

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A)	RESOLUTION NO. 08-3922
SETTLEMENT AGREEMENT WITH PACIFIC)	
POWERVAC LLC REGARDING METRO)	
NOTICE OF VIOLATION NO. NOV-186-07)	Introduced by Chief Operating Officer
)	Michael J. Jordan, with the concurrence of
)	Council President David Bragdon

WHEREAS, during 2006 and 2007, Pacific PowerVac LLC ("PPV") delivered solid waste generated within the Metro boundary to the Coffin Butte Landfill without paying the correct regional system fee and excise tax thereby violating Metro Code Sections 5.02.045 and 7.01.020; and

WHEREAS, on November 14, 2007, the Metro Chief Operating Officer ("COO"), issued Notice of Violation No. NOV-186-07 to PPV for these violations; and

WHEREAS, PPV submitted to Metro a timely request for a contested case hearing regarding NOV-186-07 in a letter dated December 4, 2007; and

WHEREAS, PPV disputed the COO's conclusion that it did not pay the correct excise tax and regional system fee and provided documents to support its position; and

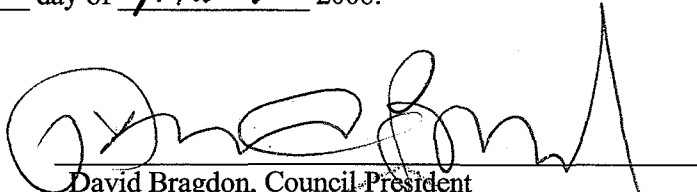
WHEREAS, the Solid Waste and Recycling Department Director and PPV agreed the terms of a settlement under which PPV will pay the regional system fee and excise tax owed, plus interest; and

WHEREAS, Metro Code Section 2.03.090 requires the Council to approve any settlement of unpaid civil penalties executed by the Director; and

WHEREAS, the COO recommends that Metro fully settle NOV-186-07 with respect to the civil penalties imposed in NOV-186-07; now, therefore


BE IT RESOLVED that the Metro Council approves settlement with PPV regarding NOV-186-07 and authorizes the COO to enter into a settlement agreement substantially similar to the document attached as Exhibit A.

ADOPTED by the Metro Council this 13th day of March 2008.

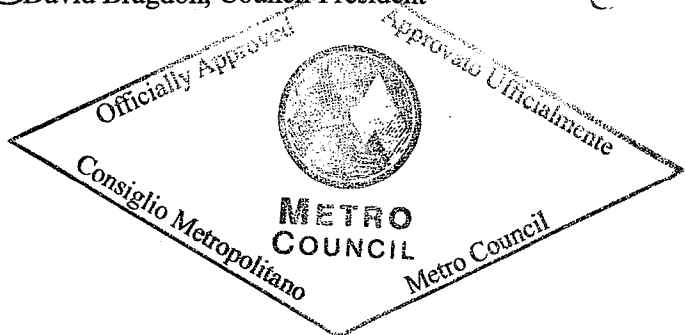


David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of the last date of signature indicated below ("Effective Date"), by and between Metro, a metropolitan service district and municipal corporation of the State of Oregon, organized under Oregon Revised Statutes Chapter 268 and the Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232 ("Metro") and PPV, Inc. ("PPV") an Oregon corporation, located at 4530 NE 138th Avenue, Portland, Oregon 97230.

RECITALS

- A. On November 14, 2007, Michael J. Jordan, Metro Chief Operating Officer ("COO"), issued Notice of Violation No. 186-07 ("NOV-186-07") to PPV. Based on an investigation conducted by Metro, the COO found that PPV did not pay the correct Metro regional system fee and excise tax.
- B. PPV disputed the COO's conclusion that it did not pay the proper excise tax and regional system fee on the solid waste and provided documents to support its position.
- C. The Parties enter into this Agreement to fully settle and compromise this dispute. Neither party admits by this settlement that it is liable to the other party.

NOW, THEREFORE, in reliance on the above recitals and in consideration of the mutual promises described below, the adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. Confession of Judgment. PPV shall execute the Confession of Judgment attached as Exhibit A to this Agreement and shall provide Metro with such executed document not later than five (5) days after both Parties have signed this Agreement.

