



METRO

Agenda

MEETING: METRO COUNCIL WORK SESSION
DATE: April 1, 2008
DAY: Tuesday
TIME: 1:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

- | | | | |
|----------------|-----------|--|------------------|
| 1:00 PM | 1. | DISCUSSION OF AGENDA FOR COUNCIL REGULAR MEETING, APRIL 3, 2008/ADMINISTRATIVE/CHIEF OPERATING OFFICER COMMUNICATIONS | |
| | | <ul style="list-style-type: none">• NEW WEB DOMAIN FOR METRO | Larson |
| 1:15 PM | 2. | SELF-HAUL STUDY | Ehinger/Tracey |
| 1:55 PM | 3. | SOLID WASTE RATE MAKING AND UNIFIED FIELD THEORY | Hoglund/Anderson |
| 2:25 PM | 4. | BREAK | |
| 2:30 PM | 5. | LANDFILL STANDARDS REPORT | Brower |
| 3:10 PM | 6. | INTERGOVERNMENTAL AGREEMENT WITH CITY OF FOREST GROVE FOR TRAIL DEVELOPMENT | Morgan |
| 3:25 PM | 7. | COUNCIL BRIEFINGS/COMMUNICATION | |

ADJOURN

SELF-HAUL STUDY

Metro Council Work Session
Tuesday, April 1, 2008
Metro Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: April 1, 2008 Time: 1:15 PM Length: 40 minutes

Presentation Title: Regional Self-Haul Waste Study

Department: Solid Waste and Recycling

Presenters: Mike Hoglund, Director
Paul Ehinger, Engineering and Technical Support Manager

ISSUE & BACKGROUND

Almost a quarter of the solid waste generated in the Metro area is delivered to transfer stations or other disposal facilities by other than a licensed or franchised solid waste hauler. While representing slightly less than 25 percent of the waste delivered to facilities serving the region, self-hauled waste accounts for 68 percent of the trips to the region's solid waste facilities. Self-haul customers at the region's solid waste facilities include a mix of both businesses and residential users.

The volume of self-hauled waste has increased along with the growth of disposal in the Metro region. Since it is delivered in small loads, the growth in self-hauled waste has had a significant impact on the facilities accepting most of the waste. The most significant impacts are:

1. **Operations.** Long lines of customers waiting for a space to open on the tipping floor. Customers may have to wait as much as one hour at some facilities on busy weekend days. This indicates that these facilities are nearing their current operating capacity to handle the self-haul customers.
2. **Waste Recovery.** Significant difficulty in recovering material at facilities handling high volumes of self-hauled waste.

The Metro Council has established a set of "values" for the solid waste system. The two impacts noted above jeopardize the system's ability to meet two of those values. These are to "Preserve public access to disposal options," and to "Ensure the system performs in a sustainable manner."

The purpose of this presentation to the Metro Council is to provide information on self-haul waste and the options being investigated, since Council action will be required to implement many of the potential solutions.

OPTIONS AVAILABLE

The options available to address the operational problems and the low recovery rates associated with the growing self-haul waste stream fall into two basic categories.

1. Demand management; and,
2. Increase supply (operational capacity) to meet demand.

These two approaches deal primarily with the capacity-related problems. Addressing the capacity-related problems will improve the relatively low recovery rates at facilities serving large numbers of self-haul customers.

At the work session on Tuesday, April 1, staff will provide information on: a) self-haul flows and recovery rates, b) categories of self-haul customers, c) reasons for self hauling, and d) provide a menu of potential demand management and supply options to address current problems in the self-haul system. These include:

- Pricing policies at Metro's transfer station could be modified to reduce demand or to encourage use of the facilities during off-peak hours when capacity is available.
- Expansion of curbside collection opportunities for wastes that are typically self hauled will reduce demand.

Increase Supply

- New facilities could be constructed to encourage material recovery rather than disposal.
- Existing capacity in the region's private transfer facilities could be utilized to meet demand.

Following the work session update, specific scenarios will be developed by Solid Waste & Recycling staff to allow comparison of the costs and benefits of these approaches. Promising scenarios will be presented to the Council at an upcoming work session this spring.

IMPLICATIONS AND SUGGESTIONS

The data and findings from this study will be used to help make decisions on a number of departmental issues. For example, the use of existing facility capacity to meet demand will impact the on-going waste allocation project and the renewal of facility franchises later in the year. Building any new facilities will need to be addressed in the department's strategic planning process and the Capital Improvement Plan.

Demand reduction options include modifications to the tipping fees at Metro facilities and may also include intergovernmental programs to help divert some of this waste to the region's commercial haulers. SWAC and the Rate Review Committee would be consulted, as appropriate on these strategies.

QUESTION(S) PRESENTED FOR CONSIDERATION

1. Is there a need for other background information?
2. Does the Council have any direction for the decision process related to this study?
3. Are there any other issues that Solid Waste & Recycling staff should investigate related to self-haul?

LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION __Yes __No
DRAFT IS ATTACHED __Yes __X_No

**SOLID WASTE RATE MAKING AND UNIFIED
FIELD THEORY**

Metro Council Work Session
Tuesday, April 1, 2008
Metro Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: 4/1/08 Time: 1:55 Length: 30 minutes

Presentation Title: Solid Waste Rate-Making (and Unified Field Theory)

Department: Solid Waste & Recycling

Presenters: Douglas Anderson, Financial Management & Analysis Manager

ISSUE & BACKGROUND

At the February 19 work session, staff presented Council with a brief seminar on Metro's solid waste rates, focusing on: (a) factors that will affect rates over the next several years and (b) legal requirements and evaluation criteria that guide Metro's solid waste rate-making process. That discussion prompted a number of suggestions and questions, together with a request for follow-up while the Rate Review Committee's discussions were still in progress.

At this follow-up work session, staff will address Councilors' questions and requests for information. The presentation is organized around four related subjects:

1. The long-run trend of Metro's disposal charges. History of the tip fee, in both current and constant dollars. Identification of the major forces that have affected the tip fee over time.
2. Projections of the tip fee over the next five years. Relationship to past trends. Identification of risks and other factors that may affect the tip fee in the future. Rate Review Committee comments on the projections.
3. The FY 2008-09 rates that are currently under discussion by the Rate Review Committee, and a comparison of these rates with solid waste charges in other west coast cities.
4. The relationship between Metro's tip fee and local collection ("curbside") charges for residential, commercial and construction/drop box customers.

OPTIONS AVAILABLE

This work session is primarily informational. However, Councilors may wish to provide comments and feedback for the Rate Review Committee.

IMPLICATIONS AND SUGGESTIONS

At its next meeting (April 10), the Rate Review Committee will consider scenarios around the long-run rate trend. This will help inform its recommendations on FY 2008-09 rates. Comments and feedback heard here today will be conveyed to the committee. The committee's formal recommendation on FY 2008-09 rates will be brought before Council in ordinance form during May.

QUESTIONS PRESENTED FOR CONSIDERATION

Do Councilors have the information on solid waste rates that they need for the upcoming budget discussions in April and deliberations over FY 2008-09 rates in May?

LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION XYes ___No
DRAFT IS ATTACHED ___Yes XNo

SCHEDULE FOR WORK SESSION

Chief Operating Officer Approval _____

Agenda Item Number 5.0

LANDFILL STANDARDS REPORT

Metro Council Work Session
Tuesday, April 1, 2008
Metro Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: April 1, 2008 Time: 2:00 pm Length: 40 minutes

Presentation Title: Review of Standards for Landfills Accepting Non-Putrescible Waste From the Metro Region

Department: Solid Waste & Recycling Presenters: Michael Hoglund, Roy Brower, Bill Metzler

ISSUE AND BACKGROUND

Adoption of the Enhanced Dry Waste Recovery Program (EDWRP) in August 2007 resulted in questions from Council regarding the environmental risks at landfills accepting Metro area waste. As a result of Council direction to evaluate those risks, staff has developed a report that reviews standards at landfills accepting dry waste that is generated from within the Metro region. The report includes a matrix that compares several out-of-region landfills against federal Resource Conservation and Recovery Act (RCRA) Subtitle D landfill standards. The report also provides an assessment of various options to ensure environmental protection at landfills for consideration by the Metro Council.

All of the landfills listed in the report currently hold the necessary state and local permits and approvals to operate as landfills. However, environmental concerns arise as to whether or not waste generated within the Metro region should be disposed at limited purpose landfills¹ that do not meet the more stringent and protective RCRA Subtitle D standards that are intended for general purpose landfills (i.e., landfills accepting mixed municipal solid waste).

While limited purpose landfills are not required to meet Subtitle D standards, Lakeside Reclamation Landfill is the only landfill receiving mixed dry waste from the Metro region that *does not* meet the substantive RCRA standards. Lakeside, however, is permitted by Oregon DEQ to accept mixed dry waste. That permit is currently under review and renewal, with a final permit anticipated within the next month. In contrast, Hillsboro Landfill, also a limited purpose landfill, does meet the substantive Subtitle D landfill standards (e.g., synthetic liner, leachate collection system).

OPTIONS AVAILABLE

The report identifies three options for Council consideration that would apply to Metro dry waste delivered to landfills under the terms of approved Metro Designated Facility Agreements (DFAs).

1. Status Quo. Dry waste generated in the Metro region would continue to be delivered to **any** out-of-region landfill provided the subject facilities have obtained all necessary local and state approvals to operate.²
2. Subtitle D Permitted. Dry waste generated in the Metro region could only be delivered to **general purpose** Subtitle D landfills that have obtained such permits from the appropriate local or state agency.
3. Meet Additional Metro Standards. Dry waste generated in the Metro region could be delivered to out-of-region **limited purpose** landfills only if they are in compliance with certain additional provisions

¹ Limited purpose landfills are permitted by the state as disposal sites to accept limited types of solid wastes, such as non-putrescible waste, that can include: construction and demolition debris, asbestos, petroleum contaminated soil and non-hazardous cleanup waste, shredded tires, non-hazardous industrial waste, and inert waste (e.g., rock, gravel).

² The status quo option will be more restrictive starting in 2009 when the Enhanced Dry Waste Recovery Program, passed by Council on August 16, 2007, limits un-processed dry waste from being disposed at landfills without first processing the waste for recoverables.

identified by Council to help ensure environmental protection (e.g. synthetic liner system, leachate collection). These additional provisions could be based on the RCRA Subtitle D requirements.

A qualitative assessment of the risks associated with the economic, regulatory and political/environmental implications of each option is included in the body of the report. In addition, the report contains a similar qualitative assessment of the Council values for the solid waste disposal system.

IMPLICATIONS AND SUGGESTIONS

Council may want to consider adoption of additional protective standards (e.g., synthetic liner, leachate collection system) for limited purpose landfills accepting dry waste from the Metro region (see Option 3). Option 3 could be further developed to provide Metro with additional tools to implement a more effective array of environmentally protective standards where Metro-generated waste is disposed. This option would continue to allow Metro waste to be disposed at limited purpose landfills - as long as they can meet and maintain compliance with the additional standards established by Metro.

