

² Historical growth in the per-capita generation rate has been inflated by a variety of factors such as improved measurement methods over time. DEQ estimates that 20 to 50 percent of the apparent increase is due to such factors. [DEQ, *Solid Waste Generation in Oregon: Composition and Causes of Change*, February 2007]. The higher proportion was chosen here to be consistent with the users’ need for a mildly conservative projection.

³ The statutory target is 64%, which includes up to 6 percentage points for waste prevention, reuse, and home composting. The 58% used for this study represents recovery through source-separation programs (including the bottle bill) and post-collection recovery. The state target is set forth in ORS 459A.010(6)(a).

⁴ Metro has designed three new initiatives to help meet the 58% recovery target. The initiatives address source-separation of compostable organic waste, expanded recycling for businesses, and post-collection recovery of materials from dry waste. These new programs are scheduled to begin rolling out in January 2008 and January 2009 per written correspondence with Lee Barrett—too late to have the necessary impact by 2009.

FINAL DRAFT

Post Collection Recovery	Assume constant 3.6 points of the regional recovery rate is post collection recovery.	Historical.
Metro Central core delivery tonnage ⁵	Assume marginal increases from 22.2% of regional core delivery tonnage ⁵ in base year 2006 to 25% by 2027.	22.6% is the base year 2006 proportion. The longer run assumption is that Metro will adjust tonnage caps at private facilities to accommodate growth over time, but will also see its own market share of waste increase slightly over the forecast horizon.
Metro Central tonnage diversion	None.	No additional diversions are known or assumed.
Metro South core delivery tonnage ⁵	Assume marginal increases from 19.2% of regional core delivery tonnage ⁵ in base year 2006 to 24% by 2027.	Same basis as for Metro Central (above).
Metro South tonnage diversion	None.	No additional diversions are known or assumed.
Metro Central post-collection recovery	Constant rate of 4.4% of Metro Central core delivery tonnage ⁵ .	Actual 2006 rate is assumed to hold over time.
Metro South post-collection recovery	Constant rate of 5.7% of Metro South core delivery tonnage ⁵ .	Actual 2006 rate is assumed to hold over time.

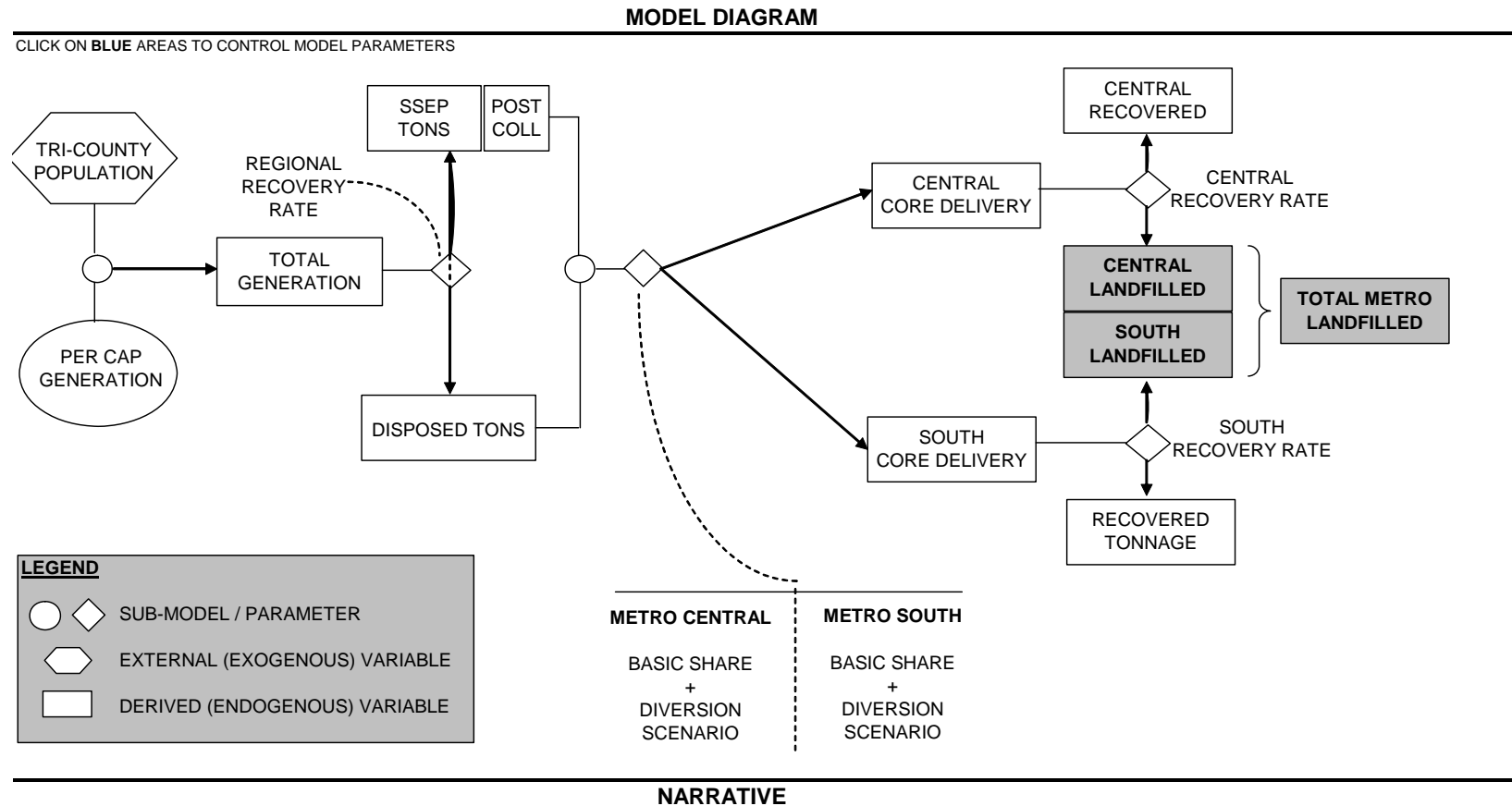
Landfill Tonnage Forecast

The scenario cited above projects landfill tonnage from Metro Central transfer station to begin at its CY2006 level of approximately 310,000 tons and rise to approximately 500,000 tons in 2026. At Metro South, the scenario projects a rise from CY2006 landfill tonnage of approximately 265,000 tons to approximately 475,000 tons in 2026.

Table 2 provides detail for the various waste quantities generated by the model in successive years, and Figure 2 depicts those quantities for the Metro transfer stations. It is important to note that some columns are hidden in Table 2. For example, the components of the regional recovery rate (the post-collection recovery and the other recovery rate points) and the Metro facility computed recovery tons are hidden. The full table may be viewed in the accompanying software.

⁵ “Delivery tonnage” is defined as the amount of mixed solid waste that is accepted by disposal sites and solid waste facilities from haulers, businesses and the public. It excludes transfers of processed waste from facilities to landfills. “Core” tonnage is municipal solid waste (MSW) plus construction and demolition waste (C&D). Core tonnage excludes industrial process waste, special wastes and environmental clean-up media. In this model, “regional core delivery tonnage” is numerically equivalent to the tonnage of post-collection recovery plus disposal.

Figure 1 – Model Schematic and Narrative



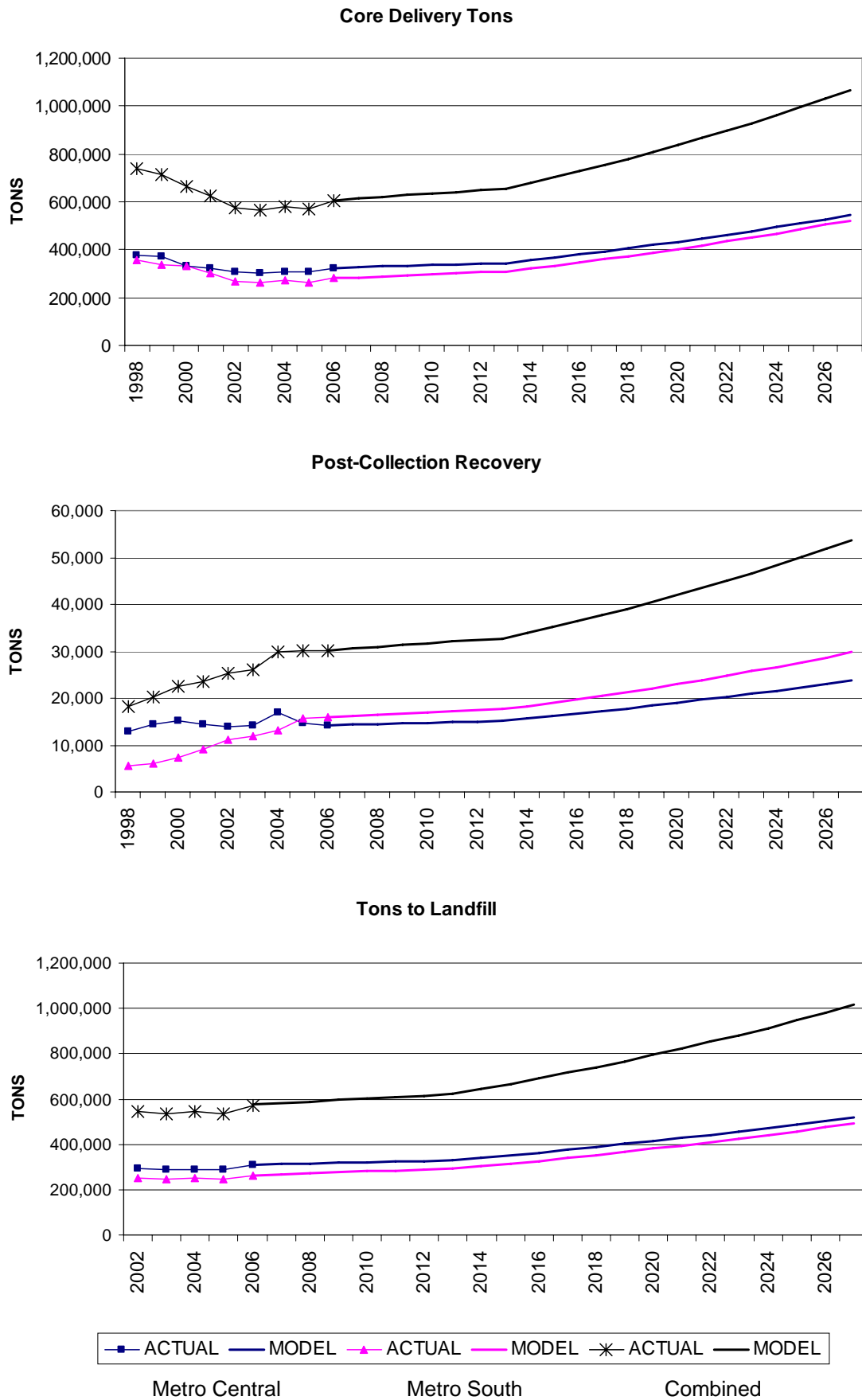
Regional population multiplied by per capita generation (in tons per person per year) yields total generation for the region, some of which is recovered while the remainder is disposed. Regional recovery includes source-separated recyclables, as well as materials that are removed from mixed waste at facilities ("post collection recovery"). The sum of post collection tons and disposal tons is numerically equivalent to the tonnage of mixed waste delivered to all solid waste facilities - a concept Metro terms "core delivery tons". Metro facilities' share of this delivery tonnage is a function of each facilities' historical base share plus potential future diversion scenarios such as the addition of Columbia Environmental to the solid waste management system. Finally, tonnage from each Metro facility destined to landfill is a function of each facilities' recovery rate.

FINAL DRAFT

Table 2 – Long Term Projections of Regional Generation, Recovery and Disposal

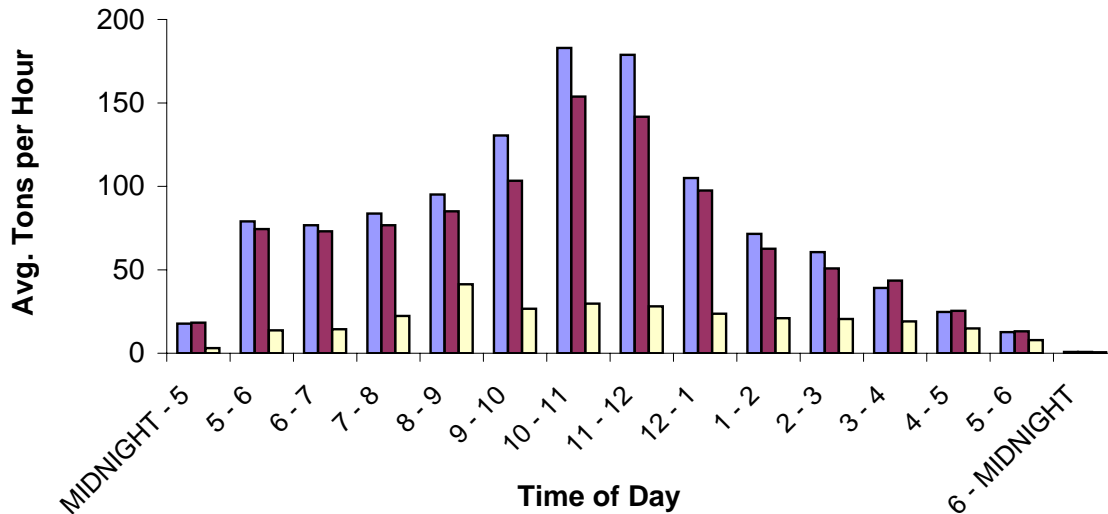
PARAMETERS		Generation					Metro Tonnage					
Year	Mid-Year	Rate	Total	Recovery	Tonnage		Incoming			Landfilled		
	Population	(lbs/capita/yr)	(tons/year)	Rate	Recovered	Disposed	Central	South	Total	Central	South	Total
2006	1,569,170	3,436	2,696,079	49.5%	1,334,400	1,361,679	323,996	280,474	604,470	309,801	264,496	574,297
2007	1,591,766	3,481	2,770,456	50.7%	1,404,877	1,365,579	327,420	285,085	612,505	313,075	268,844	581,919
2008	1,614,687	3,526	2,846,885	51.9%	1,478,227	1,368,658	330,694	289,579	620,273	316,206	273,082	589,288
2009	1,637,939	3,572	2,925,423	53.1%	1,554,555	1,370,868	333,805	293,942	627,747	319,180	277,197	596,377
2010	1,661,525	3,619	3,006,127	54.4%	1,633,969	1,372,158	336,738	298,159	634,896	321,984	281,173	603,158
2011	1,685,451	3,666	3,089,058	55.6%	1,716,582	1,372,476	339,478	302,213	641,692	324,605	284,997	609,602
2012	1,709,722	3,713	3,174,276	56.8%	1,802,509	1,371,768	342,011	306,089	648,100	327,026	288,652	615,678
2013	1,734,342	3,761	3,261,846	58.0%	1,891,870	1,369,975	344,319	309,768	654,086	329,233	292,121	621,354
2014	1,759,316	3,810	3,351,831	58.0%	1,944,062	1,407,769	355,860	321,799	677,659	340,269	303,467	643,736
2015	1,784,650	3,860	3,444,298	58.0%	1,997,693	1,446,605	367,776	334,259	702,035	351,663	315,217	666,880
2016	1,810,349	3,910	3,539,317	58.0%	2,052,804	1,486,513	380,079	347,161	727,240	363,426	327,385	690,811
2017	1,836,418	3,961	3,636,957	58.0%	2,109,435	1,527,522	392,781	360,521	753,302	375,571	339,983	715,555
2018	1,862,863	4,012	3,737,290	58.0%	2,167,628	1,569,662	405,894	374,354	780,247	388,110	353,028	741,138
2019	1,889,688	4,065	3,840,392	58.0%	2,227,427	1,612,964	419,432	388,675	808,107	401,055	366,533	767,588
2020	1,916,900	4,117	3,946,337	58.0%	2,288,876	1,657,462	433,407	403,502	836,909	414,418	380,516	794,934
2021	1,944,503	4,171	4,055,206	58.0%	2,352,019	1,703,186	447,835	418,851	866,686	428,214	394,990	823,204
2022	1,972,504	4,225	4,167,077	58.0%	2,416,905	1,750,173	462,729	434,740	897,469	442,455	409,974	852,429
2023	2,000,908	4,280	4,282,035	58.0%	2,483,581	1,798,455	478,104	451,186	929,290	457,157	425,484	882,640
2024	2,029,721	4,336	4,400,165	58.0%	2,552,096	1,848,069	493,975	468,210	962,184	472,332	441,537	913,869
2025	2,058,949	4,392	4,521,553	58.0%	2,622,501	1,899,052	510,358	485,829	996,186	487,997	458,152	946,150
2026	2,088,598	4,449	4,646,290	58.0%	2,694,848	1,951,442	527,268	504,064	1,031,332	504,167	475,348	979,516
2027	2,118,674	4,507	4,774,468	58.0%	2,769,192	2,005,277	544,724	522,935	1,067,659	520,858	493,145	1,014,002

Figure 2 – Projected Waste Quantities at the Metro Transfer Stations



METRO CENTRAL TRANSFER STATION

Average Tons per Hour of Inbound MSW on ■ MONDAY ■ TUES-FRI ■ SAT-SUN



	Avg Tons/Hour		
	Monday	Tues-Fri	Sat-Sun
MIDNIGHT - 5*	18	18	3
5 - 6	79	74	14
6 - 7	77	73	14
7 - 8	84	77	22
8 - 9	95	85	41
9 - 10	131	103	27
10 - 11	183	154	30
11 - 12	179	142	28
12 - 1	105	98	24
1 - 2	72	63	21
2 - 3	61	51	20
3 - 4	39	44	19
4 - 5	25	25	15
5 - 6	13	13	8
6 - MIDNIGHT*	1	1	1

Top 5 Tonnage Dates in 2006

Monday, July 10 (1,430 Tons)
Monday, April 24 (1,421 Tons)
Monday, July 17 (1,395 Tons)
Tuesday, December 26 (1,394 Tons)
Tuesday, November 14 (1,380 Tons)

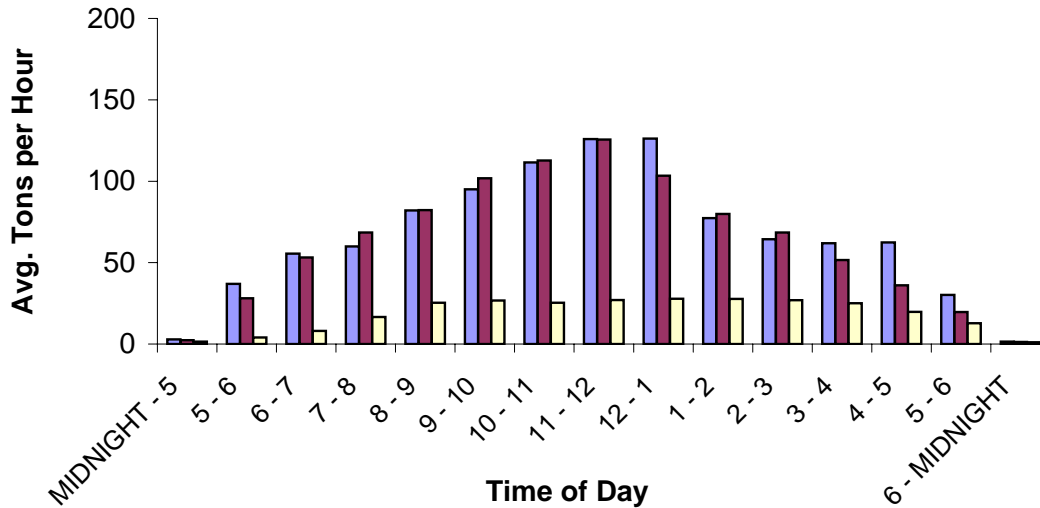
Top 5 Tonnage Weeks in 2006

November 12 - 18 (6,873 Tons)
June 4 - 10 (6,742 Tons)
July 9 - 15 (6,719 Tons)
April 30 - May 6 (6,658 Tons)
April 23 - April 29 (6,610 Tons)

* Average data represents the typical hour in this period

METRO SOUTH TRANSFER STATION

Average Tons per Hour of Inbound MSW on ■ MONDAY ■ TUES-FRI ■ SAT-SUN



	Avg Tons/Hour		
	Monday	Tues-Fri	Sat-Sun
MIDNIGHT - 5*	3	2	1
5 - 6	37	28	4
6 - 7	56	53	8
7 - 8	60	68	17
8 - 9	82	82	25
9 - 10	95	102	27
10 - 11	112	113	25
11 - 12	126	126	27
12 - 1	126	103	28
1 - 2	77	80	28
2 - 3	64	68	27
3 - 4	62	52	25
4 - 5	62	36	20
5 - 6	30	20	13
6 - MIDNIGHT*	1	1	1

Top 5 Tonnage Dates in 2006

Tuesday, December 26 (1,257 Tons)
Monday, June 5 (1,221 Tons)
Friday, June 23 (1,200 Tons)
Monday, July 17 (1,196 Tons)
Monday, June 19 (1,170 Tons)

Top 5 Tonnage Weeks in 2006

June 18 - 24 (6,234 Tons)
June 4 - 10 (6,207 Tons)
July 16 - 22 (5,995 Tons)
June 25 - July 1 (5,945 Tons)
April 30 - May 6 (5,927 Tons)

* Average data represents the typical hour in this period

**ANNUAL REPORT
WASTE TRANSPORT SERVICES**



ANNUAL REPORT

WASTE TRANSPORT SERVICES AND MITIGATION OF TRUCK IMPACTS

FOR THE PERIOD OF

**JANUARY 1
THROUGH
DECEMBER 31, 2006**

Prepared by:
Chuck Geyer and Courtney Dale
Solid Waste and Recycling
Engineering & Environmental Services

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ANNUAL REPORT

WASTE TRANSPORT SERVICES

AND

MITIGATION OF TRUCK IMPACTS

FOR THE PERIOD OF

JANUARY 1 THROUGH DECEMBER 31, 2006

Metro
600 NE Grand Avenue
Portland, OR 97232-2736
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Appendix B - Inspection Information and Definitions

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EXECUTIVE SUMMARY

Under contract with Metro, CSU transports solid waste from the Portland metropolitan area to the Columbia Ridge Landfill near Arlington, Oregon. A review of records kept by CSU, Metro, and the Oregon Department of Transportation (ODOT) indicates that CSU solid waste transport operations during 2006 were consistent and reliable. An audit of CSU dispatch logs and drivers' logs indicates substantial compliance with regulatory requirements, contract specifications, and mitigation of truck impact provisions of the 12-point agreement between Metro and the Automobile Club of Oregon (AAA).

During the period of January 1 through December 31, 2006, CSU transported a total of 571,095 tons of solid waste from Metro's transfer stations to the Columbia Ridge Landfill¹ (260,240 tons from Metro South Transfer Station, and 310,854 tons from Metro Central Transfer Station). A total of 18,604 loads, averaging 30.70 tons per load, was hauled during 2006. In 2005, the total tons of waste transported was 531,866 (246,511 tons from Metro South Transfer Station, and 285,355 tons from Metro Central Transfer Station). A total of 17,264 loads, averaging 30.81 tons per load, was hauled during 2005.

The costs for waste transport services in 2006 were as follows: Per-load payments to CSU totaled \$7,019,682, an average of \$377.32 per load or \$12.29 per ton. Total costs, including fuel, shuttle operations, overloads, weighing, parking, etc. were \$9,787,863 (8), an average of \$526.12 per load or \$17.14 per ton.

During 2006, CSU trucks traveled a total of 5.7 million miles hauling solid waste from Metro's transfer stations to the Columbia Ridge Landfill. CSU had one reportable accident related to the Metro transport contract. Six speeding tickets were issued to CSU drivers. No other traffic citations were issued. There were 57 overweight citations issued to CSU.

During the period of January 1, 2006 through December 31, 2006, ODOT conducted a total of 26 inspections of CSU vehicles. Inspection records show that CSU had 6 vehicle out-of-service violations for a vehicle out-of-service rate of 25%. The national industry average is 23.35%. CSU did not have any driver out-of-service violations. The national driver out-of-service rate is 6.61%.

CSU currently utilizes 34 tractors, 180 trailers, and ten shuttlecraft to perform its solid waste transport services. As of December 31, 2006, CSU employed 66 drivers, seven office personnel, and 20 shuttle operators, tipper operators, and maintenance personnel.

¹ The tonnage, cost, and load figures includes loads delivered from Metro South and Metro Central to Riverbend Landfill. They are included in the calculations in the Executive Summary and the following page since the report was unable to separate fuel costs accurately. The table entitled "SOLID WASTE TRANSPORTED TO COLUMBIA RIDGE LANDFILL" contains data pertaining to only waste delivered to CRL.

PART I.
WASTE TRANSPORT SERVICES

PROJECT HISTORY: On March 27, 1989, Metro contracted with Jack Gray Transport, Inc. (JGT) to provide for trucking of solid waste from the Portland metropolitan area to the Oregon Waste Systems, Inc. Columbia Ridge Landfill near Arlington, Oregon. Beginning January 2, 1990, the contract required JGT to transport to the Columbia Ridge Landfill all solid waste disposed at the Metro South Transfer Station, located in Oregon City. The duration of the Waste Transport Services Contract is a minimum of 20 years, with project completion expected to occur on December 31, 2009.

Initiation of JGT's trucking services coincided with the arrival of three new elements in the Metro disposal system: A new transfer station operator; a new method of waste consolidation (preload compactors); and a new regional landfill (Columbia Ridge Landfill in Gilliam County). Largely because of these new elements, operational coordination and experimentation typified the first six months of the contract. Innovative solutions to technical problems were achieved by Metro and the various contractors regarding such issues as the efficient loading of waste, compactor operations, equipment modifications, and necessary accounting controls. Operations since July 1990 have been characterized by consistent and reliable waste transport services.

On January 14, 1991, Metro Central Station, located at 6161 NW 61st Avenue in Portland, began operation and JGT began hauling solid waste from the facility to the Columbia Ridge Landfill. On April 1, 1991, the first load of residential garbage arrived at the Metro/Riedel Compost Facility, which was located at 5600 NE Columbia Boulevard. JGT hauled the residual from that facility to the Columbia Ridge Landfill. The compost facility closed in January 1992. In June 1994, JGT began hauling Forest Grove tonnage from Metro Central Station to the Columbia Ridge Landfill. Hauling of Forest Grove tonnage by JGT ended in March 1995.

In January 1998, Metro assigned the Waste Transport Services Agreement from Jack Gray Transport, Inc. to Specialty Transportation Services, Inc. (STS). On May 14, 2001, the Waste Transport Services Agreement was assigned from STS to CSU Transport, Inc. (CSU) by Change Order No. 26 to Metro Contract No. 900848.

Waste Quantities Transported: During the period of January 1 through December 31, 2006, CSU transported a total of 571,095 tons of solid waste to the Columbia Ridge Landfill, a total of 18,604 loads (averaging 30.70 tons per load). A summary of waste transported from Metro South and Metro Central transfer stations during 2006 is shown on page I-2. In 2005, CSU transported a total of 531,866 tons, a total of 17,264 loads, averaging 30.81 tons per load, was hauled during 2005.

Miles Traveled: CSU trucks traveled a total of 5,661,898 miles during 2006, hauling solid waste from Metro's transfer stations to the Columbia Ridge Landfill.

Cost of Waste Transport Services: Per-load payments totaled \$7,019,682 in 2006, an average of \$377.32 per load or \$12.29 per ton. Total costs, including fuel payments, fuel adjustments, shuttle operations, overloads, weighing, parking, and lease payments, were \$9,787,863, an average of \$526.12 per load or \$17.14 per ton.

2006
SOLID WASTE TRANSPORTED TO COLUMBIA RIDGE LANDFILL

<u>Metro South Station</u>			<u>Metro Central Station</u>	
<u>Month</u>	<u>Loads</u>	<u>Tons</u>	<u>Loads</u>	<u>Tons</u>
Jan	597	18,409.15	805	24,852.01
Feb	556	17,094.41	728	22,417.66
Mar	670	20,615.97	842	25,897.32
Apr	674	20,715.41	767	23,522.08
May	815	24,952.65	906	27,754.39
Jun	825	25,281.52	831	25,541.41
Jul	701	21,382.49	790	24,244.78
Aug	762	23,222.44	847	26,113.60
Sep	726	22,155.52	823	25,270.22
Oct	713	21,839.80	830	25,574.57
Nov	681	20,952.71	862	26,468.08
Dec	633	19,443.90	839	25,716.89
Totals	<u>8,353</u>	<u>256,065.97</u>	<u>9,870</u>	<u>303,373.01</u>

TRANSPORT SAFETY: Inspections, safety equipment, traffic violations, accidents and weight compliance are important concerns of the transport operation. Each of these is addressed below.

Equipment Safety: The trucking industry is carefully regulated in the State of Oregon, principally by the Oregon Department of Transportation (ODOT), Motor Carrier Transportation Branch. ODOT monitors vehicle safety via structural inspections of trucks, and by auditing driver logs for compliance with safety regulations. During the period of January 1 through December 31, 2006, ODOT examined CSU vehicles at the various staging areas and at the Cascade Locks scaling station, as well as spot-checking driver logs on other, unannounced visits.

During the period of January 1, 2006 through December 31, 2006, ODOT conducted a total of 26 inspections of CSU vehicles. Inspection records show that CSU had 6 vehicle out-of-service violations for a vehicle out-of-service rate of 25%. The national industry average is 23.35%. CSU did not have any driver out-of-service violations. The national driver out-of-service rate is 6.61%.

Accidents: CSU vehicles traveled a total of 5,661,989 miles and had one reportable accident² in Oregon during 2006 related to the Metro transport contract. According to ODOT's Motor Carrier Crash Analyst, CSU was not at fault in the accident, and there were no injuries.

² See Appendix B for definition of "reportable accident."

Traffic Violations: During 2006, six speeding tickets were issued to CSU drivers. No other traffic citations were issued.

Truck and Trailer Information: CSU currently uses 34 tractors, 180 trailers, and 10 shuttle craft to perform waste transport and shuttle services involving Metro South Station, Metro Central Station, and the Columbia Ridge Landfill.

Contract Specification 10.2 addresses the physical appearance of the transfer tractors and trailers. CSU tractors are washed in Arlington. The trailers are washed at the Metro Central Transfer Station site using a portable washing system. The painting of the tractors and trailers meets Metro's standards.

A placard promoting waste reduction and recycling is affixed to the back of most of the CSU trailers. Some trailers have had the trailer doors replaced, and a new placard had not been attached by the end of the report period.

CSU trucks do not portray any visible indications that the vehicle cargo is solid waste. To the casual observer, the vehicles appear as common commercial truck transport.

Complaints Received from the Public: No complaints were received by Metro.

Splash and Spray Suppressant Devices: CSU complies with and exceeds Attachment 13 to OAR Chapter 734, Division 74, which specifies the required devices utilized in rainy weather by "Extended Weight" transporters. CSU exceeds these requirements by extending the splash-suppressant flaps an additional ten inches toward the ground on the tractor push axles.

Weight Compliance: The potential damage to Oregon's roadways, particularly I-84, is a concern of public officials and citizens. With the goal of preventing overloaded vehicles, the waste transport services contract was carefully written to avoid incentives to the Contractor to overload its vehicles. This aim was achieved mainly through paying the Contractor on a per-load basis, as opposed to payment based upon load weight. Conversely, the transfer station operations contracts contain an incentive clause to encourage the station operator to achieve the maximum possible waste bale weight without overloading vehicles. The transfer station operators are contractually required to correct overloads at the operator's expense. In this manner, it is Metro's goal to maximize the weight of each load, while minimizing the possibility of overloaded vehicles on Oregon's highways.

Each CSU truck/trailer combination features a specialized seven-axle design engineered to appropriately distribute loads of as much as 32 tons of solid waste. The trailers feature a "push axle", which is adjusted using pressurized air to balance the vehicle axles such that the axle combinations each bear the proper proportion of total vehicle and load weight.

