

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 08-3997
CHIEF OPERATING OFFICER TO ENTER INTO)
A SOLID WASTE TRANSPORTATION) Introduced by Michael Jordan, Chief
AGREEMENT WITH WALSH TRUCKING CO.,) Operating Officer, with the concurrence of
LTD.) David Bragdon, Council President

WHEREAS, on January 17, 2008, the Metro Council adopted Resolution No. 08-3903, "For the Purpose of Authorizing the Chief Operating Officer to release a Request for Proposals for Solid Waste Transportation Services (RFP 08-1284-SWR);

WHEREAS, thereafter in January 2008 Metro issued such a Request for Proposals; and

WHEREAS, on March 12, 2008, Metro received responses to the request for proposals, and thereafter convened a proposal evaluation review committee; and

WHEREAS, on April 28, 2008 the evaluation review committee made its findings to the Chief Operating Officer that Walsh Trucking Co, Ltd. was the first ranked proposer; and

WHEREAS, thereafter, Metro and Walsh commenced negotiations on the form of contract for the proposal and have reached agreement on the form of contract, subject to the review and approval of the Metro Council; and

WHEREAS, the Chief Operating Officer has forwarded to the Metro Contract Review Board for its consideration a form of agreement he recommends; now therefore,

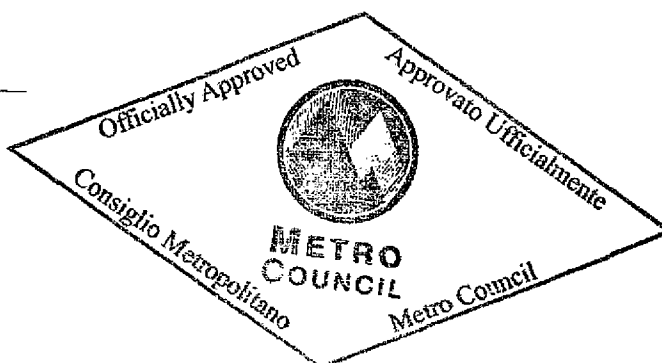
BE IT RESOLVED that the Metro Council, sitting as the Metro Contract Review Board, authorizes the Chief Operating Officer to execute a contract with Walsh Trucking Co, Ltd. in a form substantially similar to the form of contract attached as Exhibit A.

ADOPTED by the Metro Council this 16th day of October, 2008.


David Bragdon, Council President

Approved as to form:


Daniel B. Cooper, Metro Attorney



SOLID WASTE TRANSPORTATION SERVICES AGREEMENT

between

Metro, an Oregon metropolitan service district,

and

Walsh Trucking Co., Ltd.

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FOR SOLID WASTE TRANSPORT SERVICES**

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SOLID WASTE TRANSPORT SERVICES AGREEMENT

This Solid Waste Transport Services Agreement (the “Agreement”) is made by and between Metro, an Oregon Metropolitan Service District organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, and Walsh Trucking Co., Ltd. (“Contractor”), located at 1650 NW Sundial Road, Troutdale, Oregon 97060-9531.

RECITALS

Metro is the owner of two Solid Waste Transfer Stations in the Portland Metropolitan Region and has contracted for disposal of Solid Waste from the Metro Region at the Columbia Ridge Landfill (“CRL”) in Gilliam County, Oregon.

Metro wishes to procure, and Contractor wishes to provide exclusive transportation services for all Solid Waste, as hereinafter defined, from Metro’s transfer stations destined to be disposed at CRL.

ARTICLE 1 – DEFINITIONS

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

- A. “Acceptable Solid Waste” means all Solid Waste which is sealed into Contractor’s trailers at Metro-designated transfer stations.

- B. “Back-up Transport System” or “Back-up System” means that transportation system plan which Contractor has designated and Metro has accepted as the method Contractor will utilize in any circumstance in which the Primary Transport System is unavailable in the event of a non-force majeure situation.

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

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

- E. “Contractor” means the person, firm, corporation or other entity which executes this Agreement with Metro.

F. “Disposal Site” means the Columbia Ridge Landfill which is located in Gilliam County, Oregon to which “Acceptable Solid Waste” is transferred and disposed.

G. “Force Majeure” means riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, acts of nature whose effects preventing safe passage of vehicles upon state or federal highways for a continuing period of not less than 14 days and federal or state government orders, any of which is beyond the reasonable anticipation of the applicable party and which prevents performance of this Agreement, but only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time. Both parties agree that no other events, however catastrophic or uncontrollable, including, but not limited to, changes in laws or regulations, strikes, lockouts, other labor disturbances, breakage or accidents to machinery, equipment or plants or scheduled lock closures shall be considered force majeure.

H. “Load of Solid Waste” means the quantity of Solid Waste transported by container(s) during each trip from a transfer station.

I. “Metro” means the Metropolitan Service District, its officers, employees, contractors, or authorized agents or servants; the term Metro does not include Contractor, Contractor’s officers, employees, subcontractors, agents or servants.

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

K. “Rate” refers to the unit costs associated with the transport of a load of Solid Waste.

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

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

N. “Separate Contract” means a contract between Metro and a party other than the Contractor.

O. “Solid Waste” means all waste transported via a motor carrier from the Solid Waste Transfer Stations owned by Metro to a general purpose landfill.

P. “Transfer Station” means both the Metro Central Station and the Metro South Station, unless a particular Transfer Station is named in any provision of this agreement.

ARTICLE 2 – TERM OF AGREEMENT

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

ARTICLE 3 – GENERAL OBLIGATIONS OF CONTRACTOR

A. Contractor's Performance of Contractual Duties.

In consideration of Metro's payments described in Articles 8, 10 and 25 of this Agreement, Contractor agrees to perform fully the duties and tasks described in the attached Scope of Work, which is incorporated by this reference as if set forth in full; to perform such work in a manner that complies with the attached Performance Standards, which are incorporated by this reference as if set forth in full; and to provide all labor, tools, equipment, machinery, supervision, transportation, disposal, permits, and every other item and service necessary to perform such duties and tasks. Contractor further agrees to fully comply with each and every term, condition, and provision of this Agreement, including, without limitation, all provisions of the Scope of Work and the Performance Standards.

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

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

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

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

Contractor shall be responsible for the safety of its employees and must comply with all facility safety policies and procedures made known to Contractor, including the emergency action plan, and shall designate a staff member to serve as the transportation system safety coordinator, will coordinate training and ensure compliance with safety procedures at all locations.

B. Contractor's Acquisition of Approvals.

Contractor shall be responsible for obtaining all necessary approvals and permits for the services rendered under this Agreement including, but not limited to, complying with all applicable federal, state, local and Metro regulations. Contractor affirms that it has provided Metro with copies of all current permits and conditions, together with a timetable for obtaining necessary permits not yet approved. All equipment shall comply with applicable local codes, state laws, and applicable federal requirements.

C. Contractor's Retention of Transaction Records.

In addition to all requirements of Article 13-B, Contractor shall keep accurate records of all transactions in connection with this Agreement, including, without limitation, Metro Transaction Tickets received at transfer stations, any receipts or correspondence from transfer stations, and any communication from public agencies. Copies of such records shall be forwarded to Metro as requested, and Contractor shall inform Metro of all such communications or correspondence at the meeting required under sub-Article 3-E of this Agreement.