In consideration for not executing on this judgment, PPV promises to pay Metro \$78,787.05 plus six percent (6%) simple interest compounded monthly on any balance owed. This sum is to be paid in monthly installments of not less than \$2,385.00 in any one payment, except for the last payment due of \$2,382.26 as set forth in Exhibit B to this Agreement. The first payment is due on March 1, 2008, and PPV shall make a payment of \$2,385.00 on the first day of each month thereafter until PPV has paid the whole sum. PPV may make payment to Metro of all or any portion of the remaining principle and interest accrued at any time without penalty.

If PPV is overdue on the payment of two (2) of these installment payments at any time, Metro shall provide PPV with a written notice, mailed via regular U.S. mail deposited in Portland, Oregon, and addressed to Joseph Thuney, President, PPV, Inc., 4530 NE 138th Avenue, Portland, Oregon 97230. This notice shall provide PPV with not less than ten (10) days to cure such overdue payments, and shall inform PPV that it will be in default under this Agreement if PPV fails to cure such overdue payments or if PPV is overdue on three (3) such installments, as described below.

If PPV either fails to cure overdue payments within the time period provided by Metro's cure letter, as described above, or is overdue on the payment of three (3) installments, or both, then PPV shall be in default of this Agreement. In the event of such default, Metro may:

- (a) Take a judgment order based on the Confession of Judgment against PPV for:
 - (i) The entire confessed sum, \$78,787.05, less any installments paid;
 - (ii) Six percent (6%) simple interest compounded monthly on the unpaid balance of the entire confessed sum calculated from the date that the Confession of Judgment was executed by the Company;
 - (iii) Reasonable attorney fees in trial court and appellate court to take and collect the judgment; and
 - (b) Execute to collect such total sum due, including the sum due, interest, and attorney fees.
2. Metro's Release of Further Enforcement Action. Metro hereby releases, acquits, and forever discharges its authority to pursue further enforcement action against PPV for the violations alleged in NOV-186-07. The Parties do not intend that the release, acquittal, and discharge provided for in this paragraph shall release, acquit, or discharge any other claim, right, or cause of action or any claim, right, or cause of action for violation of the terms of this Agreement.
 3. Modification and Waiver. This Agreement shall not be modified unless such modification is in writing and signed by all of the Parties. No provision of this Agreement shall be considered waived by any Party unless such a waiver is made in writing signed by the Party making the waiver. Waiver of any provision of this Agreement shall not affect the enforceability of any other provision of this Agreement.
 4. Attorney Fees. If any suit or action is brought to enforce or interpret this Agreement, the prevailing Party shall be entitled to recover from the other Party reasonable attorney fees and other costs incurred by the prevailing Party at trial or on appeal.
 5. Choice of Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.
 6. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
 7. Entire Agreement. This Agreement is the entire agreement between the Parties.
 8. Voluntary Agreement. Each Party hereby declares and represents that it fully understands the terms of this Agreement, that it has had ample opportunity to review this Agreement and solicit and receive the advice of its own legal counsel, and that it voluntarily enters into this Agreement.

9. Authority to Enter Into This Agreement and Signatory Authority. Each Party hereby declares and represents that it has the legal power, right, and authority to enter into this Agreement. The individuals signing below warrant that they have full authority to execute this Agreement on behalf of the Party for which they sign.
10. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original and all of which together are deemed a single document.

PPV, Inc.

METRO

By: _____
Joseph Thuney
President

By: _____
Michael J. Jordan
Chief Operating Officer

Date: _____

Date: _____

Attachments:

Exhibit A – Confession of Judgment

Exhibit B – Payment Schedule

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**Exhibit A
Settlement Agreement**

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

METRO, a metropolitan service district and municipal
corporation of the State of Oregon,

Plaintiff,

v.

PPV, INC., an Oregon corporation,

Defendant.

Case No.

CONFESSION OF JUDGMENT

Pursuant to ORCP 73, PPV, Inc., an Oregon Corporation (“PPV”) hereby confesses and agrees to entry of judgment against PPV and in favor of Metro, a metropolitan service district and municipal corporation of the State of Oregon (“Metro”) in the amount stated below.