The following overweight citations were issued to CSU during 2006:

<u>Date</u>	<u>Citation No.</u>	<u>Date</u>	<u>Citation No.</u>
1/9/2006	765362	3/22/2006	765940
1/9/2006	765366	3/31/2006	794097
1/10/2006	765376	4/13/2006	794255
1/10/2006	765377	4/17/2006	794295
1/11/2006	765390	4/17/2006	794282
1/11/2006	765394	4/17/2006	794286
1/12/2006	765401	4/18/2006	794311
1/12/2006	765403	4/24/2006	794344
1/12/2006	765404	5/10/2006	794485
1/13/2006	765411	5/18/2006	794562
1/13/2006	765413	6/8/2006	794712
1/13/2006	765414	6/16/2006	794754
1/16/2006	765423	6/26/2006	794826
1/18/2006	765440	6/27/2006	294957
1/19/2006	765456	7/25/2006	794984
1/23/2006	765472	8/8/2006	793094
1/23/2006	765473	10/6/2006	793560
1/24/2006	765494	10/12/2006	793610
1/27/2006	765520	10/17/2006	793651
1/27/2006	765521	11/17/2006	793909
1/27/2006	765523	11/18/2006	793924
1/30/2006	765641	11/20/2006	793928
2/27/2006	765703	11/22/2006	793976
3/9/2006	765796	12/4/2006	807055
3/9/2006	765804	12/4/2006	807173
3/9/2006	765805	12/11/2006	807120
3/10/2006	765810	12/13/2006	807161
3/10/2006	765811	12/29/2006	807280
3/10/2006	765813		

The appropriate location and the composition of the waste bale are important factors in determining compliance with ODOT's weight distribution regulations. Overloads do occur, despite the efforts of CSU shuttle drivers and the compactor operators to properly distribute the waste and load the trailers. The primary cause of the above overloads is a result of the loads shifting during transit, which overloads an axle group. To minimize the number of overloads that occur during transit, potential overloads are diagnosed at the transfer station, prior to being driven on public roads.

For every load, each axle combination is weighed at least once (more often if necessary) to ensure the load will comply with ODOT regulations. Loads found to be overweight are stored in the staging area until the end of the operations day, at which time sufficient waste is unloaded from the overloaded trailer back into the transfer station pit to bring the trailer within compliance. It is in the public interest for each load to contain the maximum possible weight (to reduce overall waste disposal costs) yet still comply with ODOT

weight regulations. Metro, CSU, and the transfer station operator, Allied Waste Industries of Oregon, Inc. worked cooperatively to achieve an effective balance between these goals.

During the report period, the waste transported to the Columbia Ridge Landfill averaged 30.70 tons per load.

The loading of waste bales from the compactors into the CSU trailers requires the respective equipment operators to be attentive and precise. Nonetheless, some damage to trailers has occurred, usually because of waste material rising out of the bale and striking the roof of the trailers.

CSU Employee Information: As of December 31, 2006, CSU employed 66 drivers (56 full-time and 10 part-time), seven office personnel, and 20 shuttle operators, tipper operators, and maintenance personnel.

STATUS OF STAGING AREAS: Efficient waste transport requires the use of staging areas. The following summarizes the status of CSU's staging areas:

Metro Central Station: CSU currently utilizes a primary staging area adjacent to the Metro Central Transfer Station. The staging area is leased from Burlington Northern and Santa Fe Railway Company and has a capacity of 80 trailers. The facility enables CSU to store overloaded trailers until they can be brought within legal road weight limits. In addition, the facility enhances CSU's flexibility in scheduling the flow of waste to the Columbia Ridge Landfill.

Metro South Station: CSU is currently utilizing ten trailer spaces adjacent to the Metro South Station. This enables CSU to store overloaded trailers until they can be brought within legal road weight limits.

Rufus: CSU currently utilizes a staging area in Rufus, approved by the Rufus City Council.

Arlington: After approval by the Arlington City Council, a staging facility was located, and is currently in use by CSU at the Columbia Ridge Landfill.

Columbia Ridge Landfill: A staging area for solid waste containers is a part of the land use permit received by Oregon Waste Systems, Inc. for the Columbia Ridge Landfill. CSU and Oregon Waste Systems have a contractual arrangement by which CSU utilizes the staging facility and has offices (including the dispatch radio headquarters) at the site. All loads from the other staging areas are consolidated at the site and unloaded during normal landfill operating hours. The empty trailers are then returned to the Metro South and Metro Central transfer stations.

CSU's current operations plan specifies that the typical driver's workday begins in Arlington. An empty trailer is transported by the driver to Metro South or Metro Central transfer station, where a loaded trailer is obtained and transported back to Rufus. An empty trailer is retrieved and returned to a transfer station, where another load of waste is obtained and transported back to the Columbia Ridge Landfill. Variations of this typical

workday are utilized by CSU to optimize scheduling of drivers and to achieve compliance with ODOT's driver hours-of-service regulations.

CHANGE ORDERS TO THE CONTRACT: As of December 31, 2006, 31 change orders have been executed to modify and improve services provided under the terms of the Waste Transport Services Contract. Each change order is summarized here:

Change Order No. 1: When the Waste Transport Services Bid Documents were written, it was expected that the Metro South Station Contractor would perform shuttle services. Metro staff later determined that it was more appropriate for JGT to handle its own equipment, to minimize damage and coordination difficulties between the two contractors. Via Change Order No. 1, Metro provided a staging area for JGT adjacent to Metro South Station on an unused section of the site. In exchange, the waste transport contractor provides the labor, materials and equipment necessary to shuttle the trailers to and from the waste compactors.

The Change Order provides limitations to the waste transport contractor's labor and equipment costs to perform the shuttle operations. If shuttle operations exceed 16 hours per day on weekdays, the contractor is reimbursed \$54.28 per hour (termed "shuttle overtime"). Change Order No. 1 was executed on July 12, 1990.

Change Order No. 2: This change order was executed to address two issues. First, the St. Johns Landfill was required to close by February 1991. Direct-haul disposal quantities were not anticipated to provide the amount of waste necessary to reach the final contours needed to achieve proper closure. In addition, Metro had an intergovernmental commitment to provide waste to the Marion County Waste-to-Energy Facility to offset waste shortages, which hamper efficient incinerator operations. Change Order No. 2 provided for diversion of waste from Metro South Station to St. Johns Landfill or Marion County and established the rate for reimbursement to JGT (\$4.75 per ton). Terms of this agreement required JGT to provide equipment different from the normal JGT vehicle configuration, specifically self-unloading trailers. Change Order No. 2 was executed on March 12, 1990 and expired December 31, 1990.

Change Order No. 3 was executed on May 4, 1990 and was substantially similar to Change Order No. 2. It addressed the continued need for Metro to divert minor amounts of waste to St. Johns Landfill and Marion County. The term of Change Order No. 2 was extended from July 1, 1990 through January 31, 1991.

Change Order No. 4: This Change Order provided for dust suppression in the temporary staging area at Metro South Station. The staging area previously had a gravel surface, which generated considerable dust during dry climatic conditions. Under the terms of this agreement, JGT provided for dust control, utilizing a subcontractor who applied a vegetable oil-based adherent to the gravel surface.

Change Order No. 5: Change Order No. 5 modified and established the calendar months that constitute the "base year" and subsequent years for purposes of achieving inflation-offsetting adjustments to the unit price (cost of loads to the Columbia Ridge Landfill).

This change order modified the inflation adjustment as provided for under terms of the original Contract.

Change Order No. 6: This change order extended the term of Change Order No. 4 through December 31, 1991.

Change Order No. 7 was similar in nature to Change Order No. 1. Via this change order, the responsibility for shuttling of transfer trailers to and from the waste compactors was shifted from the Metro Central Station Operator to the waste transport contractor. Metro pays contractor for the costs of equipment, labor, and materials necessary to provide the shuttling services at the Metro Central Station. Most of these expenses are reimbursed by the station operator, as these work items were originally in the Metro Central Station Construction and Operations contracts. This change order was executed January 13, 1991 and extends through the term of the original contract.

Change Order No. 8 required JGT to perform additional shuttle services at Metro Central, specifically to achieve accurate weighing/invoicing of the transport vehicles, until a dedicated loadout facility could be constructed. This agreement was executed January 14, 1991 and expired September 1991.

Change Order No. 9: Change Order Numbers 9 and 10 provided for the shuttle services necessary for operations at the Metro/Riedel Compost Facility. Change Order No. 9 addressed the purchase and mobilization of the equipment for the shuttle operations. This agreement was executed in April 1991, and expired when the compost facility ended operations in January 1992.

Change Order No. 10 was a Force Work Order which authorized JGT to provide the materials and labor necessary to perform shuttle operations at the Compost Facility, rent end-dump trailers, and transport residual to the Metro Central Station. This Order was delivered to JGT in May 1991, and expired when the Compost facility ended operations in January 1992.

Change Order No. 11: Effective September 10, 1991, the waste transport contractor shall be reimbursed for all weighing expenses incurred by them at the remote axle scale at Metro Central Station.

Change Order No. 12 made changes to the JGT Letter of Credit regarding renewal dates and allows the Letter of Credit amount to be reduced by the amount of funds in the retainage account. No expenditures are involved. Change Order No. 12 was dated January 30, 1992.

Change Order No. 13 provided for JGT to transport immature compost from the compost facility to the St. Johns Landfill. The term of the Change Order was February 18 to February 28, 1992.

Change Order No. 14 provides for a paved parking area near Metro Central Station. The term of this Change Order was February 1, 1994 to December 31, 2000.

Change Order No. 15: Metro will supply diesel fuel to the waste transport contractor for over-the-road vehicles in exchange for a reduced per-load rate. This Change Order's term is from April 20, 1994 to December 31, 2009.

Change Order No. 16: This order enabled JGT to haul Forest Grove tonnage from Metro Central Station to the Columbia Ridge Landfill. Term: June 1994 to December 31, 1994.

Change Order No. 17 transfers the responsibility for checking trailer seal numbers from Oregon Waste Systems to the waste transport contractor. Term: September 1994 to December 31, 2009. No expenditures are associated with this change order.

Change Order No. 18 extended the term of Change Order No. 16 to March 31, 1995.

Change Order No. 19 modifies Change Order No. 15. It provides a mechanism for the waste transport contractor to share in savings arising from increased fuel economy. Term: September 1995 to December 31, 2009.

Change Order No. 20: provided for transport of wood and other hog fuel waste from Metro South Station to Metro Central Station, where it was chipped into hog fuel. Term: August 5, 1996 to October 1, 1997.

Change Order No. 21: specifies that any change in control or the transfer of a controlling interest in stock ownership of Contractor shall require the prior written consent of Metro; Change Order No. 1 required Metro to provide a paved storage area for approximately 105 transport containers. Metro shall henceforth be required to provide a paved storage area for no more than 51 trailers at Metro South Station.

Change Order No. 22: This change order extended the termination date for services specified in Change Order No. 20 until the agreement between Metro and Waste Management of Oregon for operating Metro South Transfer Station expired. That agreement expired September 30, 1997.

Change Order No. 23 approves the assignment of the Waste Transport Services Agreement from Jack Gray Transport, Inc. to Specialty Transportation Services, Inc. (STS) and provides assurances that the assignment of the Agreement to STS will not have a negative impact on Metro's waste transport operations.

Change Order No. 24 provides that Metro prepay future fixed costs, resulting in a one-time payment; the per-load payment to be reduced by \$30. STS was to move most of their transport trailers off Metro property at Metro South Station, eliminating the annual shuttle cost, and allowing Metro to proceed with facility improvements.

Change Order No. 25 allows for a change of control and change of ownership of STS from Asche Transportation Services, Inc. to Churchill Environmental & Industrial Equity Partners, L.P. It also provides assurances that such changes of control and ownership will not have a negative impact on Metro's waste transport operations.

Change Order No. 26: This agreement bestowed Metro's consent to the assignment by STS to CSU Transport, Inc. of all obligations and duties of performance owed to Metro under and pursuant to the Waste Transport Services Agreement.

Change Order No. 27 provides Metro with a paved parking area near the Metro Central Transfer Station. Metro subleases 36 parking spaces from CSU for its facility employees and various vehicles and equipment. The parking area lease was authorized initially by Change Order No. 14, which expired December 31, 2000.

Change Order No. 28 approves the purchase of two shuttle vehicles for use at Metro Central Transfer Station. CSU shall acquire such vehicles by means of a lease-purchase option agreement. Such lease shall include the obligation to allow Metro, in the event of any default by contractor, to assume control of all such leased equipment for a period of one year following any default and termination of the lease or of the Waste Transport Services Agreement.

Change Order No. 29: Metro will reimburse CSU for the purchase and installation of diesel particulate filters for up to twelve of the tractors operated by CSU in the provision of transportation services under the Waste Transport Services Agreement, and diesel particulate filters or diesel oxidation catalyst devices for four shuttle vehicles used in solid waste transfer operations at the Metro Central and Metro South transfer stations.

Change Order No. 30: This change order modifies the security for release of retainage provisions found in Paragraph B.8.i. of Change Order No. 24. In lieu of the Irrevocable Letter of Credit, Contractor may provide a performance bond or other similar instrument of security, in a form acceptable to Metro, in the amount of \$1.3 million.

Change Order No. 31 reduces the number of parking spaces near the Metro Central Transfer Station leased to Metro by CSU and provides for continued parking through December 31, 2009. The number of parking spaces are reduced from 36 to 12. See Change Orders number 14 and 27 for additional information.

Change Order No. 32: The purpose of this change order is to modify the provisions for security instruments and associated remedies found in Paragraph B of Change Order No. 30, and to make other, mutually agreed-upon amendments regarding contract termination procedures.

PART II.
MITIGATION OF TRUCK IMPACTS

INTRODUCTION: In March 1989, Metro and Jack Gray Transport, Inc. (JGT) entered into an agreement for the provision of waste transport services. The agreement, which provides for the transportation of solid waste from the Portland metropolitan area to the Columbia Ridge Landfill in Gilliam County, Oregon, contains provisions for mitigating the impacts of transporting waste. In early 1990, the Automobile Club of Oregon (AAA), Metro, and JGT entered into a 12-point agreement that required mitigation measures in addition to, as well as reiterating, those measures contained in the Waste Transport Services Contract.

In January 1998, Metro assigned the Waste Transport Services Agreement from Jack Gray Transport, Inc. to Specialty Transportation Services, Inc. (STS). On May 14, 2001, the waste transport agreement was assigned from STS to CSU Transport, Inc. (CSU). The 12 requirements of the AAA-Metro-JGT agreement now apply to CSU. This part of the annual report addresses the 12 requirements of the agreement.

MITIGATION REQUIREMENTS

1. Staging areas shall be located in areas outside or excluded from the Columbia River Gorge NSA (National Scenic Area).

Action: All staging areas are located outside the NSA. The locations are:

Metro South Transfer Station
Oregon City, Oregon

Cottonwood Street
Arlington, Oregon

Metro Central Transfer Station
Portland, Oregon

Columbia Ridge Landfill
Gilliam County, Oregon

Frosty's Truck Stop
Rufus, Oregon

2. Trucks shall stop at designated stopping points outside the Columbia River Gorge NSA, except in cases of emergency as indicated on Page 7 of the driver's handbook portion of the Operating Plan. Use of rest areas, turnouts, scenic vista points and state parks shall be limited to cases of emergency.

Action: CSU trucks stopped in the NSA 178 times during the period of January 1 through December 31, 2006. Stops were made for flat tires, mechanical and electrical problems, to put on tire chains, to assist other motorists, to wait while accidents were cleared, and for miscellaneous reasons. See Appendix A, "Audit of Dispatch Logs," for additional information.

3. Trucks shall operate twenty-four (24) hours a day. However, to the extent feasible, trucks shall not operate in the Columbia River Gorge NSA during the following times:

4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August and September.

Daylight hours on Saturdays in June, July, August and September.

All hours on Sundays in June, July, August and September.

Action: 4:00 p.m. to 10:00 p.m. Friday afternoons in June, July, August and September: It has not been feasible for CSU to suspend trips through the NSA from 4:00 p.m. to 10:00 p.m. Friday afternoons. CSU averaged 40 trips (both East and West bound) on Fridays (between the hours of 4:00 p.m. and 10:00 p.m.) in June, July, August and September 2006.

It has not been feasible to suspend trips because waste received on Fridays at the Metro South Transfer Station must be removed by the start of operations the following day, as per a condition of the permit issued by the City of Oregon City. Transfer vehicles removing this waste must make round trips to Gilliam County, unload, and return for more waste. Transport operations often take until after dawn on Saturdays to remove all the waste.

Action: Daylight hours on Saturdays in June, July, August and September: An average of nine trips occurred.

Action: All hours on Sundays in June, July, August and September: No trips occurred on Sundays during the reporting period.

4. CSU shall comply with Gilliam County's Waste Reduction Program and Specification 21.0 of the Waste Transport Services Contract by backhauling recyclables from Arlington to available recyclable markets.

Action: CSU has arranged for the transport of recyclables through Oregon Waste Systems, Inc., the landfill operator. Recyclables have been transported to market during this report period.

5. Per ODOT operation requirements, CSU trucks shall include splash and spray suppressant devices behind each wheel and rain suppressant side flaps on all non-turning axles.

Action: CSU has complied with ODOT requirements.

6. CSU shall comply with Specification 10.2, paragraph 2, of the Waste Transport Services Contract by utilizing containers that will not leak or release solid waste on roads.

Action: No citations were issued for leaking trailers in 2006. No citations have been issued for the release of waste on roads since the hauling contract commenced in January 1990. There have been two citations issued for leaking trailers since January 1990.

7. CSU shall comply with Specification 10.2, paragraph 4, of the Waste Transport Services Contract by maintaining tractors and containers suitably painted to present an acceptable appearance in the opinion of Metro, including reasonable promotion of waste reduction and recycling.

Action: CSU tractors are washed in Arlington. The trailers are washed at the Metro Central Transfer Station site using a portable washing system. The painting of the tractors and trailers meets Metro's standards. Metro designed a waste reduction and recycling sign for installation on the trailers. The sign has been installed on the rear doors of the trailers.

8. Monitoring of the Waste Transport Services Contract shall include monthly coordination meetings with a monthly report presented by CSU to discuss operational problems, complaints and any extraordinary occurrences per Specification 4.0 of the Waste Transport Services Contract. Monthly reports shall include written explanation of operational changes more than five (5) days during the month causing trucks to stop at points inside the Columbia River Gorge NSA or to operate during the hours indicated in Item 3, above.

Action: CSU has complied with the meeting and reporting requirements. No operational changes occurred that required trucks to stop in the NSA. See the discussion of Item 3 above for actions regarding hours of operation.

9. The public review process which has solicited public comment on the draft Operations Plan shall continue to review ongoing operations with mutually agreed-upon Gorge representatives in meetings once per year. Interested parties who request notice shall be notified of the time and place of the once per year public meetings. Metro shall prepare a report reviewing the past calendar year of operations for distribution at the meetings, which shall be available ten (10) days prior to the meeting. Metro shall conduct a six-month public review meeting if fifteen (15) or more individuals so request; a report reviewing the operations will be available ten (10) days prior to any such meeting. The location of all meetings shall alternate between Portland and the Columbia Gorge.

Action: Paragraph 9 of this mitigation agreement was amended in June 2004. Based upon the excellent transport record of the waste transport operator, and the fact that no representative of Oregon AAA (Automobile Club of Oregon) or Friends of the Columbia Gorge has attended the annual public meeting in the past ten years, and no member of the general public has attended the annual public meeting in the past seven years, it was proposed by Metro to amend the Agreement to eliminate the annual public meeting. Metro would continue to publish a written report each year regarding its solid waste transport operations.

On April 27, 2004, a Public Notice was sent to interested parties stating Metro's proposal to eliminate the annual public meeting. In addition, a Public Notice was printed in *The Oregonian* on May 7, 2004. Paragraph 9 was amended by Metro's Chief Operating Officer on June 14, 2004, after thirty days notice to interested parties. The amendment eliminated the annual public review meeting. The amendment provides that "each year Metro shall prepare and publish an annual report reviewing the solid waste transport operations for the past calendar year." There was no opposition to the amendment.

10. Metro shall conduct an annual audit of CSU dispatch logs to determine contractor compliance with regulatory requirements, contract specifications and mitigation of truck impact provisions. The audit shall include a determination of the reasons for operations outside these mitigation provisions as part of contract administration. This annual audit shall be reported to Metro Council as part of contract administration.

Action: Metro has conducted such an audit and the findings are shown in Appendix A of this report.

11. All mitigation of truck impact provisions for CSU shall be requirements for any subcontractor of CSU to the extent required by the Waste Transport Services Agreement.

Action: There are no subcontractors of CSU who are impacted by the mitigation provisions.

12. Proposed permanent amendments to these mitigation of truck impact provisions in Exhibit 12 of the Operation Plan may be approved by Metro's Executive Officer after thirty (30) days notice to interested parties who request such notice.

Action: Paragraph 9 of this mitigation agreement was amended on June 14, 2004. For details see Paragraph 9 above.

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Queue

Appendix A

Audit of Dispatch Logs

AUDIT OF DISPATCH LOGS

Paragraph 10 of the Mitigation of Trucks Impact Agreement requires that:

"Metro shall conduct an annual audit of dispatch logs to determine contractor compliance with regulatory requirements, contract specifications and mitigation of truck impact provisions. The audit shall include a determination of the reasons for operations outside the mitigation provisions as part of contract administration".

Period Covered/Records Audited: This audit report is for the period of January 1 through December 31, 2006. In addition to auditing CSU dispatch logs, Metro audited CSU drivers' logs, as recommended by the Oregon Department of Transportation (ODOT), for drivers' hours and drivers' off time.

FINDINGS:

Paragraph 2 of the Settlement Agreement states that trucks shall stop at designated stopping points outside the Columbia River Gorge National Scenic Area (NSA) except in cases of emergency. Emergencies are considered to include flat tires, mechanical problems, accidents, installation or removal of tire chains, and inspections. According to the audit, CSU trucks stopped in the NSA 175 times, as follows:

- 108 times for flat tires
- 9 times to put on tire chains
- 23 times for mechanical and electrical problems
- 21 times for closure of Highway I-84, to wait at accidents, and traffic
- 3 times for involvement in an accident
- 8 times to assist others
- 3 times for miscellaneous reasons (personal, etc.)

Paragraph 3 of the Agreement states that trucks shall operate twenty-four (24) hours a day. However, to the extent feasible, trucks shall not operate in the Columbia River Gorge NSA during the following times:

- 4:00 to 10:00 p.m., Friday afternoons in June; July; August and September.
- Daylight hours on Saturday in June, July, August and September.
- All hours on Sunday in June, July, August and September.

An audit of the CSU dispatch logs indicates that in 200, an average of 40 trips occurred in the NSA on Fridays between 4:00 p.m. and 10:00 p.m.. One trip equals one-way: Westbound from Arlington to Portland, or Rufus to Portland; Eastbound from Portland to Rufus, or Portland to Arlington.

There was an average of nine trips in the NSA on Saturdays during daylight hours in the months of June, July, August and September. Daylight hours are considered to be 6:00 a.m. to 10:00 p.m. There were no trips in the NSA on Sundays during 2006.

Paragraph 6 of the Agreement states that CSU shall use containers which will not leak or release solid waste on the highways. No citations were issued for leaks or solid waste releases in 2006.

Drivers' Hours: Drivers are allowed to drive twelve hours per day. Drivers must be off duty at least eight hours. No violations of these regulatory requirements were found.

SUMMARY

The audit of CSU dispatch logs and CSU drivers' logs indicates substantial compliance with regulatory requirements, contract specifications and mitigation of truck impact provisions of the settlement agreement.

Appendix B

Inspection Information and Definitions



Oregon

Theodore E. Kaliterna, Governor

February 28, 2007

Department of Transportation
Motor Carrier Transportation Division
550 Capitol Street NE
Salem, OR 97301-2530

FILE CODE

METRO REGIONAL SERVICES
ENVIRONMENTAL SERVICES DIVISION
800 NE GRAND AVE
PORTLAND OR 97232-2736

ATTN: Chuck Geyer, Principal Solid Waste Planner

RE: 2006 Safety Information for CSU Transport Inc.

During calendar year 2006, we conducted 26 truck safety inspections of CSU Transport Inc. and identified 63 safety violations. A summary of those inspections and violations is attached. Please note that this summary is limited to CSU Transport Inc. inspections conducted within Oregon and the table below provides a comparison of this carrier's operation within Oregon to National Averages.

Inspection Category	Oregon Out of Service Inspections	Oregon Out of Service Rate	National Out of Service Rate
Driver Out of Service	0	0	6.61%
Vehicle Out of Service	6	25%	23.35%

At this time one federally recordable crash and one non-federally recordable crash reports are on file with the Department involving CSU Transport Inc. during 2006. If you have questions regarding truck crashes, please contact Jack Shepard, ODOT's Truck Crash Analyst, at 503-986-3507.

Please contact me if you need additional information.

Thomas M. Bradd

Thomas M. Bradd
Safety Information Coordinator

Phone: (503) 378-4801
Fax: (503) 378-8815
Email: thomas.m.bradd@odot.state.or.us

Oregon Department of Transportation
Motor Carrier Transportation Division
 2006 Safety Inspection Summary of CSU Transport, Inc.
 Prepared for METRO Regional Services

Date	Inspection Report	violations	Vehicle out of service	Driver out of service
January 11, 2006	ORAAQ001473	2		
January 17, 2006	ORSPCU000243	3		
January 19, 2006	OR000S478911	2		
February 9, 2006	OR000S478917	1	Yes	
February 15, 2006	OR000S478789			
February 23, 2006	ORSPGB001208	1		
June 7, 2006	OR000S481080	1		
June 8, 2006	ORAAQ001855	1		
June 9, 2006	OR000S493148	8	Yes	
June 9, 2006	OR000S493146	3		
June 9, 2006	OR000S493145	5		
June 27, 2006	OR000S478385			
June 29, 2006	ORAADJ001496	4	Yes	
July 6, 2006	ORSPCA001580	2		
July 12, 2006	ORAAQ001965	6	Yes	
July 24, 2006	ORSPCA001601	2		
August 4, 2006	OR000S478050	1		
August 24, 2006	OR000S493813	6		
September 14, 2006	OR000S494526	1		
September 20, 2006	ORAASK002067	3	Yes	
October 9, 2006	OR000S463049			
October 24, 2006	ORAASG000784	3	Yes	
October 27, 2006	ORAAQ002190	2		
October 31, 2006	ORAAQ002217	1		
December 13, 2006	ORAASG000839	4		
December 20, 2006	ORSPGB001459	1		

Prepared February 28, 2007

**Oregon Department of Transportation
Motor Carrier Transportation Division**

2006 Safety Violations by CSU Transport, Inc.

Prepared for METRO Regional Services

Violation

Vehicle violations

Driver Violations

Violation	Driver Violations	Vehicle Violations
11 hour rule violation (Driver Hours of Service)	3	
Brake-out of adjustment		1
Brake-reserve system pressure loss		1
Brakes (general)		9
Emergency warning devices not as required		1
Failing to use seat belt while operating CMV	1	
Following too close	1	
Frame accessories not bolted/riveted securely		1
Inadequate reservoir for air/vacuum brakes		5
Inoperable lamp (other than head/tail)		6
Inoperative/defective brakes		2
Inspection/repair and maint parts & accssries		4
Leaf spring assembly defective/missing		1
Local laws (general)	2	3
Log violation (general/form and manner)	2	
Oil and/or grease leak		2
Other		5
Size and weight		1
Speeding	6	
Stop lamp violations		3
Tire-flat and/or audible air leak		1
Tire-ply or belt material exposed		1
Wheel fasteners loose and/or missing		1

Prepared February 28, 2007

INSPECTION INFORMATION AND DEFINITIONS

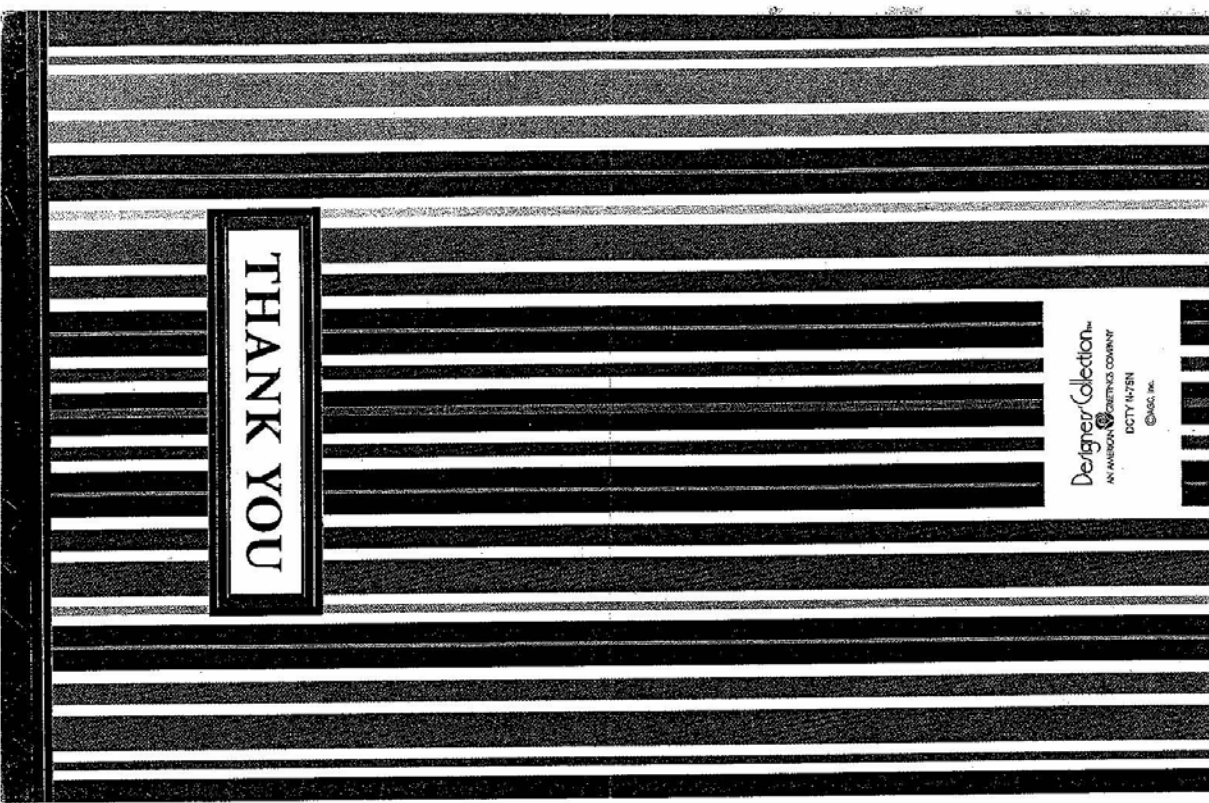
- The "Industry" classification is for all commercial transport within Oregon and registered with the Oregon Department of Transportation (ODOT).
- The "Out of Service" distinction is a percentage calculation based upon vehicles inspected by the ODOT that are not allowed to continue over-the-road transport until repairs are accomplished, divided by the total number of carrier's vehicle inspected.
- Definition of "Reportable Accident":

The term "reportable accident" means an occurrence involving a commercial motor vehicle operated on public highways by a motor carrier subject to the provisions of ORS Chapter 767, resulting in:

- a) Fatality: One or more persons killed in or outside the vehicle, or who died within 30 days as a result of the accident; or
- b) Injury: One or more persons injured as a result of the accident, and transported from the scene for medical treatment; or
- c) Tow-away: One or more vehicles disabled as a result of the accident, and towed from the scene.

Appendix C

Letters to CSU



Dear Sir,

Thank you so much
for the relationship to DSH. I
appreciate it greatly. I am
taking 16 hours this first
quarter and so far I really
like it here. Again, thank you
for your help.

Sincerely,
Brent King

Thank you,
thank you,
thank you...

Tender Thoughts

TET 8009S
©AGC, Inc.

Dear CSU Transport Inc,

Thank you for the
scholarship. It will come in
handy to help pay for college
this Fall.

...very much!

I really appreciate all the
hard work and effort you
guys do to help provide
money for college bound students
like myself. What would we
do without people like you in
our community? Thanks again
for everything you do.

Sincerely,

Angela Harrison

WESTERN OREGON
UNIVERSITY

December 19, 2006

CSU TRANSPORT INC
17701 CEDAR SPRINGS LANE
ARLINGTON OR 97812

Dear Ladies and Gentlemen:

Thank you very much for your scholarship support of a Western Oregon University student.

Your contribution is helping to make the dream of a college education a reality for this student.

Thank you again for your support.

Sincerely,



Leta Edwards
Vice President for University Advancement

LE:dlc

Scholar.doc

WHITE PAPER
METRO SOLID WASTE TRANSPORTATION STUDY
SECTIONS 4.3 AND 5

Final White Paper

Metro Solid Waste Transportation Study

Prepared for



METRO
PEOPLE PLACES • OPEN SPACES

May 2007

Prepared by

CH2MHILL

CH2M HILL
P.O. Box 91500
Bellevue, WA 98009

In association with WIH Resources Group

4.3 Fuel Use and Emissions Estimates

4.3.1 Methodology

Different approaches were used to estimate emissions for each mode. Modeling emissions is complex and depends on a host of variables that cannot easily be specified in a planning-level analysis. For this study, modeling approaches that were used that were flexible enough to address the many combinations of modes, locations, and distances in the scenarios, yet rigorous enough to give good, planning-level estimates.