D. Contractor's Provision of GPS Equipment and Use of RFID Tags.

All trucks including shuttle vehicles, used in Contractor's performance of the obligations of this Agreement shall be equipped at all times and at Contractor's expense with a real-time Global Positioning System ("GPS") data devices that will allow Metro using any Internet connection, to determine the location, travel path and current status of Contractor's trucks. Contractor shall provide for and bear the cost of any software license or software maintenance agreement required for Metro's access to the information supplied by such GPS data devices. All trailers and vehicles used to weigh the loads shall be equipped with radio frequency identification ("RFID") tags provided by Metro.

E. Contractor's Coordination of Activities.

The Contractor shall coordinate with all Metro transfer station operators regarding a timely schedule for the availability of adequate labor, equipment and empty trailers used to receive a load of Solid Waste. Contractor shall perform its obligations under this Agreement so that the operations of the Metro transfer stations are not impeded and so that all Performance Standards are met. The Contractor shall also coordinate its activities for unloading of the containerized Solid Waste with the Metro's contracted landfill operator. Contractor shall perform its responsibilities under this subsection in a manner that maximizes the efficiencies of the Metro solid waste disposal system and minimizes disputes. Metro will act as the arbitrator of any disputes between the Contractor and all transfer station or landfill operators.

Commencing January 2010, coordination meetings will be held monthly to review the progress of the work, discuss operational problems and procedures, and complaints. Contractor shall prepare for and respond to complaints, charges, and allegations brought against it prior to such meeting. No later than the 10th of each month, Contractor shall present a monthly report summarizing activities during the prior month, and plans and schedules for future activities. The monthly summary report shall include, without limitation, complaint forms and recommended actions; any extraordinary occurrences affecting the Contractor and/or Metro; the status of operating equipment; any correspondence between Contractor and any governmental body concerning in any way the performance of this Agreement; any proposed or performed transportation backhaul activities; and any accidents and incidents, including circumstances in which an accident or collision was narrowly avoided.

F. Contractor's Obligation to Provide Back-up Transport System.

1. Contractor shall ensure that a Back-up Transport System approved by Metro is available for use in performing all of its obligations under this Agreement in the event that Contractor can not utilize its Primary Transport System. In the event that Contractor is prevented from use of its Primary Transport System, Contractor shall commence to utilize the Back-up Transport System no more than twenty four (24) hours from the time that Contractor ceases to use the Primary Transport System. Any determination as to time that Contractor has ceased to use the Primary Transport System shall be made in the sole, reasonable discretion of Metro. Contractor's use of the Back-up Transport System shall be only for so long as necessary under the circumstances

2. In the event Contractor utilizes its Back-up Transport System in performing its obligations under this Agreement, Metro shall pay Contractor pursuant to Article 10; however, the amount of any increase or reduction in cost in utilizing Back-up Transport System shall be calculated and shall be added to or subtracted from the amount due Contractor under this Agreement.

G. Additional General Obligations of Contractor.

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

Hard or electronic copies of all correspondence or any other documents sent from, or received by, the Contractor, its officers, employees, agents or subcontractors to any federal, state, regional, county or local government agency, relative to any and all of the requirements of law

referred to by this paragraph shall be retained by the Contractor for a period of six years and be available for inspection by Metro. During the monthly meetings required under sub-Article 3-E of this Agreement, Metro shall be informed of such correspondence including, without limitation, citations received from the State Highway Division. All agreements between Contractor and persons, firms, and corporations employed for this Agreement shall contain this paragraph's requirements. The requirements of this paragraph shall survive the expiration of this Agreement for a period of two (2) years.

By January 31st of each year, Contractor shall provide Metro with a report detailing the following information of the previous calendar year ending December 31 relating to the equipment Contractor utilizes to perform its obligations under this Agreement:

1. The number of miles Contractor traveled for the year in the performance of its obligations under this Agreement;
2. Copies of inspections reports conducted by ODOT or any other governmental agency;
3. Copies of the accident report for all reportable accidents, as defined herein;
4. Copies of any internal reports of any driver incidents or safety issues that were not included in as reportable accidents;
5. The inventory of tractors and trailers used in the performance of this Agreement as of December 31 of each year;
6. Copies of all complaints relating to the obligations performed under this Agreement received from any outside third party and a description of how any complaint was resolved;
7. Copies of all citations received for over-weight operations; and
8. A report on Contractor's compliance with the Sustainable Operations Practices set forth in the Performance Standards contained in this Agreement.

For purpose of this contract section, the term "reportable accident" means an occurrence involving a commercial motor vehicle operated on public highways by a motor carrier subject to the provisions of ORS Chapter 767 that results in any fatality, or any injury requiring transport from the scene for medical treatment or towing of any vehicle disabled as the result of an accident.

Contractor shall use its Primary Transport System in performing this Agreement unless Contractor has received prior approval from Metro to use the Backup Transport system. Except in the event of an emergency, such prior approval shall be in writing, and Metro shall be under no obligation whatsoever to grant such approval.

Contractor shall be responsible for providing labor and equipment to assist Metro in collecting updated tare weights for the Contractor's equipment twice per year during the life of this Agreement. In addition, the Contractor shall report any maintenance activity that would alter equipment tare weights by more than one hundred pounds (100 lbs.).

Contractor agrees to promptly pay all subcontractors, material persons, suppliers, or laborers engaged for purposes of this Agreement in accordance with any and all contracts between any such persons or entities and the Contractor. Contractor agrees to immediately remove any liens or encumbrances which, because of any act or default of Contractor, its officers, employees, or agents, or of Contractor's subcontractors or material suppliers of any tier, are filed against any property, real or personal, which Contractor, its officers, employees, subcontractors and other agents, interferes with the performance of this Agreement; and to defend, indemnify, and hold Metro harmless as required by Article 14 of this Agreement.

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

Contractor shall use recycled and recyclable materials and products to the maximum, economically feasible extent in the performance of work set forth in this document. Contractor shall comply with Section 2.04.520 of the Metro Code regarding the use of recycled materials and products, particularly in the purchase of motor oil, antifreeze, and retreaded tires. This sub-Article shall not require Contractor to use any recycled material that would void a manufacturer's warranty of any equipment used by Contractor to perform this Agreement.

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

ARTICLE 4 – OBLIGATIONS OF CONTRACTOR FOLLOWING EXECUTION OF AGREEMENT & PRIOR TO COMMENCEMENT OF SERVICE

A. Within thirty (30) days of the parties' execution of this Agreement, Contractor shall submit a report indicating the status of the acquisition of all permits, equipment and real property required for Contractor's performance of the transportation services under this Agreement. Thereafter, on the final business day of each subsequent month, Contractor shall provide a report updating the status of all such acquisitions. In the event that Metro determines, in its sole, reasonable discretion, that Contractor is failing to make adequate and timely progress in the acquisition of all such permits, equipment and real property required for Contractor's performance of the transportation services required under this Agreement, upon thirty (30) days prior written notice, Metro may declare Contractor in default and proceed to terminate this

Agreement in accordance with the provisions of Article 18. During the thirty (30) day notice period, Contractor shall be permitted to affect a cure of the default, and Metro shall waive the notice of default if, in Metro's sole reasonable judgment, the default has either been cured or substantially cured.