PPV confesses that the obligation from which this Confession of Judgment arises is payment of \$78,787.05 due to Metro from PPV. PPV further confesses that the obligation arises from a deficient payment of excise taxes and regional system fees, plus interest, based on Notice of Violation No. 186-07 issued to PPV on November 11, 2007. PPV admits that it owes Metro the sum stated above and understands that the amount owed to Metro is a sum certain and justly and presently due.

PPV understands that this Confession of Judgment authorizes Metro to enter judgment against PPV without further proceedings and authorizes issuance of execution to enforce payment of the judgment.

METRO
Office of Metro Attorney
600 NE Grand Avenue
Portland, Oregon 97232-2736

**Exhibit A
Settlement Agreement**

Exhibit A to Resolution No. 08-3922

1 PPV warrants that the obligation from which this Confession of Judgment arises does not relate
2 to any contract, obligation or liability arising from the sale of goods or furnishing of services for
3 personal, family or household use, nor out of a loan or other extension of credit for personal, family or
4 household purposes, or upon a promissory note that is based upon such sale or extension of credit

5 The payment on the judgment set forth above shall be paid as follows: PPV promises to pay
6 Metro \$78,787.05 plus six percent (6%) simple interest compounded monthly on any balance owed.
7 This sum is to be paid in monthly installments of not less than \$2,385.00 in any one payment, except for
8 the last payment due of \$2,382.26. The first payment is due on March 1, 2008, and PPV shall make a
9 payment of \$2,385.00 on the first day of each month thereafter until PPV has paid the whole sum.

10 If PPV is overdue on the payment of two (2) of these installment payments at any time, Metro
11 shall provide PPV with a written notice, mailed via regular U.S. mail deposited in Portland, Oregon, and
12 addressed to Joseph Thuney, President, PPV, Inc., 4530 NE 138th Avenue, Portland, OR 97230. This
13 notice shall provide PPV with not less than ten (10) days to cure such overdue payments, and shall
14 inform PPV that it will be in default of this Confession of Judgment if the Company fails to cure such
15 overdue payments or if PPV is overdue on three (3) such installments, as described below.

16 If PPV either fails to cure overdue payments within the time period provided by Metro's cure
17 letter, as described above, or is overdue on the payment of three (3) installments, or both, then PPV shall
18 be in default of this Confession of Judgment. In the event of such default, Metro will have the legal
19 right to file this Confession of Judgment with the Court and may:

20 (a) Take a judgment order based on this Confession of Judgment against PPV for:

- 21 (i) The entire confessed sum, \$78,787.05, less any installments paid;
- 22 (ii) Six percent (6%) monthly simple interest on the unpaid balance of the entire
23 confessed sum calculated from the date that this Confession of Judgment was
24 executed by the Company;

25 ///

METRO
Office of Metro Attorney
600 NE Grand Avenue
Portland, Oregon 97232-2736

**Exhibit A
Settlement Agreement**

1 (iii) Reasonable attorney fees in trial court and appellate court to take and collect the
2 judgment; and

3 (b) Execute to collect such total sum due, including the sum due, interest, and attorney fees.

4 So long as PPV pays the amounts due as set forth above, Metro agrees to not file this Confession
5 of Judgment with the Court.

6 I hereby declare that the above statement is true to the best of my knowledge and belief, and that
7 I understand it is made for use as evidence in court and is subject to penalty for perjury.

8 Defendant:
9 PPV, Inc.

10 By: _____
11 Joseph Thuney, President

12 Date: _____

13
14 State of Oregon)
15) ss.
16 County of _____)

17 This instrument was acknowledged before me on _____, 2008
18 by JOSEPH THUNEY as President of PPV, Inc.

19
20 _____
21 Notary Public - State of Oregon

Pacific Power Vac - Settlement on Fees and Taxes owed Metro Fees, Taxes, and Interest Due on Sludge Material disposed as PCS