As illustrated in the landfill comparison matrix, both the Hillsboro Landfill and the Weyerhaeuser Landfill are examples of how a limited purpose landfill can meet the higher standards - even though they are not permitted as a Subtitle D general purpose landfill. Conversely, adoption of the approval criteria suggested in Option 3 would disqualify Delta Sand & Gravel Landfill and Lakeside Landfill from obtaining a Metro DFA, and waste from the region would not be disposed at those facilities.

Option 3 could be further developed so that very specific non-leaching waste, such as inert³ waste and shredded/chipped tires, can continue to go to limited purpose landfills permitted by the state to manage such wastes (e.g., Delta Sand & Gravel) – with no requirement to meet the proposed additional Metro standards.

Any new option chosen beyond the status quo could be timed to allow for an orderly transition from the current system to a new system. One option is to phase in any new landfill standards with the timing of the EDWRP in 2009.

QUESTIONS PRESENTED FOR CONSIDERATION

- ☐ Does Council have questions or need more information regarding risks associated with limited purpose landfills?
- ☐ Does Council have a preferred option or approach? If so, should staff develop legislation to begin the process to implement that option?
- ☐ Are there other options Council would like evaluated ?

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³ “Inert” means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.



METRO

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600 NE Grand Ave.
Portland, OR 97232-2736

Review of Standards For Landfills Accepting Non-Putrescible Waste From the Metro Region

March 26, 2008

Metro Solid Waste & Recycling Department

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Executive Summary

Introduction

In response to critical testimony about Metro's Designated Facility Agreement (DFA) with Lakeside Reclamation Landfill during the Enhanced Dry Waste Recovery Program (EDWRP) hearings, Council directed staff to evaluate the technical and environmental standards of landfills that are currently disposing Metro-generated dry solid waste. The Council wants to ensure Metro is responsibly authorizing delivery of dry waste only to facilities that are operated in an environmentally protective manner, and are in compliance with applicable federal, state and local requirements.

All of the landfills discussed in this report currently hold the necessary state and local permits and approvals to operate as landfills. However, environmental concerns arise as to whether or not waste generated within the Metro region should be disposed at limited purpose landfills that do not meet the more stringent and protective RCRA Subtitle D standards¹, intended for general purpose landfills (i.e., landfills accepting mixed municipal solid waste).

As a result of Council direction, staff have developed this review of standards at landfills accepting dry waste that is generated from within the Metro region. A matrix is included in this report that compares the standards that are currently met by several out-of-region landfills against Subtitle D standards. The report provides an assessment of various options for consideration by the Metro Council.

Options

This report identifies three options. Any of these options could be applicable to Metro-area dry waste delivered to a limited purpose landfill² under the terms of a Metro DFA.

1. Status Quo. Dry waste generated in the Metro region would continue to be delivered to **any** out-of-region landfills with necessary local and state approvals to operate.
2. Subtitle D Permitted. Dry waste generated in the Metro region could only be delivered to **general purpose** Subtitle D landfills that have obtained such permits from the appropriate local or state agency.
3. Meet Additional Metro Standards. Dry waste generated in the Metro region could be delivered to out-of-region **limited purpose** landfills only if they are in compliance with certain additional provisions identified by Council to establish a higher level of environmental protection (e.g. synthetic liner system, leachate collection).

Recommendation

Council may want to consider adoption of additional protective standards (e.g., synthetic liner, leachate collection system) for limited purpose landfills accepting dry waste from the Metro region (see Option 3). Such standards would ensure an additional level of environmental protection where Metro-generated waste is disposed. This option would continue to allow Metro waste to be disposed at limited purpose landfills - as long as they can meet and maintain compliance with the additional standards established by Metro.

¹ RCRA is the Resource Conservation and Recovery Act that governs solid waste and hazardous waste issues in the United States.

² Limited purpose landfills are permitted by the state as disposal sites to accept limited types of solid wastes, such as non-putrescible waste, construction and demolition debris, asbestos, petroleum contaminated soil and non-hazardous cleanup waste, shredded tires, non-hazardous industrial waste, and inert waste (e.g., rock, gravel).

Review of Standards for Landfills Accepting Non-Putrescible Waste From the Metro Region

This report examines the technical standards³ for landfills currently serving as disposal sites for non-putrescible⁴ (“dry”) solid waste generated within the Metro region. The report identifies options for Metro Council consideration, and serves as a starting point for a discussion about whether current system landfills accepting Metro-region dry waste should meet landfill standards intended to have a higher level of protection for public health and the environment.

This report does not address the transfer and disposal system elements for putrescible (wet) solid waste generated in the Metro region. The Solid Waste & Recycling Department has initiated the Wet Waste Allocation Project, which will re-examine Metro policies and methods for allocating putrescible waste among private transfer stations and non-system licensees.

Introduction

As part of its solid waste planning and disposal responsibilities, Metro allows solid waste generators and haulers within the region to deliver solid waste to either: (a) one of several “designated facilities” located inside or outside the region, or (b) to any other facility outside the region by obtaining a Metro “non-system license.”⁵

For the convenience of solid waste generators and haulers wishing to use facilities outside the region, Metro has made arrangements with certain willing authorized disposal sites. Metro allows solid waste haulers, located within the Metro boundary, to dispose of dry waste without the need to obtain a non-system license. These sites must be approved and formally designated by the Metro Council as “Designated Facilities of the System.” Designated Facilities agree to collect and remit the appropriate Metro fee and tax on waste they receive that was generated in the region. The contracts that Metro has entered into with these facilities are known as Designated Facility Agreements (DFAs).

The Metro Council may add to or delete facilities from the list of designated facilities at any time. However, to do so, the Council must consider the evaluation factors listed in Metro Code section 5.05.030(b) such as knowledge of prior users of the facility, regulatory compliance, and adequacy of the facility operational practices (refer to Appendix A – Designated Facility Evaluation Criteria (excerpts from Metro Code Chapter 5.05)).

Metro has historically entered into DFAs with any landfill that was properly permitted and allowed to operate by the local and state jurisdiction. Generally, once a landfill was ‘listed’ as a designated facility in the Metro Code and a DFA signed, this contractual arrangement continued unless the state or local permitting authority disallowed the facility or the facility closed.

³ Federal landfill criteria. The Environmental Protection Agency (EPA) establishes technical design and operating criteria for disposal sites in RCRA Subtitle D-the federal waste statute. The EPA determines the adequacy (approval status) of State solid waste permitting programs that, in turn, issue permits to solid waste landfills.

⁴ Non-putrescible waste and putrescible waste are defined in Metro Code Chapter 5.01. Categories of non-putrescible waste include construction and demolition waste.

⁵ Metro Code Chapter 5.05 – Solid Waste Flow Control.

Metro staff conduct periodic inspections and audits of landfills with DFAs. Inspections of designated facilities are conducted primarily to assess proper waste classification, accounting procedures and proper payment of fees and taxes to Metro. However, such inspections occasionally uncover operational or environmental problems, which are typically referred to the appropriate state or local agency.

Metro relies on local and state waste officials to address safety, nuisance and environmental problems at out-of-district landfills since Metro has no jurisdictional authority. As long as state or local governments allow a facility to remain in operation, Metro has deferred to those agencies and relied, instead, on taking action against the facility as a contract/enforcement action where Metro interests are at stake.

In 2007, in an effort to increase the recovery of dry solid waste, the Metro Council adopted the Enhanced Dry Waste Recovery Program (EDWRP) via Ordinance No. 1147B. The Ordinance requires that by January 1, 2009 all dry waste generated in the Metro region be delivered to a Material Recovery Facility (MRF) for processing prior to disposal at a landfill. The EDWRP Ordinance also stipulates that Metro's DFAs for non-putrescible waste must be substantially modified by November 1, 2008 to reflect the new Metro Code restrictions on disposal of unprocessed dry waste, or be terminated by December 31, 2008.

Background – Dry Waste DFA Landfills

Metro currently has DFAs with eight different landfills to accept dry solid waste generated from within the Metro region. In addition, two landfills accept waste from the region under authority of a Metro non-system license (NSL) that is directly issued to haulers or generators.

For instance, the Riverbend Landfill, located in Yamhill County, accepts waste from the Metro region under the authority of several NSLs issued directly to waste haulers or generators. Delta Sand & Gravel, located in Lane County, accepts only tire residual from Metro under an NSL issued to tire processors in the region. These landfills, as illustrated in the landfill location map in Figure 1, are sited in either Oregon or Washington, and are within 175 miles of Metro's jurisdictional boundaries.

Figure 1 shows the location of ten different landfills where Metro waste is delivered or has been delivered in recent years. Six of these landfills are classified as "general purpose" landfills (five have DFAs with Metro)⁶, while the remaining four are "limited purpose" landfills (three have DFAs with Metro)⁷. These landfill categories are discussed in more detail in the section that follows (the individual landfill characteristics are discussed in more detail in Appendix B to this report).

⁶ Riverbend Landfill, located in Yamhill County near McMinnville and owned by Waste Management, does not have a DFA with Metro.

⁷ Delta Sand & Gravel, located in Lane County near Eugene, does not have a DFA with Metro.

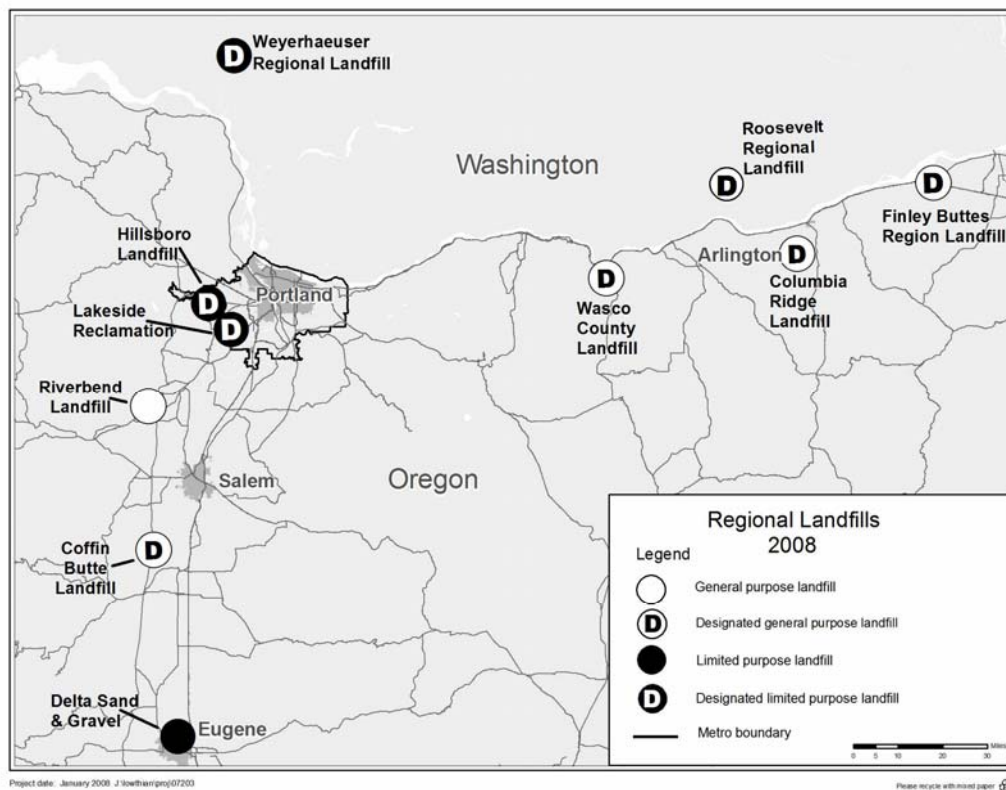


Figure 1 – Landfill Location Map

General Purpose Landfills (must meet RCRA Subtitle D standards). General purpose landfills are engineered to dispose of municipal solid waste (MSW), such as putrescible garbage, and must meet stringent construction and operational requirements under federal and state rules established in Subtitle D of the Federal Resource Conservation and Recovery Act (RCRA).⁸ RCRA's landfill requirements are commonly called "Subtitle D."