B. No less than ninety (90) days before Contractor's commencement of operations under this Agreement, Contractor shall provide to Metro the following documents:

1. A comprehensive final plan for mobilization;
2. A final schedule of all equipment and personnel to be used in the performance of this Agreement, including a procedure to determine the legal payload of Solid Waste to be transported at the Transfer Stations;
3. A final operations plan, including, without limitation, the following:
 - a. Contractor's operating procedures in the event of a work stoppage by any of the Contractor's employees or subcontractors, including specific details on the removal of Solid Waste from the transfer stations in accordance with the performance standards;
 - b. Contractor's operating procedures to perform the Scope of Work and its obligations under this Agreement in the event of any breakdown of or accident involving any of the major equipment components controlled by the Contractor that are directly involved in the loading, transport or unloading of Solid Waste;
 - c. Contractor's operating procedures to perform the Scope of Work and its obligations under this Agreement in the event of inclement weather, including identification of alternate routes to transport from the Metro transfer stations to the Columbia Ridge Landfill; and
 - d. Contractor's operating procedures detailing the transportation back-up measures that the Contractor will activate if Contractor's primary system can not be used, including, without limitation, the mode of transport, the method of unloading and the length of time necessary to activate the Back-Up System; and how the equipment used in this Back-Up System will comply with the requirements contained in this Agreement.
4. A final safety and emergency response plan, including equipment operator training and standard operating procedures during storage and transit designed to minimize hazards to human health and the environment; damage to property; and the interruption of Solid Waste transfer or traffic along transportation routes due to fires and explosions, the release of equipment fluids, unacceptable waste, or the release of any Solid Waste. Such plan shall include:

- a. A description of actions that transport personnel shall undertake in response to any fire, explosion or release;
 - b. A description and location of equipment utilized to mitigate a release, which description shall include the placement of equipment at Metro transfer station staging sites;
 - c. Documentation of arrangements with local emergency response providers setting forth what services will be rendered by each provider in the event of an emergency; and
 - d. A description of the training required to be completed by the Contractor or any subcontractors.
5. Any other document or plan requested by Metro that reasonably related to Contractor's performance of its obligations under this Agreement.

In the event that Metro determines, in its sole, reasonable discretion, that the documents Contractor has provided are in any respect insufficient, Metro may, following written notice of such insufficiency and the provision to Contractor of a thirty (30) day period to cure such insufficiency, Metro may declare Contractor in default under this Agreement and proceed to terminate this Agreement in accordance with the provisions of Article 18.

C. Upon replacement of any equipment used in the provision of services under this Agreement, Contractor shall obtain such replacement equipment meeting the higher of any federal air quality emissions standards applicable at the time of delivery or any known future federal air quality emission standard, provided that such equipment is available for purchase.

ARTICLE 5 – OBLIGATIONS OF CONTRACTOR REGARDING OPERATIONS IN GILLIAM COUNTY, OREGON

Contractor agrees that it will use its best efforts to locate and acquire real property in Gilliam County, Oregon for the establishment of a maintenance facility capable of performing, at a minimum routine maintenance of equipment terminated in Gilliam County and utilized in the performance of Contractor's obligations under this Agreement. Such facility shall serve as a base of operations for Contractor's general manager, primary dispatch, clerical staff, and the majority of the equipment operators performing under this Agreement. In addition and to the extent pricing/costs are competitive, Contractor shall make all best efforts to purchase supplies and incidental equipment from vendors and providers located in Gilliam County, Oregon, including, without limitation, fuels, oils and tires.

Contractor agrees that to reduce transportation impacts in Gilliam County, it will refrain from the use of exhaust braking systems while operating within the county.

ARTICLE 6 – TITLE TO SOLID WASTE

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

ARTICLE 7 – GENERAL OBLIGATIONS OF METRO

In consideration of Contractor's performance of the work described in the attached Scope of Work, and the Contractor's performance of all duties, tasks and obligations of this Agreement, throughout the term of this Agreement, Metro agrees to provide to Contractor, for Contractor's exclusive right to transport, all Solid Waste from the Metro Central and Metro South Transfer Stations destined to be disposed at the Columbia Ridge Landfill pursuant to Metro's Waste Disposal Service Agreement with Waste Management Disposal Services of Oregon, Inc.; to pay Contractor in accordance with the provisions set forth in Article 10; and to perform any other obligation specifically enumerated in this Agreement.

Metro shall organize the coordination meeting described in Article 3, and shall inform the Contractor concerning the identity and authority of the Metro employees responsible for the routine inspections described in Article 13.

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

ARTICLE 8 – OBLIGATIONS OF METRO REGARDING FUEL PURCHASE

A. Provision of Fuel for Shuttle Operations.

1. Rates for Shuttle Operations Fuel. Contractor shall purchase fuel for all shuttle operations work required under this Agreement. Metro shall pay Contractor the sum of \$10.38 per load for fuel used in shuttle operations work.
2. Shuttle Operations Fuel Price Adjustment. Commencing on January 1, 2010 and on the first day of each calendar quarter thereafter, the per-load payment for Shuttle Operations Fuel shall be adjusted to reflect changes in the cost of fuel. The adjusted price shall be equal to the Price for Shuttle Operations Fuel set forth in Article 8.A.1 multiplied by the Fuel Price Adjustment Factor, as follows:

Adjusted Price = Price for Shuttle Operations Fuel x Fuel Price Adjustment Factor

Fuel Price Adjustment Factor = Fuel Index_{q-1} / Base Index

q = Quarter in which the new adjusted price takes effect
Base Index = 3.000
Fuel Index = Fuel Price, in dollars, published in the final week of the previous calendar quarter

The Fuel Index will be the Portland, Oregon average rack price of No. 2 Ultra-low Sulfur Diesel published weekly by the Oil Price Information Service (OPIS) in the week directly preceding the first day of the calendar quarter. The first day of each calendar quarter is: January 1, April 1, July 1, and October 1.

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

B. Provision of Fuel for Over-the-Road Operations.

1. Metro Provision of Fuel. Metro shall supply all fuel for Contractor's equipment used in over-the-road operations. The provision of such fuel shall be at locations that meet the following specifications:
 - a. Location is capable of fueling up to four (4) trucks at once;
 - b. Fuel islands at the locations have proper lighting for driver safety and protection during inclement weather;
 - c. Locations are within one (1) mile of travel route;
 - d. Locations shall include a main fueling location in Gilliam County, Oregon;
 - e. Locations shall have twenty-four (24) hour access;
 - f. Locations shall have ample room for safe maneuvering of equipment;
 - g. Locations shall have the ability to accommodate two (2) card system; and
 - h. Locations shall have properly maintained equipment and shall be have a neatly maintained site.

Fuel supplied by Metro to Contractor shall be used exclusively for the performance of the obligations of this Agreement, and Contractor hereby warrants that all fuel provided by Metro shall be used solely and exclusively in the

performance of this Agreement. Metro agrees that all fuel supplied under this Article shall meet or exceed the standards of the manufacturer(s) of the engines operated by Contractor in the performance of services under this Agreement

2. Target Fuel Volume Incentives.

- a. Fuel Use Variation Calculation. On January 1 of each year, Metro shall calculate the Target Fuel Volume for the preceding year, which calculation shall consist of the sum of the total number of loads that Contractor transports under this Agreement multiplied by 64.87 gallons of fuel. Thereafter Metro shall compare the Target Fuel Volume to the actual amounts of fuel that Metro purchased for over-the-road operations in the preceding year under this Agreement.