A discussion of the models used to estimate emissions for each mode follows.

Barge Fuel Use and Emissions

Fuel Use. Fuel use for barges was based on input from industry representatives and was assumed to be 75 gallons per hour. Metro was assigned a percent share of that fuel use based on its share of the cargo carried on that trip, which in 2010 was 41 percent for Scenarios 1a and 1b, and 20 percent for 1c. This percentage increases in future years proportional to increases in tonnage.

CO₂ Emissions. Information provided in *Emissions Facts: Average Carbon Dioxide Emissions Resulting from Gasoline and Diesel Fuel*, EPA420-F-05-001, February 2005, was used to calculate carbon dioxide (CO₂) emissions of 10,084 grams per gallon of diesel fuel burned. This factor was used for both tugs and locomotives.

NO_x and PM Emissions. Nitrogen oxides (NO_x) and particulate matter (PM) emissions in grams per mile were calculated using the methodology from *Analysis of Commercial Marine Vessels Emissions and Fuel Consumption Data*, EPA420-00-002, February 2000. (EPA Emissions Study). In this document, an emission rate in grams per kilowatt-hour (g/kW-hr) is calculated using the fractional load and defined coefficients shown in equation 1:

$$\text{Emission rate (ER)} = a (\text{Fractional Load})^x + b \quad (1)$$

To determine emissions in grams per mile, the emission rate is multiplied by mode specific power and the annual hours of travel then divided by the annual miles as in equation 2.

$$\text{Emissions} = \text{ER} * \text{Mode specific (kW)} * \text{Time (hours)} / \text{Distance traveled (miles)} * \text{Metro share of tow (41\% in Scenario 1a in 2010)} \quad (2)$$

Mode specific power is the rated horsepower in kilowatts of the tug multiplied by the fractional load the tug is operating. In the SR 47 document, cruising is defined as 80% load; slow cruising is defined as 40% load.

Estimated NO_x and PM emissions in grams per mile from the EPA Emissions Study (calculated for Scenario 1a) are shown below.

Mode of Operation	NO _x (grams/mile)	PM (grams/mile)
EPA Commercial Marine Cruise	1,100	27
EPA Commercial Marine Slow Cruise	566	14

The CH2M HILL project team estimates that barge operations could be characterized as 90 percent “Marine Cruise” and 10 percent as “Slow Cruise”. This results in NO_x emissions of 1,047 g/mile and PM emissions of 26 g/mile.

On May 10, 2004, EPA finalized the Clean Air Nonroad Diesel Rule. This rule requires the sulfur content of marine diesel and locomotive fuel to drop from its current level of approximately 3,000ppm to 500ppm (low sulfur diesel) in June 2007 and 15ppm (ultra low sulfur diesel, ULSD) in June 2012. The reduction in sulfur levels will reduce PM and NO_x emissions from diesel engines currently in operation. EPA estimates that low sulfur diesel will result in a 10-15% reduction in PM emissions compared to existing non-road diesel fuel, and using ULSD will result in an additional 5-10% reduction in PM emissions². For the purposes of this study, the midpoints of these ranges are used, and the phase-in to ULSD is assumed to begin in 2013 (i.e., rounding to the first full year of operation).

Reducing the sulfur content of fuel will also reduce NO_x emissions somewhat. There is less information available about the relationship between sulfur in fuel and NO_x emissions. Based on a review of available literature³, this study assumes that using low sulfur diesel will result in a 10% reduction in NO_x emissions, and using ULSD will result in an additional 5% reduction in NO_x emissions.

These adjustments are made to both marine and locomotive diesel consumption estimates. The emissions estimates used in this study for the barge mode for various time periods follow.

Mode of Operation	NO _x (grams/mile)	PM (grams/mile)
2010-2012 (Low Sulfur Diesel)	916	23
2013-2019 (Ultra Low Sulfur Diesel)	847	22

Additional calculations used to prepare these emission rates are shown in Appendix C.

² *Finding Strategies that Work: Advanced Pollution Controls for Commuter Locomotives*. Lucy Edmonton, EPA New England. January 26, 2006.

³ See for example the London and California examples in: *International Experience On Ultra Low Sulfur Diesel and Biodiesel*. Michael P. Walsh. Hong Kong Environmental Protection Department Motor Vehicles Emissions Group. January 24, 2000; and *Diesel Health Impacts and Recent Comparisons to Other Fuels*. Diane Bailey, Natural Resources Defense Council, DEER Conference, San Diego, CA, August 2002.

Proposed EPA Rule⁴. EPA is proposing to adopt more stringent standards for marine diesel engines and locomotives that would have three main effects. First, existing locomotive engines would be affected when they are remanufactured. These standards would take effect as soon as certified remanufacture systems are available (as early as 2008), but no later than 2010 (2013 for Tier 2 locomotives). EPA is also requesting comment on similar requirements for certain existing marine diesel engines when they are remanufactured.

Second, EPA is proposing near-term emission standards, referred to as Tier 3 standards, for newly-built locomotive and marine engines. These standards would reflect the application of technologies to reduce engine-out PM and NO_x emissions and would phase in starting in 2009.

Third, EPA is proposing long-term emissions standards, referred to as Tier 4, for newly-built locomotives and marine diesel engines. These standards are based on the application of high-efficiency catalytic after treatment technology and would phase in beginning in 2014 for marine diesel engines and 2015 for locomotives. These standards are enabled by the ULSD that is required to be made available to non-road shippers beginning in 2012. These marine Tier 4 engine standards would apply to commercial marine diesel engines above 800 hp and recreational marine diesel engines above 2,000 hp. The proposal would result in PM reductions of about 90 percent and NO_x reductions of about 80 percent from engines meeting these standards, compared to engines meeting the current standards. The proposed standards would also yield sizeable reductions in emissions of HC, CO, and other air toxics.

Rail Fuel Use and Emissions

Based on input from industry representatives, rail fuel use was assumed to be 6,000 gallons total for three locomotives per round trip for a 6,000 foot train. Fuel use was adjusted so that every 1 percent reduction in tonnage results in a 0.33 percent reduction in fuel use.

NO_x and PM emissions from the use of locomotives were calculated using the methodology from EPA's *Technical Highlights, Emission Factors for Locomotives*, EPA420-F-97-051, December 1997. Emission factors vary according to the age of the locomotive with Tier 0 standards applying to locomotives originally manufactured between 1973 and 2001, Tier 1 standards applying to locomotives manufactured from 2002 through 2004 and Tier 2 standards applying to locomotives manufactured in 2005 and later.

The average age of the locomotives was assumed to be 10 years each year of the 2010-2019 project. Therefore, Tier 0 standards were used for the first year of the project; Tier 1 standards were used for the years 2011 through 2013 and Tier 2 standards were used for the remaining years.

Equation 3 presents the calculation of NO_x and PM emissions in grams per mile:

$$\text{Emissions (NO}_x \text{ and PM)} = F \times EF / M \quad (3)$$

Where

F = annual fuel consumption, gallons

⁴ <http://www.epa.gov/otaq/regs/nonroad/420f07015.htm>

EF = Emission factor (gram per gallon, g/gal)

M = annual miles traveled

As discussed above for barge emissions, a reduction in emissions from the use of low sulfur diesel and ultra low sulfur diesel was applied. The low sulfur diesel adjustment was applied to Tier 0 and Tier 1, and the ultra low sulfur diesel adjustment was applied to Tier 2. Emission factors are presented in Exhibit 4-5.

EXHIBIT 4-5
Locomotive Emission Factors – Grams Per Gallon

Tier	NO _x	PM
0	155.8	6.0
1	121.6	6.0
2	83.4	3.1

Truck Fuel Use and Emissions

Based on the project team's knowledge of trucking operations and information about Metro's existing system, the following fuel economy was assumed for different types of trucks:

- Long-haul with new engines: 5.5 mpg
- Drayage with new engines: 4.5 mpg
- Leased trucks during lock closures: 5.0 mpg

NO_x, PM and CO₂ emissions from the use of trucks were calculated using the Freight Logistics Environmental and Energy Tracking Performance Model (FLEET). The model is available at http://www.epa.gov/smartway/smartway_fleets_software.htm. Inputs included number of trucks, payload, vehicle class, fuel consumption and idling hours.

The FLEET model accounts for the mandated changes in truck technology and for the use of ultra-low sulfur diesel in 2007. Additional inputs include truck model year and the year emissions are to be calculated. The model does not account for upgrades to engines in 2010. These upgrades affect NO_x emissions. NO_x emissions were reduced by 80 percent consistent with EPA estimates.

4.3.2 Fuel Use and Emissions Results

Emissions in Grams per Mile

Emissions in grams per mile for all transportation links in the scenarios are shown in Exhibit 4-6. (This exhibit and all subsequent exhibits are shown at the end of this section.)

Total Fuel Use and Emissions, 2010-2019

Estimated fuel use and emissions for each scenario are shown graphically in Exhibits 4-7 to 4-10, and in tabular form in Exhibit 4-11. As shown, the scenarios with a barge line-haul (1a, 1b, 4a) have significantly lower fuel and CO₂ emissions compared to the other

scenarios. The all truck scenario, Scenario 3 would result in the lowest PM and NO_x emissions.

Emissions in the Columbia River Gorge Scenic Area

As discussed in a variety of publications including the *Columbia River Gorge Visibility Project, 2006 Annual Report*, Oregon Department of Environmental Quality, Southwest Clean Air Agency, September 12, 2006, there is heightened sensitivity about air pollution that is causing visibility and other concerns in the Columbia River Gorge Scenic Area. In response, diesel fuel use and NO_x emissions in the Scenic Area were estimated for the scenarios as shown in Exhibit 4-12. Because of a lack of available emissions data, diesel fuel use was used as a proxy for SO_x emissions.

Likely Effects from EPA Proposed Marine Diesel and Locomotive Standards

Should they be adopted as law, the proposed EPA marine diesel and locomotive standards would result in a phase in of much cleaner operating diesel engines. As discussed above, remanufactured engines would be required to have improved emissions performance at some point between 2008 and 2010, and after 2014 (marine diesel) and 2015 (locomotive), all new engines would be required to include emissions reduction technologies similar to those about to take effect on trucks that would result in a projected reduction of 90 percent of PM emissions and 80 percent of NO_x emissions. Thus, there would be some potential for regulatory action or the initiative of barge and rail companies that would result in a substantial improvement in emissions performance during the life of the Metro contract.

PM and NO_x emissions estimates using marine diesel and locomotive engines that meet the emissions performance outlined in the proposed EPA standards are shown in Exhibits 4-13 and 4-14. Under these circumstances, barge and truck would have similar PM emissions, but the all-truck scenario (Scenario 3) would still have substantially lower NO_x emissions than the other scenarios.

Uncertainty Associated with Emissions Estimates

Considerably more research has been done to model emissions from trucks than has been done for barge and rail. In addition, emissions are inherently difficult to estimate because they depend on many factors such as fuel sulfur content, engine loading, wind, currents, tare weights, and aerodynamic drag. Specifically, in the case of barging, water depth, engine power, and draft all have unique effects on emissions. Additionally EPA standards for emissions for trucks are much more stringent than that for the barge and railroad industry. These uncertainties should be recognized when making conclusions made based on the estimates provided in this report.

EXHIBIT 4-6
Emissions Outputs

Truck Movement	Scenario	Engine	Grams per Mile		
		Year	CO2	PM	NOx
1. Truck - Current System	0	2002	1,900	0.26	11.17
2. Truck - Current System in Gorge	0	2002	1,900	0.26	11.17
3. Truck - drayage, new with 2007 compliant engines	1a	2010	2,238	0.08	0.69
4. Truck - drayage trucks, lock closure (new engines)	1a	2010	2,014	0.08	0.73
5. Truck - leased fleet trucks during lock closure	1a	2004	2,014	0.25	7.00
6. Truck - leased fleet trucks during lock closure	1a	2013	2,014	0.08	0.73
7. Trucks Through Gorge - drayage trucks, lock closure	1a	2010	2,014	0.08	0.73
8. Trucks Through Gorge - leased fleet trucks, lock closure	1a	2004	2,014	0.25	7.00
9. Trucks Through Gorge - leased fleet trucks, lock closure	1a	2013	2,014	0.08	0.73
10. Tugs 2010-12	1a	Age 20	43,754	23.13	915.78
10A. Tugs 2013-19	1a	Age 20	43,754	21.97	847.09
11. Tugs	1a	New 2014	43,754	2.31	183.16
12. Truck - drayage, new with 2007 compliant engines	1b	2010	2,238	0.08	0.73
13. Truck - drayage trucks, lock closure (new engines)	1b	2010	2,014	0.08	0.73
14. Truck - leased fleet trucks during lock closure	1b	2004	2,014	0.25	7.00
15. Truck - leased fleet trucks during lock closure	1b	2013	2,014	0.08	0.73
16. Tugs 2010-12	1b	Age 20	46,281	24.71	968.36
16A. Tugs 2013-19	1b	Age 20	46,281	23.47	895.73
17. Tugs	1b	New 2014	46,281	2.47	193.67
18. Truck - drayage, new with 2007 compliant engines	2a	2010	2,238	0.08	0.73
19. Locomotives - Tier 0, 2010	2a	Age 10	188,571	110.00	2,996.00
19. Locomotives - Tier 1, 2011-13	2a	Age 10	188,571	110.00	2,339.00
19. Locomotives - Tier 2, 2014-19	2a	Age 10	188,571	58.00	1,724.00
20. Locomotives	2a	New 2015	188,571	11.00	599.20
21. Truck - drayage, new with 2007 compliant engines	2b	2010	2,238	0.08	0.73
22. Locomotives - Tier 0, 2010	2b	Age 10	188,571	110.00	2,996.00
22. Locomotives - Tier 1, 2011-13	2b	Age 10	188,571	110.00	2,339.00
22. Locomotives - Tier 2, 2014-19	2b	Age 10	188,571	58.00	1,724.00
23. Locomotives	2b	New 2015	188,571	11.00	599.20
24. Truck - drayage, new with 2007 compliant engines	2c	2010	2,238	0.08	0.73
25. Locomotives - Tier 0, 2010	2c	Age 10	165,378	96.00	2,627.00
25. Locomotives - Tier 1, 2011-13	2c	Age 10	165,378	96.00	2,052.00
25. Locomotives - Tier 2, 2014-19	2c	Age 10	165,378	51.00	1,512.00
26. Locomotives	2c	New 2015	165,378	9.60	525.40
27. Truck - long-haul, new with 2007 compliant engines	3	2010	1,831	0.08	0.73
28. Truck Through Gorge - long-haul, new engines	3	2010	1,831	0.08	0.73
29. Truck - drayage, new with 2007 compliant engines	4a	2010	2,238	0.08	0.73
30. Truck - long-haul, new with 2007 compliant engines	4a	2010	1,831	0.08	0.73
31. Truck - drayage trucks, lock closure (new engines)	4a	2010	2,014	0.08	0.73
32. Truck - leased fleet trucks during lock closure	4a	2004	2,014	0.25	7.00
33. Truck - leased fleet trucks during lock closure	4a	2013	2,014	0.08	0.73
34. Tugs 2010-12	4a	Age 20	21,343	11.39	446.58
34A. Tugs 2013-19	4a	Age 20	21,343	10.82	413.09
35. Tugs	4a	New 2014	21,343	1.14	89.32
36. Truck - drayage, new with 2007 compliant engines	4b	2010	2,238	0.08	0.73
37. Truck - long-haul, new with 2007 compliant engines	4b	2010	1,831	0.08	0.73
38. Locomotives - Tier 0, 2010	4b	Age 10	161,344	94.00	2,563.00
38. Locomotives - Tier 1, 2011-13	4b	Age 10	161,344	94.00	2,002.00
38. Locomotives - Tier 2, 2014-19	4b	Age 10	161,344	50.00	1,475.00
39. Locomotives	4b	New 2015	161,344	9.40	512.60

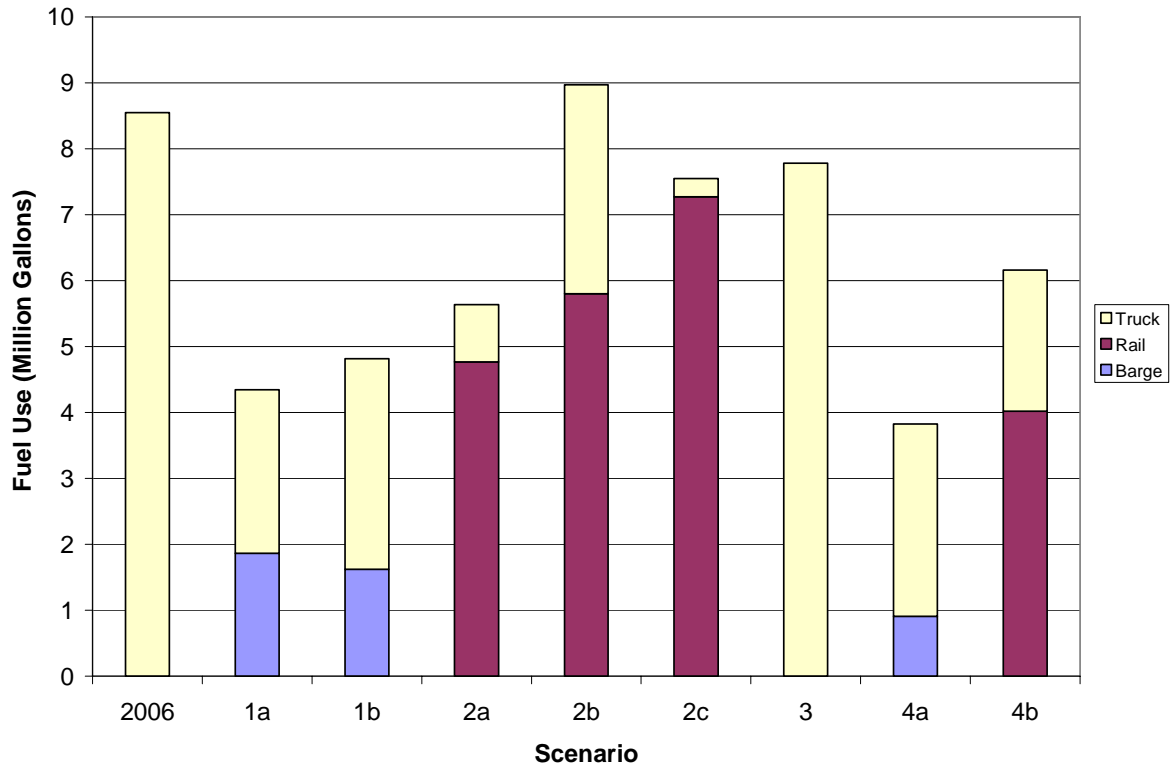


EXHIBIT 4-7
Estimated Fuel Use (mgal)
PV2010-2019

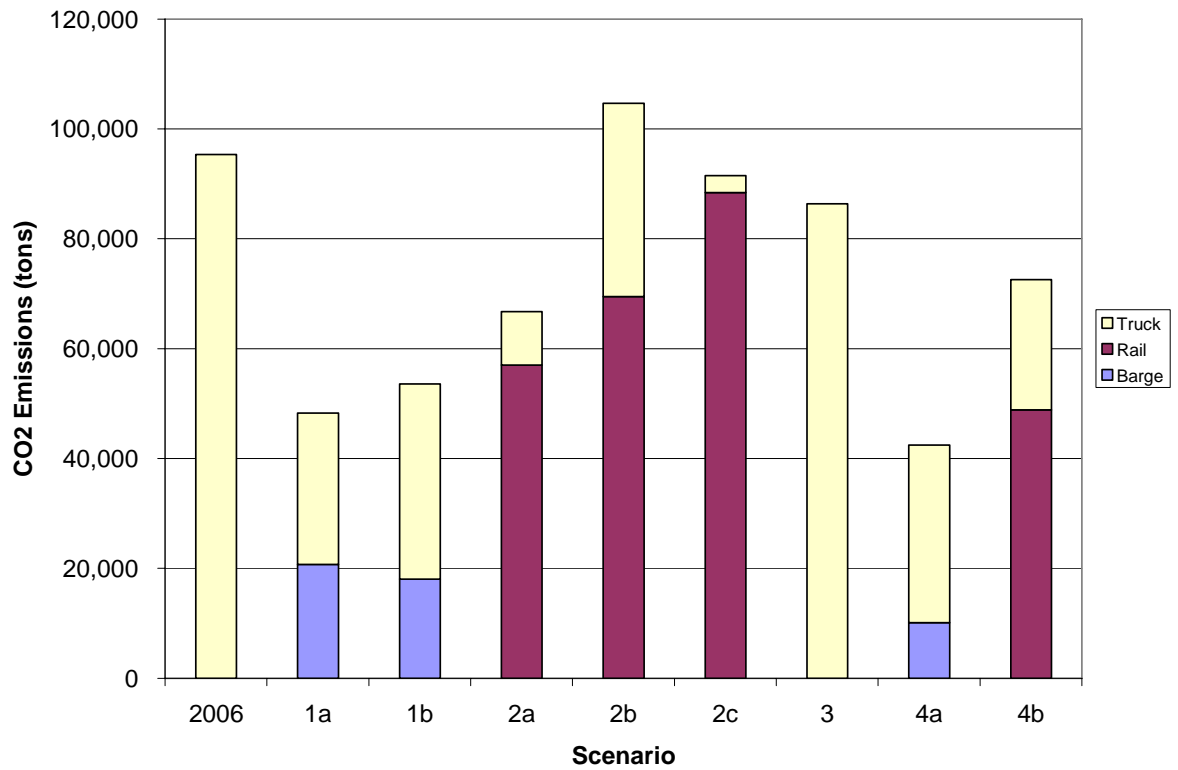


EXHIBIT 4-8
Estimated CO₂ Emissions (tons)
PV 2010-2019

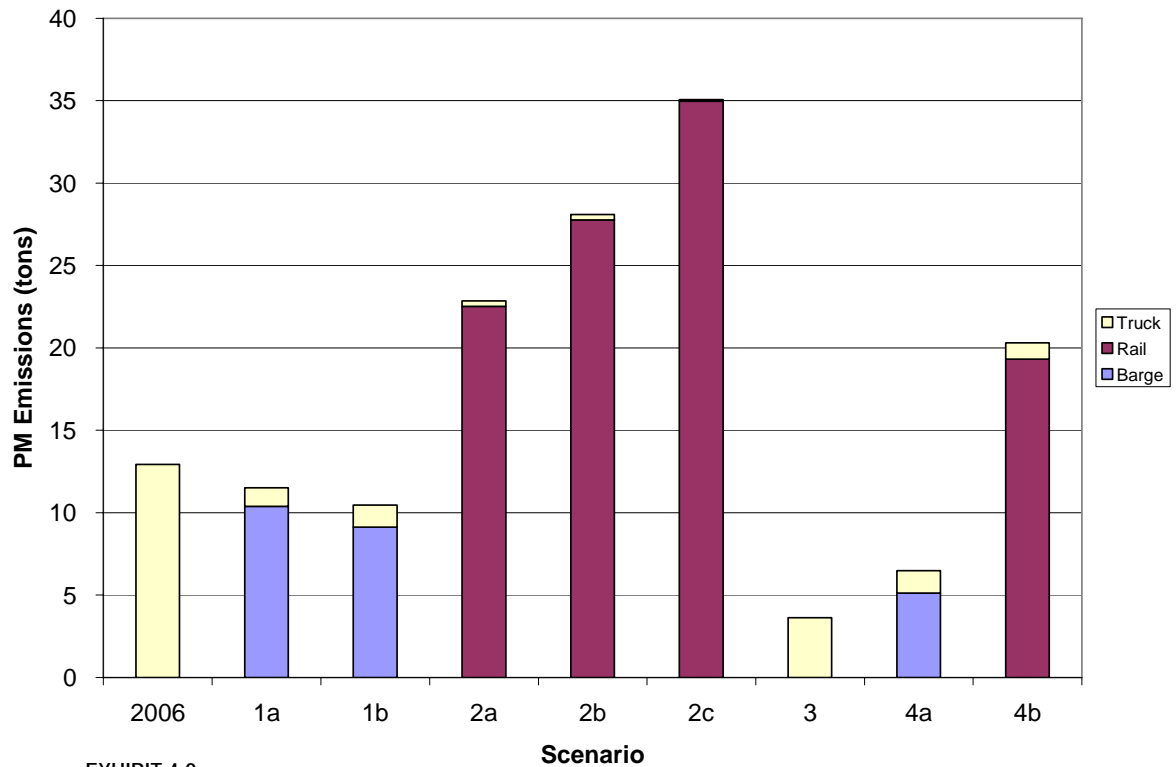


EXHIBIT 4-9
Estimated PM Emissions (tons)
PV 2010-2019

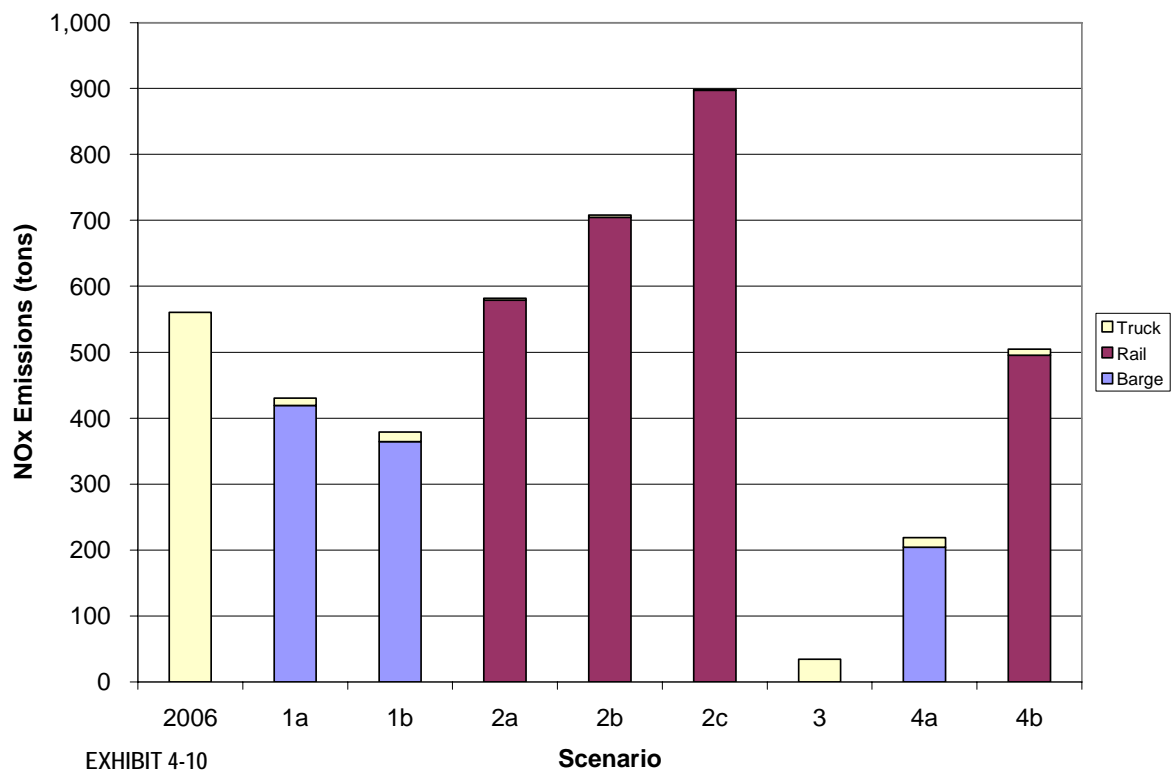


EXHIBIT 4-10
Estimated NO_x Emissions (tons)
PV 2010-2019

EXHIBIT 4-11

Fuel Use and Emissions Summary

	Present Value, Operations from 2010-2019			
	Fuel	Emissions (tons)		
	(Gallons)	CO2	PM	NOx
Total				
Current System	8,549,621	95,347	12.9	560.6
Scenario 1a - Barge:T2 (west) and Willow Creek (east)	4,343,051	48,237	11.5	430.5
Scenario 1b - Barge Northern Portland (west) and Willow Creek (east)	4,817,262	53,561	10.5	378.7
Scenario 2a - Rail: T2 (west) and CRL (east)	5,634,355	66,709	22.9	582.1
Scenario 2b - Rail: T2 (west) and Port of Morrow (east)	8,969,528	104,636	27.8	708.1
Scenario 2c - Rail: Portland Rail Yard and Metro South (west) and CRL (east)	7,548,842	91,478	34.9	898.1
Scenario 3 - Truck Haul Similar to Current System	7,780,479	86,364	3.6	34.5
Scenario 4a - Barge from Central (T2-Willow Creek) and Truck from South	3,823,356	42,454	6.5	218.8
Scenario 4b - Rail from Central (T2-CRL) and Truck from South	6,159,217	72,542	20.3	504.7
Barge				
Current System	0	0	0.0	0.0
Scenario 1a - Barge:T2 (west) and Willow Creek (east)	1,866,350	20,746	10.4	419.0
Scenario 1b - Barge Northern Portland (west) and Willow Creek (east)	1,622,913	18,040	9.1	364.3
Scenario 2a - Rail: T2 (west) and CRL (east)	0	0	0.0	0.0
Scenario 2b - Rail: T2 (west) and Port of Morrow (east)	0	0	0.0	0.0
Scenario 2c - Rail: Portland Rail Yard and Metro South (west) and CRL (east)	0	0	0.0	0.0
Scenario 3 - Truck Haul Similar to Current System	0	0	0.0	0.0
Scenario 4a - Barge from Central (T2-Willow Creek) and Truck from South	910,415	10,120	5.1	204.3
Scenario 4b - Rail from Central (T2-CRL) and Truck from South	0	0	0.0	0.0
Rail				
Current System	0	0	0.0	0.0
Scenario 1a - Barge:T2 (west) and Willow Creek (east)	0	0	0.0	0.0
Scenario 1b - Barge Northern Portland (west) and Willow Creek (east)	0	0	0.0	0.0
Scenario 2a - Rail: T2 (west) and CRL (east)	4,763,950	57,047	22.5	578.9
Scenario 2b - Rail: T2 (west) and Port of Morrow (east)	5,801,001	69,465	27.8	704.9
Scenario 2c - Rail: Portland Rail Yard and Metro South (west) and CRL (east)	7,270,774	88,391	34.9	897.1
Scenario 3 - Truck Haul Similar to Current System	0	0	0.0	0.0
Scenario 4a - Barge from Central (T2-Willow Creek) and Truck from South	0	0	0.0	0.0
Scenario 4b - Rail from Central (T2-CRL) and Truck from South	4,021,263	48,810	19.3	495.3
Truck				
Current System	8,549,621	95,347	12.9	560.6
Scenario 1a - Barge:T2 (west) and Willow Creek (east)	2,476,701	27,492	1.1	11.5
Scenario 1b - Barge Northern Portland (west) and Willow Creek (east)	3,194,348	35,521	1.3	14.5
Scenario 2a - Rail: T2 (west) and CRL (east)	870,405	9,662	0.3	3.2
Scenario 2b - Rail: T2 (west) and Port of Morrow (east)	3,168,527	35,171	0.3	3.2
Scenario 2c - Rail: Portland Rail Yard and Metro South (west) and CRL (east)	278,068	3,087	0.1	1.0
Scenario 3 - Truck Haul Similar to Current System	7,780,479	86,364	3.6	34.5
Scenario 4a - Barge from Central (T2-Willow Creek) and Truck from South	2,912,941	32,334	1.4	14.5
Scenario 4b - Rail from Central (T2-CRL) and Truck from South	2,137,954	23,732	1.0	9.3