The Subtitle D requirements were established to protect human health and the environment from possible contamination caused by landfills, especially groundwater and stormwater. These regulations include specific requirements for landfill location, design, operation, closure and financial assurance.

Five of the eight Metro DFAs are "general purpose" landfills. These landfills accept unprocessed dry waste⁹, processed dry waste, special waste and cleanup waste. They are permitted as Subtitle D landfills:

1. Coffin Butte Landfill (Benton County)
2. Columbia Ridge Landfill (Gilliam County)
3. Finley Butte Landfill (Morrow County)
4. Roosevelt Landfill (Klickitat County)
5. Wasco County Landfill (Wasco County)

⁸ The primary regulations are found in 40 CFR Part 257 and Part 258 of the Code of Federal Regulations.

⁹ Until January 1, 2009 when they can only accept processed dry waste.

Limited Purpose Landfills (not required to meet Subtitle D standards). Limited purpose landfills may be constructed or operated under less stringent standards than general purpose landfills. Limited purpose landfills are typically authorized by a state solid waste disposal site permit to accept specific non-putrescible wastes, such as construction and demolition waste and clean fill material (e.g., uncontaminated soil, rock and similar inert¹⁰ materials).

The state permit can also authorize acceptance of other wastes including but not limited to: petroleum contaminated soils and other non-putrescible debris from clean-up of petroleum or other non-hazardous chemical spills, non-hazardous industrial wastes, asbestos, and shredded tires. Environmental impacts may occur at these landfills. Such impacts may include contamination of groundwater or surface water from leachate, methane or other gas production, landfill fires and human health issues with exposure to toxic materials.

Three of the eight Metro dry waste DFAs are with “limited purpose” landfills that are not permitted as Subtitle D landfills:

1. Hillsboro Landfill (Washington County)
2. Lakeside Landfill (Washington County)
3. Weyerhaeuser Landfill (Cowlitz County, WA)

While RCRA Subtitle D establishes standards for landfill construction and operation, state and local governments may enact more stringent requirements. Some states have requirements for limited purpose landfills that are more stringent than the federal requirements, however Oregon has not implemented such standards on a statewide basis, although the Oregon DEQ may do so on a case-specific basis. In Oregon the DEQ still issues permit renewals to unlined landfills with no leachate or gas collection systems, to accept and dispose of certain wastes.

According to the EPA website, the states that have additional liner requirements for limited purpose landfills are as follows:

- Natural clay liner requirements include - Indiana, Iowa, Kentucky, Louisiana, New Jersey, Oklahoma, Tennessee, Texas, West Virginia, and Wisconsin.
- Composite liner (clay liner plus a synthetic liner) requirements include - Massachusetts, Nevada, New York, and Rhode Island.
- Site-specific requirements include - Colorado, Georgia, Michigan, New Hampshire, South Carolina, South Dakota, and Virginia. The individual characteristics of each landfill site determines the type of liner system required (e.g., depth to groundwater).

¹⁰ “Inert” means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health (Metro Code Section 5.01.010(u)).

Analysis

In response to critical testimony about Metro's Designated Facility Agreement (DFA) with Lakeside Reclamation Landfill during the Enhanced Dry Waste Recovery Program (EDWRP) hearings¹¹, Council directed staff to evaluate the technical and environmental standards of landfills that are currently disposing of Metro-generated dry solid waste.

The Council wants to ensure Metro is responsibly authorizing the delivery of dry waste only to facilities that are operated in an environmentally protective manner, and are in compliance with applicable federal, state and local requirements. Given this, environmental concerns arise as to whether or not waste generated within the Metro region should be disposed at limited purpose landfills that do not meet the more stringent and protective Subtitle D standards, intended for general purpose landfills (i.e., landfills accepting mixed municipal solid waste).

As a result of Council direction, staff have reviewed the standards at landfills accepting dry waste that is generated from within the Metro region. A matrix has been developed that compares several out-of-region landfills to major RCRA Subtitle D standards. Based on information in the landfill standards comparison matrix (see Figure 2), this report provides an assessment of various options for consideration by the Metro Council.

The landfill standards matrix compares ten out-of-region landfills, accepting Metro-area waste, against the substantive Subtitle D standards. For accurate comparison, the landfills have been divided into the two major categories discussed in the previous section:

- General purpose landfills, and
- Limited purpose landfills.

As illustrated in Figure 2, the Landfill Standards Comparison Matrix, Metro has DFAs with five "general purpose" landfills (Subtitle D) to accept non-putrescible waste. The Riverbend Landfill accepts Metro waste under authority of NSLs issued to haulers rather than a DFA. In addition to the five general purpose landfills, there are three "limited purpose" DFA landfills accepting Metro waste that are not Subtitle D permitted landfills. Two of these landfills - Hillsboro Landfill and Lakeside Reclamation Landfill - are located in Washington County just outside the Metro boundary. Delta Sand & Gravel accepts only used tire residual from the region by an NSL issued to tire processors located in the Metro region.

The following general purpose landfills are currently permitted as Subtitle D landfills (see Figure 2). There are no major compliance issues identified by the Oregon Department of Environmental Quality (DEQ) or Washington Department of Ecology, and relevant local governments:

- Coffin Butte Landfill.
- Columbia Ridge Landfill.
- Finley Buttes Regional Landfill.
- Riverbend Landfill.
- Roosevelt Regional Landfill.
- Wasco County Landfill.

¹¹ The Council hearing culminated in the adoption of Ordinance No. 07-1147B on August 16, 2007.

Figure 2
Landfill Standards Comparison Matrix

Information provided for comparative purposes only. Not for compliance status.

Landfill Name (location)		Accepts Metro Dry Waste through a DFA or NSL	Tons of Metro Mixed Dry Waste ^{*2} accepted in 2007	Federal RCRA Subtitle D Standards*												
				Conduct Frequent Load Inspections	Use Daily Cover Material	Adequate Control of Vectors	Control or Collect Explosive Gas (e.g. Methane)	Limit Open Burning & Control of Onsite Dust	Control Public Access	Control, Collect & Treat Stormwater & Surface Water	Liquids and Managed, Restricted or Prohibited	Meet Record Keeping Requirements	Provide Synthetic Liner & Leachate Collection	Conduct Frequent Groundwater Monitoring & Sampling	Provide Adequate Closure Plan & Financial Assurance	Provide Adequate Post-Closure Care (30 years) & Financial Assurance
General Purpose Landfills (RCRA Subtitle D)	Coffin Butte Landfill (Corvallis)	DFA	83,000	+	+	+	+	+	+	+	+	+	++	+	+	+
	Columbia Ridge Landfill (Arlington)	DFA	14,000	+	+	+	+	+	+	+	+	+	++	+	+	+
	Finley Buttes Regional Landfill (Boardman)	DFA	2,000	+	+	+	+	+	+	+	+	+	++	+	+	+
	Riverbend Landfill (McMinnville)	NSL	56,000	+	+	+	+	+	+	+	+	+	++	+	+	+
	Roosevelt Regional Landfill (Roosevelt, WA)	DFA	0	+	+	+	+	+	+	+	+	+	+	+	+	+
	Wasco County Landfill (The Dalles)	DFA	68,000	+	+	+	+	+	+	+	+	+	++	+	+	+
Limited Purpose Landfills (Not RCRA Subtitle D)	Delta Sand & Gravel Demo (Eugene) ^{*3}	NSL	21,000	u	u	u	u	u	+	u	u	u	o	u	+	u
	Hillsboro Landfill (Hillsboro)	DFA	279,000	+	+	+	+	+	+	+	+	+	++	+	+	+
	Lakeside Reclamation Landfill (Beaverton)	DFA	80,000	u	u	u	u	u	+	u	u	u	o	u	+	u
	Weyerhaeuser Regional Landfill (Castle Rock, WA)	DFA	3,000	+	+	+	+	+	+	+	+	+	+	+	+	u
Key																
o		Does not meet Subtitle D requirements with current infrastructure or operating practices.														
u		Unknown (compliance with Subtitle D requirements have not been established).														
+		Meets at least the minimum Subtitle D requirements.														
++		Exceeds Subtitle D requirements with 2 layers of synthetic liner and 2 layers of leachate collection (secondary collection acts as leak detection).														
* RCRA Subtitle D Standards are for MSW landfills only. Subtitle D standards are not required at dry waste or inert landfills, however, state for local government can impose these or other standards on dry waste landfills.																
^{*2} Totals include: dry solid waste, dry residual, PCS/ECU, special waste and tires.																
^{*3} Delta Sand & Gravel is authorized by Metro to received only tires from the Metro region, no other dry waste.																
DFA= Designated Facility Agreement; NSL= Non-System License; RCRA= Resource Conservation and Recovery Act.																

Information found in Figure 2 was gathered from a variety of sources including: Metro regulatory files, internet references such as the facility/company websites, DEQ and WA Department of Ecology websites, and conversations with facility/company representatives and/or DEQ and WA Department of Ecology representatives.

In staff's judgment, the following limited purpose landfills meet or could meet the Subtitle D standards (see Figure 2) with their current infrastructure:

- Hillsboro Landfill.
- Weyerhaeuser Landfill.

In staff's judgment, the following limited purpose landfills could not meet all Subtitle D standards (see Figure 2) with their current infrastructure and cannot meet them without a large capital investment:

- Delta Sand & Gravel.¹²
- Lakeside Reclamation Landfill.¹³

Hillsboro Landfill and Lakeside Reclamation Landfill are located just outside the Metro boundary and receive the majority of their tonnage from the Metro region. In 2007, Hillsboro Landfill received 279,000 tons¹⁴ from the region (about 80% of total waste landfilled came from inside the region), while Lakeside Reclamation Landfill received 80,000 tons¹⁵ from the region (about 86% of the total waste landfilled came from inside the region).