In the event that that actual volume of fuel Metro purchased exceeds the Target Fuel Volume, Metro shall deduct from the next subsequent payment made to Contractor an amount equal to the average per gallon cost of fuel for the preceding year multiplied by the difference between the amount of actual fuel purchased and the Target Fuel Volume.

In the event that the Target Fuel Volume exceeds the actual volume of fuel purchased annually, Metro shall include in the next subsequent payment made to Contractor a payment in an amount equal to seventy five percent (75%) of the average per gallon cost of fuel for the preceding year multiplied by the difference between the amount of actual fuel purchased and the Target Fuel Volume.

C. Use of Alternative Fuel Technologies.

In the event that alternative fuel technologies, including, without limitation, the use of urea or any other substances as a fuel additive or alternative fuel, which technology materially effects the amount of fuel consumed or the cost of such fuel, and such technology becomes economically and environmentally feasible during the term of this Agreement, the parties will undertake good faith negotiations to modify the fuel provisions of this Agreement to adequately address the advent of the new fuel technology.

ARTICLE 9 – SEPARATE CONTRACTS

Contractor acknowledges that waste, other than Solid Waste, moves to, from and between Metro owned or controlled facilities. Metro reserves the right to enter into separate contracts for, and in connection with, the transportation of such other waste within and beyond Metro’s boundaries and to enter any other separate contracts involving such other wastes transfer or disposal from any facilities controlled by Metro.

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

Metro shall be the sole arbitrator of all disputes between the Contractor and any other contractors concerning performance of the work and interpretation of this Agreement and any other legally binding document affecting or related to this Agreement. All decisions of Metro relating to such Agreement and documents shall be deemed final. Contractor shall notify Metro of any such disputes within ten (10) working days of the occurrence of such dispute, or such dispute will be deemed to have been resolved adversely to the interests of Contractor. Under no circumstances whatsoever shall Metro be liable for damages of any kind or nature resulting from or related to disputes between the Contractor and any separate contractor.

ARTICLE 10 – PAYMENT

A. Per Load Payment Provisions.

1. Price. For all work required under this Agreement, Metro will pay Contractor Five Hundred Seventy-Seven Dollars (\$577) per load adjusted as set forth in sub-Articles 10-A-2, which price is exclusive of over-the-road fuel that shall be furnished by Metro in accordance with the provisions of Article 8.
2. Price Adjustment. Commencing on July 1, 2009 and on each July 1 thereafter, the per-load price set forth in sub-Article 10-A-1 shall be adjusted by an amount equal to three-quarters (75%) of the rate of inflation between the previous two calendar years. The adjusted price shall be equal to the price in effect on July 1 of the previous year (“current price”) multiplied by the quantity: one plus the Price Adjustment Factor, as follows:

$$\text{Adjusted Price} = \text{Current Price} * (1 + \text{Price Adjustment Factor})$$

where:

$$\text{Price Adjustment Factor} = 0.75 * ((\text{CPI}_{t-1} / \text{CPI}_{t-2}) - 1)$$

- t = Year in which the new adjusted price takes effect
CPI_{t-1} = Consumer Price Index for the previous calendar year
CPI_{t-2} = Consumer Price Index for the next previous calendar year

The Consumer Price Index (CPI) set forth herein shall be based on the annual Consumer Price Index for all urban consumers, “West-Size Class A” series, published by the U.S. Department of Labor, Bureau of Labor Statistics (“BLS”). If such BLS series is discontinued, a replacement index shall be agreed upon by the contracting parties. If the BLS designates an index with a new title and/or code number or table number as being the continuation of the index cited above, the

new index will be used. If the specific index “West-Size Class A” is discontinued, the “West Urban All Items” index shall be used. If both such indices are discontinued, the parties shall agree on an appropriate substitute.

a.B. Additional Payment Provisions.

1. Petition for Increased Costs Due to Change in Law. For purposes of this Article, the term “change in law” means any new or revised laws, statutes, rules, regulations, ordinances, or a final judicial determination thereof rendered by a court of competent jurisdiction in the State of Oregon. Upon petition of the Contractor and subject to approval of Metro as described in this section, Metro shall pay, subject to the limitations, conditions and procedures stated below, one hundred percent (100%) of Contractor’s reasonable, actual increased costs of performing this Agreement if such increased costs are directly attributable to changes in law which increase the cost of Contractor’s performance of this Agreement, and if such changes in law become effective at any time after the effective date of this Agreement.
 - a. Local and County Law - Limitations: Metro shall reimburse Contractor, subject to the terms and conditions of this Article, for reasonable, actual increased costs due to changes in local and county laws if and only if such changes are applicable to all business in the relevant county or local area. Metro shall not compensate Contractor for any increased costs due to changes in local or county laws to the extent that such laws are applicable only to Contractor, Contractor’s activities in connection with this Agreement, or to persons or entities engaged in the waste management or transportation industries.
 - b. Increases in Certain Taxes above CPI adjustment: During each twelve month period covered by the price adjustment set forth in Article 10A.2., if the amount of the Oregon Weight Mile Tax for which provision is made in ORS 825.474 increases by a sum that is above the adjustment for which provision is made in Article 10A.2, Metro shall adjust the per load payment as provided in Article 10.A.1 to reflect the increased expense of Contractor. Upon the request of either Metro or Contractor, the parties shall meet and negotiate in good faith any such adjustment. In addition, if the amount of tax imposed by either the federal Heavy Highway Use Tax (IRS Form 2290) or by any state or federal excise tax on the sale of heavy trucks, tractors or trailers increases by a sum greater than the price adjustment set forth in Article 10A.2, either Metro or Contractor may initiate negotiations to consider amendments to this Agreement concerning the allocation of such increased tax expenses. If such negotiations are requested, each party shall conduct any negotiation in good faith.

- c. Federal, State or Local Taxes, Fees or Surcharges: Except as set forth in sub-Articles 10B.1.a and 10B.1.b., Metro shall not be obligated to reimburse Contractor for any cost increases or expenses Contractor may incur due to increase in the rates of federal, state or local taxes, fees or surcharges of whatever nature.
- d. General Conditions and Limitations on Reimbursement: Reimbursement shall be allowed under this sub-Article only for any costs incurred which are the least costly means of ensuring full compliance with and which are directly necessitated by the relevant change in law. No reimbursement for cost increases shall be allowed for any cost increases which are in any way attributable to Contractor's operations or to Contractor-provided transport sites or to conditions, operations, or activities at Contractor-provided transport sites, or conditions, operations or activities which are caused by Contractor or its subcontractors, employees, agents, or servants, or which are otherwise within Contractor's control.