Exhibit B-1 of 2
Settlement Agreement

	Sludge Tonnage	Fees & Taxes Due ²		Paid		Balance Due		Fee&Tax Due	9%	Net Due
		System Fee	Excise Tax	System Fee	Excise Tax	System Fee	Excise Tax	Subtotal	¹ Interest	
May-05	31.04	\$ 468.39	\$ 266.32	\$ 77.60	\$ 31.04	\$ 390.79	\$ 235.28	\$ 626.07	\$ -	\$ 626.07
Jun-05	-	-	-	-	-	-	-	-	4.70	630.77
Jul-05	-	-	-	-	-	-	-	-	4.73	635.50
Aug-05	-	-	-	-	-	-	-	-	4.77	640.27
Sep-05	-	-	-	-	-	-	-	-	4.80	645.07
Oct-05	-	-	-	-	-	-	-	-	4.84	649.91
Nov-05	-	-	-	-	-	-	-	-	4.87	654.78
Dec-05	-	-	-	-	-	-	-	-	4.91	659.69
Jan-06	-	-	-	-	-	-	-	-	4.95	664.64
Feb-06	-	-	-	-	-	-	-	-	4.98	669.62
Mar-06	-	-	-	-	-	-	-	-	5.02	674.64
Apr-06	-	-	-	-	-	-	-	-	5.06	679.70
May-06	270.01	3,925.95	2,249.18	526.52	270.01	3,399.43	1,979.17	5,378.60	5.10	6,063.40
Jun-06	260.27	3,784.33	2,168.05	507.53	260.27	3,276.80	1,907.78	5,184.58	45.48	11,293.46
Jul-06	454.28	6,605.23	3,784.15	885.85	454.28	5,719.38	3,329.87	9,049.25	84.70	20,427.41
Aug-06	351.04	5,104.12	2,924.16	684.53	351.04	4,419.59	2,573.12	6,992.71	153.21	27,573.33
Sep-06	237.15	3,218.13	1,980.20	592.88	237.15	2,625.25	1,743.05	4,368.30	206.80	32,148.43
Oct-06	377.87	5,127.70	3,155.21	944.68	377.87	4,183.02	2,777.34	6,960.36	241.11	39,349.90
Nov-06	446.63	6,060.77	3,729.36	1,116.58	446.63	4,944.19	3,282.73	8,226.92	295.12	47,871.94
Dec-06	365.32	4,957.39	3,050.42	913.30	365.32	4,044.09	2,685.10	6,729.19	359.04	54,960.17
Jan-07	286.54	3,888.35	2,392.61	716.35	286.54	3,172.00	2,106.07	5,278.07	412.20	60,650.44
Feb-07	294.95	4,002.47	2,462.83	737.38	294.95	3,265.09	2,167.88	5,432.97	454.88	66,538.29
Mar-07	238.16	3,231.83	1,988.64	595.40	238.16	2,636.43	1,750.48	4,386.91	499.04	71,424.24
Apr-07	33.14	449.71	276.72	82.85	33.14	366.86	243.58	610.44	535.68	72,570.36
May-07	-	-	-	-	-	-	-	-	544.28	73,114.64
Jun-07	-	-	-	-	-	-	-	-	548.36	73,663.00
Jul-07	-	-	-	-	-	-	-	-	552.47	74,215.47
Aug-07	-	-	-	-	-	-	-	-	556.62	74,772.09
Sep-07	-	-	-	-	-	-	-	-	560.79	75,332.88
Oct-07	-	-	-	-	-	-	-	-	565.00	75,897.88
Nov-07	-	-	-	-	-	-	-	-	569.23	76,467.11
Dec-07	-	-	-	-	-	-	-	-	573.50	77,040.61
Jan-08	-	-	-	-	-	-	-	-	577.80	77,618.41
Feb-08	-	-	-	-	-	-	-	-	582.14	78,200.55
Mar-08	-	-	-	-	-	-	-	-	586.50	78,787.05
Total	3,646.40	\$ 50,824.37	\$ 30,427.85	\$ 8,381.45	\$ 3,646.40	\$ 42,442.92	\$ 26,781.45	\$ 69,224.37	\$ 9,562.68	
		\$81,252.22		\$12,027.85		\$69,224.37		\$78,787.05		

Notes: ¹ Interest is assessed on the balance due on the first day of the following month. e.g. on June 1 interest is calculated on any prior balance due plus any fees & taxes owed on waste disposed in May.