Summary of Subtitle D Standards for General Purpose Landfills.

The EPA's Subtitle D program establishes a system for managing solid (primarily nonhazardous) waste, such as municipal solid waste at general purpose landfills. The matrix lists thirteen of the major Subtitle D standards¹⁶ that apply to general purpose landfills. Not all of the Subtitle D requirements are listed in the matrix. In particular, location restrictions (e.g., airports, floodplains, wetlands, fault and seismic areas) for siting new landfills are not presented since the landfills in this study are already sited and constructed. The Subtitle D requirements are summarized as follows:

1. Load inspections. The landfill must set up a program to detect and prevent disposal of regulated quantities of hazardous waste and polychlorinated biphenyl (PCB) wastes. The program must include procedures for random load inspections and records of inspections, training of personnel and notifying authorities of any hazardous waste received.
2. Cover material used. The landfill must cover disposed solid waste with at least 6 inches of earthen material (or state approved Alternative Daily Cover) at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging.
3. Control of disease vectors. The landfill is responsible for controlling vector populations. Vectors include any rodents, flies, mosquitoes, or other animals or insects capable of transmitting disease to humans. Application of cover material at the end of each operating day generally controls vectors.

¹² Delta Sand & Gravel is authorized to accept only used tires from the Metro region – not mixed dry waste.

¹³ Lakeside Reclamation Landfill (LRL) may not meet several Subtitle D standards. The landfill has no synthetic liner or leachate collection system or gas collection system. The operator claims that the clay soil in the area around the landfill is impermeable enough to contain any leachate therefore a liner is not needed. LRL also feels that the levels of explosive gas produced by the dry waste to not warrant a gas collection system. Even though LRL's Operations Plan (1993) reports that every load will be checked for non-acceptable material, the landfill has been warned by DEQ on occasion for accepting prohibited material. Currently, LRL only inspects one in every ten loads.

¹⁴ Includes dry waste, dry residual, clean-up waste, special waste and tires.

¹⁵ Includes Dry waste and dry residual.

¹⁶ Excerpts from Criteria for Solid Waste Disposal Facilities—A Guide for Owners / Operators, USEPA, March 1993.

4. Control of explosive gases. The landfill must set up a program to check for methane gas emissions monthly. If limits are exceeded, the operator must immediately notify the state and take immediate steps to protect human health and the environment. A remediation plan must also be developed and implemented within 60-days.
5. Air quality requirements. Open burning of wastes is not permitted except for specific limited exceptions. Landfills must comply with the applicable requirements of their State Implementation Plans for meeting federal air quality standards.
6. Control public access. The landfill must control public access to prevent illegal dumping, unauthorized vehicular traffic, and public exposure. Artificial and/or natural barriers may be used to control access (limit access during and after hours to prevent unscreened dumping).
7. Control storm water and surface water protection. The landfill must build and maintain a control system designed to prevent storm waters from running on to the active part of the landfill. A surface water run-off control system must also be built and maintained according to the requirements of the Clean Water Act. Landfills must be built and maintained to ensure they do not release pollutants that violate the Clean Water Act.
8. Liquids managed / restricted. A landfill cannot accept bulk or non-containerized liquid waste unless (1) the waste is non-septic household waste, or (2) it is leachate or gas condensate that is re-circulated to the landfill, and the unit is equipped with a composite liner and leachate collection system per the requirements. Containers of liquid waste can be landfilled only if they meet size requirements, if they are designed to hold liquids for use other than storage, or hold only household waste in containers from routine collection.
9. Meet record keeping requirements. Landfills are required to keep certain documents in or near the facility, including procedures for excluding hazardous wastes, gas monitoring results, leachate or gas condensate system design documentation, ground-water monitoring, closure and post-closure plans, and cost estimates and financial assurance documentation, including records of waste volumes, sources, etc.
10. Synthetic liner / leachate collection. Landfills are required to comply with specific EPA-approved permeability performance standards or install an EPA-approved composite liner and a leachate collection system. The composite liner system combines an upper liner of synthetic flexible membrane and a lower layer of soil at least 2 feet thick that meets specific hydraulic conductivity limits. The leachate collection system must be designed to keep the depth of the leachate over the liner to less than 12 inches.
11. Conduct groundwater monitoring & sampling. This requirement is related to the sampling and analysis of groundwater in the landfill area and selection and implementation of corrective actions if contamination is detected. Landfills must install enough groundwater monitoring wells in the appropriate places to accurately assess the quality of the uppermost aquifer.
12. Closure plan and financial assurance. Landfills must prepare and maintain adequate written closure and post-closure plans. There are specific standards for owners / operators to follow when closing a landfill including requirements for final cover (capping), closure plans and financial assurance. Financial assurance is provided to cover the cost of closing the landfill.
13. Post-closure care and financial assurance. For at least 30 years after closure, landfills are responsible for maintaining the integrity of the final cover, monitoring groundwater and methane

gas, and continuing leachate management. Landfills must comply with financial assurance criteria and demonstrate financial responsibility for the costs of closure, post-closure care, and corrective action for known releases. Financial assurance is provided to assure long term care and remediation of a landfill.

Conclusion

It is important to note that all of the limited purpose landfills listed in the matrix currently hold the necessary state and local permits and approvals to operate. Therefore, they are all currently eligible to receive specified waste generated in the Metro region.¹⁷ However, environmental concerns arise as to whether or not waste generated within the Metro region should continue to be disposed at limited purpose landfills that do not meet, at a minimum, the more stringent and protective Subtitle D standards that are intended for general purpose landfills (i.e., landfills accepting mixed municipal solid waste).

While limited purpose landfills are not required to meet Subtitle D standards, Lakeside Reclamation Landfill, and Delta Sand & Gravel are the only landfills receiving waste from the Metro region that do not meet the substantive Subtitle D standards (e.g., synthetic liner, leachate collection system). Both landfills, however, have an Oregon DEQ Permit which allows such waste to be disposed there. Lakeside Landfill's DEQ permit is currently being reviewed for renewal. In contrast, Hillsboro Landfill and Weyerhaeuser Landfill, also limited purpose landfills, do meet the substantive Subtitle D landfill standards, including the synthetic liner and leachate collection system requirements.

Options

As illustrated in the landfill comparison matrix, there are multiple system landfills that meet the Subtitle D standards. As a starting point for discussion, Metro could consider a range of options from the status quo to the full RCRA Subtitle D permitting requirements for general purpose landfills. In addition, alternatives to the Subtitle D standards requirement should also be identified for consideration. Accordingly, three options have been identified for further analysis. The options presented below could be imposed on certain waste generated in the Metro region that would be delivered to a landfill under the terms of an approved Metro DFA.

1. Status Quo. Waste generated in the Metro region would continue to be delivered to **any** out-of-region limited purpose landfills provided the subject facilities have obtained all necessary local and state approvals to operate.
2. Subtitle D Permitted. Waste generated in the Metro region could only be delivered to **general purpose** Subtitle D landfills that have obtained such permits from the appropriate local or state agency.
3. Meet Additional Metro Standards. Waste generated in the Metro region could be delivered to out-of-region **limited purpose** landfills only if they are in compliance with certain additional provisions identified by Council to establish a higher level of environmental protection (e.g. synthetic liner system, leachate collection). These additional provisions could be based on the RCRA Subtitle D requirements.

¹⁷ Although they meet six other criteria currently in Metro Code to become a Designated Facility of the System, or to receive waste under a non-system license. Metro Council must approve Designated Facility status.

Some of the possible economic, regulatory, and political/environmental implications for each of the three options are presented below:

OPTION 1 - Status Quo.

Waste generated in the Metro region may continue to be delivered to **any** out-of-region landfills provided the subject facilities have obtained all necessary local and state approvals to operate.

Economic implications.

- Neutral. Waste could continue to go to the Lakeside, Hillsboro, Delta Sand & Gravel and Weyerhaeuser landfills under the terms of a Metro DFA, as long as state and local approvals to operate are in place. However, the status quo will only be maintained until January 1, 2009, when landfills accepting mixed dry waste must be in compliance with Metro's Enhanced Dry Waste Recovery Program (EDWRP), and will no longer be allowed to take unprocessed dry waste from the region.

Regulatory implications.

- The new DEQ solid waste disposal site permit for Lakeside may require the landfill to close its operations in 2009.

Political / Environmental implications.

- Metro perceived as not taking positive action toward environmental concerns with waste delivered to limited purpose landfills that don't meet the higher protective standards.
- This action would not result in additional measures that would further protect human health or the environment.

OPTION 2 - Subtitle D Permitted.

Waste generated in the Metro region can only be delivered to a **general purpose** Subtitle D landfill fully permitted by the appropriate local or state agency.

Economic implications.

- Waste from the region could no longer be delivered to a limited purpose landfill - such as Lakeside, Hillsboro, Delta Sand & Gravel, or Weyerhaeuser landfills. In 2007, the following Metro area tonnages were delivered: 80,000 tons to Lakeside Landfill; 279,000 tons to Hillsboro Landfill; 21,000 tons of shredded tires to Delta Sand & Gravel Landfill; and 3,000 tons to Weyerhaeuser Landfill.
- The existing general purpose landfills appear to have adequate future capacity to accept additional waste from the region for many decades to come.
- Higher costs (transportation and some disposal fees) for current customers of Lakeside Landfill, Hillsboro Landfill, Weyerhaeuser Landfill and Delta Sand & Gravel.
- City or county franchise fees, enhancement fees or other similar fees and taxes (if currently imposed) could be reduced due to decrease in tonnage deliveries to the limited purpose landfills.

- Hillsboro Landfill could raise its tip fees as a consequence of making an application to the DEQ to become a fully permitted Subtitle D landfill (it is not clear whether the DEQ has the resources to issue Subtitle D permits where they are not required).
- It is unlikely that Lakeside Landfill or Delta Sand & Gravel would make an application to the DEQ to become a fully permitted Subtitle D landfill.

Regulatory implications.

- Metro flow control and enforcement issues would require additional legal evaluation, including risk assessment. Metro would need to investigate flow control violations and take more frequent enforcement action.
- The Oregon DEQ and Washington Department of Ecology may be unwilling or unable to permit limited purpose landfills meeting Subtitle D standards if the landfill does not plan to take mixed municipal solid waste.

Political / Environmental implications.

- The environment would be better protected as a result of this action by ensuring Metro dry waste was delivered to the most protective available landfills.
- Metro Council must pass an ordinance to remove one or more designated facilities from the list in Chapter 5.05 and the COO would terminate the agreements with non-listed landfills.
- Two landfills in Washington County would be unavailable to accept Metro waste (approximately 359,000 combined tons from both Lakeside and Hillsboro landfills in 2007). Metro would need to investigate violations and take more frequent flow control enforcement action.