EXHIBIT 4-12

Summary of Fuel Use and Emissions in the Columbia River Gorge Scenic Area

	Present Value, Operations from 2010- 2019	
	Fuel (Gallons)	Emissions NOx
Total		
Current System	4,668,543	306.1
Scenario 1a - Barge:T2 (west) and Willow Creek (east)	3,482,960	223.6
Scenario 1b - Barge Northern Portland (west) and Willow Creek (east)	3,870,355	238.0
Scenario 2a - Rail: T2 (west) and CRL (east)	4,763,950	326.9
Scenario 2b - Rail: T2 (west) and Port of Morrow (east)	5,801,001	326.9
Scenario 2c - Rail: Portland Rail Yard and Metro South (west) and CRL (east)	4,077,529	503.1
Scenario 3 - Truck Haul Similar to Current System	4,249,379	18.8
Scenario 4a - Barge from Central (T2-Willow Creek) and Truck from South	2,750,924	114.3
Scenario 4b - Rail from Central (T2-CRL) and Truck from South	5,963,181	288.3
Barge		
Current System	0	0.0
Scenario 1a - Barge:T2 (west) and Willow Creek (east)	3,212,451	221.1
Scenario 1b - Barge Northern Portland (west) and Willow Creek (east)	3,397,985	233.8
Scenario 2a - Rail: T2 (west) and CRL (east)	0	0.0
Scenario 2b - Rail: T2 (west) and Port of Morrow (east)	0	0.0
Scenario 2c - Rail: Portland Rail Yard and Metro South (west) and CRL (east)	0	0.0
Scenario 3 - Truck Haul Similar to Current System	0	0.0
Scenario 4a - Barge from Central (T2-Willow Creek) and Truck from South	1,567,049	107.8
Scenario 4b - Rail from Central (T2-CRL) and Truck from South	0	0.0
Rail		
Current System	0	0.0
Scenario 1a - Barge:T2 (west) and Willow Creek (east)	0	0.0
Scenario 1b - Barge Northern Portland (west) and Willow Creek (east)	0	0.0
Scenario 2a - Rail: T2 (west) and CRL (east)	4,763,950	326.9
Scenario 2b - Rail: T2 (west) and Port of Morrow (east)	5,801,001	326.9
Scenario 2c - Rail: Portland Rail Yard and Metro South (west) and CRL (east)	4,077,529	503.1
Scenario 3 - Truck Haul Similar to Current System	0	0.0
Scenario 4a - Barge from Central (T2-Willow Creek) and Truck from South	0	0.0
Scenario 4b - Rail from Central (T2-CRL) and Truck from South	4,021,263	279.7
Truck		
Current System	4,668,543	306.1
Scenario 1a - Barge:T2 (west) and Willow Creek (east)	270,509	2.5
Scenario 1b - Barge Northern Portland (west) and Willow Creek (east)	472,370	4.2
Scenario 2a - Rail: T2 (west) and CRL (east)	0	0.0
Scenario 2b - Rail: T2 (west) and Port of Morrow (east)	0	0.0
Scenario 2c - Rail: Portland Rail Yard and Metro South (west) and CRL (east)	0	0.0
Scenario 3 - Truck Haul Similar to Current System	4,249,379	18.8
Scenario 4a - Barge from Central (T2-Willow Creek) and Truck from South	1,183,875	6.4
Scenario 4b - Rail from Central (T2-CRL) and Truck from South	1,941,918	8.6

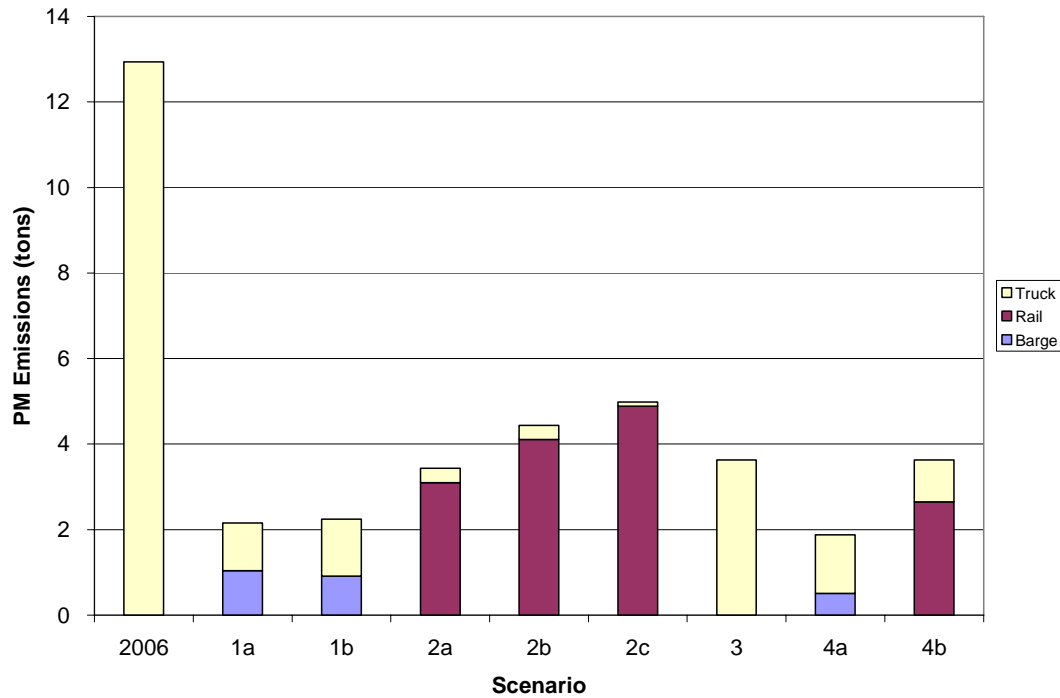


EXHIBIT 4-13
 Estimated PM Emissions under Proposed EPA Marine Diesel and Locomotive Standards (tons)
PV 2010-2019

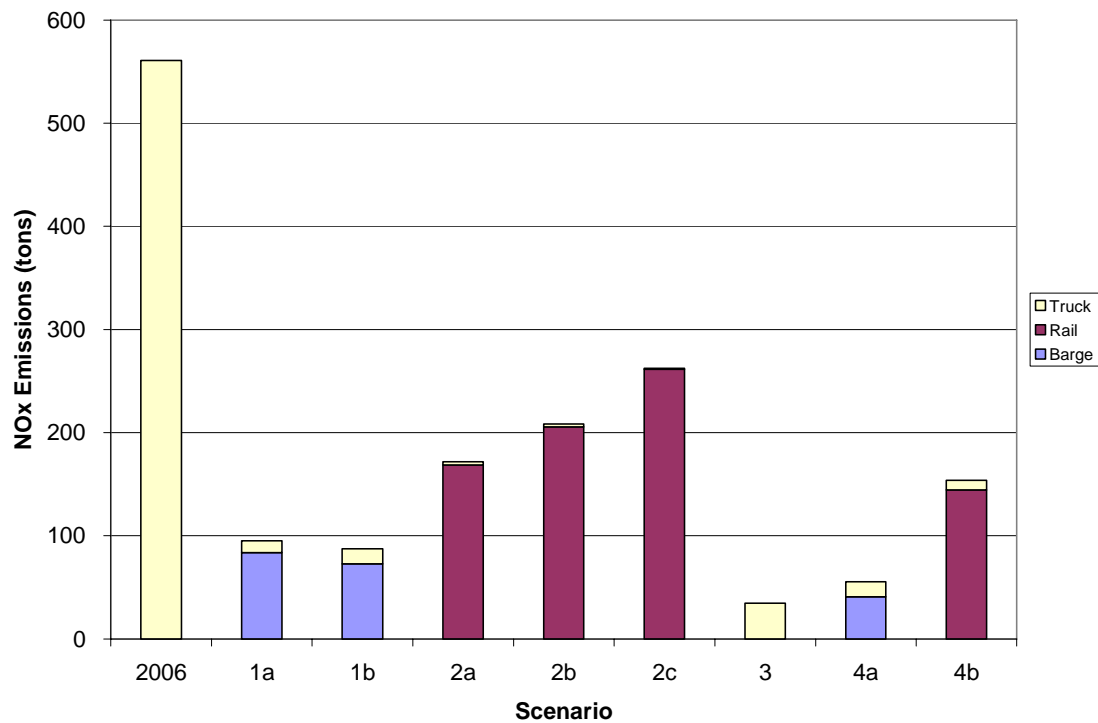


EXHIBIT 4-14
 Estimated NO_x Emissions under Proposed EPA Marine Diesel and Locomotive Standards (tons)
PV 2010-2019

SECTION 5

Value Modeling of Scenarios

A value modeling methodology (multi-criteria decision analysis) was used to evaluate the cost, environmental, socioeconomic, and operational aspects of each scenario. Value modeling is a method of evaluating how well a series of options rate against a chosen set of objectives. It is a particularly useful tool when important non-monetary values and objectives exist, stakeholder input must be considered, and clear documentation of methods and results is important. The value modeling approach consists of the following six elements:

- Establish the decision goal
- Identify and specify fundamental objectives
- Develop performance measures to assess project performance against objectives
- Add technical detail to the performance measures, and assign scores to the performance measures
- Assign weights to the objectives
- Calculate value scores and conduct sensitivity analysis

5.1 Council Values and Objectives Hierarchy

In establishing the objectives for this analysis, Metro Council Goals and Objectives and Critical Success Factors and the values established for the Metro disposal system were reviewed. The following were thought to be particularly relevant to this analysis:

Goal and Objective 2. Environmental Health

2.3 The region's waste stream is reduced, recovered, and returned to productive use, and the remainder has a minimal impact on the environment

2.4 Metro is a model for sustainable business practices

Metro Critical Success Factors

1. Metro sets a standard of fiscal prudence, integrity, transparency and accountability that is emulated by others

1.3 Metro programs are sustainably supported at an appropriate level and are right-sized in relation to their benefits

Disposal System Values

Environmental sustainability

Ensure reasonable, affordable rates

The project team worked with Metro staff and developed a hierarchy of objectives that forms the foundation of the value modeling approach. Exhibit 5-1 presents the objectives hierarchy used in this analysis. As shown there are various “levels” in the hierarchy in which lower levels help define or describe the meaning of the upper level objectives. The two first level, or fundamental objectives are Metro’s cost values and its non-cost values. The next level under non-cost values includes three second-level objectives: environmental, socioeconomic, and operations; there are no second-level objectives associated with cost. Also listed are various third and fourth level objectives that clarify Metro’s objectives further.

EXHIBIT 5-1
Objectives Hierarchy

Decision Context: Evaluate various transportation scenarios to provide insight into ways of structuring Metro’s pending procurement process for solid waste transportation services.

1. Metro Cost Values (Minimize long-term life-cycle cost)
2. Metro Non-Cost Values
 - 2.1 Environmental
 - 2.1.1 Minimize use of non-renewable fuel and harmful air emissions
 - PM
 - NO_x
 - Greenhouse gases (CO₂)
 - 2.1.2 Minimize impacts in CR Gorge National Scenic Area
 - Non-renewable fuel (proxy for SO_x)
 - NO_x
 - Potential for impacts other than emissions
 - 2.2 Socioeconomic
 - 2.2.1 Minimize impacts to neighborhoods
 - Facility proximity effects (noise, traffic)
 - Traffic and associated emissions
 - 2.2.2 Enhance regional freight movement
 - Likelihood of a regional freight hub or terminal that leads to economic growth
 - Minimizes truck trips in congested roadways in Metro Area during peak traffic periods
 - 2.2.3 Enhance relationships with Gilliam County partners
 - Provides jobs
 - Supports development of transportation infrastructure
 - 2.3 Operations (Flexibility, Reliability, Risk)
 - 2.3.1 Has flexibility to respond to future changes in disposal and transfer
 - Metro South
 - Attract new wastes
 - Respond to new fuels and/or emission technologies
 - 2.3.2 Reliable, consistent, timely service throughout contract
 - 2.3.3 Manages risk that can not be mitigated
 - Likelihood of waste release to environment
 - Consequence of waste release to environment
 - Ability to provide backup service during emergency outage
 - Not influenced by potential fishery and dam issues
 - Relatively insensitive to fuel price increases

5.2 Performance Measures and Scoring

Performance measures were developed for each objective that was identified by the project team for measurement. The performance measures and descriptions of constructed scales are shown in Exhibit 5-2. The constructed scales are qualitative measures in which the best feasible outcome rates a 5, and the worst conceivable outcome rates a 1.

Exhibit 5-3 shows how well each scenario was judged to meet each objective. Results reported in Section 4 were used to score cost and emissions measures, and the project team met to assign scores to the constructed scales. The rationale for the constructed scale scores for each scenario is documented in Appendix D.

5.3 Weighting

CH2M HILL and a Metro staff working group prepared an initial assessment of the relative importance of each objective in accordance with the Metro Council's stated values. The initial objectives hierarchy and weights were presented to the Metro Council Liaison's for this project, then to the full Council at a study session on March 20, 2007. In response to feedback from the Council, the hierarchy and weights were revised to reflect the weights shown in Exhibit 5-4.

During the work session it was agreed that the sensitivity of the results should be tested for relative weights on cost of 30, 60, and 90.

EXHIBIT 5-2
Performance Scales

					Description of 1-5 Performance Scales				
Objectives Hierarchy		Performance Measure	Best	Worst	5	4	3	2	1
1. Metro Cost Values		Planning-level 2010 Costs in million 2007\$	\$10.0	\$20.0	Estimated Costs				
2. Metro Non-Cost Values									
	2.1 Environmental								
	2.1.1 Minimize use of non-renewable fuel and harmful air emissions								
	PM10	Tons	3.5	40.0	Estimated PM Emissions				
	NOx	Tons	30	950	Estimated NOx Emissions				
	Greenhouse gases (CO2)	Tons	40,000	110,000	Estimated CO2 Emissions				
	2.1.2 Minimize impacts in CR Gorge National Scenic Area								
	Non-renewable fuel (proxy for SO2)	million gallons			Estimated Fuel Use				
	NOx	Tons			Estimated NOx Emissions				
	Potential for impacts other than emissions	1-5 scale	5	1	Few issues of concern		Some issues of concern		A number of issues of concern
	2.2 Socioeconomic								
	2.2.1 Minimize impacts to neighborhoods	1-5 scale	5	1	All truck travel is on routes currently used by Metro transportation contractor	New facility in industrial zone and/or some new truck travel on routes that pass by properties zoned industrial or commercial; impact of additional truck traffic on those streets is small			New facility likely to result in organized opposition and/or some new truck travel on routes that are zoned commercial or residential; impact of additional truck traffic on those streets is noticeable and mitigation may be required
	2.2.2 Enhance regional freight movement	1-5 scale	5	1	Scenario includes a terminal with barge and rail access; no increase in truck trips on congested roadways during peak traffic periods	Scenario includes a terminal with barge or rail access; no increase in truck trips on congested roadways during peak traffic periods	Scenario includes a terminal with barge or rail access; some increase in truck trips on congested roadways during peak traffic periods	Part of Metro's waste would be handled at a multi-modal terminal with some increase in truck trips on congested roadways during peak traffic periods, or no change from current system	No multi-modal terminal and an increase in truck trips on congested roadways during peak traffic periods
	2.2.3 Enhance relationships with Gilliam County partners	1-5 scale	5	1	Employment for Gilliam County workers likely to be similar or greater than in current contract		Employment for Gilliam County workers likely to be noticeably less, but contract supports development of new infrastructure in Gilliam County		Few opportunities for Gilliam County infrastructure or jobs
	2.3 Operations (Flexibility, Reliability, Risk)								
	2.3.1 Has flexibility to respond to future changes in disposal and transfer	1-5 scale	5	1	Maximum possible flexibility for foreseeable future changes				Very inflexible for one or more potential future changes
	2.3.2 Reliable, consistent, timely service throughout	1-5 scale	5	1	Track record of reliable, consistent, and timely service in region and no major constraints to this continuing throughout the contract	Track record of reliable, consistent, and timely service in region, but some challenges related to potential service interruption throughout the contract			Concerns exist with current and likely future operations that could result in noticeable increased cost to Metro, challenges to staff and/or impacts to customers at transfer stations
	2.3.3 Manages risk that can not be mitigated	1-5 scale	5	1	Not highly exposed to listed unmitigable risks		A moderate level of exposure to unmitigable risks exists		A relatively high level of exposure to unmitigable risks exists

EXHIBIT 5-3
Decision Scores

			Decision Scores								
Objectives Hierarchy			Scale	Scenario							
				1a	1b	2a	2b	2c	3	4a	4b
1. Metro Cost Values			2010 in mill. 2007\$	\$13.0	\$13.0	\$15.6	\$18.3	\$14.8	\$12.2	\$12.7	\$16.5
2. Metro Non-Cost Values											
	2.1 Environmental										
		2.1.1 Minimize use of non-renewable fuel and harmful air emissions									
		PM	PV 2010-19, tons	11.4	10.6	22.9	27.8	34.9	3.6	6.3	20.3
		NOx	PV 2010-19, tons	430.6	378.6	582.1	708.1	898.1	34.5	219.0	504.7
		Greenhouse gases (CO2)	PV 2010-19, tons	48,237	53,561	66,709	104,636	91,478	86,364	42,454	72,542
	2.1.2 Minimize impacts in CR Gorge National Scenic Area										
		Non-renewable fuel	PV 2010-19, mgal.	3.5	3.9	4.8	5.8	4.1	4.2	2.8	6.0
		NOx	PV 2010-19, tons	223.7	237.9	326.9	326.9	503.1	18.8	114.4	288.3
		Potential for impacts other than emissions in Columbia River Gorge National Scenic Area	1-5 scale	3.5	3.5	3.5	3.5	3.5	2.0	3.0	3.0
	2.2 Socioeconomic										
		2.2.1 Minimize impacts to neighborhoods	1-5 scale	4.0	4.0	4.0	4.0	2.0	5.0	4.5	4.5
		2.2.2 Enhance regional freight movement	1-5 scale	4.0	4.5	3.0	3.0	2.5	2.0	3.5	2.5
		2.2.3 Enhance relationships with Gilliam County partners	1-5 scale	3.5	3.0	1.0	2.5	1.0	5.0	4.0	3.0
	2.3 Operations (Flexibility, Reliability, Risk)										
		2.3.1 Has flexibility to respond to future changes in disposal and transfer	1-5 scale	3.0	3.0	3.0	3.0	2.0	4.0	3.5	3.5
		2.3.2 Reliable, consistent, timely service throughout contract	1-5 scale	3.0	3.0	2.0	2.0	2.0	5.0	4.0	3.0
		2.3.3 Manages risk that can not be mitigated	1-5 scale	2.0	2.0	3.0	3.0	3.0	4.0	3.0	3.5

EXHIBIT 5-4

Weights Assigned to Objectives

Objectives Hierarchy		Weights				Percent Weight ^a
		Level 1	Level 2	Level 3	Level 4	
1. Metro Cost Values		60%				60.0%
2. Metro Non-Cost Values		40%				
	2.1 Environmental		40%			
	2.1.1 Minimize use of non-renewable fuel and harmful air emissions			70%		
	PM				50%	5.6%
	NOx				25%	2.8%
	Greenhouse gases (CO2)				25%	2.8%
	2.1.2 Minimize impacts in CR Gorge National Scenic Area			30%		
	Non-renewable fuel (proxy for SO2)				55%	2.6%
	NOx				35%	1.7%
	Potential for impacts other than emissions				10%	0.5%
	2.2 Socioeconomic		10%			
	2.2.1 Minimize impacts to neighborhoods			50%		2.0%
	2.2.2 Enhance regional freight movement			25%		1.0%
	2.2.3 Enhance relationships with Gilliam County partners			25%		1.0%
	2.3 Operations (Flexibility, Reliability, Risk)		50%			
	2.3.1 Has flexibility to respond to future changes in disposal and transfer			25%		5.0%
	2.3.2 Reliable, consistent, timely service throughout contract			60%		12.0%
	2.3.3 Manages risk that can not be mitigated			15%		3.0%

^aThe percent weights are applied to the scores (Exhibit 5-3) in a weighted averaging process. An example calculation of the percent weights follows:
PM weight is 5.6%, which is 40% * 40% * 70% * 50%

5.4 Results

The performance scales and weights were entered into Criterium Decision Plus software to compile the results. The results of the value model analysis are shown in Exhibit 5-5. As shown, Scenarios 3 (trucking with new, low emission engines) and 4a (barge from Central and truck from South) are the scenarios that best meet this representation of Metro's values. The other two barge scenarios, 1a and 1b, also score relatively high.

Exhibit 5-5 also provides some insight into the reasons for this result. Scenarios 3 and 4a perform well on all the main cost and non-cost values, in particular Scenario 3 scores best in operations performance and is similar in cost to Scenarios 4a, 1a, and 1b. Most scenarios are fairly similar in environmental performance.

Exhibit 5-6 provides an additional view of how the scenarios scored on the sub-elements of the three non-cost values.

Exhibits 5-7 to 5-9 show how the scenarios perform as the relative weight assigned to cost changes from 30 percent to 60 percent to 90 percent. As shown, the rank ordering of scenarios is quite stable regardless of the weight assigned to cost: there is no change in the ordering of the four highest rated scenarios. The only changes in rank order occur between the rail options (2a, 2b, 2c, 4b): Scenario 4b scores best when cost is assigned a 30 percent weight and Scenario 2c scores best when cost is assigned a 90 percent weight.

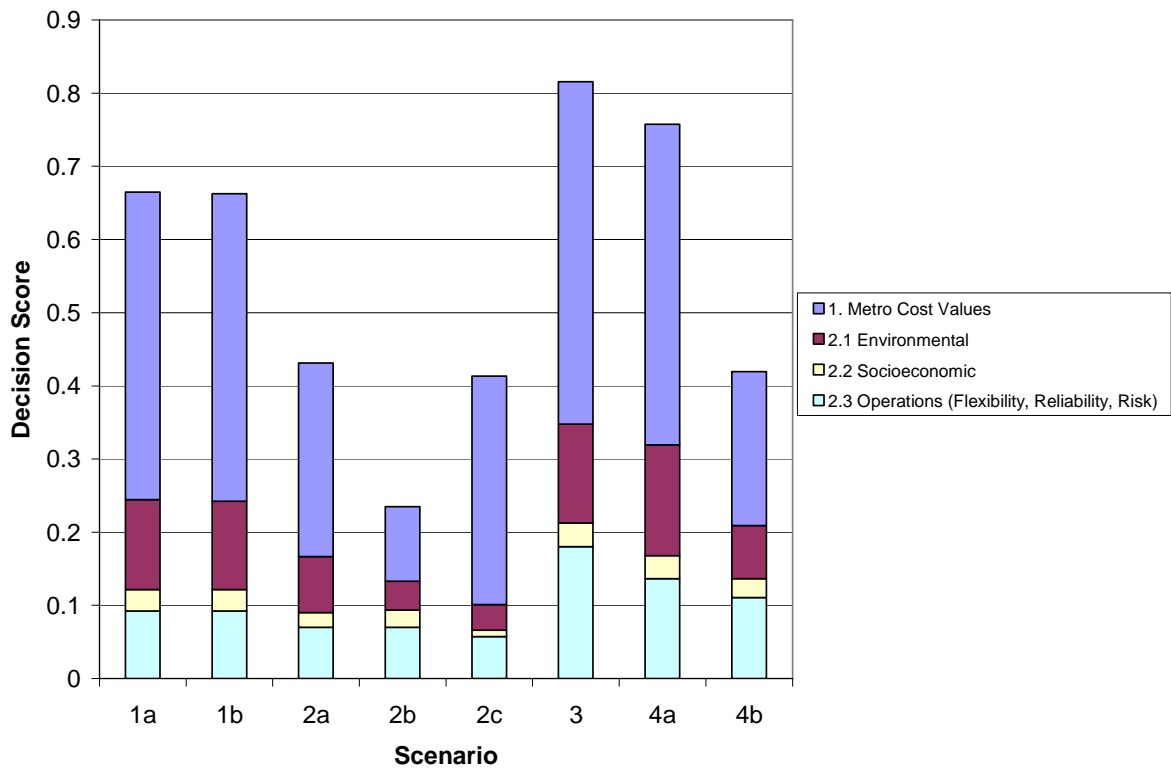


EXHIBIT 5-5
Value Model Results

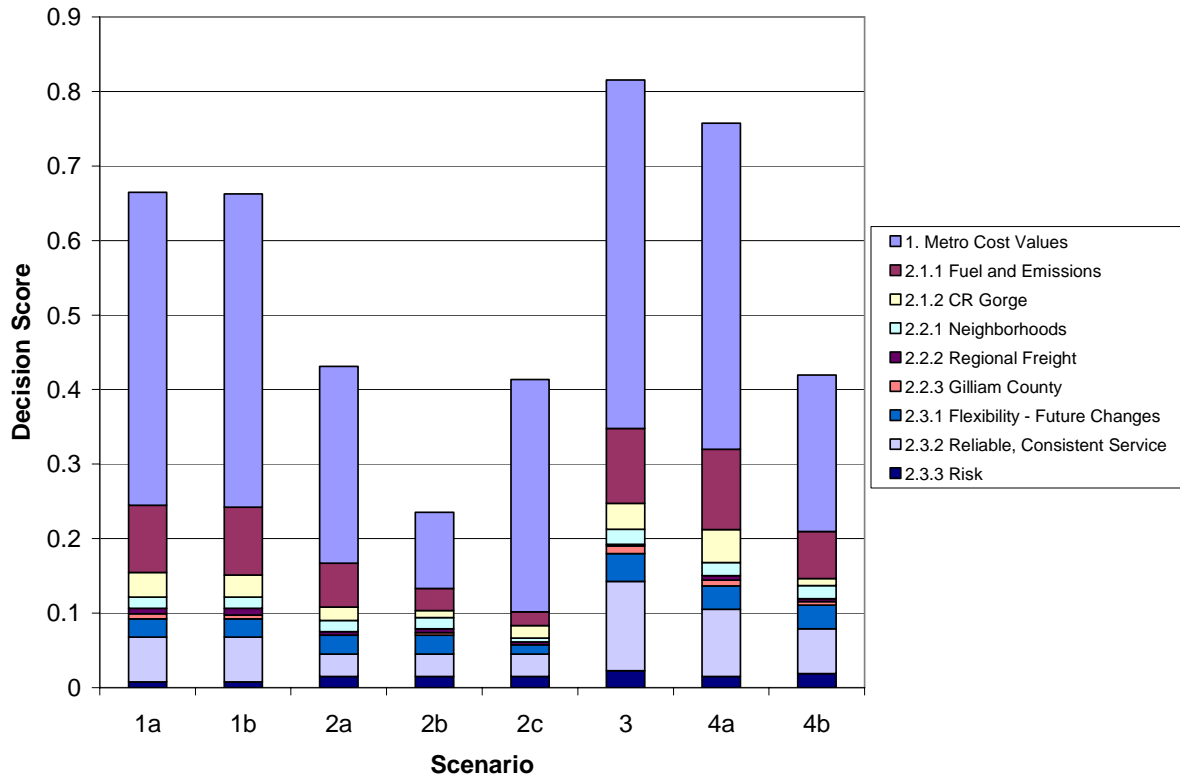
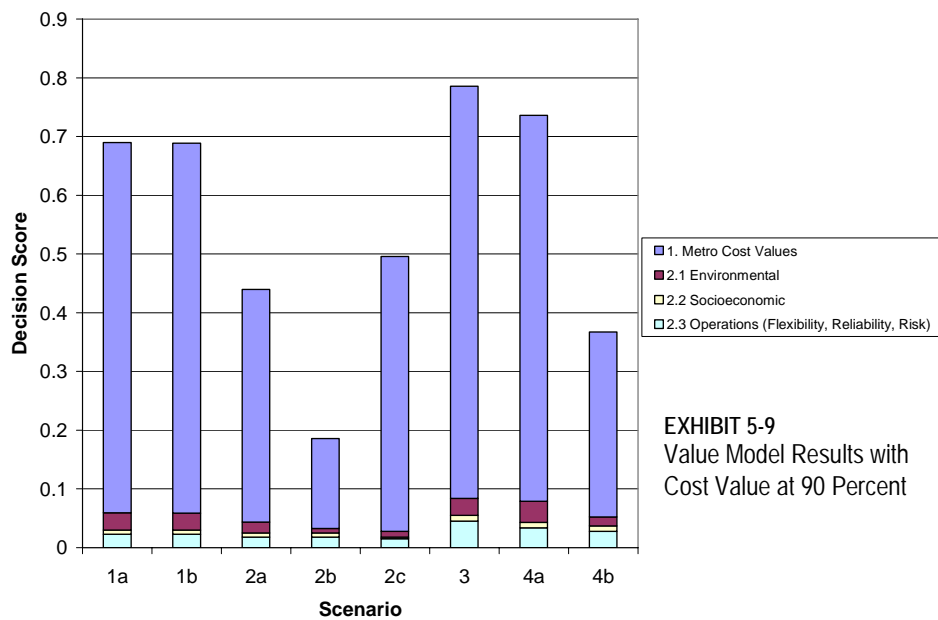
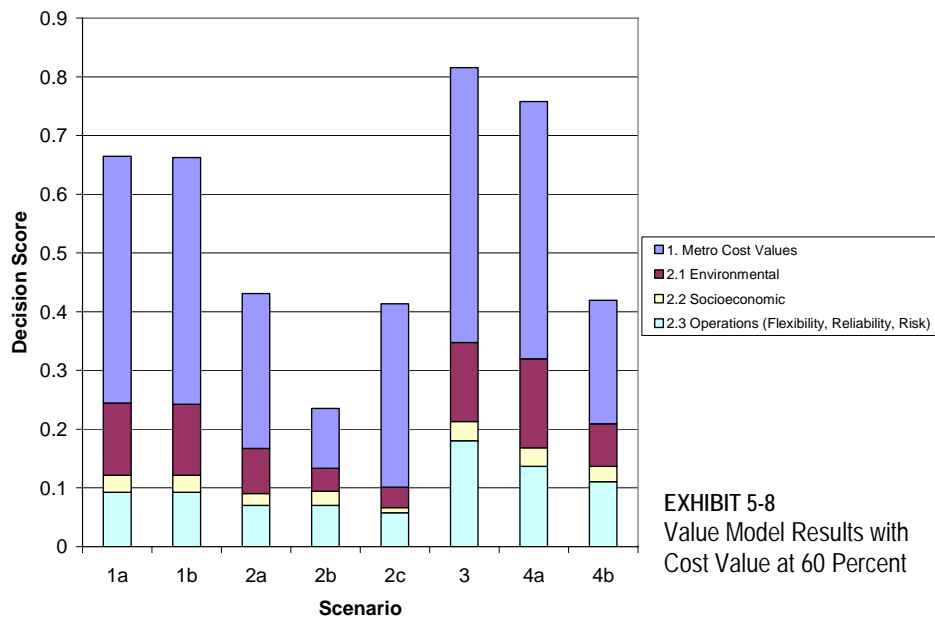
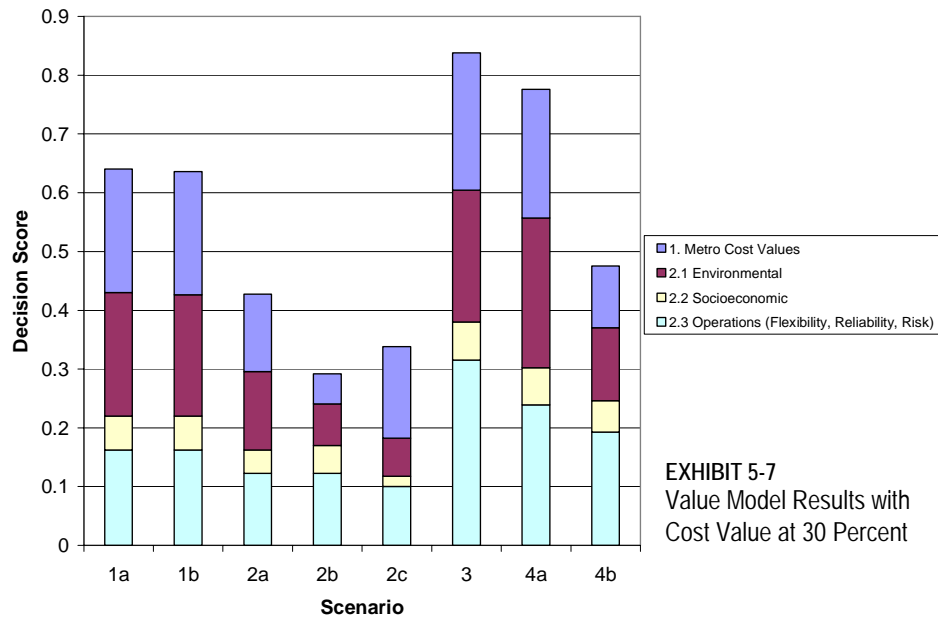


EXHIBIT 5-6
Additional Value Model Results



INFORMATION ON METRO COMPACTION EQUIPMENT



600 NE Grand Ave.
Portland, OR 97232-2736

February 15, 2007

To Prospective Transportation Contractors

RE: Metro Waste Transport Contract

A number of firms have requested information regarding the dimensions of the existing trailers used to currently perform waste transport services for Metro. Attached is a drawing, together with some supplemental information presented below. It should be noted that the height of trailers has increased over time from that shown in the drawing. Information regarding compactors is also presented in this communication.