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

- e. Cancellation of Reimbursement: Metro may at any time cancel any reimbursement made under this sub-Article which was made in error. Contractor shall at all times keep Metro informed as to whether any reimbursement remains necessary. Also, upon Metro's request, Contractor shall immediately provide Metro with all documents or information or other evidence in Contractor's possession or control which Metro requests to determine whether there is a continuing need for any and all reimbursements made under this sub-Article.
 - f. Schedule of Payment of Reimbursement: Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) which may include installment payments over an extended period of time which may extend beyond the termination or completion of this Agreement. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.
2. Deductions from Payments for Reduced Costs Due to Changes in Law. Metro shall be entitled to reduce payments to Contractor subject to the conditions stated below, to reflect one hundred percent (100%) of the reduced costs of Contractor's performance under this Agreement which reduced costs are attributable to any categories of changes in law for which Contractor is entitled to reimbursement of increased costs under the previous sub-Article. Metro may at any time serve Contractor with notice and explanation of Metro's intent to reduce payments under this paragraph. Within thirty (30) days of service of such notice, Contractor

shall respond in writing to such notice, and such written response shall state whether or not Contractor believes that any deductions from payments due Contractor are justified by the change in law and shall state any reductions in the costs of performing this Agreement due to the relevant change in law. Contractor shall fully document and otherwise support its response to Metro's notice under this sub-Article.

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

3. Partial payments shall not constitute acceptance by Metro of Contractor's work nor be construed as a waiver or surrender of any right or claim by Metro in connection with the work.
4. Contractor shall submit its invoices with a detailed cost breakdown in accordance with the procedures approved by Metro. In addition to the information provided to Metro in support of its monthly applications for payments, Contractor shall submit to Metro, concurrent with its monthly payment application, a detailed accounting of all sums paid to minority, women and emerging small business (MWESB) subcontractors during the previous calendar month. This accounting shall reflect the type of work being performed by the MWESB firms and the MWESB firms' name, address, telephone and contact person, previous calendar month's payment and total payments made to the subcontractor.
5. Conditions Precedent to Payment. It is a condition precedent to Contractor's rights to any payments under this Agreement that all bills for labor and materials, including labor and materials supplied by or to Contractor, are paid in full; and, if requested by Metro, Contractor shall submit receipted invoices and/or lien waivers, as evidence of payment in full of all such accounts. As a further condition precedent to Contractor's right to any payments under this Agreement, if requested by Metro, Contractor shall submit a lien waiver before any payment, and a final lien waiver stating Contractor has been paid in full prior to the final payment. Nothing in this section is meant to establish an exhaustive list of all the conditions precedent to payment in this Agreement. Any and all conditions precedent to payment established by this Agreement but not contained in this section remain valid.
6. Basis of Payment. On or prior to the eighth day of each month, Contractor will submit to Metro a billing which indicates the number of loads of Solid Waste transported from each transfer station pursuant to this Agreement. The value of unit price work shall be based upon the number of loads of Solid Waste actually transported pursuant to this Agreement for the calendar month just completed. The Contractor shall furnish to Metro such detailed information as set forth in this

Agreement (including records from transfer stations) and as Metro may request to aid in the preparation of monthly payments. After approval by Metro, Metro will pay the Contractor by the 25th day of the month in which the billing was received.

ARTICLE 11 – CONTRACTOR AS INDEPENDENT CONTRACTOR

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

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

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

ARTICLE 12 – CONTRACTOR'S USE OF SUBCONTRACTORS

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

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

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

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

ARTICLE 13 – INSPECTIONS OF CONTRACTOR / RECORDS RETENTION

A. Inspections.

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

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

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

B. Records Retention.

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

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

1. The performance of the Contractor, including, but not limited to, Contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and with any and all requirements imposed on the Contractor or subcontractor under the terms of this Agreement or subcontract.
2. Any claims arising from or relating to the performance of the Contractor or subcontractor under a public contract.
3. Any cost and pricing data relating to this Agreement.
4. Payments made to all suppliers and subcontractors.

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

Contractor and subcontractors shall make records available to Metro and its authorized representatives including, but not limited to, the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro including, but not limited to, the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

Contractor and subcontractors authorize and permit Metro and its authorized representatives, including, but not limited to, the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Contractor shall submit to Metro at least annually, and more often at Metro's request, copies of such financial records and tax returns as are submitted to the surety or banking institution furnishing Contractor's Performance Bond or Letter(s) of Credit (see Article 16). Metro acknowledges that Contractor's financial records are proprietary information and hereby obligates itself not to disclose such documents unless compelled to do so by an order of any Oregon District Attorney or by any court or competent judicial authority. Upon receipt by Metro of any requests for disclosure of such proprietary information or any document otherwise exempt from disclosure under Oregon Public Records Law, Metro shall notify Contractor of the request. Contractor shall respond in writing within seven (7) days of Metro's notice to advise Metro of whether the requested information should be released or defended. If Contractor elects to defend the exemption of the requested information from public disclosure, Contractor shall assume all

responsibilities for such defense, and shall also indemnify and hold Metro harmless for all costs and expenses incurred in the defense of the request, including court and appeals costs and attorney fees and expenses.

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

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

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

ARTICLE 14 – INDEMNIFICATION

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

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

sealed until the disposal of such load of Solid Waste at the disposal site. The Contractor shall be solely responsible for all costs incurred from any release of Solid Waste, liquids or liquid wastes during transport and storage of such Solid Waste.

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

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

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

ARTICLE 15 – INSURANCE

A. General.

The Contractor shall provide, either from insurance companies acceptable to Metro, or through self-insurance arrangements acceptable to Metro, the insurance coverage designated hereinafter and shall pay all costs therefore. Before commencing work under this Agreement, Contractor shall furnish Metro with certificates of insurance specified herein naming Metro as an additional insured and showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statements.

1. Such policy or policies shall be considered as primary insurance and exclusive of any insurance carried by Metro and the insurance endorsed by this certificate shall be exhausted first, notwithstanding the fact that Metro may have other valid and collectible insurance covering the same risk.

2. Such policy or policies shall not be cancelled, reduced in coverage, nor materially altered until after sixty (60) days' written notice of such cancellation, reduction or alteration in coverage shall have been received by Metro.
3. No act on the part of the insured shall affect the coverage afforded to Metro under the insurance covered by this certificate.
4. Such policy or policies consist only of insurance on an occurrence basis, not on a claims-made basis.

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

Designated Insurance Requirements			Limits
1.	(a)	Workers' Compensation covering all employees who are engaged in any work under this Agreement. (Contractor shall require its Workers' Compensation carrier to provide Metro with an endorsement for waiver of subrogation.)	Statutory
	(b)	Employers' Liability including bodily injury caused by disease.	Not less than \$1,000,000
2.		Commercial General Liability insurance, which include contractual liability to cover the liability assumed by the Contractor under this Agreement.	\$1,000,000 per occurrence
3.		Business auto coverage including Owned, Non-owned and Hired Vehicles with endorsements for pollution liability, CA 99 48 or equivalent, and MCS 90, or equivalent:	
		(i) Bodily injury (inc. death)	
		(ii) Property damage	
		(i and ii coverage)	\$1,000,000 per occurrence
4.		Umbrella coverage	Achieving total coverage of \$15 million per occurrence.

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

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

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

E. Metro shall have the right, at its sole option, to require Contractor to place all of the aforementioned insurance coverages other than Workers Compensation or Employers Liability insurance through such Master Policy as Metro may obtain if such would be comparable to Contractor's coverage and reduce the premiums for such coverages. Contractor agrees that Metro may deduct from the Contract Sum the amount of the premiums payable thereon, or, at Metro's discretion, pay the same directly to the insurance carrier, and Contractor further agrees to comply with such regulations as Metro may issue from time to time to improve the administration of the Master Policy. Metro shall reimburse Contractor for any penalty imposed on Contractor as the result of such replacement coverage. Nothing in this provision shall require Contractor to accept any replacement insurance provided by Metro in the event that such replacement either increases the cost of such insurance on any other equipment operated by Contractor or in the event such replacement results in the cancellation of any insurance coverage of Contractor.