OPTION 3 – Meets Additional Metro Standards.

Waste generated in the Metro region could be delivered to out-of-region **limited purpose** landfills only if they are in compliance with certain additional provisions identified by Council (e.g., synthetic liner, leachate collection system). These additional provisions could be based on the Subtitle D requirements, and would ensure a significant level of additional environmental protection over the status quo.

Economic implications.

- Lakeside Landfill and Delta Sand & Gravel Landfill would not likely be able to meet the standards. In 2007, 80,000 tons of waste from the Metro region was delivered to Lakeside Landfill; and 21,000 tons of shredded tires from the region were delivered to Delta Sand & Gravel Landfill.
- Hillsboro Landfill and Weyerhaeuser Landfill would likely meet the standards.
- Franchise fees, enhancement fees or other similar fees and taxes if collected by a city or county could be reduced due to a decrease in tonnage deliveries to Lakeside Landfill. However, this impact would be substantially diminished by EDWRP implementation on January 1, 2009, when all dry waste must be delivered to a MRF and only processing residual can go to a landfill.

- Disposal fees might increase at “non-compliant” limited purpose landfills, wanting to meet the new standards in order to accept Metro generated waste.
- Potentially longer drive times and higher disposal fees for some customers currently using Lakeside Landfill and higher disposal fees for some customers currently using Delta Sand & Gravel.

Regulatory implications.

- Metro flow control and enforcement issues would require further evaluation. Metro would need to investigate violations and take more frequent flow control enforcement action.

Political / Environmental implications.

- The environment would be better protected as a result of this action.
- Metro Council must select specific standards and / or Subtitle D provisions for limited purpose landfills. These standards would need to be included in the DFA approval criteria in Metro Code Chapter 5.05.
- Metro Council must pass an ordinance to remove an existing non-compliant designated facility (i.e., limited purpose landfill) from the designated list in Chapter 5.05 and the Chief Operating Officer would terminate the agreement.

The following table summarizes the results of staff assessment of the possible economic, regulatory, and political/environmental implications that may arise from each of the options as discussed above. The implications for each option is ranked, by staff, according to its associated risk as either low, medium, or high, with low having the least amount of risk (most favorable) and high the most risk (least favorable).

Risk Assessment Summary

Options for Dry Waste Landfill DFAs	Risk Assessment		
	Economic	Regulatory	Political
Option 1 - Status Quo	Low	Low	Medium
Option 2 – Subtitle D Permitted	High	High	High
Option 3 – Meets Additional Metro Standards	Medium	Medium	Medium

Results indicate that there are significantly higher risks for Metro associated with Option 2, and less risk associated with Option 1 and Option 3. The next section compares the three options to the Council values for the disposal system.

Council Values for the Disposal System. In 2006, during Phase 1 of the Disposal System Planning project,¹⁸ the Metro Council outlined seven values associated with the solid waste disposal system.

The seven Council Disposal System Values are presented in the table below, and are used to qualitatively evaluate the three options. The options have been ranked, by staff, according to their associated risk to the Council Disposal System Values as either low, medium, or high, with low being the least risk (most favorable) and high the most risk (least favorable).

Council Disposal System Values	Options - Risk Assessment		
	Option 1 - Status Quo	Option 2 – Subtitle D Permitted	Option 3 – Meet Metro Standards
1. Protect public investment in the solid waste system.	Low	Medium	Low
2. “Pay to Play” – Ensure participants pay fees / taxes.	Low	Medium	Low
3. Environmental Sustainability – Ensure system performs in a sustainable manner.	High	Low	Low
4. Preserve public access to disposal options (location/hours).	Low	High	Medium
5. Ensure regional equity – Equitable distribution of disposal options.	Low	High	Low
6. Maintain funding source for Metro general government.	Low	Medium	Low
7. Ensure reasonable / affordable rates.	Low	High	Medium

Results of the assessment indicate that:

- ❑ There is significantly less risk associated with Option 1, with the exception that the environmental sustainability value is unfavorably ranked (high risk).
- ❑ There are more risks (medium and high rankings) associated with implementing Option 2 when evaluated against the Council System Values.
- ❑ Option 2 and Option 3 would be more protective of the environment as they would require higher standards for limited purpose landfills receiving waste from the Metro region.
- ❑ Option 2 would require Metro to send its waste exclusively to Subtitle D permitted general purpose landfills and would severely limit disposal options for the region. Both of the risk assessment summary tables indicate that Option 2 presents significantly more negative implications, which would likely outweigh any benefits.
- ❑ Option 3 is ranked significantly better than Option 2, with generally favorable overall rankings. Moreover, Option 3 does not limit Metro to entering into agreements with only Subtitle D permitted general purpose landfills - as would Option 2.

¹⁸ Metro Transfer System Ownership Study, Final Report, June 2006, prepared by CH2MHill and Ecodata Inc.

Recommendation

Based on the previous assessments, Option 3 would provide Metro with additional tools to implement a more effective array of environmentally protective standards where Metro-generated waste is disposed. This option would continue to allow certain Metro waste to be disposed at limited purpose landfills - as long as they can meet the additional entry standards and on-going compliance standards established by Metro. As illustrated in the landfill comparison matrix (Figure 2), both the Hillsboro Landfill and the Weyerhaeuser Landfill are examples of how a limited purpose landfill can meet the higher standards - even though they are not state permitted as a Subtitle D general purpose landfill.

Therefore, staff believes that Option 3 best meets the study objectives to minimize environmental risk, and ensuring efficient disposal opportunities for Metro area generated waste. Metro could make clear that only limited purpose landfills that demonstrate that they meet the additional standards would be eligible to apply for Metro DFA status. In addition, Option 3 could be further developed so that very specific non-leachable waste, such as inert¹⁹ waste and shredded/chipped tires, can continue to go to limited purpose landfills permitted by the state to manage such wastes (e.g., Delta Sand & Gravel) – with no requirement to meet the proposed additional Metro standards.

If Option 3 is selected for further development, then specific additional “entry” standards should be established as approval criteria for all future Metro DFAs with limited purpose landfills. Once a limited purpose landfill DFA is established with the standards, Metro would periodically verify that the landfill is in operational compliance. If a landfill was no longer in operational compliance, a re-evaluation and possible DFA termination or modification process could be triggered. In addition, Metro would identify certain homogeneous non-leachable wastes that could continue to go to landfills not meeting the new Metro standards.

As a starting point, the following six additional standards could be considered for inclusion in DFA approval criteria. They would ensure Metro-generated waste would be disposed in only the most protective limited purpose landfills that demonstrate on-going compliance with the more significant Subtitle D standards.

Proposed Additional Metro Standards²⁰

1. Conduct inspections of every load.
2. Control of stormwater and surface water.
3. Synthetic liner and leachate detection & collection system.
4. Adequate ground-water monitoring and sampling.
5. Adequate closure plan, and adequate financial assurance at all times.
6. Adequate post closure care and adequate financial assurance at all times.

If an option is selected for further development by Council, staff would need to discuss it more thoroughly with the DEQ. In addition, the Office of Metro Attorney (OMA) would need to conduct a more extensive legal evaluation of the risks of any option selected for further development.

¹⁹ “Inert” means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

²⁰ In addition to the existing evaluation criteria referenced in Appendix A.

Once the approval criteria (standards) are identified and assessed, an ordinance could be developed for Council consideration. The standards could then be adopted into Metro Code Chapter 5.05 as specific approval criteria for designated limited purpose landfills accepting waste generated from within the Metro region. If necessary, additional implementation details could be added in administrative procedures by the Chief Operating Officer.

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Appendix A: Designated Facility Evaluation Criteria (excerpts from Metro Code Chapter 5.05)

Section 5.05.030 of the Metro Code addresses Designated Facilities of the System. The designated facility evaluation criteria as provided in Section 5.05.030(b) is reproduced below:

Changes to Designated Facilities to be Made by Council. From time to time, the Council, acting pursuant to a duly enacted ordinance, may remove from the list of designated facilities any one or more of the facilities described in Metro Code Section 5.05.030(a). In addition, from time to time, the Council, acting pursuant to a duly enacted ordinance, may add to or delete a facility from the list of designated facilities. In deciding whether to designate an additional facility, or amend or delete an existing designation, the Council shall consider:

- (1) The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations;
- (3) The adequacy of operational practices and management controls at the facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of the designation with Metro's existing contractual arrangements;
- (6) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement; and
- (7) Other benefits or detriments accruing to residents of the region from Council action in designating a facility, or amending or deleting an existing designation.

Appendix B: General Landfill Information

Introduction & Definitions

The term “Metro tonnage” refers to tonnage that is generated within Metro’s jurisdictional boundary and delivered to a respective landfill.

The following material type definitions apply:

ADC	Alternative Daily Cover.
Dry waste	Non-putrescible municipal solid waste, including construction and demolition debris.
Dry residual	Processing Residual, the non-putrescible solid waste disposed from material recovery operations.
PCS/ECU	Environmental Clean-up Material, including Petroleum Contaminated Soils.
Special	Waste arising from an industrial process, or might require special handling by the landfill, such as dredge spoils, sludge, chemicals, etc.
Tires/residue	Tires or processing residual from a tire processor.
MSW	Putrescible municipal solid waste.

General Landfill Information

Coffin Butte Landfill (Benton County)

- DFA with Metro since 2001
- Owned by Allied Waste since 1975
- Permitted as a Subtitle D landfill in 1992
- Open in 1940s (Old Camp Adair ‘cell’ dates back to 1940s when area was active Army base) lined ‘new’ landfill started in 1972);
- ~700-acre site; 120-acre landfill footprint with 77 years of expected landfill life remaining
- Total tonnage received: 547,000
- Metro tonnage received: 136,000
 - ADC (11,000)
 - Dry residual (36,000)
 - PCS/ECU (1,000)
 - Special (35,000)
 - Tires/residue (11,000)
 - MSW (42,000)
- 74 miles from Metro Regional Center; 10 miles from Corvallis



Columbia Ridge Landfill (Gilliam County)

- DFA with Metro since 1993; Metro's contract disposal site since 1993
- Open in 1987
- Owned by Waste Management since 1987
- Permitted as a Subtitle D landfill in 1987
- 1,300-acre site; 700-acre landfill footprint with 100 years of expected landfill life remaining
- Total tonnage received: 2,600,000
- Metro tonnage received: 775,000
 - ADC (119,000)
 - Dry residual (12,000)
 - Special (2,000)
 - MSW (642,000)
- 145 miles from Metro Regional Center; 9 miles from Arlington



Delta Sand & Gravel Demo Landfill (Lane County)

- This landfill does not have a DFA with Metro
- Receives Metro waste through NSLs issued to haulers
- Owned by Babb Family
- Permitted as a Demolition landfill in 1995
- Open in 1977
- 35-acre landfill footprint with 20 years of expected landfill life remaining
- Total tonnage received: 70,000
- Metro tonnage received: 21,000
 - Tires/residue (21,000)
- 111 miles from Metro Regional Center; 5 miles from Eugene