The following information is supplemental to the drawing of a loaded truck and trailer.

The compactors at Metro facilities create a bale of waste that is 7' wide by 7' tall and can vary in length up to a maximum length of 34'. The length of the bale can be shortened as desired or needed; 29.5 to 31 feet is average depending on the time of day (mornings are typically shorter than at night). Currently the typical bale weighs 30.7 tons.

Waste bales will ravel (slough from the top down) and expand, as they are loaded. There is 1 to 4 feet of raveling at the front of a bale and 2 to 3 feet in the rear, depending on the type of material in the bale and how dense the bale was compacted. The bales will also expand 6 to 12 inches depending on material type. There are a number of factors that affect the expansion and raveling of the bales- type of material, moisture content, size of particles, etc. Metro South is able to break material up by driving over it with a dozer and the dust suppression system at that station adds moisture to dusty loads. This produces more consistent bales that at Metro Central, which does not have a dozer or large a dust suppression system.

The existing trailers back up to the compactor; the rear deck of the trailer goes under the front of the compactor approximately 36-inches. The front throat of the compactor extends about 28-inches into the trailer. The compactor is capable of pushing the bale of waste 7-feet 2-inches into the trailer (waste will, however, slough back as the compactor ram is retracted). With 4' of raveling in the front, a 34' bale could be pushed all the way to the front of a 45' trailer by the compactor ram. The front of the bale is usually pushed to within 1 to 2 feet of the front of the trailer, depending on the density/center of gravity (denser bales are not pushed in as far). The rear of the bale is usually 2 to 3 feet from the doors after loading.

Four of the five Metro compactors are equipped with programmable controllers that allow the operator to set the density and length of the bale. Due to the nature of the waste (it is heterogeneous in nature), it is difficult to be exact in controlling density, or center of gravity, within the bale.

Compactors

Attached is a drawing of one of the compactors in use at the Metro Central transfer station. It is one of the four single bale compactors in use. The height to the bottom of the chamber is 59 1/4". The outside dimension is 86 11/16" each way.

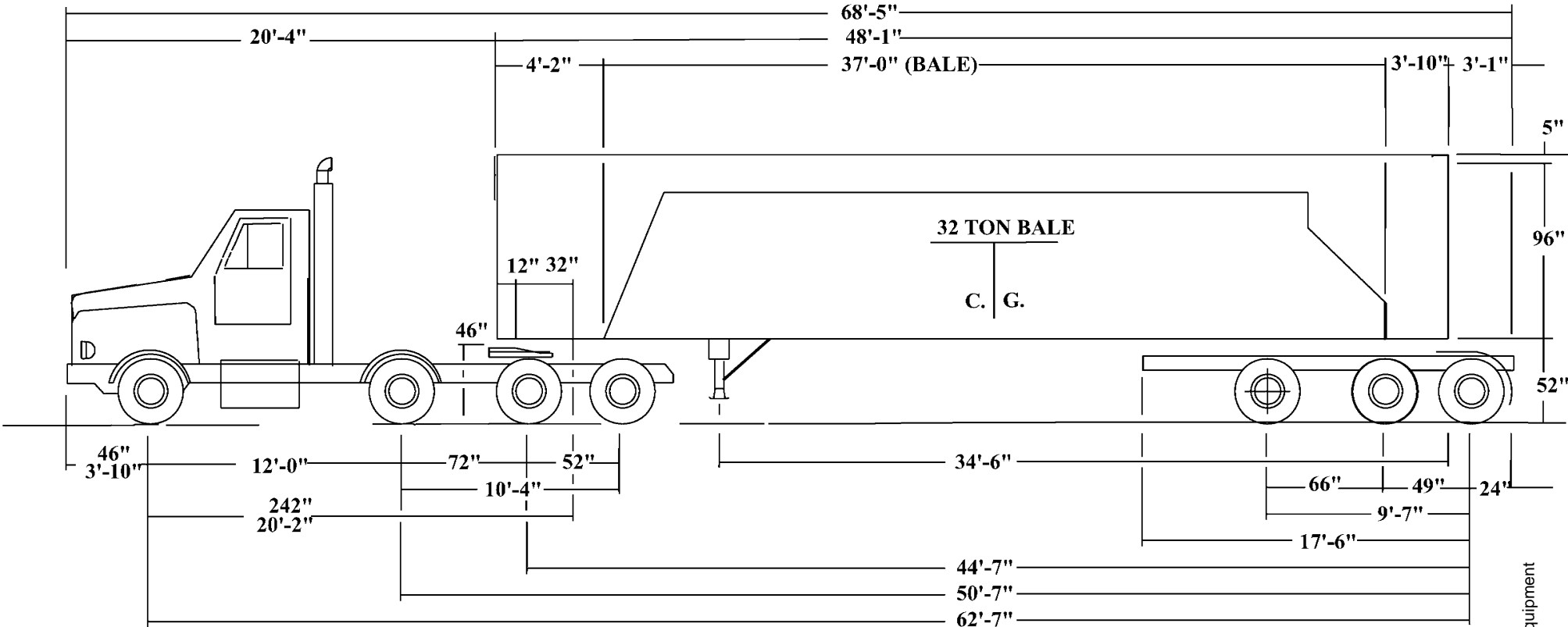
To obtain full drawings of the compactors, or additional information regarding either the trailers or compactors, contact Metro's Engineering Manager- Paul Ehinger at ehingerp@metro.dst.or.us or 503-797-1789.

Chuck Geyer
Metro Waste Transport Options Study PM

CG:gbc
Enclosures: Trailer drawing, Compactor drawing
M:\rem\remdept\projects\Transport\project\Vendor Notes\vendor letter February 15.doc
Queue

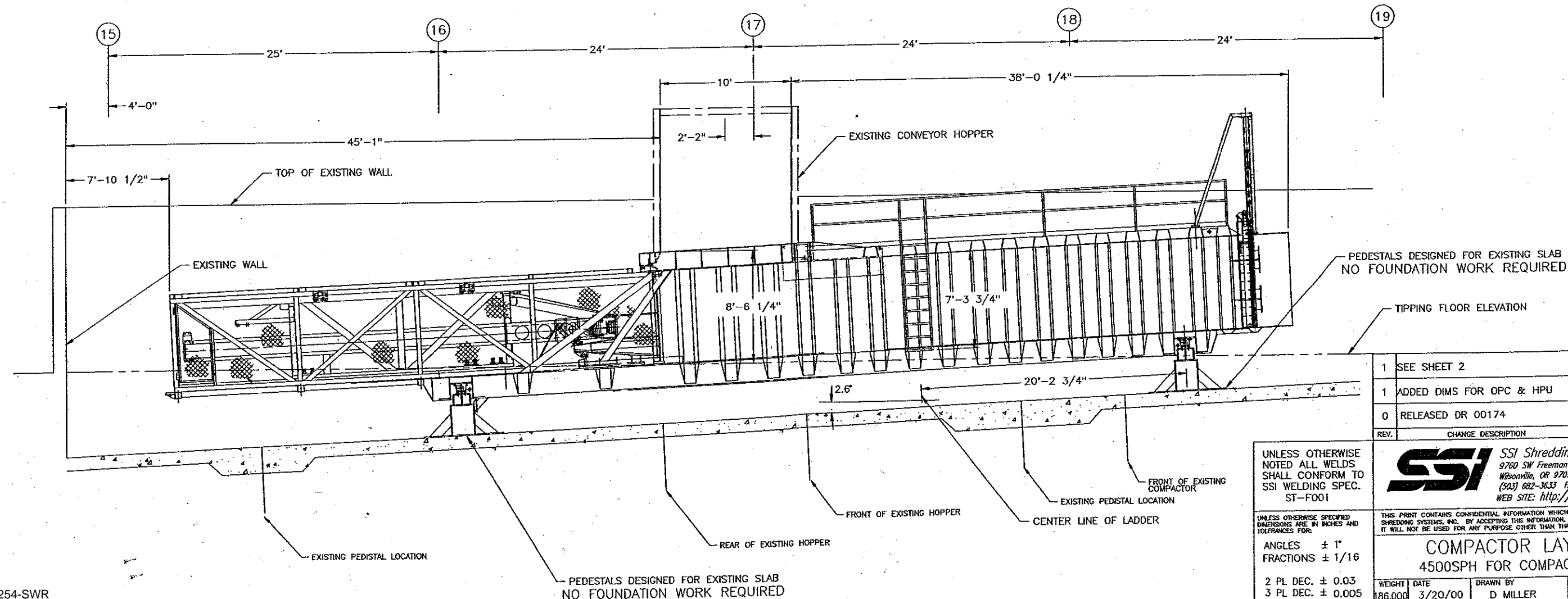
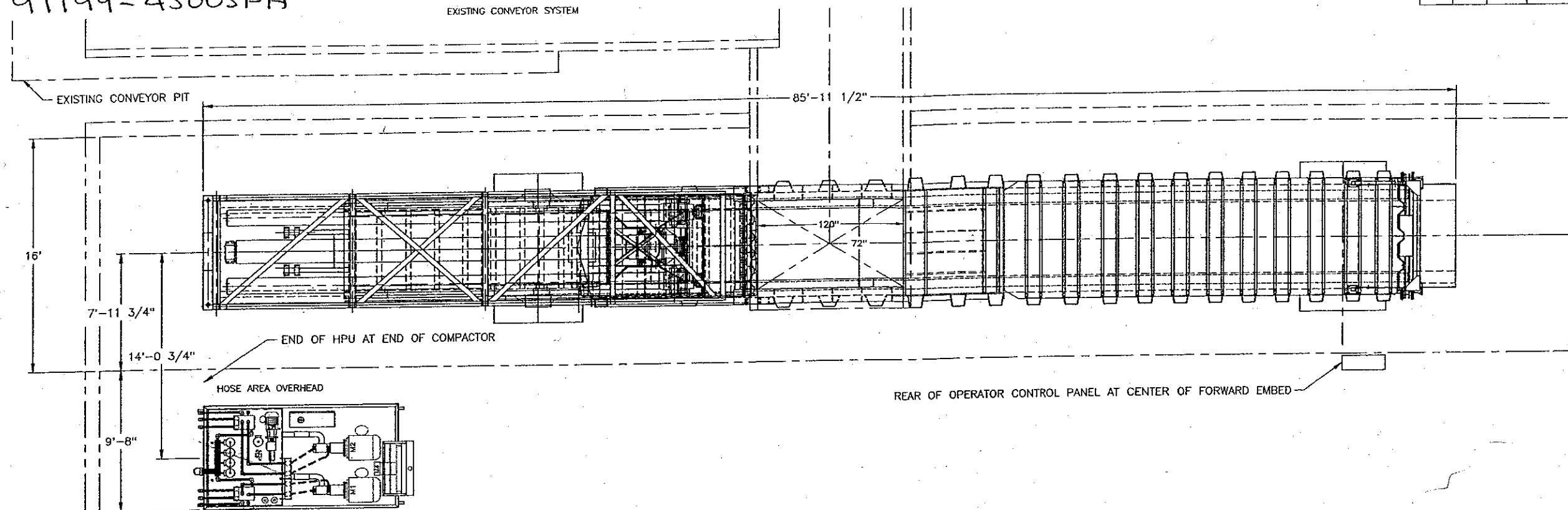
Jack Gray (45 ft. semitrailer)

APPROVED BY TOM BRADD FOR OVER-WEIGHT PERMIT ON JUNE 23, 1989



METRO CENTRAL # 1
91199-4500SPH

ITEM NO.	QTY.	FAB CODE	MFG CODE	MATERIAL
----------	------	----------	----------	----------



1	SEE SHEET 2	1/01	DM	DM
1	ADDED DIMS FOR OPC & HPU	8/00	DM	DM
0	RELEASED DR 00174	3/20/00	DM	DM
REV.	CHANGE DESCRIPTION	DATE	DRAWN	APPR.

UNLESS OTHERWISE NOTED ALL WELDS SHALL CONFORM TO SSI WELDING SPEC. ST-F001

SSI Shredding Systems, Inc.
9760 SW Freeman Drive
Wilsonville, OR 97070-9286 USA
(503) 682-3633 FAX (503) 682-1704
WEB SITE: <http://www.ssiworld.com>

UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCHES AND TOLERANCES FOR:

ANGLES ± 1°
FRACTIONS ± 1/16
2 PL DEC. ± 0.03
3 PL DEC. ± 0.005

THIS PRINT CONTAINS CONFIDENTIAL INFORMATION WHICH IS THE PROPERTY OF SSI SHREDDING SYSTEMS, INC. BY ACCEPTING THIS INFORMATION, THE BORROWER AGREES THAT IT WILL NOT BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT IS LOANED.

COMPACTOR LAYOUT 4500SPH FOR COMPACTOR #1

WEIGHT	DATE	DRAWN BY	SCALE	PLT SCALE
186,000	3/20/00	D MILLER	1"=48"	1"=48"
REF. DWG.	ASSY. DWG.	MODEL	DRAWING NUMBER	SHEET
		4500 SPH	80-2534-D	1 of 2

**COLUMBIA RIDGE LANDFILL
ENTRANCE POLICIES / CONTACT INFORMATION**

DRAFT

September 13, 2007

Mr. Chuck Geyer
Principal Planner
Metro- Solid Waste & Recycling
600 NE Grand Ave
Portland, OR 97232-2736

RE: Facilities Available to Metro's Waste Transport Contractor

Dear Mr. Geyer,

I am writing this letter to describe the service and areas Waste Management Disposal Services of Oregon (WMDS) is willing to provide to Metro's successful transportation bidder at our Columbia Ridge Landfill & Recycling Center (CRL).

Currently, the tipping operation for Metro's waste volume is performed exclusively by the Transport Contractor, CSU. We feel we can find some efficiency for both Metro's unloading operation, and our own unloading operation if we combine our tipping operations and CSU's together. Our plan would be to purchase an additional tipper, and staff it with an operator and helper. We would then open up our three tippers, giving Metro trucks the option of tipping from any of the four available tippers. This should help with the congestion issues that occur on the CSU tipper from time to time. WMDS would be able to provide this service for \$.50/ton (assuming no significant fluctuations in tonnage). The transportation contractor will continue to be responsible for delivering the trailers/containers to the tipper deck.

In addition, WMDS will continue to provide the existing trailer staging area that accommodates approximately 200 trailers, and the pole building that CSU has been using to thaw containers. This building will be available only when thawing is necessary (anticipated to be one or two weeks per year on average). Performance of truck or equipment maintenance will not be allowed in this building. The transporter will be responsible for any necessary upkeep, or maintenance of both the staging area and thaw building, along with any necessary fuel or utilities. We will expect the transporter to conduct their operations on our site in both a safe and compliant manner. This includes adherence to our company policies and procedures, and compliance with any external agencies' requirements (OSHA, ODEQ, EPA, etc.). It is not likely we will need to relocate the staging area or pole building during the contract term, but we reserve the right to do so if our business warrants.

We will also continue to allow 24 hr access to the trailer staging area, seven days a week. Our gate is typically staffed from 6:00 AM to 9:00 PM. During these hours all trucks will be expected to stop and exchange information with the gate clerk. During the hours our gatehouse is closed, a separate procedure will be developed to ensure proper accounting of all loads.

Every load entering the site must have an unbroken seal (placed on the load at the transfer station). This seal will be removed at the landfill, and the number will be communicated to WMDS personnel. The loads from the staging area will only be unloaded during LF operating hours. Typically, operations begin at 6:00 AM and conclude eight to ten hours later. Current operations run five days/week, Monday thru Friday. Operating hours and schedule sometimes vary based upon volume demands and other factors.

Any bidder to Metro should assume no further support facilities or operations will be provided by WMDS. If you have any questions regarding this matter, please feel free to give me a call at (541) 454-3307. We appreciate the excellent relationship we have had with Metro and CSU over the life of this contract, and look forward to continuing this partnership as we move into the future with a new transport operation.

Sincerely,

WASTE MANAGEMENT DISPOSAL SERVICES OF OREGON

Will Spears
Site Manager

cc: Cal Palmer

**CONTACT INFORMATION FOR
PORT OF PORTLAND AND PORT OF ARLINGTON**

Jeff Krug
Port Of Portland – T- 2 Manager
Tel: 503-944-7218
Cell: 503-789-1501
Email: Jeff.Krug@Portofportland.Com
Web: www.Portofportland.Com

Gene Leverton, Principal (Contact For Port Of Arlington)
Tel: 503-281-3851
Fax: 503-281-8196
Leverton and Associates
3144 N.E. 17th Avenue
Portland, Oregon 97212
leverton@imagina.com

CSU – BNSF AND RUFUS LEASES

March 15, 2005

Baunach Enterprises, Inc.
PO Box 26
Rufus, OR 97050

Re: Lease for parking spaces

Dear Luella:

Our contract with Metro requires any lease arrangements we may have to include a provision that should CSU Transport default on the contract with Metro, that Metro would be provided the right to have that lease assigned to them under which Metro would assume all the obligations of CSU under that lease.

We are requesting that Baunach Enterprises agrees to the following:

In the event that CSU Transport, Inc. defaults under their existing Waste Hauling Contract with Metro and Metro assumes the operations of CSU Transport, Inc., under such Contract, Metro will be permitted to obtain an assignment of the lease between Baunach Enterprises and CSU, provided that said Assignment meets the approval of Baunach and Metro agrees to assume all of the obligations of CSU Transport, Inc. under the lease.

Please indicate your acceptance of the Metro assignment rights by signing both originals in the space provided below. After signing, please return one original to us and retain the other original for you records.

Sincerely,


Michael Benden
President - CSU Transport, Inc.

Agreed to and accepted by:

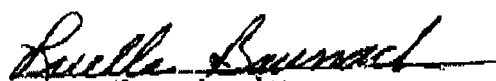

  4-5-05
Baunach Enterprises, Inc. Date

EXHIBIT "A"

ASSIGNMENT

✓ as of [Signature]
THIS AGREEMENT, made this 14TH day of MAY, 2001 among **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called Lessor, **SPECIALTY TRANSPORTATION SERVICES, INC.**, an Illinois corporation, hereinafter called Assignor, and **CSU TRANSPORT, INC.**, a Minnesota corporation, hereinafter called Assignee:

Whereas, Lessor and Assignor are parties to certain leases as shown on Exhibit "A" attached hereto and made a part hereof.

Assignor and Assignee desire that Assignor's interest in said leases be assigned to Assignee and that Lessor consent thereto.

NOW THEREFORE, the parties hereto, in consideration of their mutually-dependent promises, hereby agree as follows:

1. For a valuable consideration, the receipt of which by Assignor is acknowledged, Assignor sells, assigns, transfers and sets over to Assignee all of Assignor's interest in and under said leases, as the same may have heretofore been amended or modified and as the same may be hereby modified and amended.

2. Assignor understands and agrees that Assignor shall indemnify and hold harmless Lessor from any suit or claim growing out of any damages alleged to have been caused, in whole or in part, by (i) Assignor's use or occupation of the premises, (ii) an unhealthful, hazardous or dangerous condition caused by, contributed to, or aggravated by Assignor's presence on and use of the premises or (iii) Assignor's violation of any laws, ordinances, regulations or requirements pertaining to solid or other wastes, chemicals, oil and gas, toxic, corrosive, or hazardous materials, air, water (surface or groundwater) or noise pollution, and the storage, handling, use or disposal of any such material. Assignor shall bear the expense of all practices or work, preventative or remedial, which may be required because of the condition or use of the premises, by Assignor or those claiming by, through or under Assignor, during Assignor's occupancy. Assignor expressly agrees that the indemnification and hold harmless obligations and obligations pertaining to environmental matters, removal of improvements and restoration of the premises contained within the Lease shall survive assignment of said lease to Assignee. Assignor agrees that statutory limitation periods on actions to enforce these obligations shall not be deemed to commence until Lessor discovers any such health or environmental impairment, and Assignor hereby knowingly and voluntarily waives the benefits of any shorter limitation period.

3. Assignee hereby accepts said assignment and agrees to be bound by and to abide by each and every of the terms and conditions of said leases and hereby expressly assumes all liability for and agrees to pay to said Lessor all moneys which may be now or hereafter due or payable to it under the terms of said leases, including payment of any rentals and taxes now due and unpaid by Assignor.

4. Assignee shall use the premises covered by said assignment for the exclusive purpose of TRUCK AND TRAILER STAGING AND PARKING AREA.

5. Lessor consents to the assignment from Assignor to Assignee, provided that such consent shall not be construed as consent to any further assignment of said leases.

6. This agreement shall be effective as of MAY 14, 2001.

7. Prior to completion of this assignment a processing fee of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to Lessor.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

By:

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

[Signature]
DIRECTOR OPERATIONS
STATIONARY CEMENT SERVICES
ATTORNEY-IN-FACT FOR BNSF

Witnesses to execution by Assignor:

SPECIALTY TRANSPORTATION
SERVICES, INC.

By:

Title:

[Signature]
President

Witnesses to execution by Assignee:

CSU TRANSPORT, INC.

By:

Title:

[Signature]
President

EXHIBIT "A"
LEASES TO BE ASSIGNED TO (CSU TRANSPORT, INC.)

<u>LEASE NO.</u>	<u>DATE</u>	<u>CITY, COUNTY AND STATE</u>	<u>LESSEE</u>	<u>PURPOSE</u>
501,022	2/1/98	WILLBRIDGE, MULTNOMAH COUNTY, OREGON	SPECIALTY TRANSPORTATION SERVICES, INC.	TRUCK AND TRAILER STAGING AND PARKING AREA

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

INDEFINITE TERM LEASE

LAND

501022

THIS LEASE made this 1ST day of FEBRUARY, 1998, between **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, hereinafter called "Lessor", and **SPECIALTY TRANSPORTATION SERVICES, INC.**, an Illinois corporation, whose post office address is 10214 NORTH MT. VERNON ROAD, SHANNON, IL 61028, hereinafter called "Lessee",

WITNESSETH:

In consideration of the covenants hereinafter contained to be kept and performed by Lessee, Lessor hereby leases to Lessee upon the terms and conditions hereinafter set forth the following described Property ("Property") situated in the City of WILLBRIDGE, County of MULTNOMAH, State of OREGON:

As shown OUTLINED IN RED on attached print marked Exhibit "A", dated JANUARY 1, 1998 and made a part hereof.

1. This Lease shall commence on FEBRUARY 1, 1998, and may be terminated by either party, at any time, by serving at least thirty (30) days' written notice of termination upon the other party, and upon expiration of the time specified in such notice, this Lease and all rights of Lessee shall absolutely cease. Upon any such termination, Lessor shall retain as a charge for use of the Property, a minimum sum equal to three (3) months rental, and any excess unearned portion of the annual rental paid in advance shall be refunded to Lessee.

2. Lessee shall use and occupy said Property for the sole and exclusive purpose of A TRUCK/TRAILER STAGING AND PARKING AREA. Lessee shall respond to Lessor's reasonable inquiries regarding the use or condition of the Property, and Lessor may enter the Property at reasonable times to check on same.

3. (a) Lessee shall pay rent of FORTY SIX THOUSAND NINE HUNDRED AND THIRTY FIVE AND NO/100 DOLLARS (\$46,935.00), as rental for said Property, payable ANNUALLY IN ADVANCE. Lessor reserves the right to change rental rates as conditions warrant. Billing or acceptance by Lessor of any rental shall not imply a definite term or otherwise restrict either party from canceling this Lease as provided herein. Either party hereto may assign any receivables due it under this Lease, provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Lease.

(b) Commencing on the first annual rental anniversary date and continuing on all succeeding annual anniversaries, the base rental shall be adjusted in accordance with the changes in the Consumer Price Index indicated in the column for Urban Wage Earners and Clerical Workers, U.S. city average (hereinafter called the "Index"), published by the Bureau of Labor Statistics, U.S. Consumer Price Index from the base index number

(i.e., the index number current on the date of this Lease, or the index number from the preceding year, whichever is more current) to the current index number.

If publication of the Consumer Price Index shall be discontinued, the parties hereto shall thereafter use in its place comparable statistics on the cost of living for Urban Wage Earners and Clerical Workers, as they shall be computed and published by an agency of the United States or by a responsible financial periodical of recognized authority then to be selected by the Lessor.

(c) The rental shall be subject to further revision annually or at discretion of Lessor to adjust same to a fair market value basis.

(d) Lessee acknowledges that Lessor utilizes the rental collection system involving direct deposit of monies received through financial institution selected by Lessor, which precludes Lessor's ability to exercise rejection of a rental payment before Lessee's check is cashed. Lessee agrees that as a condition of Lessor granting this Lease, Lessee hereby waives any right it may have under law to force continuation of this Lease due to Lessor having accepted and cashed Lessee's rental remittance. Lessor shall have the option of rejecting Lessee's payment by refunding to Lessee the rental amount paid by Lessee, adjusted as set forth in this Lease, and enforcing the termination provisions of this Lease.

(e) Payment of rental specified herein is subject to a late payment charge of one and one-half percent (1.5%) per month (18% per annum), or such lesser amount permitted by law, on balance past due over thirty (30) days. This shall also apply to any balance due under paragraph 9 hereof.

4. Lessee shall pay to Lessor N/A and No/100 Dollars (\$ 00.00) as a security deposit for the faithful performance of all the terms and conditions of this Lease. In no event shall Lessor be obligated to apply the security deposit to rents or other charges in arrears or to damages for failure to perform the terms and conditions of this Lease by Lessee. Application of the security deposit sum to the arrears of rental payments or damages shall be at the option of Lessor, and the right to possession of the Property by Lessor for nonpayment of rent or for any other reason shall not in any event be affected by this security deposit. The security deposit shall be returned to Lessee when this Lease is terminated, according to the terms of this Lease, if not applied toward the payment of rent in arrears or toward the payment of damages suffered by Lessor by reason of any breach of the terms and conditions of this Lease by Lessee. In no event is any security deposit amount to be returned until Lessee has vacated the Property and delivered possession to Lessor. The security deposit will draw no interest. In the event that Lessor repossesses the Property because of default of Lessee or because of a failure by Lessee to comply with the terms of this Lease, Lessor may apply the security deposit to all damages suffered to the date of repossession and may retain the balance of the security deposit to apply to damages that may accrue or be suffered thereafter by reason of the default or breach of Lessee. Lessor shall not be obligated to hold the security deposit in a separate fund, but may mix the deposit with other funds of Lessor.

5. If access to and from the Property shall be required by use of Lessor's property adjacent to the Property, such use is granted on a non-exclusive basis. Lessor shall have the right to designate the location or route to be used. For the purpose of this Lease, access, whether specifically defined or not, is included under the definition of Property. Lessee understands and agrees that Lessor shall apply all of these terms to any property adjacent to the Property which Lessee may occupy just as though the property had been specifically described herein.

6. LESSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT

OF QUIET ENJOYMENT IS MADE. This Lease is made subject to all outstanding rights or interests of others. If the Property is subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Lessor. Lessee accepts this Lease subject to that possibility. In case of eviction of Lessee by anyone, other than Lessor, owning or claiming title to or any interest in Property, Lessor shall not be liable to Lessee for damage of any kind or to refund any rental paid hereunder, except to return the proportionate part of any rental paid in advance.

7. Lessor reserves to itself, and others, right of access to its adjoining property and the right to construct, maintain, and operate trackage, fences, pipelines, signal and communication facilities, telegraph, telephone, power, or other transmission lines, or appurtenances or facilities of like character, upon, over, across, or beneath the Property, without payment of any sum for any damage, including damage to growing crops, occasioned thereby. The foregoing rights, (except the right of access, which is unconditional), shall not be exercised in a manner that unreasonably interferes with Lessee's use of the Property.

8. It is understood that Lessee has inspected the Property and takes it "AS IS, WHERE IS", and "WITH ALL FAULTS". Lessor is not obligated by this Lease to make any changes, removals, or repairs of any kind nor to construct any fences. Lessee shall use the Property only in the manner described in Section 2 hereof, and shall not construct or place on the Property any advertising billboards, structures, additions, or improvements not described herein, or plant or remove trees and shrubbery, except with express prior written permission of Lessor, and at Lessee's sole risk and cost.

9a) In addition to the rent, Lessee shall pay all taxes, utilities, and other charges which may become due or be levied against the Property, against Lessee, against the business conducted on the Property or against improvements placed thereon during the actual term hereof, even though such taxes, license fees or other charges may not become due and payable until after cancellation of this Lease. Lessee agrees that Lessor shall not be required to furnish to Lessee any of the above services. If this is a transfer of an existing lease, Lessee must make arrangements with the present Lessee for payment of any delinquent and current taxes. If such arrangements are not made, Lessee agrees to pay all such taxes. If Lessor should make any such payments, Lessee shall reimburse Lessor for all such sums.

b) Should the Property be subject to special assessment for public improvements in the amount of Five Hundred Dollars (\$500.00) or less, Lessee shall promptly reimburse Lessor the amount in full. Should the assessment exceed Five Hundred Dollars (\$500.00), the rental herein shall be increased by twelve (12) percent per annum of the total.

c) In case of nonpayment of rental, taxes, or other charges, the same shall, until paid, constitute a lien on any buildings or other property owned by Lessee on the Property, foreclosable according to law. Lessee shall not remove said buildings or property until said rental, taxes, or other charges are paid, unless directed to do so by Lessor.

10a) Lessee shall not place, or permit to be placed, any material, structure, pole or other permanent or temporary obstruction within 8-1/2 feet laterally of the center line or within 24 feet vertically from the top of the rail of any track or such greater clearances as may be required by Lessor or Federal Railroad Authority requirements. If, by statute or order of public authority, greater clearances shall be required, Lessee shall strictly comply with such statute or order.

b) IF, ON APPLICATION BY LESSEE, EITHER OR BOTH THE LATERAL AND VERTICAL CLEARANCES ARE PERMITTED TO BE REDUCED BY ORDER OF COMPETENT

PUBLIC AUTHORITY, LESSEE SHALL STRICTLY COMPLY WITH THE TERMS OF ANY SUCH ORDER, AND INDEMNIFY AND HOLD HARMLESS LESSOR, REGARDLESS OF ANY NEGLIGENCE OF LESSOR, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, EXPENSES, COSTS AND JUDGMENTS ARISING OR GROWING OUT OF LOSS OF OR DAMAGE TO PROPERTY OR INJURY TO OR DEATH OF PERSONS OCCURRING, DIRECTLY OR INDIRECTLY, BY REASON OF SUCH REDUCED CLEARANCE.

c) Lessor's continued operations with knowledge of an unauthorized reduced clearance shall not constitute a waiver of the foregoing covenants of Lessee or of Lessor's right to recover for resulting damages to property or injury to or death of persons.

11. Lessee shall not permit the existence of any nuisance on the Property; shall keep the same in clean and safe condition and free of any explosive, flammable or combustible material which would increase the risk of fire, except such material necessary to Lessee's business; shall not handle or store any potentially dangerous or toxic materials or hazardous materials; and shall not permit the accumulation of junk, debris or other unsightly materials. Lessee shall at its sole expense keep the Property and any improvements in good repair. Further, Lessee shall comply with all federal, state, local, and police requirements, regulations, ordinances and laws respecting the Property and activities thereon. Lessee shall not permit to exist on the Property any treatment, storage or disposal facility, as those terms are defined by the Federal Resources Conservation and Recovery Act.

12a) Lessee shall not create or permit any condition on the Property that could present a threat to human health or to the environment. Lessee shall indemnify and hold harmless Lessor, regardless of any negligence of Lessor, from any suit or claim growing out of any damages alleged to have been caused, in whole or in part, by an unhealthy, hazardous, or dangerous condition caused by, contributed to, or aggravated by Lessee's presence on and use of the Property or Lessee's violation of any laws, ordinances, regulations, or requirements pertaining to solid or other wastes, chemicals, oil and gas, toxic, corrosive, or hazardous materials, air, water (surface or groundwater) or noise pollution, and the storage, handling, use, or disposal of any such material. Lessee shall give Lessor timely notice of any release, violation of environmental laws or inspection or inquiry by governmental authorities charged with enforcing environmental laws with respect to the Property. Lessee also shall give Lessor timely notice of all measures undertaken by or on behalf of Lessee to investigate, remediate, respond to or otherwise cure such release or violation. In the event that Lessor receives notice from Lessee or otherwise of a release or violation of environmental laws which occurred or is occurring during the term of this Lease, Lessor may require Lessee, at Lessee's sole expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation. Lessee shall bear the expense of all practices or work, preventative or remedial, which may be required because of the condition or use of the Property, by Lessee or those claiming by, through or under Lessee, during Lessee's period of occupancy. Lessee expressly agrees that the indemnification and hold harmless obligations it hereby assumes shall survive cancellation of this Lease. Lessee agrees that statutory limitation periods on actions to enforce these obligations shall not be deemed to commence until Lessor has actual knowledge of any such health or environmental impairment, and Lessee hereby knowingly and voluntarily waives the benefits of any shorter limitation period.

b) In this connection, Lessee expects to use on the Property the following hazardous materials: **NONE**, and to store on the Property the following hazardous materials: **NONE**. Lessee shall respond to Lessor's reasonable inquiries regarding the use or condition of the Property, and Lessor may enter the Property at such reasonable times and upon reasonable notice to Lessee. Use or storage on the Property of any hazardous materials not disclosed in this paragraph is a breach of this Lease.