² Fees & tax rates are adjusted annually in September:

period	System Fee	Excise Tax	ECM System Fee	ECM Excise Tax
04-05	\$15.09	\$8.58	\$2.50	\$1.00
05-06	\$14.54	\$8.33	\$1.95	\$1.00
06-07	\$13.57	\$8.35	\$2.50	\$1.00

Pacific Power Vac - Settlement on Fees and Taxes owed Metro

Payment Schedule

Principal Balance Due \$ 78,787.05
Annual Interest Rate 6%
Monthly Payment \$ 2,385.00
Number of Payments 36

<u>Payment #</u>	<u>Payment Date</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest</u>	<u>Balance</u>
1	Mar 1, 2008	\$ 2,385.00	2,385.00	0.00	\$ 76,402.05
2	Apr 1, 2008	\$ 2,385.00	2,002.99	382.01	\$ 74,399.06
3	May 1, 2008	\$ 2,385.00	2,013.00	372.00	\$ 72,386.06
4	Jun 1, 2008	\$ 2,385.00	2,023.07	361.93	\$ 70,362.99
5	Jul 1, 2008	\$ 2,385.00	2,033.19	351.81	\$ 68,329.80
6	Aug 1, 2008	\$ 2,385.00	2,043.35	341.65	\$ 66,286.45
7	Sep 1, 2008	\$ 2,385.00	2,053.57	331.43	\$ 64,232.88
8	Oct 1, 2008	\$ 2,385.00	2,063.84	321.16	\$ 62,169.04
9	Nov 1, 2008	\$ 2,385.00	2,074.15	310.85	\$ 60,094.89
10	Dec 1, 2008	\$ 2,385.00	2,084.53	300.47	\$ 58,010.36
11	Jan 1, 2009	\$ 2,385.00	2,094.95	290.05	\$ 55,915.41
12	Feb 1, 2009	\$ 2,385.00	2,105.42	279.58	\$ 53,809.99
13	Mar 1, 2009	\$ 2,385.00	2,115.95	269.05	\$ 51,694.04
14	Apr 1, 2009	\$ 2,385.00	2,126.53	258.47	\$ 49,567.51
15	May 1, 2009	\$ 2,385.00	2,137.16	247.84	\$ 47,430.35
16	Jun 1, 2009	\$ 2,385.00	2,147.85	237.15	\$ 45,282.50
17	Jul 1, 2009	\$ 2,385.00	2,158.59	226.41	\$ 43,123.91
18	Aug 1, 2009	\$ 2,385.00	2,169.38	215.62	\$ 40,954.53
19	Sep 1, 2009	\$ 2,385.00	2,180.23	204.77	\$ 38,774.30
20	Oct 1, 2009	\$ 2,385.00	2,191.13	193.87	\$ 36,583.17
21	Nov 1, 2009	\$ 2,385.00	2,202.08	182.92	\$ 34,381.09
22	Dec 1, 2009	\$ 2,385.00	2,213.09	171.91	\$ 32,168.00
23	Jan 1, 2010	\$ 2,385.00	2,224.16	160.84	\$ 29,943.84
24	Feb 1, 2010	\$ 2,385.00	2,235.28	149.72	\$ 27,708.56
25	Mar 1, 2010	\$ 2,385.00	2,246.46	138.54	\$ 25,462.10
26	Apr 1, 2010	\$ 2,385.00	2,257.69	127.31	\$ 23,204.41
27	May 1, 2010	\$ 2,385.00	2,268.98	116.02	\$ 20,935.43
28	Jun 1, 2010	\$ 2,385.00	2,280.32	104.68	\$ 18,655.11
29	Jul 1, 2010	\$ 2,385.00	2,291.72	93.28	\$ 16,363.39
30	Aug 1, 2010	\$ 2,385.00	2,303.18	81.82	\$ 14,060.21
31	Sep 1, 2010	\$ 2,385.00	2,314.70	70.30	\$ 11,745.51
32	Oct 1, 2010	\$ 2,385.00	2,326.27	58.73	\$ 9,419.24
33	Nov 1, 2010	\$ 2,385.00	2,337.90	47.10	\$ 7,081.34
34	Dec 1, 2010	\$ 2,385.00	2,349.59	35.41	\$ 4,731.75
35	Jan 1, 2011	\$ 2,385.00	2,361.34	23.66	\$ 2,370.41
36	Feb 1, 2011	\$ 2,382.26	2,370.41	11.85	\$ 0.00
		<u>\$ 85,857.26</u>	<u>\$ 78,787.05</u>	<u>\$ 7,070.21</u>	