Finley Buttes Regional Landfill (Morrow County)

- DFA with Metro since 1993; DFA renewed in 2003
- Owned by Waste Connection, Inc. since 2001, Previously owned by Columbia Resources Company
- Open in 1990, permitted as a Subtitle D landfill in 1990
- 1,800-acre site; 510-acre landfill footprint with 200 years of expected landfill life remaining
- Total tonnage received: 682,000
- Metro tonnage received: 45,000
 - Dry waste (2,000)
 - MSW (43,000)
- 168 miles from Metro Regional Center; 7 miles from Boardman



Hillsboro Landfill (Washington County)

- DFA with Metro since 1993
- Owned by Waste Management since 1998, Previously owned by Hillsboro Landfill Inc (Gary Clapshaw)
- Open in mid-1960s
- 400-acre site; 221-acre landfill footprint: 32 years of expected landfill life remaining
- Total tonnage received: 347,946
- Metro tonnage received: 279,000
 - Dry waste (83,000)
 - Dry residual (11,000)
 - PCS/ECU (128,000)
 - Special (54,000)
 - Tires/residue (3,000)
- 19 miles from Metro Regional Center; 3 miles from the center of Hillsboro



Lakeside Reclamation Landfill (Washington County)

- DFA with Metro since 1993
- Owned by Howard Grabhorn since 1950s
- Open in 1950s
- 44-acre site; ~20-acre landfill footprint with 1-3 years of expected landfill life remaining (DEQ expected to close landfill in 2009 or 2010)
- Total tonnage received: 93,300
- Metro tonnage received: 80,000
 - Dry waste (79,000)
 - Dry residual (1,000)
- 19 miles from Metro Regional Center; 8 miles from the center of Beaverton



Riverbend Landfill (Yamhill County)

- This landfill does not have a DFA with Metro
- Receives Metro waste through several NSLs issued to haulers or generators
- Owned by Waste Management Inc. since the late 1990s, Previously owned by SaniFill
- Permitted as a Subtitle D landfill in 1983
- Open in 1983
- 740-acre site; 85-acre landfill footprint with 7 years of expected landfill life remaining (WM is seeking to expand the site by 87-acres, extending the landfill life for 20-30 years)
- Total tonnage received: 638,000
- Metro tonnage received: 278,000
 - Dry residual (38,000)
 - PCS/ECU (17,000)
 - Special (1,000)
 - MSW (222,000)



- 44 miles from Metro Regional Center; 4 miles from McMinnville

Roosevelt Regional Landfill (Klickitat County, WA)

- DFA with Metro since 1993
- Owned by Allied Waste (Rabanco) since 1990
- Permitted as a Subtitle D landfill in 1990
- Open in 1990
- 2,545-acre site; 915-acre landfill footprint with 40 years of expected landfill life remaining
- Total tonnage received: 2,400,000
- Metro tonnage received: 0
- 141 miles from Metro Regional Center; 4 miles from Roosevelt



Wasco County Landfill (Wasco County)

- DFA with Metro since 2003
- Owned by Waste Connections since 1999, Previously owned by USA Waste
- Permitted as a Subtitle D landfill in 1972
- Open in 1940s
- 348-acre site; 213-acre landfill footprint with 102 years of expected landfill life remaining
- Total tonnage received: 324,000
- Metro tonnage received: 68,000
 - ADC (2,000)
 - Dry waste (4,000)
 - Dry residual (34,000)
 - PCS/ECU (8,000)
 - Special (8,000)
 - Tires/residue (12,000)
- 85 miles from Metro Regional Center; 3 miles from The Dalles



Weyerhaeuser Regional Landfill (Cowlitz County, WA)

- DFA with Metro since 2005
- Owned by Weyerhaeuser since 1993
- Permitted as a Limited Purpose landfill (built as Subtitle D) in 1993
- Open in 1993
- 308-acre landfill footprint with 46 years of expected landfill life remaining
- Total tonnage received: 260,000
- Metro tonnage received: 3,000
 - Dry residual (3,000)
- 58 miles from Metro Regional Center; 10 miles from Castle Rock



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Agenda Item Number 6.0

**INTERGOVERNMENTAL AGREEMENT WITH CITY
OF FOREST GROVE FOR TRAIL DEVELOPMENT**

Metro Council Work Session
Tuesday, April 1, 2008
Metro Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: April 1, 2008 Time: _____ Length: 20 minutes

Presentation Title: Intergovernmental Agreement with Forest Grove for Trail Development

Department: Regional Parks and Greenspaces

Presenters: Jim Morgan

ISSUE & BACKGROUND

City of Forest Grove (“the City”) is seeking an easement through an intergovernmental agreement from Metro for the construction and use of a public pedestrian and bike trail section on Metro property. The trail section on Metro property, measuring approximately 12 feet by 375 feet, will provide continuity for the City’s proposed LGGP Bike and Pedestrian Trail. The trail is identified as an important connection for recreation and transportation purposes in the City’s Community Trail Master Plan.

With the support of Metro, the City obtained significant funding for trail construction from an Oregon State Parks and Recreation grant program. In compliance with grant requirements, the City is requesting from Metro an intergovernmental agreement to allow construction of the trail and to grant a perpetual easement to the City for intended trail uses. The City will assume responsibilities for ongoing trail use, maintenance, and repair.

OPTIONS AVAILABLE

For the City to construct the complete trail, there are no other options than traversing 375 feet across Metro property. From the City-owned trailhead property to the north to the abandoned railroad bed to the south purchased by the City, the only alternate route is through the Forest Grove Transfer Station which is not feasible..

IMPLICATIONS AND SUGGESTIONS

Trail use on the Metro property is a park use and is consistent with Metro’s Metropolitan Greenspaces Master Plan and Metro’s easement policy. A master plan for adjacent Metro property has not been developed by Metro or the City. A restoration plan has been developed and is being implemented for the riparian and floodplain portion of the adjacent Metro property. Construction and long-term use of the trail will unlikely have a significant impact on the wildlife habitat being restored within the floodplain since the trail section is located on the property perimeter. The trail could provide future users access to the restored wildlife habitat while minimizing potential user impacts.

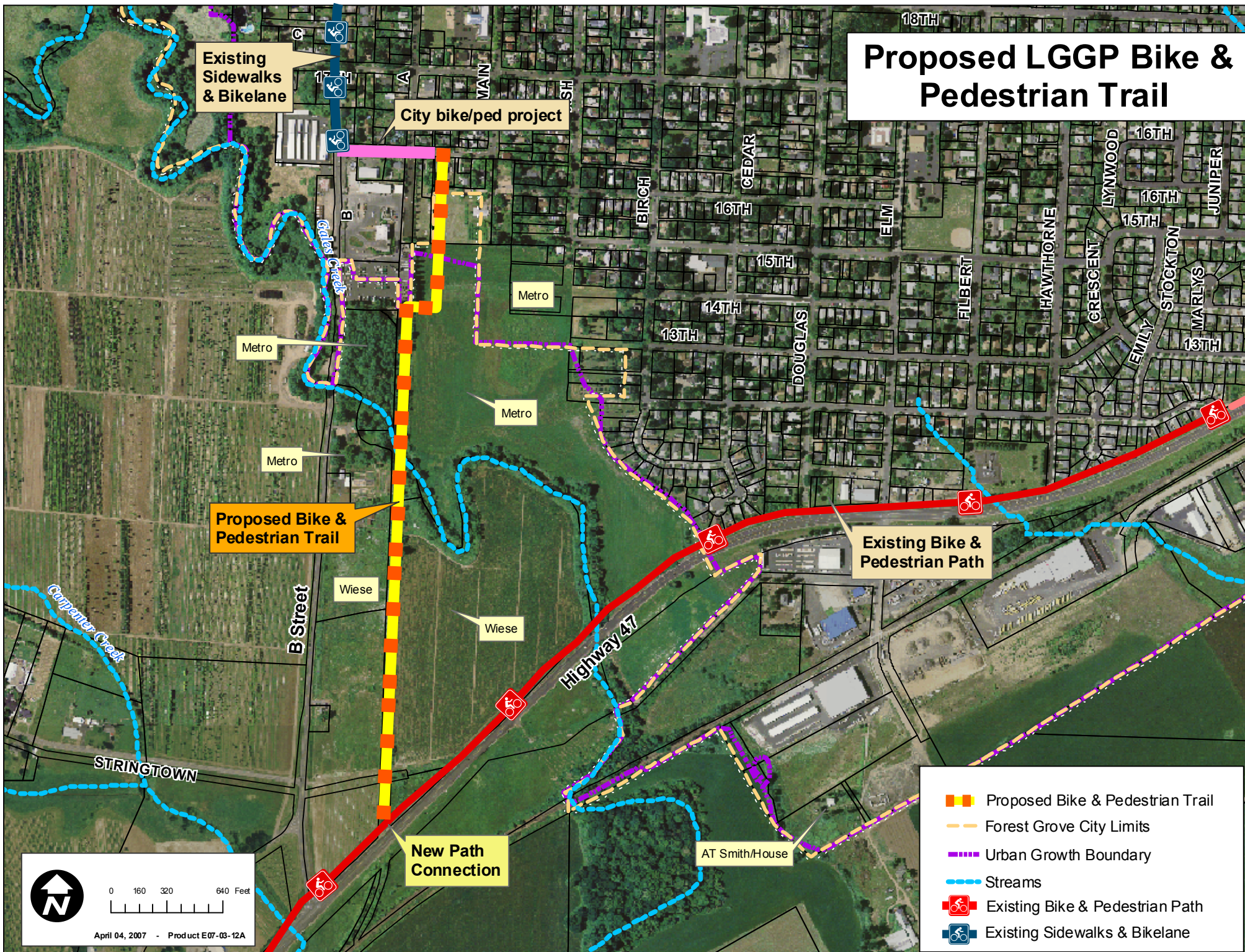
The Department recommends entering into the intergovernmental agreement with the City in a form as attached and granting a perpetual easement for trail use.