13a) It is understood by Lessee that the Property is in dangerous proximity to railroad tracks and that persons and property, whether real or personal, on Property will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Property), and Lessee accepts this Lease subject to such dangers.

b) Lessee understands, as one of the material considerations of this Lease without which it would not be granted, that Lessee assumes all risk of injury to or death of all persons, and damage to or loss or destruction of buildings, contents, or other property (including animals) brought upon or in proximity to the Property by Lessee, or by any other person with the consent or knowledge of Lessee, **WITHOUT REGARD TO WHETHER SUCH BE THE RESULT OF NEGLIGENCE OR MISCONDUCT OF ANY PERSON IN THE EMPLOY OR SERVICE OF LESSOR OR OF DEFECTIVE TRACKAGE, EQUIPMENT, OR TRACK STRUCTURES. LESSEE HEREBY INDEMNIFIES AND AGREES TO PROTECT LESSOR FROM ALL SUCH INJURY OR DEATH AND LOSS, DAMAGE OR DESTRUCTION TO PROPERTY, INCLUDING CLAIMS AND CAUSES OF ACTION ASSERTED AGAINST LESSOR BY ANY INSURER OF SAID PROPERTY EXCEPT TO THE EXTENT PROXIMATELY CAUSED BY LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. NOTWITHSTANDING THE FOREGOING, HOWEVER, LESSEE SHALL NOT BE LIABLE FOR INJURY TO OR DEATH OF LESSOR'S EMPLOYEES OR AGENTS, OR ROLLING STOCK BELONGING TO LESSOR OR OTHERS, OR SHIPMENTS OF THIRD PARTIES IN THE COURSE OF TRANSPORTATION, WHEN THIS INJURY, DEATH OR DAMAGE IS PROXIMATELY CAUSED BY LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

c) **LESSEE ALSO AGREES TO INDEMNIFY AND HOLD HARMLESS LESSOR, REGARDLESS OF ANY NEGLIGENCE OF LESSOR, FROM ANY LOSS, DAMAGE, INJURY OR DEATH ARISING FROM ANY ACT OR OMISSION OF LESSEE, LESSEE'S INVITEES, LICENSEES, EMPLOYEES, OR AGENTS, TO THE PERSON OR PROPERTY OF THE PARTIES HERETO AND THEIR EMPLOYEES, AND TO THE PERSON OR PROPERTY OF ANY OTHER PERSON OR CORPORATION WHILE ON OR NEAR THE Property.**

d) Whenever any employee, agent or contractor of Lessee makes any claim for personal injury or death against Lessor within the meaning of the Federal Employers' Liability Act, or any applicable safety act, for any incident caused, wholly or in part, by property, equipment, fixtures or condition belonging to or subject to the control of Lessee, or claims or alleges that he or she is an employee of Lessor or is furthering the operational activities of Lessor, Lessee agrees to indemnify and hold harmless Lessor for all losses, damages, costs or expenses related to such claim, regardless of Lessor's negligence.

e) Lessor shall not be liable for lost electronic computer data or damage to computer system caused by electrical power fluctuations and failures.

14. It is agreed that the provisions of Sections 10, 12, and 13 are for the equal protection of other railroad companies, including National Railroad Passenger Corporation (Amtrak), permitted to use Lessor's property.

15. Lessee shall not assign this Lease or any interest therein, or grant a security interest in any buildings or improvements on the Property, or sublet, and no heir, executor, administrator, receiver, master, sheriff, trustee in bankruptcy, or other assignee by operation of law shall assign or sublet, without the express prior written consent of Lessor. All the covenants and provisions of this Lease shall be binding upon the heirs.

legal representatives, successors and assigns of Lessee. No assignment by Lessee shall be binding upon Lessor without the written consent of Lessor in each instance.

16. Lessee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Lessee on Property and shall indemnify Lessor against any loss, liability or expense incurred by Lessor on account of such liens. Lessor is hereby authorized to post any notices or take any other action upon or with respect to Property that is or may be permitted by law to prevent the attachment of any such liens to Property; provided, however, that failure of Lessor to take any such action shall not relieve Lessee of any obligation or liability under this Section or any other Section of this Lease. If, because of any act or omission of Lessee, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Lessor or any portion of the Property, Lessee shall, at its own expense, cause the same to be discharged of record within thirty (30) days after written notice from Lessor to Lessee of the filing thereof, and shall indemnify and save harmless Lessor against and from all costs, liabilities, penalties, and claims, including legal expenses, resulting therefrom. Lessee acknowledges that Lessor shall have no responsibility for management of the Property.

17a) Lessee shall, at its expense, procure and maintain throughout the term of this Lease, and thereafter until any Lessee-owned improvements are removed from the Property, a comprehensive general form of insurance covering liability, including, but not limited to, Public Liability, Personal Injury and Property Damage, as well as Contractual Liability in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. Such insurance shall contain no exclusion with respect to property of Lessor in the care, custody or control of Lessee. Lessee also shall, at its expense, procure and maintain throughout the term of this Lease, an automobile liability policy with limits of \$1,000,000.00 covering "any auto". LESSOR SHALL BE NAMED AS AN ADDITIONAL INSURED PARTY COVERED BY THE POLICY.

b) All risk insurance on the property of the Lessee, or in Lessee's care, custody and control, shall contain a waiver of subrogation of claims against Lessor. Lessee shall maintain Workers Compensation insurance which shall contain a waiver of subrogation against Lessor.

c) All insurance shall be placed with insurance companies licensed to do business in the State in which the Property is located, with a current Best's Insurance Guide Rating of B and Class X, or better. Lessee shall provide, and thereafter maintain in effect, a current Certificate of Insurance evidencing such insurance and said Certificate shall reference this contract number. When any portion of or all of the Property is located within 50 feet of a railroad track, insurance must provide for coverage of incidents occurring within fifty (50) feet of a railroad track, and any provision in the insurance policy to the contrary must be specifically deleted. Each policy shall provide that it shall not be canceled or materially changed unless at least thirty (30) days' prior written notice of cancellation or change shall have been mailed by the insurance company to Lessor at the address designated herein.

d) The furnishing of insurance required by this section shall in no way limit or diminish the liability or responsibility of Lessee as provided under any section of this Lease.

18. Lessor may at its option prior to cancellation of this lease, require Lessee to conduct an environmental audit of said Property, at Lessee's cost and expense, to determine if any environmental damage to said Property has occurred during Lessee's occupancy thereof. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Lessee shall pay all expenses for any remedial action that may be required as a result of said audit to

correct any environmental damage, and all necessary work shall be performed by Lessee prior to cancellation of this lease.

19. This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the Lessor which may be appurtenant to the Property. All right, title, and interest in and to such water is expressly reserved unto Lessor, and the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor. Lessee shall not install or permit to be installed any wells on the Property without the written consent of Lessor.

20. Upon written notice from Lessor, Lessee agrees to assume the defense of any lawsuit, or other proceeding brought against Lessor by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by this Lease for which Lessee has an obligation to assume liability for and/or save and hold harmless Lessor. Lessee shall pay all the costs incident to such defense including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments.

21. If default shall be made in any of the covenants or agreements of Lessee contained in this document, or in case of any assignment or transfer of this Lease by operation of law, Lessor may, at its option, terminate this Lease by serving five (5) days' notice in writing upon Lessee; but any waiver by Lessor of any default or defaults shall not constitute a waiver of the right to terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this Lease. The remedy set forth in this section shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity.

22. Upon the termination of this Lease in any manner herein provided, Lessee shall relinquish possession of the Property and shall remove any improvements, and restore the Property to substantially the state and environmental condition in which it was prior to Lessee's use. In case Lessee shall fail within thirty (30) days' after the date of such termination to make such removal and restoration, then Lessor may, at its election, (a) either remove the improvements or otherwise restore the Property, and in such event Lessee shall, within thirty (30) days' after receipt of bill therefor, reimburse Lessor for cost incurred, or (b) upon written notice to Lessee may take and hold any improvements and personal property as its sole property; or (c) pursue any remedy at law or in equity. In the event that the restoration of the Property is not completed by the date which Lessee terminates this Lease and relinquishes possession of the Property, Lessee's obligation to pay an amount equal to the rental payments under this Lease shall continue until such restoration is completed. Further, in the event Lessor has consented to improvements remaining on the Property following termination, Lessee shall provide a Bill of Sale covering such improvements to Lessor.

23. If Lessee fails to surrender to Lessor the Property, upon any termination of this Lease, all liabilities and obligations of Lessee hereunder shall continue in effect until the Property is surrendered; and no termination shall release Lessee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination or the date, if later, when any Lessee-owned improvements and personal property are removed and the Property restored or Lessor elects to take and hold any Lessee-owned improvements and personal property as its sole property as referenced in Section 22.

24. In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.

25. It is understood and agreed that this Lease shall not be placed of public record.

26. All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the laws of the State in which the Property is located.

27. To the maximum extent possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Lease shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Lease.

28. The waiver by Lessor of the breach of any provision herein by Lessee shall in no way impair the right of Lessor to enforce that provision for any subsequent breach thereof.

29. If all or any part of the Property is subjected to taking under eminent domain laws, this Lease shall terminate from the time possession is taken by the condemning entity, with prepaid rentals prorated. Lessee agrees that it is not entitled to, and hereby disclaims, any award made for such taking, excepting only an award issued solely and expressly to compensate for the taking of personal property or buildings owned or constructed by Lessee.

30. Nothing in this Lease shall prevent Lessor from discontinuing service over any railroad line or lines by which rail service may be provided to the Property.

31. All notices to be given by Lessee to Lessor shall be given by letter, deposited with the United States Postal Service, postage prepaid, addressed to 2120 FIRST INTERSTATE CENTER, 999 THIRD AVENUE, SEATTLE, WA 98104. All notices to be given by Lessor shall be similarly given, addressed to Lessee at the address stated above. It is the Lessee's duty to notify Lessor promptly in writing of any change in its address; if it fails to do so, any notice from Lessor sent to its last known address shall be effective, whether or not received.

32. This Lease is the full and complete agreement between Lessor and Lessee with respect to all matters relating to lease of the Property, and supersedes any and all other agreements between the parties hereto relating to lease of the Property. If this Lease is a reissue of an existing agreement(s) held by Lessee, it shall supersede and cancel the previous Lease or Leases, without prejudice to any liability accrued prior to cancellation.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns.

SPECIALTY
SERVICES, INC.

TRANSPORTATION

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By:




By:

CATELLUS MANAGEMENT CORP.
ITS ATTORNEY IN FACT

Title:

VP - Finance

By:


Regional Manager

By signing this agreement, I acknowledge that
I have read and understand it, and will abide
by all of its terms.

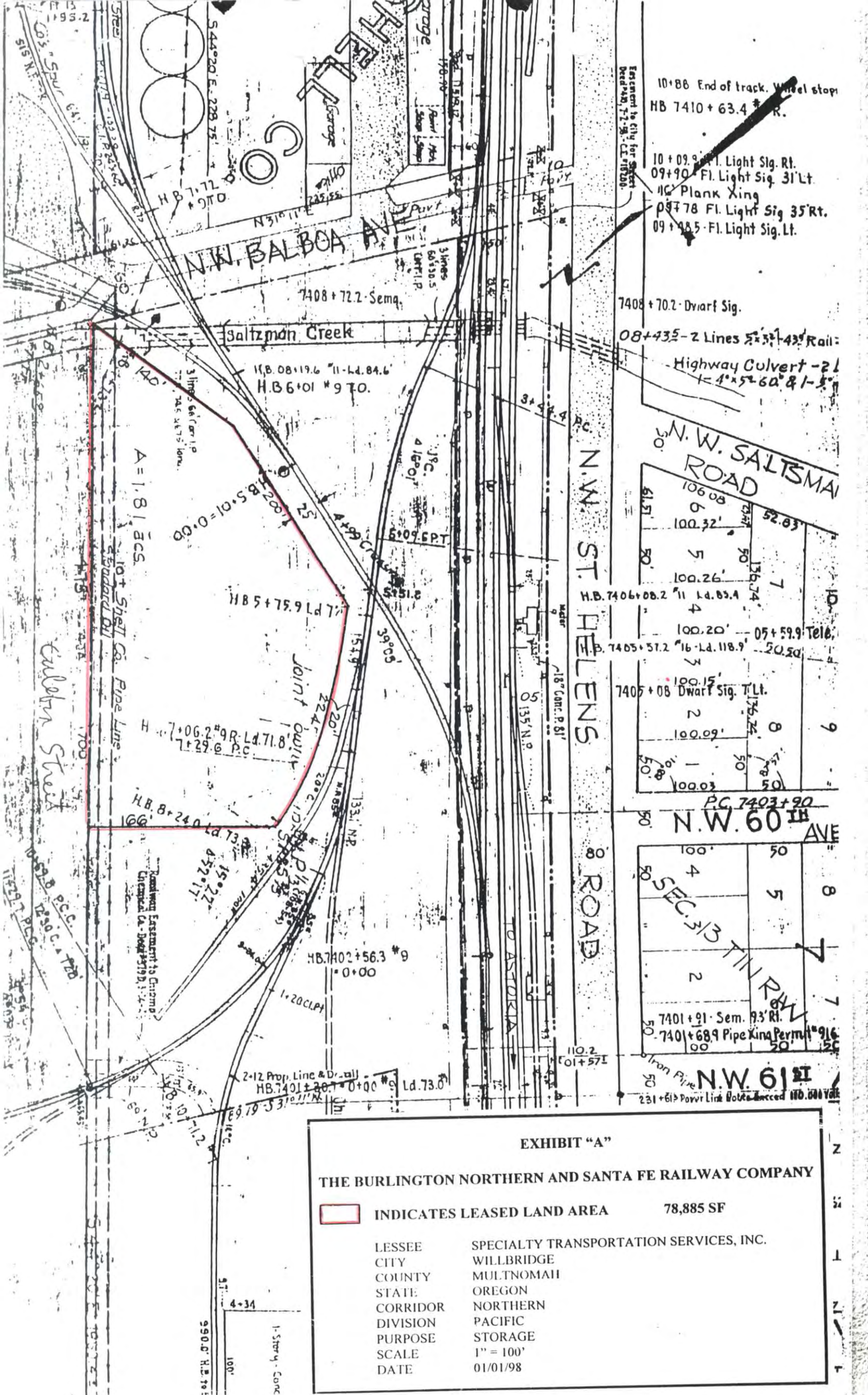


EXHIBIT "A"

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

<div></div>	INDICATES LEASED LAND AREA	78,885 SF
LESSEE	SPECIALTY TRANSPORTATION SERVICES, INC.	
CITY	WILLBRIDGE	
COUNTY	MULTNOMAH	
STATE	OREGON	
CORRIDOR	NORTHERN	
DIVISION	PACIFIC	
PURPOSE	STORAGE	
SCALE	1" = 100'	
DATE	01/01/98	

FORM APPROVED
BY LAW

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

CONSENT TO SUBLEASE UNDER LEASE NO 501,022

THIS AGREEMENT, among THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, hereinafter called "Lessor", CSU TRANSPORT, INC., hereinafter called "Lessee", and METRO, hereinafter called "Sublessee",

WITNESSETH:

WHEREAS, by lease numbered 501,022 and dated FEBRUARY 1, 1988 and Assignment dated as of May 14, 2001, Lessor leased to Lessee certain premises at WILLBRIDGE, County MULTNOMAH, State of OREGON; and

WHEREAS, Lessee and Sublessee desire Lessor's consent to a sublease from Lessee to Sublessee of those certain leased premises described in said lease, as shown on the attached Exhibit A.

NOW THEREFORE, the parties hereto, in consideration of their mutually-dependent promises, hereby agree as follows:

1. Lessee and Sublessee shall jointly and severally perform and be bound by all of the terms, conditions and provisions of said lease, as the same may have been or may hereby or hereafter be amended, during the term of the sublease from Lessee to Sublessee. If only a part of the leased premises are being subleased, Sublessee shall be so bound only as to the part subleased.
2. Sublessee shall occupy and use an 11,934 square foot subleased premises for the exclusive purpose of A PAVED PARKING AREA WITH 36 PARKING SPACES FOR METRO EMPLOYEES' VEHICLES AND METRO VEHICLES AND EQUIPMENT.
3. Lessor consents to the sublease from Lessee to Sublessee, provided that such consent shall not be construed as consent to any further sublease of said premises.
4. At the request of Lessor, said sublease shall be subject to cancellation upon thirty (30) days written notice given by Lessee to Sublessee. Upon receipt of written notice by Lessee from Lessor requesting cancellation of said sublease, Lessee will within ten (10) days serve written notice of cancellation of said sublease on Sublessee, who shall peaceably and quietly surrender said premises upon the expiration of said thirty (30) day period.
5. In the event that CSU Transport, Inc. defaults under their existing Waste Hauling Contract with Metro and Metro assumes the operations of CSU Transport, Inc., under such Contract, Metro will be permitted to obtain an assignment of Lease # 501,022, provided that said

Assignment meets the approval of Lessor and Metro agrees to assume all of the obligations of CSU Transport, Inc. under the Lease.

6. Prior to completion of this agreement a processing fee of ^{Five}~~Two Hundred Fifty~~ Dollars (\$500.00) shall be paid to Lessor.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate this 10th day of September, 2001.

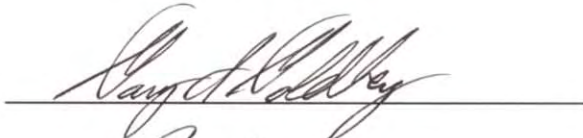
**LESSOR: THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY**

By: Staubach Global Services
Its Attorney in Fact



LESSEE: CSU TRANSPORT, INC.

By:



Title:

President

SUBLESSEE: METRO

By:



Title:

Director

STAFF REPORT

IN CONSIDERATION OF NO. 08-3889, FOR THE PURPOSE OF CONSIDERING THE RELEASE OF REQUEST FOR PROPOSAL NO. 08-1254 FOR THE PROCUREMENT OF SOLID WASTE TRANSPORTATION SERVICES

Date: December 18, 2007

Prepared by: Mike Hoglund

PURPOSE

The Metro Council's approval of this Resolution would authorize the Chief Operating Officer to release a Request for Proposals to procure a new solid waste transport contractor for solid waste disposed at Metro South and Metro Central transfer stations.

BACKGROUND

Metro's current Waste Transport Services Contract expires at the end of 2009. The contract provides for the transport of waste received at Metro's two transfer stations to the Columbia Ridge Landfill owned by Waste Management Disposal Services. Metro must obtain replacement transport services to continue transporting waste to this landfill through 2019 at which time the disposal contract expires. In late 2006, the Metro Council approved the project work plan entitled *New Waste Transport Contract* to obtain these replacement services. An interdepartmental project team was assembled with representatives from Solid Waste & Recycling, Planning, Finance & Administrative Services, and Office of the Metro Attorney. In addition the consulting firm of CH2M Hill was retained to assist the project team to review waste transport modal options and to facilitate development of the request for proposals evaluation criteria.

Phase I – Transportation Study

The first phase of this project consisted of the Metro Solid Waste Transportation Study, which investigated the alternative approaches available to Metro for replacement transport services. The consulting firm of CH2M Hill presented this study to the Metro Council at its May 29, 2007 meeting, concluding the study phase of the project.

The major findings of the study involved the feasibility of the possible modes available, how the values of the Metro Council could be used to evaluate proposals to provide the needed services and an analysis of policy issues. The study demonstrated that all three modes (barge, rail and truck) were capable of providing the necessary logistics and services required. It also indicated substantial variation amongst the modes when evaluated utilizing criteria derived from the Council values, and identified the factors proposers needed to address in relation to those values in their proposals. A major policy finding was that the possibilities of backhaul were limited and should not be emphasized during the request for proposals (RFP) process.

Phase II – Public Outreach and Procurement

Phase II of the project consists of conducting a procurement process, beginning with the drafting of a request for proposals (RFP). Based on the study and feedback from the Metro Council, staff drafted an RFP that was distributed for review and comment by potential proposers and interested parties in October and early November 2007.

Three public meetings were held in Condon, Hood River and in Portland. Total attendance at these meetings was **108**. In addition a survey has been available at the public meetings and online; **84** people responded to the survey.

The outreach campaign has been supported by ads in community and metropolitan newspapers and industry publications and press releases.

The Solid Waste and Recycling department also conducted a postal mailing and two emailings to more than **800** interested parties as well as numerous mailings to the industry email list.

The responses from the public hearings and the online survey are summarized in Attachment #1. Generally comments stressed the importance of environmental and socioeconomic factors over cost. The reliability and efficiency of the transport system were also important.

Over twenty interested firms were contacted regarding the draft and comments were received from approximately half. Comments and the project team's responses are contained in Attachment #2.

Based on the comments received, a presentation was made to the Metro Council on November 27th, which included sensitivity analysis around how changing evaluation points or emission assumptions might affect the ranking of different modes. The analysis showed that while the relative ranking between modes did not differ from the original analysis, the difference in rankings narrowed. Based on this analysis and subsequent discussion, the Council agreed to reallocate evaluation points as shown below, and to continue the approaches regarding soliciting a single contractor and the handling of fuel as contained in the draft RFP.

Change in Evaluation Points

Evaluation Criteria	Draft RFP	Final RFP
Cost	60	45
Environmental Impacts	15	20
Socioeconomic Impacts	5	10
Operations/Risk	20	25

Additional changes were made to the RFP based on the comments and incorporated into the final RFP attached as Exhibit A to Resolution No. 08-3889. Individual changes are listed in Attachment #2 to this staff report.

Phase III – Mobilization and Begin Operations

Phase III of this project will occur after a new service provider has been procured. Most potential operators have expressed the need for at least an 18-month time window for mobilization prior to beginning operations; hence, selection of a contractor by mid-year next year is in the critical path if the new contractor is to begin operations as scheduled, in January 2010.

Schedule

If this resolution is adopted, the following 2008 schedule is anticipated:

- End of January - release RFP
- Mid-March - Proposals Received
- Evaluation/Negotiation Complete- End of June
- Council Review/Award - July

- Contractor Begins Mobilization - August
- New Operations Begin - January 1, 2010
- Contract Terminates - December 31, 2019

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to proceeding with the project.

2. Legal Antecedents

There are no known legal antecedents.

3. Anticipated Effects

See Schedule above for anticipated effects upon adoption of this Resolution.

4. Budget Impacts

There is no extraordinary budget impact anticipated in the current fiscal year, nor in fiscal year 2008-2009 from the release of RFP. The effort of evaluating proposals received in 2008, i.e., staff time, is considered part of the Department's normal business operations and will be accomplished within existing budget allocations.

Once a new transport contractor has been selected to begin operations on January 1, 2010, it is probable that there will be a significant increase in the cost to transport waste to the Columbia Ridge Landfill of as much or more than \$2 per ton, or about \$1.2 million per year. The actual changes in cost will be relatively well known well in advance of budget planning for the 2009-2010 fiscal year; hence, from the perspective of cost recovery, e.g., through Metro's tip fee, the Metro Council will have ample opportunity through the normal budgeting process to respond to then-known changes in cost for waste transport services.

RECOMMENDED ACTION

Approve Resolution No. 08-3889, to release Request for Proposals SWR 08-1254-SWR to procure a new solid waste transport contractor.

ATTACHMENT #1

WASTE TRANSPORT CONTRACT PUBLIC MEETINGS

CONDON, OREGON- OCTOBER 8, 2007

Comments and Questions (Staff Responses)

Questions:

- Is the trucking option cost-effective?
- Will Metro have to replace / modify compactors if the rail or barge option is used? (No.)
- Would barges go from the port at Morrow? (Possibly, though unlikely because it's not cost effective. It depends on the proposals we receive.)
- Are there emission controls on trains? (No.)
- Can Gilliam County require contractor to have a permit? (Yes. They do now.)
- What about using biodiesel? (It's not currently a requirement/factor in the draft RFP.)
- Are trucks considered personal property that is taxed? (No; other equipment is, but not trucks.)
- Is there planning in case of disasters? (Yes; a disaster debris plan is being developed.)
- Why no back hauling? (What can be transported in waste hauling trucks is pretty limited. Rocks, chips could be back hauled. Metro is open to back-haul opportunities.)
- Will landfill / transfer operators be restricted from bidding? (No.)
- If rail is the choice, what's our recourse in Arlington to deal with the traffic delay issues? [State representative and local elected officials responded regarding laws governing how long trains can close an intersection.]

Comments:

- Choosing any option other than trucking would result in half as many jobs / wages. Current drivers are employed from surrounding counties.
- Truckers' jobs are important, and the trucking option employs the most people.
- Don't fix a system that isn't broken.
- Barge and rail options would rely on trucking, as well, but the trucking option doesn't rely on barge and rail.
- Don't transport the waste by rail; stay with trucking.
- Don't transport the waste by barge; there's no current barge facility.
- There's no major advantage to changing from the current (trucking) system. Barges can have accidents that cause a significant environmental problem.
- Trains crossing roads interfere with traffic flow and emergency vehicles.
- Trucking hasn't had any significant impact on I-84.
- CSU drivers are polite and represent Gilliam County well.
- If trucking continues to be the transport mode, the jobs should still be based in Gilliam County.
- If the barge option is chosen, it needs to be based at Willow Creek.
- Trucks used to have to start and stop in Gilliam County.
- The Metro contract has been a godsend to Gilliam County and has resulted in low property taxes and many other benefits. Trucking is the way to go.
- The transportation system you choose could be a life-saver for Gilliam County in an emergency situation. Think outside the box.
- Need to give more points in the criteria for development in Gilliam County.

BEST WESTERN INN
HOOD RIVER, OREGON- OCTOBER 29, 2007
Comments and Questions

- **Will rising fuel costs be passed onto customers?** They could be. However, particularly for residential customers, the increase would be very minimal because the percentage of the garbage bill for landfill transport fuel is so small. For commercial customers who generate more waste, costs would be more substantial.
- Metro will be looking for proposals that address the issue of rising fuel costs.
- **Will biofuel for trucks be a requirement in the request for proposal?** No. Low-sulfur fuels will be. However, utilization of biofuel will be considered in the allocation of points under both the “environmental” criterion and the sustainability aspects of the “operational” criterion.
- **What option would work best for Gilliam County?** [Question addressed to Gilliam County Commissioner at the meeting.] Trucking gives us the greatest number of jobs. We were hoping to also develop a barge dock, but we’re experiencing problems with it.
- **If you selected trucking, how would a severe fuel shortage impact the people of Portland?** A severe fuel shortage would impact any of the transport options selected. If it were a really serious shortage, obviously just getting fuel to transport the waste would be an issue, regardless of the costs.

METRO REGIONAL CENTER – COUNCIL CHAMBERS
PORTLAND, OREGON, NOVEMBER 7, 2007
Comments and Questions

Questions

- Statistics regarding trucking and emissions; do they take into account the higher number of trips needed?
- Where is equipment being maintained currently? (at Columbia Ridge Landfill)

Comments

- Gilliam County happy with the current economic benefits and employment. Strong community support for trucking. @ 80 jobs currently; would like trucking base to remain in the county (Gilliam Court Commission Chair).
- Friends of Columbia River Gorge concerned with air quality issues. Would like environmental concerns to be given more points in the RFP.
- Current contract has been a huge investment for Metro and contributed to the development of the regional solid waste system. There are even more ways to expand. Perhaps put in points for backhauling to encourage bidders to incorporate that aspect.
- DEQ encourages bidders to look ahead towards more stringent air quality standards. Rail and barge lag in restrictions; some of the improvements from trucking could be developed for these other modes of transport.
- Increased cost is tolerable if benefits occur as well, such as environmental benefits.
- Provide an analysis of modes to help public and Council make an informed financial decision.

Comments via email

- Method chosen must be the most efficient possible regarding carbon emissions. Transporting combustible waste likely uses more energy than burning it locally, producing electricity. Use whichever method produces the least carbon dioxide.
- Must be careful to minimize impacts to the Gorge. Weigh the risks to the Gorge ecosystem and the health/safety of those who live or travel to that area.

1. How important is each criterion to you (1 = not important 2 = somewhat important 3= important 4 = very important).						
	not important	somewhat important	important	very important	Rating Average	Response Count
a. Cost effectiveness	4.7% (4)	25.9% (22)	37.6% (32)	31.8% (27)	2.96	85
b. Reliability	4.8% (4)	11.9% (10)	42.9% (36)	40.5% (34)	3.19	84
c. Community concerns and impact	4.7% (4)	15.3% (13)	32.9% (28)	47.1% (40)	3.22	85
d. Environmental impacts	3.5% (3)	10.6% (9)	24.7% (21)	61.2% (52)	3.44	85
	answered question					85
	skipped question					1
3. Based on what you know about the three transportation options (barge, truck, rail) and on your preferred criteria, select one preferred option. Select only one.						
				Response Percent	Response Count	
Barge				11.1%	9	
Truck				53.1%	43	
Rail				35.8%	29	

1. How important is each criterion to you (1 = not important 2 = somewhat important 3= important 4 = very important).

answered question

81

ATTACHMENT #2

Comments and Responses Received on Draft RFP 08-1254-SWR, October 2007

Note: Comments received were primarily from firms interested in proposing on the project, as well as DEQ and the Friends of the Columbia Gorge.

1. **RFP**

a. **Ability to propose on one or both**

- Responding firms presented pros and cons to a single contract encompassing both transfer stations, or a contract for each. Most preferred a single contract, citing difficulty in administering two large contracts, including duplicate overhead.

Metro Response: At its Work Session of October 27, 2007, Council voted to continue the single proposal approach in the final RFP.

b. **Experience Requirement**

- There was some disagreement with the single customer provision¹ of the experience requirement, and that the distance requirement in proportion to the quantity of freight could be problematic for smaller firms.

Metro Response: The single customer condition has been modified to lower the experience requirement and shorten the distance so that smaller firms may participate in the project.

c. **Fuel**

- Vendors expressed concerns over whether or not fuel costs should be included in the per container price; how fuel prices are adjusted; and if Metro should purchase fuel for the project.

Metro Response: At the Council Work Session of October 27, 2007, the Council indicated its approval of continuing the draft RFP's approach of offering proposers the choice of proposing on: 1) a single per-container price that includes fuel; or 2) a price for handling the container plus a separate per-load price for fuel.

Regarding Metro buying fuel and obtaining excise tax relief, Council decided to continue the current approach in the draft (soliciting the cost component *with excise taxes included* for evaluation purposes), and to reevaluate the issue of Metro purchasing fuel during contract negotiations.

Metro's intentions regarding fuel payments and adjustments are contained in Item VIII (E) of the RFP.

d. **Overview of current contract**

- There is no mention of how the lump sum prepayment made to the existing transport contract affected the per ton prices described in this section.

¹ This required that a threshold amount of freight be transported for a single customer by the proposer.

Metro Response: A footnote has been added to the “Metro Waste Transport Payments and Fuel Usage” appendix document noting the payment. Vendors should review the current transport contract and all its change orders posted on the project website to determine current pricing and scope of services.

e. Evaluation

- Potential proposers asked that Metro request clarification prior to adjusting any data submitted that Metro judges to be inaccurate, and that more evaluation points be added in consideration of socioeconomics. A question was also posed regarding the definition of “container capacity.”

Metro Response: The evaluation process has been modified to allow proposers an opportunity to respond to evaluation committee changes to data submitted.

After discussion at the October 27 Work Session, Council decided to adjust evaluation points as follows:

- Cost – reduced from 60 to 45
- Environment – increased from 15 to 20
- Socioeconomic – increased from 5 to 10
- Operations/Risk – increased from 20 to 25

Proposers should evaluate their tractor/trailer or tractor/chassis combination to determine the maximum bale they can transport, assuming a maximum bale length of 34 feet that can be pushed no further than 7 feet into the container.