F. Pursuant to sub-Article 15-E and to the extent allowed by this sub-Article, Metro shall only reimburse Contractor for the actual increased cost of premiums which Contractor must pay to comply with insurance requirements not specified above which become effective after the deadline for submission of bids. No other reimbursement for costs associated with increased insurance requirements will be allowed under this sub-Article.

ARTICLE 16 – CONTRACTOR'S PERFORMANCE BOND

The initial term of the Performance Bond or Letter(s) of Credit shall commence no later than January 1, 2010. The amount of the Performance Bond or Letter of Credit(s) shall be in the amount of Two Million Dollars (\$2,000,000).

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

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

Pursuant to the Contractor's commitments under Article 26 of this Agreement, Contractor shall also enter into an agreement with its surety, and shall provide Metro with a copy of such agreement at any time that it must provide Metro with any Bond or Letter(s) of Credit pursuant to sub-Article B of this Article, in which Contractor's Surety shall consent:

A. To accept jurisdiction of the courts of the State of Oregon for the purposes of commencing, conducting and enforcing arbitration proceeding pursuant to Article 26 of this Agreement.

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

C. That any decision of an arbitrator pursuant to Article 26 of this Agreement shall be final, binding and enforceable upon the Contractor's Surety and that proper venue for any judicial proceeding to enforce any decision or award made by such an arbitrator shall be exclusively in the county of Multnomah in the State of Oregon.

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

**ARTICLE 17 – METRO'S RIGHTS AND REMEDIES FOR
CONTRACTOR'S DEFAULTS IN PERFORMANCE
(INCLUDING PENALTIES FOR DELAYED LOADING)**

A. Liquidated Damages.

1. In the event of any default of this Agreement by Contractor which default, in the sole, reasonable opinion of Metro, substantially impedes the normal operations of any Metro Transfer Station, Contractor shall have one hour to remedy the situation such that, in Metro's sole, reasonable opinion, operations at such transfer station are no longer substantially impeded. If in Metro's sole reasonable opinion, the Contractor fails to remedy the substantial imposition found by Metro,

Contractor shall pay Metro liquidated damages at the rate of Six Thousand Dollars (\$6,000) per hour or prorated portion thereof until Contractor has, in Metro's sole reasonable opinion, removed the substantial imposition to transfer station operations. For purposes of this Agreement, a circumstance that "substantially impedes" or constitutes a "substantial imposition" shall include, without limitation, any circumstance affecting the ability of customers to unload waste within twenty minutes of the arrival of such customer at any Metro Transfer Station.

2. If a default as described in the preceding paragraph continues for a period in excess of twenty four (24) hours, Metro shall not recover liquidated damages for periods beyond the initial twenty four (24) hour period, but Metro shall be entitled to all other remedies for Contractor's continued default that this Agreement or the law provides or permits.
3. It is expressly understood and agreed that these amounts are not to be considered in the nature of a penalty, but because of the difficulties of proof of loss, the parties have determined that these amounts are a reasonable forecast of just compensation in light of the anticipated or actual harm which would be caused by a breach or default on Contractor's part. Upon prior written notice to Contractor, Metro may deduct such damages from any amount due or which may become due, or the amount of such damages shall be due and collectible from the Contractor or the Surety or banking institution within fifteen (15) days of service of notice by Metro that liquidated damages have been imposed. This remedy shall be in addition to, and not a waiver or surrender of, any other rights or remedies Metro may have under this Agreement or any provision or provisions of law.

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

4. Metro's Rights and Remedies for Contractor's Default which result in Liquidated Damages: For each and every event of default by Contractor which default, in Metro's sole reasonable opinion, results in liquidated damages and if neither Contractor nor Surety, within twenty four (24) hours after written notice of such default has been served upon both Contractor and Surety, cures such default or gives Metro reasonable assurances that the default will be promptly cured, Metro shall have the unconditional right to all of the following remedies to the extent permitted by law.
 - a. Actual Damages. In addition to liquidated damages, Metro shall be entitled to recover any actual damages suffered as a result of any such default if actual damages exceed the amount of liquidated damages due under sub-Article 17-A.

- b. Equitable Remedies. For each and every default under this Article, Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief and the taking possession and operation of any equipment owned by Contractor and which is used by Contractor to perform this Agreement.

B. Damages other than Liquidated Damages.

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

1. Equitable Remedies. For each and every default under this Article, Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief and the taking possession and operation of any equipment owned by Contractor and which is used by Contractor to perform this Agreement.
2. Actual Damages. As an additional remedy, for each and every default under Article 17, Metro shall be entitled to recover its actual damages during all periods of default. Any disputes arising as to the amount of Metro's actual damages shall be resolved by arbitration under Article 26. No liquidated damages remedy shall apply to defaults under this section.
3. Notice of Credit Default. Default by Contractor on any lending agreement with any lending institution utilized by Contractor shall be considered a default by Contractor under this Agreement. To the extent Contractor fails to cure a default under such lending agreement, under the terms for cure and in the time frame provided in such agreement, Metro shall have the right to terminate this Agreement. Contractor shall provide Metro, or require all of its lending institutions to provide directly to Metro, copies of all correspondence related to a loan default or alleged default under a lending agreement, upon receipt by Contractor or issuance by the lending institution, as the case may be.

C. Additional Penalty Provisions.

Contractor shall provide an empty trailer at the transfer station compactor and otherwise be ready to receive a load upon the transfer station operator's instruction that a payload is ready to be loaded. Failure to comply with this performance standard shall result in a penalty payment of Seventy-Five Dollars (\$75) for each failure, together with a penalty of Six Dollars (\$6) per minute after the first ten (10) minutes of each occurrence until the failure is corrected. In addition, if Contractor exceeds the container capacity of any staging area at either facility, Metro

shall have the right to impose a penalty of Seventy-Five Dollars (\$75) for each such occurrence, together with a penalty of Six Dollars (\$6) per minute after the first ten (10) minutes of each occurrence until the situation is remedied to Metro's satisfaction.

The penalties enumerated in this sub-Article shall be imposed only for Contractor's failures of compliance during such twelve (12)-hour period occurring on weekdays and such eight (8)-hour period occurring on weekends as Contractor shall agree with Metro's transfer station operator, which agreement shall be subject to the approval of Metro.

Notwithstanding the provisions of this sub-Article, before any additional penalty is imposed, Metro shall provide Contractor with twenty four (24) hours to correct such failure, provided that Metro has not afforded Contractor with the opportunity to remedy any other failure in the previous thirty (30) days.

ARTICLE 18 – METRO'S RIGHT TO SUSPEND OR TERMINATE AGREEMENT

A. Termination or Suspension of Contractor's Contract.

For each and every event of default under Article 17.A.1 which lasts longer than twenty-four (24) hours, Metro shall be entitled to terminate or suspend this Agreement in accordance with the provisions of this Article. Alternatively, for each and every event of default under Article 17-A-1 which lasts longer than thirty (30) days, Metro shall be entitled to terminate or suspend this Agreement immediately and without the necessity of notice to Contractor.