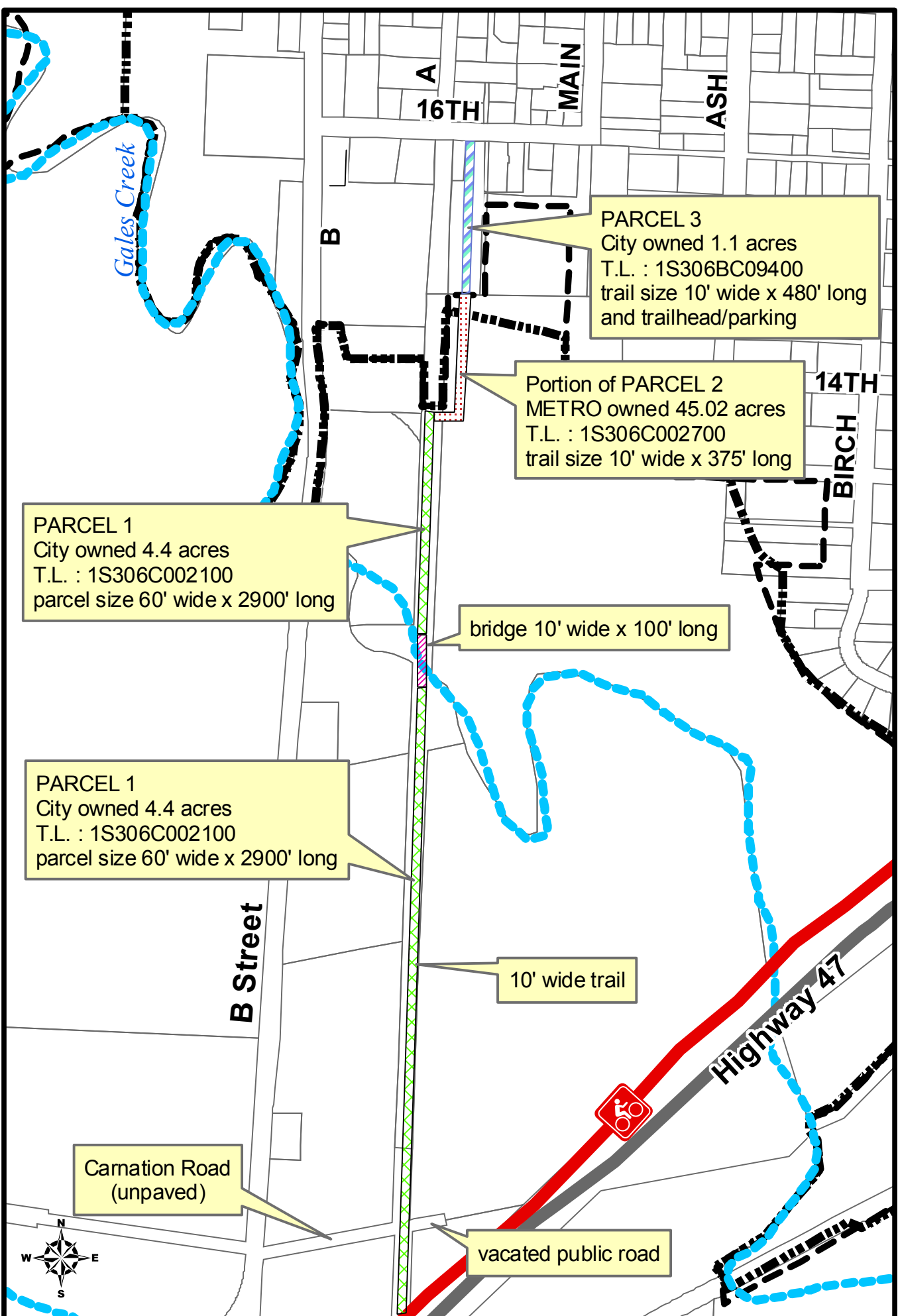
QUESTION(S) PRESENTED FOR CONSIDERATION

Does Metro Council see the proposed trail use of Metro property by the City of Forest Grove consistent with the Greenspaces Master Plan and Metro's easement policy? Does the Council agree with the terms of the perpetual easement terms as drafted in the attached documents?

**LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION X Yes ___No
DRAFT IS ATTACHED X Yes ___No**

Proposed LGGP Bike & Pedestrian Trail





PROPOSED LGGP Bike & Pedestrian Trail

DRAFT

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") is by and between Metro, an Oregon municipal government, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 ("Metro"), and the City of Forest Grove, an Oregon municipal corporation, located at _____ ("the City"). This Agreement shall be effective on the last date of signature of a party, below (the "Effective Date").

RECITALS:

WHEREAS, the City owns certain property commonly known as Tax Lot 2100 in Township 1 South, Range 3 West, Section 6C, which property is a former railroad right-of-way ("City Right of Way Parcel");

WHEREAS, Metro owns certain property adjacent to the City Right of Way Parcel commonly known as Tax Lot 2700 in Township 1 South, Range 3 West, Section 6C ("Metro Property");

WHEREAS, the City has received a grant from the Oregon Parks and Recreation Department to construct a bicycle and pedestrian trail along a route that includes the City Right of Way Parcel and the Metro Property;

WHEREAS, the Metro Council concludes that such a trail use on the Metro Property is a park use and is consistent with Metro's Metropolitan Greenspaces Master Plan;

WHEREAS, Metro and the City wish to enter into this Agreement to provide the City with temporary authority to enter certain portions of the Metro Property to construct a pedestrian and bicycle trail, subject to the conditions herein; and

WHEREAS, upon the conclusion of the satisfactory construction of the trail described herein on Metro Property, Metro agrees, subject to the provisions herein, to provide the City with a recordable easement for the ongoing use, maintenance, repair, and reconstruction of such trail;

Now, therefore, the parties agree as follows:

- 1. City's Access and Use of the Metro Property.** The City and the City's officers, employees, agents, invitees, contractors, and subcontractors are hereby authorized to temporarily access and use a portion of the Metro Property identified as the "Trail Construction Area," as more specifically described and depicted in Exhibit A attached hereto and incorporated herein, between the Effective Date of this Agreement and September 30, 2009, for the purpose of constructing an all-weather paved bicycle and pedestrian trail pathway, including related surface and subsurface utilities and related safety improvement and landscape amenities (the "Trail"), within the portion of the Metro Property identified as the "Trail Corridor," as more specifically described and depicted in Exhibit A. Such access may include use of the Trail Construction Area for staging trail construction equipment and supplies. All areas of the Metro Property that are accessed or disturbed by the City in any way pursuant to this paragraph shall be restored to

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their pre-work condition as provided in Section 4 of this Agreement. The City shall coordinate its use of the Trail Construction Area with Metro to ensure that the City's activities do not have any detrimental impact on agricultural activities on the Metro Property.

- 2. Trail Specifications; Metro Approval of Deviations.** The trail constructed by the City shall be not more than ten (10) feet wide and 375 feet long, and shall be constructed of permeable asphalt or concrete over approximately six (6) inches of crushed rock laid at existing grade. Prior to the City's commencement of construction, if the final trail design deviates from such specifications in any respect, then the City shall provide such design deviations to Metro for Metro's review and approval at least one (1) month prior to the start of construction. Metro shall have two (2) weeks to review and approve any such deviation, provided that Metro's approval shall not be unreasonably withheld.
- 3. Limitations; Hazardous Substances Prohibited.** Except as specifically authorized by this Agreement, no other use may be made of the Trail Construction Area without the prior written approval of Metro. Except for fuel and lubricants stored within equipment necessary and incidental to the authorized use of the Trail Construction Area pursuant to this Agreement, no Hazardous Substances may be used, handled, stored, or transported on, to, or from the Trail Construction Area. Under no circumstances shall any use be made of, or conduct occur on, the Trail Construction Area which would cause such areas, 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 applicable law, rule, or regulation.
- 4. Repair of Surface Damages; Compensation If Not Repaired.** The City shall repair to their pre-work condition all areas of the Metro Property, including personal property, improvements, and agricultural crops, that are impacted or damaged by the City or the City's officers, employees, agents, invitees, contractors, or subcontractors. In the event that such impacts or damages relate to removal of native vegetation, landscaping, or landscaping material, the City shall restore the vegetation and landscaping as provided below. If the City fails to repair such impacts and damages, then the City shall compensate Metro for its costs to repair such impacts and damages. If such impacts and damages result in the loss of any agricultural crops then the City shall compensate Metro's lessee farmer for the value of such lost crops. In making any installation in the Trail Construction Area, the City shall restore any landscaping to its condition and size prior to such installation, as well as replace, as applicable, any sidewalks, pavement, curbs, driveways, signs, irrigation systems, or other improvements affected by the installation. The City shall perform all work in the Trail Construction Area in a prompt and workmanlike manner.
- 5. Metro to Provide Easement Upon Receipt of Survey and Legal Description of Easement Area.** Upon the City's completion of construction of the trail, the City shall provide to Metro a survey and legal description of the specific area on the Metro Property where the Trail is located and, subject to Metro's approval of such survey and description, at Metro's sole reasonable discretion, Metro shall grant the City a bicycle and pedestrian trail easement substantially in the form attached hereto as Exhibit B.

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- 6. Indemnity.** The City, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30, shall fully defend, indemnify, and save harmless Metro and Metro's 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', paralegals', and experts' fees and expenses at trial and on appeal, relating to or arising out of: (a) an intentional or negligent act or omission of the City or the City's officers, employees, agents, invitees, contractors, or subcontractors acting within the scope of their employment or duties occurring within the Trail Construction Area; (b) the installation, construction, maintenance, or operation of any improvements, utilities, or other systems installed in the Trail Construction Area, including the installation, construction, maintenance, or operation of the Trail; and (c) any breach, violation, or failure to perform any of the City's obligations under this Agreement.
- 7. Environmental Indemnity.** To the maximum extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the City shall fully defend, indemnify, and save harmless Metro and Metro's officers and employees from and against the costs of any necessary or required sampling, testing, study, remediation, cleanup, or monitoring, and against all actual or alleged claims, actions, demands, judgments, and damages, and all costs, expenses, and fees incidental to the investigation and defense thereof, including, but not limited to attorney, accountant, paralegal and expert fees through all appeals, arising out of or related to the City's activities on the Metro Property authorized herein and based upon or arising out of the release, disposal, generation, or transport within the Trail Construction Area of Hazardous or Toxic Materials or Substances, as those terms are defined in ORS chapters 465 and 466, as amended, or the federal Resource Conservation and Recovery Act ("RCRA"), Toxic Substances Control Act ("TSCA"), Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended 42 USC § 960 et seq., or any other federal, state, or local law, ordinance, rule, or regulation pertaining to the protection of the environment; provided, however, that by entering this Agreement, the City is not accepting liability for any preexisting release of hazardous substances onto or from the Trail Construction Area, and Metro is not attempting to convey any such liability.
- 8. Insurance.** The City shall require all contractors and subcontractors working on the Metro Property to maintain the following types of insurance, covering the Contractor and the Contractor's employees and agents, and naming the City and Metro, and their elected officials, departments, employees, and agents as ADDITIONAL INSURED, and requiring that notice of any material change or policy cancellation shall be provided to the City and Metro not less than thirty (30) days prior to such change or cancellation:

 - (a) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability, shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage; and
 - (b) Automobile bodily injury and property damage liability insurance coverage shall be a minimum of \$1,000,000 per occurrence.