2. Questionnaire

Vendors asked to be allowed to submit alternative financial information rather than audited financial statements, and asked for clarification regarding financial reporting requirements during the contract.

Metro Response: Metro will not require audited financial statements: New requirements for financial information have been substituted in the Questionnaire.

Regarding financial reporting during the life of the contract, Article 11 of the proposed services agreement contains the following requirement:

“Contractor shall submit to Metro at least annually, and more often at Metro’s request, copies of such financial records and tax returns as are submitted to the surety or banking institution furnishing Contractor’s Performance and Labor and Materials Bonds or Letter(s) of Credit (see Article 14).”

- 3. Contractual Issues** – The Proposed Solid Waste Transportation Services Agreement contained in the January draft RFP is the same as that contained in the October draft. Metro intends to modify the agreement during negotiations as described in section VIII (E) of the January draft RFP.

a. **Article 1 (Definitions)**

- How would contract terms be affected in the case of a large-scale natural disaster, as they are excluded from the Force Majeure definition?

Metro Response: It is anticipated that such events would result in “federal or state government orders” that would fall under the Force Majeure definition.

b. **Article 3 (Obligations of Contractor)**

- Vendors questioned whether monthly meetings would be for just the start-up or the contract duration; and questioned if additional compensation would be available for use of the alternative transport system during an emergency / disruption to the system.

Metro Response: The monthly meeting requirement is for the duration of the contract, and the Contractor is not entitled to additional compensation for putting into place an alternative to its primary transportation system unless a Force Majeure event has occurred.

c. **Article 4 (Title to Waste)**

- Responding firms asked for clarification of this Article.

Metro Response: If a seal is broken on a load after Contractor takes possession but prior to being broken by the landfill contractor, the transport Contractor is responsible for all costs and liabilities associated with the load, such as if it contains unacceptable waste which requires additional handling, or must be disposed in a hazardous waste landfill.

d. **Article 6 (Separate Contracts)**

- Regarding this clause, there were concerns that Metro would not be required to guarantee commitment to the chosen proposer, nor to buy their equipment or cover other expenses incurred, in the event Metro contracted with other firms to haul the waste discussed in the RFP.

Metro Response: Metro’s intentions regarding this matter are contained in Item VIII (E) of the RFP.

e. **Article 7 (Payment)**

- It was requested that proposal prices be adjusted prior to the start of operations to account for long mobilization time; to modify the change in law provision so that the contractor is not responsible for costs due to local government changes in law; to cover specific expenses associated with changes with existing fees/taxes; and to clarify the timeliness in which Metro pays the contractor after receiving an invoice.

Metro Responses: Metro’s intentions regarding payments and the local change in law provision are contained in Item VIII (E) of the RFP.

The payment article is written such that the Contractor is responsible for the payment of all fees and taxes whether in existence at the time of contract execution or which come into existence later. CPI adjustments in the article are intended to cover increases in fees and taxes, as well as other operating expense increases. Article 7-3 addresses circumstances under which Contractor may be eligible for additional compensation from Metro for new or

revised fees and taxes, however generally the Contractor will be responsible for increases in fees and taxes without additional compensation from Metro.

f. Article 8 (Additional or Deleted Work)

- Potential proposers asked for clarification of this item, particularly how compensation for additional/deleted work will be determined should the parties disagree.

Metro Response: Metro's intentions regarding this matter are contained in Item VIII (E) of the RFP.

g. Article 11 (Inspections/Records retention)

- Clarification was needed regarding a number of phrases used.

Metro Response: The proposals/bids that Metro receives in response to a RFP, RFB, or RFI become public record. According to the Metro Records Retention Schedule, the accepted bid is retained for six years and rejected bids are retained for two years. During the life of these records anyone may request them in a public document request. However, a Contractor may request confidentiality in their submitted bid to protect sensitive information. Any public document request would be referred to the Office of Metro Attorney for possible redaction or exemption.

Submitted information becomes the property of Metro.

As defined by the State of Oregon, a record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. The electronic record may take the place of the original and all hard copy versions of the record may be treated as convenience copy and disposed of in an appropriate manner when the copy is no longer needed.

h. Article 13 (Insurance)

- Respondents questioned the necessity of citing the Harbor Workers and FELA (Jones Act) and the amount of umbrella insurance coverage (\$15 million).

Metro Response: The Harbor Act and Jones Act are applicable mainly to intermodal terminals with marine or rail services respectively. In addition, the article has been rewritten. Metro's intentions regarding other insurance issues are contained in Item VIII (E) of the RFP.

i. Article 15 (Metro's Rights and Remedies for Contractor's Default in Performance)

- Vendors voiced several concerns regarding penalties and liquidated damages that may be levied against the Contractor once the station is closed.

Metro Response: Metro's intentions regarding exposure to penalties are contained in Item VIII (E) of the RFP.

In the case of liquidated damages (LDs), Metro wishes the Contractor to continue its efforts to remedy the situation causing imposition of LDs even if the station is closed and will continue to impose any LDs until the situation is remedied subject to the 24 hour limitation.

j. **Article 16 (Metro's Right to Terminate)**

- Questions arose about compensation for equipment and costs incurred under this Article.

Metro Response: The types of costs allowable under the termination provision will be negotiated between Metro and the Contractor, but will not include anticipated profits. Metro will negotiate reimbursement for the use of Contractor's equipment during final negotiations once the mode and equipment purchasing arrangements are known.

k. **Article 28 (Compliance with Oregon public contracting laws)**

- One respondent asked for clarification regarding employee overtime and medical care.

Metro Response: Regarding overtime, it is our interpretation that public policy will require the use of overtime for this contract. Contractor will be required to comply with any medical care provisions of the article. The title has been changed to better reflect the intent of the article.

4. **Operational**

a. **BNSF site**

- A few questions arose about the property leased from BNSF adjacent to Metro Central.

Metro Response: Metro will provide a copy of the current lease in the final RFP. The current lease is \$53,914 annually; Metro pays CSU 5.24% for 12 spaces on the 1.81 acre storage yard. Traditionally, the lease has been adjusted per the CPI, but BNSF is considering reassessing the surrounding property to readjust. Metro will not be responsible for finding replacement space if the lease is cancelled, but expects its sublease to continue if the next Contractor utilizes the site.

b. **Onsite Activities**

- A discrepancy was mentioned regarding trailer and tractor washing between the Annual Report and the RFP. Also, a vendor wondered about the thawing building, as well as compaction hours. Other questions concerned various aspects of onsite activities including siting fuel tanks/maintenance facilities at CRL, liability for trailer damage during loading and hazardous materials.

Metro Response: The washing of trailers at MCS as mentioned in the annual report occurred in the lot leased by the Contractor, not on the transfer station site. Regarding the thawing building, only the building is available (not heaters). The letter from WMDS contained in the RFP appendix contains further information about the building.

Generally, compaction hours are 18 hours per day M-F, and 8 hours on one weekend day at MSS; 14 hours weekdays at MCS and 8 hours on one weekend day.

Metro neither owns nor leases any space at the landfill, so an above-ground diesel fuel tank has not been considered. Metro does not know if a maintenance facility may be possible at CRL- any such negotiations would be between the two contractors.

Regarding damage to property, one or two trailers sustain minor damages every other month at the transfer stations, while major damage such as structural failure occurs about once every two years (mainly to 100 series trailers with exposed roof bows). The transfer station operator is generally responsible for damage unless the trailer is structurally unsound or the shuttle driver is at fault (in which case the transport contractor may be liable). The two contractors are responsible for working out who is at fault; Metro will be the final arbiter of any dispute.

Hazardous materials are prohibited at Metro transfer stations. The transfer station operator is responsible for spotting and removing any hazardous or unacceptable material prior to loading for transport. The transport contractor is responsible, however, for developing contingency plans in the event hazardous waste is loaded into its containers, causing an incident.

c. Equipment

- Some vendors were unclear as to the reason equipment is required to be new, and had some trepidation about equipping all containers with GPS units. Water-tightness conditions were a concern, as well.

Metro Response: Contractor must supply enough new tractors and containers to accomplish the anticipated normal operations, including anticipated breakdowns and routine maintenance. During use of the back-up system, Contractor can substitute used equipment. However, during the evaluation process, the emissions from the use of an alternate transport system will be considered (particularly for extended periods such as lock closures).

Insofar as water-tightness, testing will only need to be documented as part of the Contractor's acceptance of new containers (see revision to item 3.3 of SOW). However, Metro will reserve the right to require testing if it believes a container does not meet the performance requirement. See revised item 3.4 of SOW. The cleaning (item 3.5) requirement has been revised to require cleaning as problems arise.

Item 3.7 of the Scope of Work has been modified to limit the GPS requirement. Metro will also consider alternative methods of tracking equipment in proposals.

d. Drivers

- Vendors asked several questions about employees' salaries / pay scales, and from where drivers could be hired.

Metro Response: Proposing contractors are not required to use the current contractor's salary structure, nor is there a specific pay scale requirement. Hiring drivers from Portland or counties other than Gilliam is acceptable, though the socioeconomic impact on the affected communities will be considered during proposal evaluation.

e. Tipping

- One respondent asked about Waste Management's tipping fee, and what alternative landfills are available in the event of highway closures.

Metro Response: See letter from WMDS contained in the appendix for tip fee information. Metro does not anticipate the use of an alternate landfill should I-84 close. The Contractor

would be required to implement their back-up system, which should include the use of alternate routes.

f. Payloads

- Are there MSW payload goals?

Metro Response: Metro has established no goals but desires a payload that minimizes costs to Metro and the total number of loads. Historical payload data is contained in the appendix of the RFP.

g. Contingency Plans

- Proposers were interested in whether there are requirements for environmental contingency plans, whether for trailers, barge, or rail.

Metro Response: Contingency plans are required for all modes. Regarding the environmental effects of a barge or rail mode failure versus truck transport, an assessment of such risks is contained in the *Metro Solid Waste Transportation Study*, available online.

h. Miscellaneous

- There was interest expressed for information regarding Metro-sponsored community involvement programs, as well as questions regarding personal protective equipment (PPE).

Metro Response: Metro does not sponsor involvement programs in the affected communities; however, the agency does have ongoing enhancement programs to mitigate impacts surrounding its transfer stations. Regarding PPE, the Contractor is required to comply with each of the facilities' safety and operating requirements.

- The DEQ offered the following suggestions:
 1. Require that trucks comply with year 2010 requirements
 2. Require tugs and locomotives to use ULSD
 3. Consider encouraging biodiesel if there is no increase in NOx
 4. Encourage proposers to enact anticipated regulatory requirements early

Metro Response: The evaluation process contemplated in the RFP will reward proposals which contain these actions. Metro has largely taken this performance-based approach rather than a prescriptive approach to allow proposers to craft the most environmentally creative proposal to meet the objectives stated in the DEQ letter.

- Friends of the Columbia Gorge offered these:
 1. Require the transportation option with the least possible emissions in the Gorge
 2. Incorporate the Columbia Gorge mitigation requirements from the last transport contract

Metro Response: Since Metro is unsure which transportation option will have the lowest emissions in the Gorge, it has structured the evaluation process to accommodate these specific concerns. Likewise, we have specifically included impacts on the Gorge as part of the socioeconomic evaluation. Once the mode has been determined, Metro will reexamine Gorge operations and their impact.

5. Appendix

TONNAGE PROJECTIONS/HISTORICAL TONNAGE PATTERNS: The original forecast has been updated to reflect new information regarding waste recovery and generation, as well as the lack of a new non-Metro transfer station in the system. The result of these changes is an addition of approximately 72,000 annual tons under the contract in the lead up to 2013, with even more projected additions beyond, as Metro transfer stations acquire an increasing proportion of regional solid waste.

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Resolution No. 08-3892, For the Purpose of Approving a Sole Source Contract with the Oregon Pacific Railroad for Railroad Track Realignment Services.

Contract Review Board

Metro Council Meeting
Thursday, January 17, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL CONTRACT REVIEW BOARD

RESOLUTION OF METRO COUNCIL, ACTING	)	RESOLUTION NO. 08-3892
AS THE METRO CONTRACT REVIEW BOARD,)	
FOR THE PURPOSE OF APPROVING A SOLE)	
SOURCE CONTRACT WITH THE OREGON	)	Introduced by Chief Operating Officer
PACIFIC RAILROAD FOR RAILROAD TRACK	)	Michael J. Jordan, with the concurrence of
REALIGNMENT SERVICES	)	Council President David Bragdon

WHEREAS, pursuant to ORS 279A.060 and Metro Code 2.04.010, the Metro Council is designated as the Public Contract Review Board for the agency; and

WHEREAS, Metro Code 2.04.062 requires Contract Review Board approval for contracts awarded without competitive bidding when it has been determined that the needed goods or services are available from only one source; and

WHEREAS, Metro's Chief Operating Officer has determined that realignment of the Oregon Pacific Railroad Company track between SE Umatilla Street and SE Marion Street in Sellwood, City of Portland, is a necessary prerequisite to prepare for future construction of the Springwater Trail between its current terminus at SE Umatilla Street and SE 18th Street (the "Sellwood Gap"); and

WHEREAS, the City of Portland Bureau of Environmental Services ("BES") has determined that said track realignment is a necessary prerequisite to the construction of a planned Combined Sewer Overflow Interceptor System to be installed in the current location of the Oregon Pacific Railroad Company track between SE Umatilla Street and SE Marion Street in Sellwood, City of Portland; and

WHEREAS, the Oregon Pacific Railroad Company ("OPR") has agreed to the track realignment, but only if OPR has complete control and responsibility for moving the tracks and Metro pays OPR an agreed upon sum for doing so; and

WHEREAS, BES and Metro have entered into an Intergovernmental Agreement providing that BES will pay Metro a set sum plus contract administration expenses for the procurement of the OPR track realignment and establishing Metro as the procuring agency for the track realignment services; and

WHEREAS, because the track realignment may only be performed by and at the direction of the Oregon Pacific Railroad, the Chief Operating Officer has concluded that the track realignment services are available from only one source, as set forth in Metro Code 2.04.062 and ORS 279B.075; and

BE IT RESOLVED that the Metro Council acting as the Public Contract Review Board authorizes the Chief Operating Officer to negotiate and execute a sole source contract with the Oregon Pacific Railroad Company in substantially the form attached as Exhibit A hereto.

ADOPTED by the Metro Council Contract Review Board this ____ day of _____ 2008.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3892, RESOLUTION OF METRO COUNCIL, ACTING AS THE METRO CONTRACT REVIEW BOARD, FOR THE PURPOSE OF APPROVING A SOLE SOURCE CONTRACT WITH THE OREGON PACIFIC RAILROAD FOR RAILROAD TRACK REALIGNMENT SERVICES

Date: January 17, 2008

Prepared by: Mary Anne Cassin
and Mel Huie

PURPOSE

The Metro Council's (acting as the Contract Review Board) approval of the resolution will allow Metro to enter into a sole source contract with the Oregon Pacific Railroad (OPR) to realign the railroad tracks in the Sellwood Gap (SE Umatilla St. to SE Marion St.) of the Springwater Corridor Trail, near the Willamette River.

BACKGROUND

The city of Portland has been required by federal and state environmental agencies to greatly curtail the amount of untreated sewerage that spills into the Willamette River during periods of heavy rains. New sewer lines need to be installed in the Sellwood Gap from SE Umatilla to SE Marion St. in southeast Portland. In order to install the sewers, the existing railroad tracks need to be realigned. The new sewers will be installed on the inland side of the corridor and the future trail will be on the riverside of the corridor. A maintenance road in the corridor will serve as an interim trail.

Oregon Pacific Railroad (OPR) owns the right-of-way and the tracks to be realigned. OPR has agreed to allow the track to be realigned, on the condition that OPR have complete control and responsibility for managing the tracks. Because OPR will not allow another party to realign its tracks, a competitive procurement of said track realignment services would be fruitless. OPR also realigned the railroad tracks nearly a decade ago to allow for the "Springwater on the Willamette Trail" to be built. Then, as now OPR's proposed compensation for the track realignment was less expensive than other available options.

The city of Portland will pay all the costs of the track realignment. Metro Parks & Greenspaces will administer the funds and contract with OPR. Metro will also serve as the contract manager for the track realignment.

ANALYSIS / INFORMATION

Known Opposition

There is no known opposition.

Legal Antecedents

Metro Code Section 2.04.062 provides that a contract for goods or services may be awarded without competition if the Metro Contract Review board determines that the goods or services are available from only one source, in accord with ORS 279B-075. ORS 279B.075 requires that the Metro Contract Review Board base its decision on a written finding that the goods and services are available from only one source.

Anticipated Effects

The project will allow the city of Portland to install new sewer lines and a pump station in the corridor. The railroad tracks will be realigned and a maintenance road will be built. The maintenance road will serve as the interim trail.

Budget Impacts

None. The City will provide all the funding for the track realignment project.

RECOMMENDED ACTION

Staff recommends the approval of Resolution No. 08-3892.

**Exhibit A to Resolution No. 08-3892
Placeholder
Sole Source Contract Between Metro and
Oregon Pacific Railroad for Railroad Track Realignment Services**

Resolution No. 08-3903, For the Purpose of Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement with the City of Portland providing for funding and administration of a public contract for railroad track realignment services, and to grant an easement to the City of Portland for Non-Park Use.

Contract Review Board

Metro Council Meeting
Thursday, January 17, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE	)	RESOLUTION NO. 08-3903
CHIEF OPERATING OFFICER TO EXECUTE)	
AN INTERGOVERNMENTAL AGREEMENT)	
WITH THE CITY OF PORTLAND PROVIDING)	
FOR FUNDING AND ADMINISTRATION OF A)	
PUBLIC CONTRACT FOR RAILROAD TRACK)	
REALIGNMENT SERVICES AND TO GRANT	)	Introduced by Chief Operating Officer
AN EASEMENT TO THE CITY OF PORTLAND	)	Michael J. Jordan, with the concurrence of
FOR NON-PARK USE	)	Council President David Bragdon

WHEREAS, Metro's Chief Operating Officer has determined that realignment of the Oregon Pacific Railroad Company track between SE Umatilla Street and SE Marion Street in Sellwood, City of Portland, is a necessary prerequisite to prepare for future construction of the Springwater Trail between its current terminus at SE Umatilla Street and SE 18th Street (the "Sellwood Gap"); and

WHEREAS, the City of Portland Bureau of Environmental Services ("BES") has determined that said track realignment is also a necessary prerequisite to the construction of a planned Combined Sewer Overflow Interceptor System ("CSO System") to be installed under the current location of the Oregon Pacific Railroad Company track, in SE Grand Avenue and on Metro property between SE Umatilla and Marion Streets in Sellwood, City of Portland; and

WHEREAS, the Oregon Pacific Railroad Company (OPR) has agreed to the track realignment, but only if OPR has complete control and responsibility for moving the tracks and Metro contracts with OPR to pay OPR an agreed upon sum for doing so; and

WHEREAS, Metro has expertise in negotiating for an acquiring railroad right-of-way and procuring track realignment services; and

WHEREAS, Metro Regional Parks and Greenspaces Department has provided a parallel Resolution No. 08-3892 "Resolution of Metro Council, Acting As the Metro Contract Review Board, for the Purpose of Approving a Sole Source Contract With the Oregon Pacific Railroad for Railroad Track Realignment Services," for concurrent consideration by the Metro Contract Review Board providing a sole source procurement of track realignment services from Oregon Pacific Railroad pursuant to Metro Code 2.04.062 and ORS 279B.075; and

WHEREAS, the Metro Regional Parks and Greenspaces Department and BES now propose that Metro and the City of Portland enter into the Intergovernmental Agreement attached as Exhibit "A," providing for Metro procurement of OPR's track realignment services, a grant of easement from Metro to BES to accommodate the CSO System ("Sewer Easement"), BES funding of the Metro-OPR procurement and BES Construction of a temporary gravel maintenance road, as further set forth below; and

WHEREAS, BES is requesting a subsurface Sewer Easement through Metro property under the future location of the Springwater Trail between SE Marion and SE Clatsop Streets, as described and depicted in the attached Exhibit "B," to accommodate construction of the CSO System; and

WHEREAS, Resolution No. 97-2539B "For the Purpose of Approving General Policies Related to the Review of Easements, Right-of Ways, and Leases for Non-Park Uses Through Properties Managed by the Regional Parks and Greenspaces Department," adopted by the Metro Council on November 6, 1997 (the "Easement Policy"), requires formal review of all easement requests by the Metro Council; and

WHEREAS, the Metro Regional Parks and Greenspaces Department has determined that the City's easement request satisfies the Easement Policy, as set forth in the Metro Easement Policy Criteria and Staff Findings attached as Exhibit "C," and can be accommodated with no impact to natural resources, recreational resources, recreational facilities, recreational opportunities or their operation and management; and

WHEREAS, in lieu of paying the required fair market value for the Sewer Easement and the costs of processing the application, BES has agreed to provide and maintain a 16-foot wide graded gravel maintenance road between SE Umatilla and Linn Streets, in the location of the future Springwater Trail; now therefore

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer:

1. To execute the Intergovernmental Agreement with the City of Portland Bureau of Environmental Services attached as Exhibit A, providing for funding and administration of a public contract for railroad track realignment services;
2. Grant a Sewer Easement to the City of Portland Bureau of Environmental Services; and
3. Waive the requirement to pay easement processing costs and appraisal value for the Sewer Easement.

ADOPTED by the Metro Council this ____ day of _____ 2008.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

INTERGOVERNMENTAL AGREEMENT Oregon Pacific Railroad Realignment Project

This Intergovernmental Agreement ("Agreement") dated November 30, 2007, is by and between Metro, a metropolitan service district organized under the laws of the state of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Portland, Bureau of Environmental Services, located at 1120 SW 5th Avenue, Portland, Oregon 97204 ("BES"), collectively referred to as the "Parties."

RECITALS:

WHEREAS, Metro and the City of Portland, Parks and Recreation Department ("Parks") entered into an intergovernmental agreement (the "Sellwood Section IGA") dated February 6, 2004, providing for the management, maintenance and operation by Parks of certain parcels of real property owned by Metro in the Town of Sellwood, City of Portland (the "Sellwood Section") and establishing that, until the Springwater Trail is constructed over said parcels, Parks will landbank the Sellwood Section in accordance with the Metro Open Spaces Implementation Work Plan; and

WHEREAS, in accord with the Sellwood Section IGA, all requests for easements over the Sellwood Section must be evaluated and processed by Metro using the Metro Easement Policy, Resolution No. 97-2539B, passed by the Metro Council on November 6, 1997; and

WHEREAS, BES plans to install a Combined Sewer Overflow Interceptor system under unimproved SE Grand Avenue between SE Tacoma Street and SE Marion Street (the "CSO Project"), and has requested a permanent sewer easement ("Easement") over a portion of the Sellwood Section next to SE Grand Avenue to provide for the CSO Project, and Metro wishes to accommodate said request; and

WHEREAS, the Oregon Pacific Railroad ("OPR") rail line currently occupies SE Grand Avenue between SE Tenino Street and SE Marion Street, and a section of said rail line between railroad engineer's station Milepost 3.64 and Milepost 3.98 must be permanently realigned eastward to provide space for the excavation and construction of the CSO Project and to allow the OPR rail line and CSO Project to co-exist within SE Grand Avenue (the "OPR Realignment Project"); and

WHEREAS, Metro has expertise in negotiating for and acquiring railroad right-of-way and procuring track realignment services, and BES wishes to enter into this Agreement with Metro for the procurement of track realignment services for the OPR Realignment Project;

NOW, THEREFORE, the Parties agree as follows:

1. Permanent Sewer Easement. Metro and BES agree to execute and record a Permanent Sewer Easement encumbering the Metro Property, State Identification Number

1S1E26BB 4000, TL 4000 BLOCK 21, within the Sellwood Section, as shown in the map attached as Exhibit A. Metro and BES agree that the Permanent Sewer Easement will be drafted and recorded as set forth in the easement recording paragraph in the Scope of Work, Exhibit B to this IGA.

2. Procurement of Track Realignment Services. Metro, its agents and contractors shall procure track realignment services for the OPR Realignment Project on BES's behalf, in accord with the Scope of Work and Budget attached as Exhibit B. The procurement services provided by Metro shall be conducted in accord with the Metro Code and all applicable provisions of ORS Chapters 279A and 279B. All modifications to the Scope of Work and Budget must be mutually approved in writing by BES and Metro.
3. Payment. Once the BES and Metro Ordinance(s) are in effect, Metro shall be reimbursed for costs of track realignment shown in Exhibit A. Metro then shall invoice BES for mobilization and progress payments for each segment of railroad work complete. Each invoice shall include a breakdown of payment for costs for Metro staff that performed work, payment for costs for all other services directly related to Procurement Services with a description of those services, and payment for the direct costs for the rail realignment services, in accordance with Exhibit B. In addition, Metro shall be reimbursed for its staff time and expenses, and any other reasonable costs and expenses associated with or in any way related to the procurement performed hereunder, including changes in the Scope of Work and Budget, OPR Realignment Project delays and OPR Realignment Project cost increases. Metro shall provide City with current and projected expenses, and a summary of work accomplished by each Metro Staff, to BES on a monthly basis upon commencement of Procurement Services. Invoices shall be sent addressed as follows, or to such other address as the City may hereafter specify in writing:

Bureau of Environmental Services
Kurt Robinson
1120 SW Fifth Ave, Room 1000
Portland, OR 97204

4. BES to Provide Unpaved Maintenance Road. After track realignment is accomplished and upon completion of the Sewer Project, but no later than December 31, 2011, BES shall provide a 16-foot wide graded gravel maintenance road, to be located within unimproved SE Grand Avenue rights-of-way, eight and one-half (8.5) feet west of the railroad ties, between SE Umatilla Street and SE Linn Street crossings, as depicted in Exhibit A. BES shall install barriers or other improvements that prevent access by unauthorized motor vehicles over the maintenance road.
5. Maintenance of Unpaved Maintenance Road – Future Trail Use. BES agrees to maintain the unpaved maintenance road in a condition passable by bicycles and pedestrians, and specifically acknowledges that the maintenance road will be paved by others in the future as part of a Metro/Portland Parks bicycle and pedestrian trail project, and officially opened to the public. BES agrees that, after said paved bicycle and pedestrian trail is

constructed, BES will repair and/or replace any trail improvements that are removed and/or damaged beyond ordinary wear and tear by BES's ongoing maintenance, repair or replacement of the sewer improvements within Grand Avenue and the Sellwood Section. BES further agrees that said maintenance, repair and replacement activities shall not result in closure of the trail for more than 48-hours in any two week period, save any duration required to mitigate emergency sewer situations with the sewer system, or unless mutually agreed that a duration of ongoing maintenance longer than 48 hours is necessary.

6. Termination of Agreement.

6.1 Termination for Convenience by Mutual Agreement. Metro and BES may terminate all or part of this Agreement at any time by mutual agreement, based upon the determination that such termination is in the public interest. Termination under this provision shall be effective immediately upon written notice of termination executed by both Parties.

6.2 Payment/Reimbursement After Termination. Notwithstanding any termination of this Agreement, Metro and its agents and contractors shall be entitled to receive payment and/or reimbursement for any work completed or for which Metro or its agents or contractors are contractually or legally obligated, where such work or legal/contractual obligation occurred prior to the effective date of the termination.

7. Term and Expiration. This Agreement for Procurement Services shall be twenty (20) years. Unless earlier terminated, this Agreement shall expire on the tenth anniversary of the Effective Date. The Sewer Easement shall be in force, in perpetuity, unless amended otherwise by mutual agreement of both parties.

8. Coordination of Public Statements. BES and Metro shall coordinate their public statements about the OPR Realignment Project. All written public statements and media communications by BES concerning the OPR Realignment Project shall be provided to Metro for review and approval no less than five (5) business days prior to the public statement's release, or, if in case of emergency, no less than 48 hours prior to release.

9. General Provisions.

9.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent both by fax and regular mail as follows, or to such other address as the receiving party may hereafter specify in writing:

To Metro: Jim Desmond
 Director, Metro Regional Parks and Greenspaces
 600 NE Grand Avenue
 Portland, OR 97232-2736

To BES: Andi Gresh
 Fund Development Manager
 City of Portland Bureau of Environmental Services
 1120 SW 5th Avenue
 Portland, OR 97204

- 9.2 Indemnification. Subject to the conditions and limitations of Article XI, Section 10 of the Oregon Constitution and the limits of the Oregon Tort Claims Act, ORS chapter 30:
- 9.2.1 BES shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions whether arising in tort, by contract or by operation of any statute, including but not limited to attorney's fees and expenses at trial and upon appeal which, in whole or in part, directly or indirectly arise from or are in any way connected with BES's performance of its obligation under this Agreement, or its breach violation or non-performance of its obligation hereunder.
- 9.2.2 Metro shall defend, indemnify and save harmless BES, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions whether arising in tort, by contract or by operation of any statute, including but not limited to attorney's fees and expenses at trial and upon appeal which, in whole or in part, directly or indirectly arise from or are in any way connected with Metro's performance of its obligation under this Agreement, or its breach violation or non-performance of its obligation hereunder.
- 9.3 Laws of Oregon. This Agreement shall be governed by the laws of the state of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state, and the Parties agree to submit to the jurisdiction of the court of the state of Oregon.
- 9.4 Assignment. Neither party shall assign any of its responsibilities under this Agreement without prior written consent from the other party, except that both Metro and BES may subcontract for performance of any of their respective responsibilities under this Agreement, without the prior written consent of the other party.
- 9.5 Severability. If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would

then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.

Attachments:

Exhibit A –Permanent Sewer Easement and Rail Alignment

Exhibit B – Scope of Work and Budget – Track Realignment Procurement Services

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year set forth above.

CITY OF PORTLAND
Bureau of Environmental Services

METRO

Bureau Director Date

Authorized Signature Date

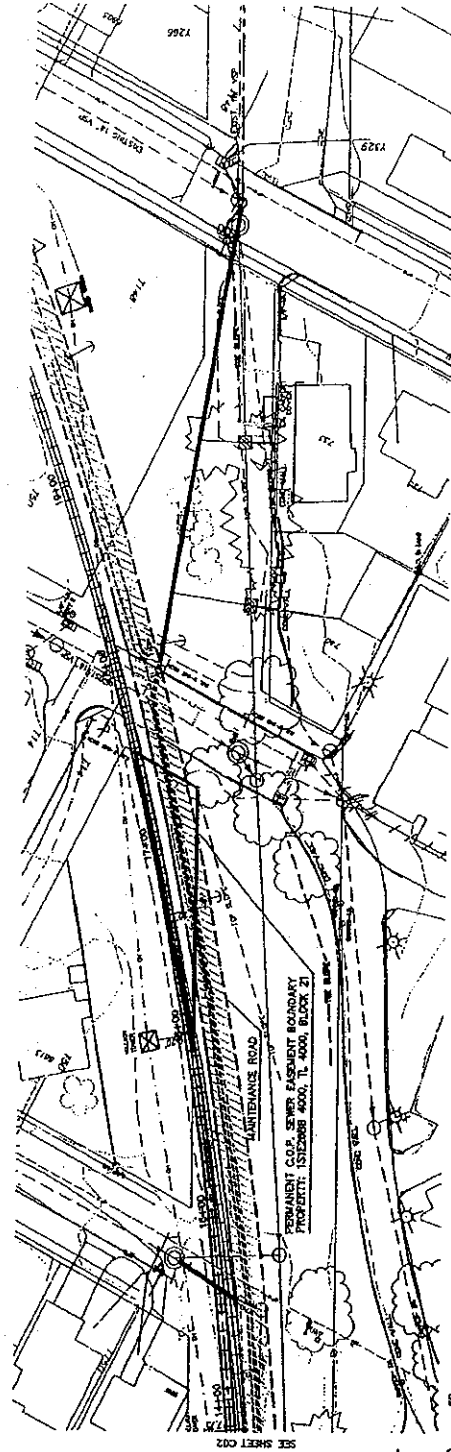
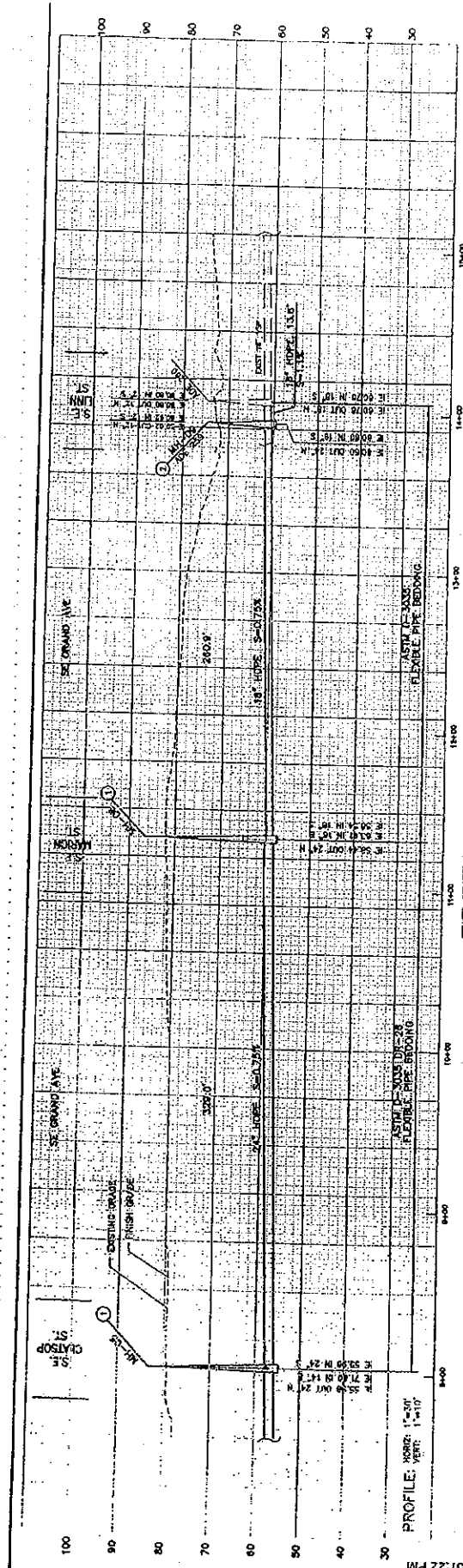
City Auditor Date

APPROVED AS TO FORM

Approved as to form by Date
General Council

[Signature] 12/17/07

Approved as to form by Date
City Attorney ATTORNEY



NOTES:
Easement Description:
The easement is for the purpose of installing and maintaining a sewer line and related structures within the easement area. The easement is to be used for the purpose of installing and maintaining a sewer line and related structures within the easement area. The easement is to be used for the purpose of installing and maintaining a sewer line and related structures within the easement area.