B. Termination or Suspension of Contractor's Performance of this Agreement.

For each and every event of default under Article 17B which lasts longer than thirty (30) days, Metro shall be entitled to terminate or suspend Contractor's performance of this Agreement in accordance with sub-Article C of this Article.

C. Procedure for Termination or Suspension of this Agreement by Metro.

1. To terminate or suspend this Agreement, Metro must notify in writing both Contractor and Contractor's Surety of Metro's intent to terminate or suspend this Agreement. Within ten (10) days of service upon Contractor of Metro's notice of intent to terminate or suspend this Agreement, Contractor shall either:
 - a. Cure any defaults in performance; or
 - b. Discontinue its work on this Agreement or such part thereof as Metro shall designate.
2. If Contractor does not cure any defaults within ten (10) days after service of the notice of intent to terminate or suspend this Agreement, Surety may, at its option, take over and assume full and complete performance of this Agreement or that portion thereof which Metro has ordered Contractor to discontinue, and may

perform the same or may sublet the work or that portion of the work taken over by a contractor or contractors acting on behalf of Surety; provided, however, that the Surety shall exercise its option and begin performance of the work, if at all, within ten (10) days after Surety is served with a copy of the written Notice of Termination or suspension. The Surety shall be paid by Metro for all work performed by Surety in accordance with and subject to each and every term of this Agreement.

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

3. If Contractor does not cure a default within the time allowed herein, and Contractor either does not have a surety or the surety elects not to exercise its option under this section, this Agreement shall terminate. In accordance with the provisions of sub-Article 18.F, for one year from the date Contractor ceases to provide service, and continuing subsequent termination, Contractor shall make available to Metro all tractors, trailers, and shuttle vehicles used or available for use in carrying out this Agreement at the time Contractor ceases to provide service. The provisions shall survive termination of this Agreement. Metro agrees to pay Contractor a commercially reasonable rental rate for use of any of Contractor's equipment pursuant to this sub-Article.

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

The parties agree that if Contractor becomes insolvent, is dissolved, files for Bankruptcy, is adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Metro shall be entitled to request of Contractor or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure of Contractor and Surety to comply with such request within ten (10) calendar days of service upon both Contractor and Surety of a written request from Metro for such assurances shall entitle Metro to terminate or suspend Contractor's performance of this Agreement under sub-Article 18-C-2 of this Article. To the full extent allowed by law, Metro shall not be bound to this Agreement by an insolvent Contractor's trustee or receiver.

E. Procedures and Remedies for Metro Termination for the Convenience of Metro.

Notwithstanding any provision to the contrary in this Agreement, Metro shall have the right at any time after January 1, 2014 to terminate this Agreement by providing 365 days written notice of such termination to Contractor. In the event Metro exercises its right to terminate this Agreement under this section, Metro shall purchase all equipment, including but not limited to all rolling stock, transportation support paraphernalia, inventories, parts or supplies used in Contractor's Solid Waste transport operations performed under this Agreement, at price that is

equal to the fair market value of such equipment (inventory items shall be purchased at Contractor's documented acquisition costs); shall assume any lease of real property used in the performance of Contractor's obligations under this Agreement; and shall pay Contractor an annually prorated payment in accordance with the following schedule:

Date Metro Provides Notice of Its Intent to Terminate	Amount paid to Contractor
Notice provided on or after January 1, 2014	\$1,500,000.00
Notice provided on or after January 1, 2015	\$1,000,000.00
Notice provided on or after January 1, 2016	\$600,000.00
Notice provided on or after January 1, 2017	\$300,000.00
Notice provided on or after January 1, 2018	\$100,000.00

Any dispute as to the amount due Contractor shall be resolved by arbitration as provided in Article 26. Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) that may include installment payments, including interest, over a period of time that may extend beyond the termination or completion of this Agreement. Any such determination with regard to payments shall take into consideration, but not be bound by, Contractor's reasonable and actual financing costs.

F. Provision of Equipment to Metro.

Notwithstanding any provision to the contrary in this Agreement and except as provided in Article 18(E), Contractor agrees that if this Agreement is terminated or if Contractor ceases to provide transport service as required herein, all equipment used in Contractor's Solid Waste transport operations shall immediately be made available to Metro for a period of one (1) year and that the immediate provision of such equipment shall not be subject in any way to any ten (10) day cure of default provision of this Agreement, but shall be subject to any conditions of insurance, driver qualifications, licensing or other reasonable requirements made of Metro by the Contractor's primary equipment lien holder. Metro's right of use of the equipment shall terminate one year after such use commences, at which time Metro shall have a first right of purchase of such equipment at price that is equal to the fair market value of the equipment. Nothing under this provision shall provide Metro with any right of use of the equipment after December 31, 2019, unless Metro has purchased the equipment from Contractor. Metro agrees to pay Contractor a commercially reasonable rental rate for the use of Contractor's equipment. Any dispute as to the amount due Contractor shall be resolved by arbitration as provided in Article 26.

ARTICLE 19 – CONTRACTOR'S RIGHT TO TERMINATE

Should Contractor be unable to perform this Agreement by using either its primary or back-up transportation system for a period of sixty (60) days or more by 1) a public authority other than Metro; or 2) by Metro (if Metro is acting in violation of Contractor's rights under this Agreement) and either inability is through no fault of Contractor, then Contractor, upon seven (7) days' written notice to Metro may stop the work or terminate this Agreement and recover from Metro that portion of this Agreement's payments, less the aggregate of previous payments,

allowable to this Agreement completed as of the date of termination, plus its demonstrated actual damages. However, in such event, Metro will make no payments to Contractor for any work actually performed under this Agreement after the date of termination.

ARTICLE 20 – ALLOCATION OF RISK/FORCE MAJEURE

A. Representations of Parties.

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

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

B. Effect of Force Majeure on Parties' Obligations.

1. Parties' Obligations. In the event that a party is unable, wholly or in part, by the occurrence of a force majeure to carry out any of its obligations under this Agreement, such party's obligations, to the extent affected by such occurrence, shall be suspended during the continuance of such inability.
2. Contractor's Obligations. In the event that a force majeure or forces majeure preclude the use by Contractor of both its Primary and Back-Up Transport systems, Contractor shall, at Metro's request, use its best efforts to make available to Metro alternative transport arrangements which would allow full performance of this Agreement. In the event that Metro requests an alternative system and Contractor makes available such a system, Contractor shall be paid in the same manner as it would be paid for the active use of the Back-Up System as described above plus any increased cost actually incurred by Contractor for use of any such alternative system.
3. Procedures and Remedies for Termination Under Force Majeure. If an event or events of force majeure preclude the use of both Contractor's Primary and Back-Up Transport Systems, then Metro shall have the right, in its sole, reasonable discretion, to terminate this Agreement. Additionally, in the event that any single event of force majeure lasts longer than ninety (90) days, Metro shall have the right, in its sole, reasonable discretion, to terminate this Agreement. In the event that Metro chooses to terminate this Agreement under this sub-Article, Metro shall serve Contractor with written notice of such intent and shall pay Contractor

for all actual costs which Metro determines Contractor has incurred in performing this Agreement prior to service upon Contractor of the notice to terminate, plus an amount equal to ten percent (10%) of such costs. It shall also be a condition precedent to any payments under this paragraph that Contractor fully demonstrate and document to Metro's satisfaction the costs Contractor actually incurred prior to receiving service of the Notice of Termination. Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) which may include installment payments, including interest, over an extended period of time which may extend beyond the termination or completion of this Agreement. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.