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- 9. Signage.** The City may provide on-site signage informing the public that the City is constructing a trail on the site. The City shall install additional on-site signage, provided by Metro, stating that funding for the acquisition of some of the land on which the Trail is located came from proceeds of the 1995 Metro Open Spaces Bond Measure. The City also shall document in any publication, media presentation, or other presentations that acquisition of some of the land on which the Trail is located was paid for with proceeds from the 1995 Metro Open Spaces Bond Measure. All signage shall be consistent with Metro guidelines for Open Spaces/Natural Areas Projects.
- 10. Term.** This Agreement shall be in effect from the Effective Date until December 31, 2009, provided, however, that the requirements of Sections 4, 6, 7, and 9 shall survive the expiration of this Agreement.
- 11. Joint Termination for Convenience.** Metro and the City may, by written agreement signed by both parties, jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective as provided in such termination agreement.
- 12. Termination for Cause.** Either party may terminate this Agreement in full, or in part, at any time if that party (the “terminating party”) has determined, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement and is therefore in default (the “defaulting party”). The terminating party shall promptly notify the defaulting party in writing of that determination and document such default as outlined herein. The defaulting party shall have thirty (30) days to cure the default described by the terminating party. If the defaulting party fails to cure the default within such thirty (30) day period, then this Agreement shall terminate ten (10) days following the expiration of such thirty (30) day period.
- 13. Laws of Oregon; Public Contracts.** The laws of the State of Oregon shall govern this Agreement, and the parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS chapters 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated by this reference as if such provisions were a part of this Agreement. Specifically, the City’s construction activities shall fully comply with all applicable zoning, development, land use, public contracting, prevailing wage, and workers’ compensation laws, rules, and regulations.
- 14. Assignment.** Neither party may assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except that a party may delegate or subcontract for performance of any of its responsibilities under this Agreement.
- 15. 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 by both (1) electronic mail or fax, and (2) regular mail. Notices shall be deemed delivered on the date personally delivered or the date of such electronic or fax correspondence, unless such delivery is on a weekend day, on a holiday, or after 5:00

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p.m. on a Friday, in which case such notice shall be deemed delivered on the next following weekday that is not a holiday.

To Metro: Director, Metro Regional Parks and Greenspaces
600 N.E. Grand Avenue
Portland, OR 97232-2736

To City: [Authorized Representative's name] _____
City of _____
[Parks Dept. Name] _____
[Address] _____
[City, OR Zip] _____

16. Severability. If any covenant or provision of 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.

17. Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties and, except as provided in Section 1.1, supersedes any prior oral or written agreements or representations relating to the Properties. No waiver, consent, modification, amendment, or other change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth below.

CITY OF FOREST GROVE

METRO

By: _____
Print Name: _____
Title: _____

Michael Jordan, Chief Operating Officer

Date: _____

Date: _____

Exhibits:

Exhibit A – List of Properties Subject to Existing Management IGAs

Exhibit B – Form of Bicycle and Pedestrian Easement

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EXHIBIT A

Description and Depiction of Trail Construction Area and Trail Corridor

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EXHIBIT B

Easement

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GRANTOR: METRO
600 NE Grand Avenue
Portland, OR 97232-2736

GRANTEE: THE CITY OF FOREST GROVE, OREGON
[Address]
Forest Grove, Oregon 97xxx

Until a change is requested, all tax statements should be sent to:
METRO
600 NE Grand Avenue
Portland, OR 97232-2736

After Recording Return to:
The City of Forest Grove, Oregon
[Address]
Forest Grove, Oregon 97xxx

GRANT OF BICYCLE AND PEDESTRIAN TRAIL EASEMENT

METRO, an Oregon municipal corporation ("Grantor"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, subject to the terms hereof, to THE CITY OF FOREST GROVE, OREGON, an Oregon municipal corporation ("Grantee" or "City"), an exclusive, perpetual, public bicycle and pedestrian trail easement and right-of-way over and through that certain real property commonly known as Tax Lot 2700 in Township 1 South, Range 3 West, Section 6C, as more fully described in the legal description attached hereto as Exhibit 1 (the "Metro Property"), for the purposes outlined herein and within an area not more than 400 feet long and 15 feet wide, as more fully described and depicted in Exhibit 2, attached hereto and incorporated herein (the "Easement Area").

The cash consideration paid for this grant is \$0; however, the true and actual consideration includes other value given or promised which is the whole of the consideration.

1. **PURPOSE.** The purpose of this Easement is for Metro to grant the City with the right to use, maintain, repair, and reconstruct the Easement Area as an all-weather, paved bicycle and pedestrian trail.
2. **RIGHTS GRANTED.** This Easement hereby grants to Grantee and the public the perpetual, exclusive right of ingress and egress to and from, over and across the Easement Area along the Trail for all-hours public bicycle and pedestrian access. Forest Grove shall have the right to access the Easement Area to use, maintain, repair, and reconstruct the Trail.
3. **LIMITATIONS.** Except as specifically authorized by this Easement, no other use may

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be made of the Easement Area without the prior written approval of Grantor. Except for fuel and lubricants stored within equipment necessary and incidental to the authorized use of the Easement Area pursuant to this 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 such areas, 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 applicable law, rule, or regulation.

4. **SURFACE DAMAGES.** Grantee shall compensate Grantor for all damages to Grantor's real and/or personal property improvements, including all damages and impacts to the Metro Property and to any agricultural activities occurring on the Metro Property, caused by the construction, maintenance, repair, replacement, or removal of the Trail in the Easement Area or, in the event that the damages relate to removal of native vegetation, landscaping, or landscaping material, Grantee shall restore the vegetation and landscaping as provided below. In making any installation in the Easement Area, the Grantee shall restore any landscaping to its condition and size prior to such installation, as well as replace, as applicable, any sidewalks, pavement, curbs, driveways, signs, irrigation systems, or other improvements affected by the installation. Grantee shall perform any work in the Easement Area in a prompt and workmanlike manner.
5. **RELEASE OF LIABILITY.** By granting this Easement, the Grantor shall have no liability or responsibility for the costs of any installation made by Grantee in the Easement Area, including the cost of constructing, maintaining, repairing, replacing, reconstructing, or removing the Trail. Grantor is hereby released from all liability for damages to any improvements, utilities, or systems installed in the Easement Area caused by members of the public entering on the Easement Area, except to the extent such damages arise from or are caused by Grantor's negligence.
6. **INDEMNITY.** To the maximum extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee shall fully indemnify, hold harmless, and defend the Grantor and Grantor's officers, employees, and agents from and against all actual or alleged claims, actions, demands, judgments, and damages, and all costs, expenses, and fees incidental to the investigation and defense thereof, including, but not limited to, attorney, accountant, paralegal, and expert fees through all appeals, based upon or arising out of: (a) an intentional or negligent act or omission of Grantee or Grantee's officers, employees, agents, invitees, contractors, or subcontractors acting within the scope of their employment or duties occurring on the Easement Area; (2) the installation, construction, maintenance, or operation of any improvements, utilities, or other systems installed in the Easement Area, including the installation, construction, maintenance, or operation of the Trail; and (3) any breach, violation, or failure to perform any of Grantee's obligations under this Easement.
7. **ENVIRONMENTAL INDEMNITY.** To the maximum extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Grantee shall fully indemnify, hold harmless, and defend the Grantor, its officers, and employees from and against the costs

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of any necessary or required sampling, testing, study, remediation, cleanup, or monitoring, and against all actual or alleged claims, actions, demands, judgments, and damages, and all costs, expenses, and fees incidental to the investigation and defense thereof, including, but not limited to attorney, accountant, paralegal and expert fees through all appeals, arising out of or related to Grantee's activities on the Metro Property authorized herein and based upon or arising out of the release, disposal, generation, or transport within the Easement Area of Hazardous or Toxic Materials or Substances, as those terms are defined in ORS chapters 465 and 466, as amended, or the federal Resource Conservation and Recovery Act ("RCRA"), Toxic Substances Control Act ("TSCA"), Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended 42 USC § 960 et seq., or any other federal, state, or local law, ordinance, rule, or regulation pertaining to the protection of the environment; provided, however, that by accepting this Easement, Grantee is not accepting liability for any preexisting release of hazardous substances onto or from the Easement Area, and Grantor is not attempting to convey any such liability.

8. RIGHT OF RE-ENTRY; TERMINATION. This Easement is granted on the express condition that the Grantee use the Easement solely for the purposes stated in Sections 1 and 2, above. In the event the Grantee uses the Easement for another purpose or fails to use the Easement Area for a continuous period of one (1) year at any time after the initial Trail construction authorized by this Easement, or, in the event the parties mutually agree to terminate this Easement, then Grantor may re-enter and terminate this Easement. Within ninety (90) days from the date of written notice from Grantor upon non-continuous use for the one (1) year period or mutual termination of this Easement, the Grantee shall remove any installation from the Easement Area, including the Trail, shall restore the land to a grade consistent with the surrounding area, said restoration to be at Grantee's sole cost as directed by and to the satisfaction of the Grantor, and shall deliver to the Grantor a recordable document or documents sufficient to remove this Easement as an encumbrance on the Easement Area.
9. RESERVATIONS. Grantor reserves the right to use and enjoy the Easement Area provided that such use shall not hinder, conflict with, or interfere with Grantee's rights hereunder or disturb its installations within the Easement Area, and Grantor shall neither authorize nor construct, create, or maintain any road, reservoir, excavation, change in surface grade, obstruction, or structure on, over, along, or within the Easement Area without Grantee's prior written consent.
10. COVENANTS. The rights granted herein shall be covenants running with the land and be binding upon Grantor, its successors and assigns in perpetuity, except as otherwise set forth herein. Grantee covenants and agrees to maintain and repair all improvements, utilities, and systems installed within the Easement Area by Grantee, including the Trail. Grantee 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 rules and regulations of all federal, state, and local government bodies having jurisdiction over the construction activities occurring within the Easement Area and, if applicable, on adjacent real property owned by Grantor.

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11. GRANTOR'S RIGHT TO GRANT EASEMENT. Grantor represents and warrants that it is the owner of the Easement Area having the full right and power to grant the rights provided in this Easement, subject to liens and encumbrances of record as of the date of execution set forth below.

THIS EASEMENT is executed this _____ day of _____ 2007.

METRO, GRANTOR

By: _____

Name: Michael J. Jordan

Title: Chief Operating Officer

State of Oregon)

ss.

County of _____)

On this _____ day of _____ 2007, before me _____, the undersigned Notary Public, personally appeared _____, as Chief Operating Officer of Metro, a 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: _____

ACCEPTANCE

THIS EASEMENT is hereby accepted this _____ day of _____ 2007.

CITY OF FOREST GROVE, GRANTEE

By: _____

Name: _____

Title: _____

STATE OF OREGON)

) ss.

County of Multnomah)

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This instrument was acknowledged before me on the ____ day of _____
2007 by _____, the _____ of the City
of Forest Grove, Oregon.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

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Exhibit 1 Metro Property Legal Description

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Exhibit 2

Easement Area Legal Description

[to be appended upon completion of survey]