CITY OF PORTLAND
ENVIRONMENTAL SERVICES

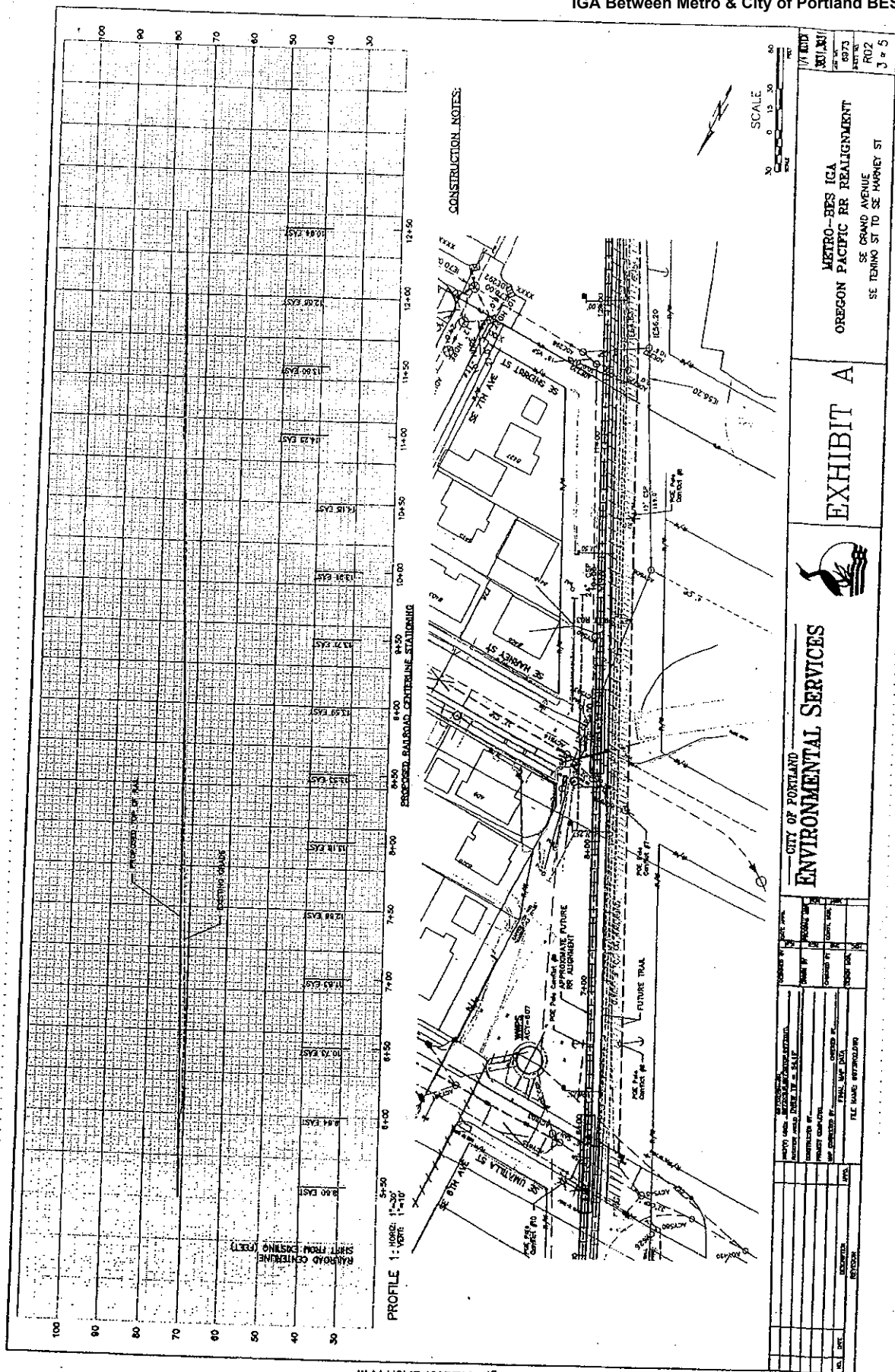
METRO-BES IGA
OREGON PACIFIC RR REALIGNMENT
PERMANENT BES SEWER EASEMENT

EXHIBIT A

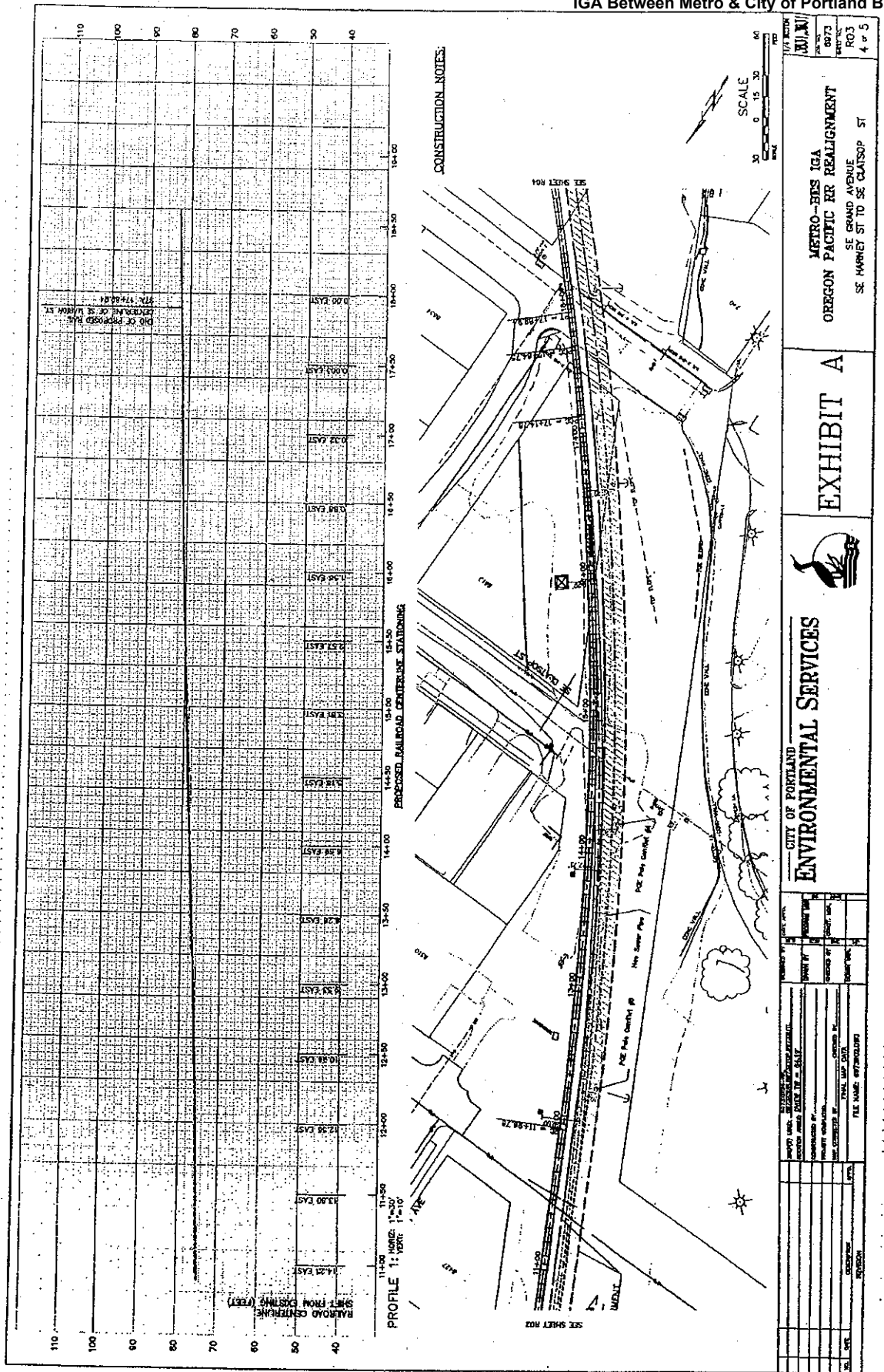
NO.	DATE	DESCRIPTION	BY	CHECKED BY	DATE
1	11/12/2007	ISSUED FOR PERMITTING	J. L. B.	J. L. B.	11/12/2007
2	11/12/2007	REVISION: SEE SHEET A-5	J. L. B.	J. L. B.	11/12/2007
3	11/12/2007	REVISION: SEE SHEET A-5	J. L. B.	J. L. B.	11/12/2007
4	11/12/2007	REVISION: SEE SHEET A-5	J. L. B.	J. L. B.	11/12/2007
5	11/12/2007	REVISION: SEE SHEET A-5	J. L. B.	J. L. B.	11/12/2007
6	11/12/2007	REVISION: SEE SHEET A-5	J. L. B.	J. L. B.	11/12/2007
7	11/12/2007	REVISION: SEE SHEET A-5	J. L. B.	J. L. B.	11/12/2007
8	11/12/2007	REVISION: SEE SHEET A-5	J. L. B.	J. L. B.	11/12/2007
9	11/12/2007	REVISION: SEE SHEET A-5	J. L. B.	J. L. B.	11/12/2007
10	11/12/2007	REVISION: SEE SHEET A-5	J. L. B.	J. L. B.	11/12/2007

SCALE
0 15 30
FEET





C:\kurt\projects\IGA\6973\Metro IGA\6973R02-EXHIBIT A.dwg, 11/12/2007 2:45:11 PM





After Recording Return To:
Bureau of Environmental Services
City of Portland
1120 SW 5th Avenue, Room 1000
Portland, OR 97204-1972

SEWER EASEMENT

METRO, a municipal corporation and political subdivision of the State of Oregon (“Metro”), for and in consideration of the mutual covenants and agreements set forth herein, and other consideration hereby acknowledged, hereby grants to the City of Portland, Bureau of Environmental Services, a municipal corporation of the State of Oregon (“BES”), its successors and assigns, a perpetual non-exclusive sewer easement, for the installation of a sewer pipeline and maintenance drive (hereafter, the “Facilities”) on, under and through Metro real property more particularly described in the Deed recorded as Fee No. 2003-080710, Multnomah County Deed Records (hereafter, the “Property”).

1. Easement Description. The sewer pipeline shall be located within the Easement between the depths of 5 and 20 feet below ground surface. The Easement shall be located as legally described in Exhibit A and depicted in Exhibit B attached hereto (the “Easement”).

2. Easement Rights. BES shall have the right to operate, maintain, repair, remove or replace the Facilities in whole or in part within the Easement. In exercising its rights hereunder, BES may enter on to, use, occupy and disturb the surface of the Property. However, BES shall promptly repair and or replace any trail or other improvement that is damaged by BES, its agents and contractors beyond ordinary wear and tear.

3. Limitations. After initial construction, BES’s activities hereunder shall not result in closure of the Easement area to public use for more than 48 hours in any two-week period, save any duration required to mitigate emergency sewer situations, or unless mutually agreed upon by the parties. Except as specifically authorized by this Easement, no other use may be made of the Easement without the prior written approval of Metro. Except for fuel and lubricants stored within equipment necessary and incidental to the authorized use of the Easement, no Hazardous Substances may be used, handled, stored or transported on, to or from the Easement Area. Under no circumstances shall any use be made of, or conduct occur on, the Easement Area which would cause the Easement Area, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any Environmental Law.

4. Metro's Reservation of Rights. Metro reserves the right to use the Property subject to the Easement for any purpose that does not hinder, disturb or interfere with the Facilities. In particular, and without limiting the generality of the foregoing, the following surface and subsurface activities are allowed on the Property, to the extent they do not hinder, disturb or interfere with the Facilities:

4.1 Trail construction.

4.2 Underground utility installation.

5. Ownership. Metro represents and warrants that it holds fee simple title to the Property. However, this grant of Easement is expressly subject to liens and encumbrances of record as of the date of execution set forth below. Metro expressly disclaims any representation and warranty as to encumbrances and/or vested rights of third parties affecting the Property that may conflict or interfere with the rights granted herein, or that it holds all rights necessary or incident to the operation of the Facilities or Easement.

6. Notices. Metro agrees to provide written notice of the existence of the Easement and the Facilities to any tenant, lessee, or assignee of Metro who occupies the Property or acquires any interest in the Property from Metro. All requests elections, notices and other communications to be given hereunder by either party to the other shall be in writing and sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

As to BES:

Bureau of Environmental Services
City of Portland
1120 SW 5th Avenue, Room 1000
Portland, OR 97204-1972

As to Metro:

Metro
Parks and Greenspaces Department
Attn: Jim Desmond, Director
600 NE Grand Avenue
Portland, OR 97232-2736

Changes of address may be accomplished for purposes of this section by giving the other party written notice of new address in the manner set forth above. Notices, elections and other communications shall be deemed effective upon receipt.

7. Covenants. The rights granted herein shall be covenants running with the land and be binding upon Metro, BES, their successors and assigns in perpetuity, except as otherwise set forth herein. BES covenants and agrees that, in the conduct of any and all of its activities and operations hereunder, it will comply strictly with all present and future laws, rules and regulations of all federal, state, and local governmental bodies having jurisdiction over the construction, installation, and operation activities occurring within the Easement.

8. Indemnity. BES, to the maximum extent permitted by law and subject to the Oregon Constitution and Oregon Tort Claims Act, ORS Chapter 30, shall defend, indemnify and save harmless Metro, its officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from BES use or occupancy of the Property.

9. Environmental Indemnity. This Environmental Indemnity is in addition to, and not in lieu of, the general indemnity provision set forth above. BES shall be solely responsible for and agrees to defend (using legal counsel reasonably acceptable to Metro), indemnify and hold harmless Metro from and against all Environmental Costs claimed against or assessed against Metro arising, in whole or in part, directly or indirectly, from acts or omissions of BES, its employees, agents and contractors at, on or about the Easement during the term hereof, including the discovery of pre-existing latent Hazardous Substance contamination as a result of BES's excavation. Environmental Costs shall be interpreted in the broadest sense to include, but not necessarily be limited to: (i) damages, fines, costs or expenses relating to any actual or claimed violation of or noncompliance with any Environmental Law; (ii) all claims of third parties, including governmental agencies, for damages, response costs or other relief related to Hazardous Substances, as defined below; (iii) all reasonable expenses of evaluation, testing, analysis, cleanup, remediation, removal and disposal relating to Hazardous Substances, including reasonable fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances or the violation of Environmental Laws to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (v) any and all expenses or obligations, incurred at, before and after any trial or appeal, or any administrative proceeding or appeal. For purposes of this Environmental Indemnity, the term "Hazardous Substance" shall include any and all substances, pollutants or contaminants defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under ORS 465, ORS 466 and any other applicable Environmental Law. The term "Environmental Law" shall include ORS 465 and 466, as amended, the Resource Conservation and Recovery Act ("RCRA"), the Toxic Substances Control Act ("TSCA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended 42 USC § 960 et seq., and any and all other applicable federal, State of Oregon, regional and local laws, regulations, rules, permit terms, codes, or ordinances now or hereafter in effect, as the same may be amended from time to time, which govern the protection of the environment.

10. Binding Effect/Reversionary Interest. This Easement is granted on the express condition that the BES use the Easement solely for the purposes stated in Sections 1 and 2 set forth above. In the event the BES uses the Easement for another purpose, then Metro may re-enter and terminate this Easement. In the event that BES fails to use the Easement for a continuous period of one (1) year at any time after the initial installation(s) authorized by this Easement, or, in the event the parties mutually agree to terminate this Easement, then Metro may re-enter and terminate this Easement.

IN WITNESS WHEREOF, the parties have executed this Sewer Easement as of this
_____ day of _____ 2008.

METRO

CITY OF PORTLAND
BUREAU OF ENVIRONMENTAL SERVICES

By: _____
Name: Michael J. Jordan
Title: Chief Operating Officer

By: _____
Name: _____
Title: _____

Attachments:

Exhibit A Property Legal Description
Exhibit B1 Legal Description Sewer Easement
Exhibit B2 Map Depiction of Sewer Easement

State of Oregon)
 ss.
County of Multnomah)

On this _____ day of _____, 2008, before me _____,
the undersigned Notary Public, personally appeared MICHAEL J. JORDAN, as Chief Operating
Officer of Metro, an Oregon municipal corporation, personally known to me (or proved to be on
the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument,
and acknowledged that he executed it.

My commission expires: _____

State of Oregon)
 ss.
County of Multnomah)

On this _____ day of _____, 2008, before me _____,
the undersigned Notary Public, personally appeared _____
as _____ of CITY OF PORTLAND, BUREAU OF ENVIRONMENTAL
SERVICES, an Oregon municipal corporation, personally known to me (or proved to be on the
basis of satisfactory evidence) to be the person(s) whose name(s) is (are) subscribed to this
instrument, and acknowledged that he (she or they) executed it.

My commission expires: _____

Exhibit A
Property Legal Description

A TRACT OF LAND SITUATED IN THE NORTHWEST ONE-QUARTER OF SECTION 26, TOWNSHIP 1 SOUTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A SEWER EASEMENT AFFECTING A PORTION THAT PROPERTY DESCRIBED IN DEED DOCUMENT NUMBER 2003-080710. THE GRAPHICAL DEPICTION AND THE ANGULAR RELATIONSHIP OF THIS DESCRIPTION IS PER RECORD OF SURVEY NUMBER 57923 MULTNOMAH COUNTY SURVEY RECORDS. THE BASIS OF BEARINGS IS BASED ON STATE PLAIN COORDINATES 83/91 DATUM, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SE CORNER OF LOT 4 BLOCK 21 PLAT OF "TOWN OF SELLWOOD", MULTNOMAH COUNTY PLAT RECORDS AS SHOWN ON EXHIBIT "B";
THENCE NORTH 88°25'37" WEST A DISTANCE OF 46.00 FEET TO THE INTERSECTION OF EASTERLY RIGHT OF WAY OF SE GRAND AVENUE AND THE NORTHERLY RIGHT OF WAY OF SE MARION STREET BEING THE POINT OF BEGINNING;

THENCE SOUTH 88°25'37" EAST, ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 39.10 FEET;
THENCE LEAVING SAID RIGHT OF WAY LINE, NORTH 38°33'26" WEST, A DISTANCE OF 149.85 FEET, TO THE EASTERLY RIGHT OF WAY LINE OF SE GRAND AVENUE;
THENCE. S 25°04'12" E ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 128.18 FEET TO THE POINT OF BEGINNING.

CONTAINS 2,240 SQUARE FEET, MORE OR LESS

Exhibit B
Map Depicting Sewer Easement

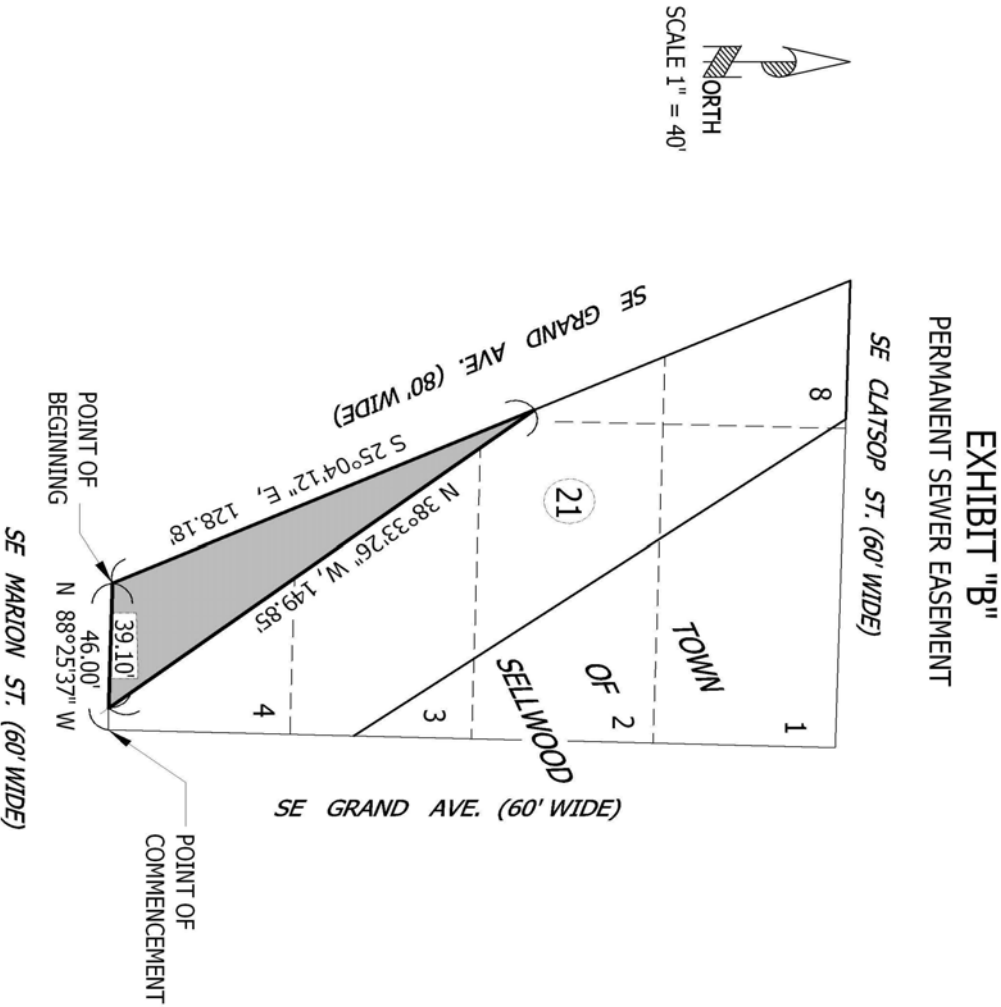


EXHIBIT C
Resolution 08-3903

Metro Easement Policy Criteria and Staff Findings

- 1) **Provide for formal review of all proposed easements, rights of ways, and leases for non-park uses to Metro Council. Notwithstanding satisfaction of the criteria set forth herein, the final determination of whether to approve a proposed easement, right-of-way, or lease is still subject to the review and approval by the full Metro Council.**

Staff Finding: The City of Portland Bureau of Environmental Services has submitted a formal easement and right-of-way application and request to the Regional Parks and Greenspaces Department. Staff recommends approval of the Easement request.

- 2) **Prohibit the development of utilities, transportation projects and other non-park uses within corridors or on sites which are located inside of Metro owned or managed regional parks, natural areas, and recreational facilities except as provided herein.**

Staff Finding: The applicant proposes to install a combined sewer outfall (“CSO”) interceptor pipe under Metro Property as part of a larger federally mandated project to prevent sewage from spilling into the Willamette River. BES is requesting a permanent sewer easement over 2,240 square feet of Metro’s park property bounded by SE Clatsop Street, SE Marion Street and undeveloped SE Grand Avenue in Sellwood (“Easement Area”).

- 3) **Reject proposals for utility easements, transportation right-of-ways and leases for non-park uses which would result in significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.**

Staff Finding: The property has minimal natural resource value. Its intended use is for a future Springwater Trail connection. After subsurface installation of the pipe, the applicant will grade the surface of the Easement Area and provide a temporary gravel maintenance road suitable for bicycle and pedestrian travel in the location of the future trail. The proposal will thus result in no significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.

- 4) **Accommodate utility easements, transportation right-of-ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right-of-way, or non-park use can be accommodated without significant impact to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and that the impacts can be minimized and mitigated.**

Staff Finding: A Metro trail concept plan exists for this site. Because the property affected by the proposed easement has little natural resource value, the easement will have minimal impact on natural resources. Because the pipe is below the surface, it will not limit or eliminate the future trail use of the Easement Area.

- 5) **Require full mitigation and related maintenance, as determined by the Department, of all unavoidable impacts to natural resources, recreational facilities, recreational opportunities or their operation and management associated with the granting of easements, right-of-ways, or leases to use Metro owned or managed regional parks, natural areas or recreational facilities for non-park uses.**

Staff Finding: All site disturbances resulting from the construction of the CSO improvements will be restored by BES upon completion of construction, and a temporary gravel maintenance road suitable for bike and pedestrian use will be constructed between SE Umatilla and SE Linn Streets.

- 6) **Limit rights conveyed by easements, right-of-ways, and leases for non-park uses to the minimum necessary to accomplish the objectives of any proposal.**

Staff Finding: The subsurface easement requested is the minimum needed to allow BES to construct the CSO interceptor pipe.

- 7) **Limit the term of easements, right-of-ways and leases to the minimum necessary to accomplish the objectives of any proposal.**

Staff Finding: The easement must be perpetual, to protect the permanence of the sewer infrastructure improvements.

- 8) **Require reversion, non-transferable, and removal and restoration clauses in all easements, rights of ways, and leases.**

Staff Finding: The easement includes these terms.

- 9) **Fully recover all direct costs (including staff time) associated with processing, reviewing, analyzing, negotiating, approving, conveying, or assuring compliance with the terms of any easement, right-of-way, or lease for non-park use.**

Staff Finding: The applicant requests that the Metro Council waive cost recovery in consideration for the construction and maintenance of the temporary gravel maintenance road in the location of the future trail.

- 10) **Receive no less than fair market value compensation for all easements, right-of-ways, or leases for non-park uses. Compensation may include, at the discretion of the Department, periodic fees or considerations other than money.**

Staff Finding: The Easement Area has been appraised by Real Property Consultants, Inc., George W. Donnerberg, dated January 22, 2007, and an appraisal obtained by Metro confirmed the value report of \$18.00 a square foot for the Easement Area, for a value of "\$40,320.00" section of area.

- 11) **Require full indemnification from the easement, right-of-way or leaseholder for all costs, damages, expenses, fines, or losses related to the use of the easement, right-of-way, or lease. Metro may also require insurance coverage and/or environmental assurances if deemed necessary by the Office of Metro Attorney.**

Staff Finding: The easement will include indemnification provisions and environmental resources. Additional insurance coverage has been deemed unnecessary by the Office of the Metro Attorney.

- 12) **Limit the exceptions to this policy to: grave sales, utilities or transportation projects which are included in approved master/management plans for Metro regional parks, natural areas and recreational facilities; projects designed specifically for the benefit of a Metro regional park, natural area, or recreational facility; or interim use leases as noted in the Open Spaces Implementation Work Plan.**

Staff Finding: No exception is proposed.

- 13) **Provide for the timely review and analysis of proposals for non-park uses by adhering to the following process:**

- A. **The applicant shall submit a detailed proposal to the Department which includes all relevant information including but not limited to: purpose, size, components, location, existing conditions, proposed project schedule and phasing, and an analysis of other alternatives which avoid the Metro owned or managed regional park, natural area or recreational facility which are considered infeasible by the applicant. Cost alone shall not constitute unfeasibility.**

Staff Finding: There are no feasible alternatives due to the location of the existing connecting sewer infrastructure and surrounding residences.

- B. **Upon receipt of the detailed proposal, the Department shall determine if additional information or a Master Plan is required prior to further review and analysis of the proposal. For those facilities, which have master plans, require that all proposed uses are consistent with the master plan. Where no master plan exists all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.**

Staff Finding: No additional information is needed.

- C. **Upon determination that the necessary information is complete, the Department shall review and analyze all available and relevant material and determine if alternative alignments or sites located outside of the Metro owned or managed regional park, natural area, or recreational facility are feasible.**

Staff Finding: No alternative alignment outside this area is feasible.

- D. **If outside alternatives are not feasible, the Department shall determine if the proposal can be accommodated without significant impact to park resources, facilities or their operation and management. Proposals which cannot be accommodated without significant impacts shall be rejected. If the Department determines that a proposal could be accommodated without significant impacts, staff shall initiate negotiations with the applicant to resolve all**

issues related to exact location, legal requirements, terms of the agreement, mitigation requirements, fair market value, site restoration, cultural resources, and any other issue relevant to a specific proposal or park, natural area or recreational facility. The Department shall endeavor to complete negotiations in a timely and business-like fashion.

Staff Finding: The proposal can be accommodated without significant impacts to such resources, facilities, their operation and management.

- E. Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval. In no event shall construction of a project commence prior to formal approval of a proposal.**

Staff Finding: Construction is contingent upon approval.

- F. Upon completion of all Metro tasks and responsibilities or at intervals determined by the Department, and regardless of Metro Council action related to a proposed easement, right-of-way, or lease for a non-park use, the applicant shall be invoiced for all expenses or the outstanding balance on expenses incurred by Metro.**

Staff Finding: BES requests that Metro Council waive reimbursement for Metro staff time.

- G. Permission from Metro for an easement or right-of-way shall not preclude review under applicable federal, state, or local jurisdiction requirements.**

Staff Finding: Criterion satisfied.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3903, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND PROVIDING FOR FUNDING AND ADMINISTRATION OF A PUBLIC CONTRACT FOR RAILROAD TRACK REALIGNMENT SERVICES AND TO GRANT AN EASEMENT TO THE CITY OF PORTLAND FOR NON-PARK USE

Date: January 17, 2008 Prepared by: Mary Anne Cassin and Mel Huie

PURPOSE

The Metro Council's approval of the resolution would authorize the Chief Operating Officer to enter into an Intergovernmental Agreement (IGA) with the city of Portland which would allow Metro to fund and administer a public contract to realign the railroad tracks in the Sellwood Gap from SE Umatilla Street to SE Linn Street. Approval of the resolution would also allow Metro to grant the city of Portland a sewer easement in the trail corridor from SE Umatilla Street to SE Linn Street.

BACKGROUND

The city of Portland has been required by state and federal environmental agencies to greatly curtail the amount of untreated sewerage that flows into the Willamette River during periods of heavy rain. Currently, combined sewers (sewerage and stormwater) in southeast Portland allow for this. The City will be installing new separated sewer and stormwater lines and a pump station on the trail corridor to prevent sewerage spills into the Willamette River.

In order to install the new lines in the trail corridor, the City will need a sewer easement from Metro. The City is also requesting that Metro administer a contract with Oregon Pacific Railroad Co. ("OPR") to realign the railroad tracks. The sewer lines will be on the inland side of the trail corridor and the future trail will be on the riverside of the corridor. A maintenance road in the corridor will serve as an interim trail.

ANALYSIS / INFORMATION

Known Opposition

There is no known opposition.

Legal Antecedents

There are no known legal antecedents.

Anticipated Effects

The project will allow the city to construct new sewer/stormwater lines in the corridor to prevent the overflow of sewerage into the Willamette River during heavy rains. A maintenance road in the corridor will also serve as an interim trail.

Budget Impacts

None. The City will provide funding for and manage the entire project. Metro will administer the contract for the track realignment though. Funds will come from the City to cover the cost of the track realignment.

RECOMMENDED ACTION

Staff recommends the approval of Resolution No. 08-3903.