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3922 APPROVING A SETTLEMENT AGREEMENT WITH PACIFIC POWER VAC, LLC REGARDING METRO NOTICE OF VIOLATION NO. NOV-186-08

February 22, 2008

Prepared by: Steve Kraten

BACKGROUND

Pacific Power Vac, LLC (“PPV”) solidifies various sludges in order to make them suitable for landfilling. In July 2007, an analysis of Coffin Butte Landfill (“CBLF”) transactions revealed anomalies in records of solid waste delivered to the landfill by PPV. CBLF and PPV were asked to provide an explanation of the anomalies but neither provided an adequate explanation. Metro then conducted an investigation, which found that, over a period of nearly two years, 3,646 tons of solidified sludge delivered to CBLF by PPV was erroneously classified as petroleum contaminated soil. Because of this classification, PPV erroneously paid regional system fees and excise tax at a reduced rate established only for cleanup material contaminated by hazardous substances. As a result of these findings, Metro issued a Notice of Violation to CBLF that imposed a penalty of \$13,800 for failure to adhere to provisions of its operating plan that require it to inspect and assess the nature of each incoming load of solid waste. Adherence to the operating plan is a requirement of CBLF’s designated facility agreement. CBLF promptly paid the penalty.

Metro also issued a Notice of Violation to PPV for its failure to pay the proper amount of regional system fees and excise taxes on 5,224 tons and sought to recover \$120,638 in fees, taxes, penalties, and accrued interest. PPV disputed this amount and provided adequate documentation to support its position that it improperly paid on only 3,646 tons. The proposed resolution approves a settlement agreement by which Metro will recover \$69,224.37 in regional system fees and excise taxes that would have been paid had the waste been classified correctly plus interest on this amount accrued at nine percent for a total of \$78,787.05. No additional penalties were assessed.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed settlement.

2. Legal Antecedents

Metro Code Section 2.03.090 provides that, after the Chief Operating Officer (or his designee) issues a NOV assessing a civil penalty, any settlement that compromises or settles the assessed civil penalty must be approved by the Metro Council. The settlement agreement includes a confession of judgment by PPV.

3. Anticipated Effects

The effects of Resolution No. 08-3922 will be to approve a settlement that requires Pacific Power Vac, LLC to pay METRO the sum of \$78,787.05 in 36 monthly installments at six percent interest commencing on March 1, 2008.

4. Budget Impacts

This settlement will impact both the Solid Waste Fund and the General Fund. The settlement will provide future recovery of uncollected fees and taxes owed to Metro in the amount of approximately \$28,619 annually for each of the next three years. The annual revenue stream will be allocated as follows:

Annual Allocations from PPV Settlement Revenue

Solid Waste Fund	\$ 17,457
General Fund	\$ 11,162
<i>Total</i>	<u>\$ 28,619</u>

Fiscal Impact

The impact of this settlement on Metro's solid waste disposal charges will be small. Under Metro's normal budgeting process, the largest portion of future revenue—allocated to the Solid Waste Fund—would be used to pay for regional program costs in lieu of rate (Regional System Fee) revenue. If the total Solid Waste Fund allocation were used to pay for program costs, then the effect on the Regional System Fee would be a reduction of about one cent per ton. The portion of the repayment allocated to the General Fund will have no effect on future per-ton solid waste excise tax rates.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 08-3922, approving a Settlement Agreement with Power Vac, LLC substantially similar to the Settlement Agreement attached to the resolution as Exhibit A.