C. Notice of Force Majeure.

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

ARTICLE 21 – CONTRACTOR'S ASSIGNMENT OF CONTRACTUAL OBLIGATIONS

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

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

ARTICLE 22 – CONTRACTOR'S ASSIGNMENT TO METRO OF ANTITRUST RIGHTS

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

Metro's interest shall be a proportion of the total claim or cause of action equal to the percentage of the total claim proportional to the performance of this Agreement as measured against the total of Contractor's business affected by the violation.

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

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

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

- A. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action.
- B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action.
- C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to Metro.

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

ARTICLE 23 – CHANGE OF CONTRACTOR'S OWNERSHIP

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

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

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

ARTICLE 24 – PERMITS AND REGULATIONS

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

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

ARTICLE 25 TAXES AND FEES

As between Metro and Contractor, Contractor shall be responsible and liable for payment of all federal, state, regional, county and local taxes and fees, and surcharges of every form, which apply to any and all persons, entities, property, income, equipment, materials, supplies, structures, or activities which are involved in the performance of this Agreement including, but not limited to, any and all income taxes, real property taxes, excise taxes, sales and use taxes, and fees which arise in connection with this Agreement, provided, however, that any increases in or assessments of taxes relating to the fuel used by Contractor to perform its obligations under this Agreement shall be the responsibility of and shall be borne solely by Metro. Except as otherwise provided in Article 10B of this Agreement, any such taxes and fees, or any increases in such taxes and fees, shall be the responsibility of the Contractor with no increase in compensation from Metro.

ARTICLE 26 – ARBITRATION

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

Subject to the conditions and limitations of this Article, any controversy or claim arising out of or relating to this Agreement shall be exclusively settled by arbitration under the laws of the State of Oregon, in accordance with the rules of Arbitration Service of Portland, Inc. All disputes shall be heard and decided by one arbitrator, and all arbitration proceedings shall be held in Portland, Oregon. However, all disputes concerning Metro's right to the equitable remedy of specific performance shall not be subject to arbitration, but shall be decided exclusively by a court of competent jurisdiction in Multnomah County, Oregon, under the laws of the State of Oregon.

Contractor agrees to consolidation of any arbitration between Metro and Contractor with any other arbitration involving, arising from or relating to this Agreement or otherwise involving the transfer, transport, collection or disposal of Solid Waste by Metro. In the event that Metro determines, in its sole opinion, that the public interest requires a speedy resolution of any controversy or claim regardless of the amount, Metro shall have the option of electing resolution of the controversy or claim by the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association (Rules E-1 through E-10) or to request Arbitration Service of Portland, Inc. follow a similar procedure.

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

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

ARTICLE 27 – ATTORNEY'S FEES

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

ARTICLE 29 – MINORITY, WOMEN AND EMERGING SMALL BUSINESS PROGRAM

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

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

ARTICLE 29 – HOURS OF LABOR FOR CONTRACTOR’S EMPLOYEES

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

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

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

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

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

B. All persons shall be paid at least time and a half pay for all work performed under this Agreement on the legal holidays specified in a collective bargaining agreement, if applicable, or on the following annual legal holidays: New Year’s Day on January 1, Memorial Day on the last Monday in May, Independence Day on July 4, Labor Day on the first Monday in September,

Thanksgiving Day on the fourth Thursday in November, and Christmas Day on December 25. For purposes of this provision, each time a holiday falls on a Sunday, the succeeding Monday shall be recognized as a legal holiday, and each time a holiday falls on a Saturday, the preceding Friday shall be recognized as a legal holiday.

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

Notwithstanding the provisions of this Article, Contractor may enter into a labor agreement under the Labor Management Relations Act of 1947 as amended with any or all of its employees who perform services under this Agreement, and employees covered by any such labor agreement shall not be subject to the provisions of this Article 29.

ARTICLE 30 – PARTIES’ REPRESENTATIVES AND NOTICES

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

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

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

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

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

ARTICLE 31 – NEWS RELEASES AND MEDIA RELATIONS

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

Contractor shall not issue news releases, conduct interviews with news media representatives, or otherwise release or disclose to news media representatives any information concerning the operations or facilities at MSS or MCS without the prior consent of Metro. Contractor shall promptly notify Metro of the identity of any news media representative who requests disclosure of such information, and in no event shall such notice be provided more than one business hour after Contractor has received such a request. Metro, in its sole discretion, shall determine the response to any such request for disclosure of information in accordance with applicable law.

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

ARTICLE 32 – MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

A waiver by either party of any breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance. Where the condition to be waived is a material part of this Agreement such that its waiver would affect the essential bargains of the parties, the waiver must be supported by consideration and take the form of a modification to this Agreement as provided for elsewhere in this section.

ARTICLE 33 – WALSH LEASING II, LLC/AGREEMENT TO BE BOUND

Contractor shall cause the members of Walsh Leasing II, LLC (“Walsh II”) to agree to be bound by the terms and conditions of this Agreement to the extent that any equipment operated by Contractor has been or will be acquired by Walsh II and leased to Contractor. Contractor shall furnish Metro with a resolution of the members of Walsh II agreeing to be bound by this Article 33 and all other pertinent terms of this Agreement.

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

WALSH TRUCKING CO. LTD.

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

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SCOPE OF WORK

Contractor shall provide all labor, equipment, materials and facilities needed to transport waste from the Metro South and the Metro Central Transfer Stations to the Columbia Ridge Landfill located in Gilliam County, Oregon and to unload such waste at the Columbia Ridge Landfill. Contractor shall perform the following:

- A. Contractor shall be responsible for staging the containers at appropriately dedicated staging areas at the Metro Central and Metro South Transfer Stations, and for shuttling the containers from the staging area to and from the compactors.
 1. Contractor shall be responsible for providing, coordinating and documenting a container inspection procedure prior to receiving a load of waste. The transfer station contractor shall be responsible for documenting damage caused during the loading process.
 2. Contractor shall receive a load of waste from the Metro South and Metro Central transfer station whenever the transfer station operator has prepared such load. The Contractor shall be responsible for opening the transport container doors prior to connecting to the compactor and shall also be responsible for assisting the transfer station operator during the loading process such that the weight of the load is maximized, the waste is properly positioned within the container, and the load is legally acceptable for transport. Contractor shall assure that transport containers are attached to the compactors and a power unit (shuttle vehicle or tractor) at all times during the loading process.
 3. After receiving a load on which the transfer operator has placed a pre-numbered door seal on the container, Contractor shall ensure the seal has been properly installed before the trailer leaves the compaction area for transport to Columbia Ridge Landfill. By verifying that the seal is properly installed, Contractor accepts responsibility for the waste in the container removed at Columbia Ridge Landfill in accordance with the procedures of WMDS.
 4. Following the completion of loading, Contractor shall move the container to a designated Metro scale, Contractor shall weigh the vehicle using the dedicated, onsite scale and print a load ticket manifest that shall become the basis of payment. Each transaction will produce a multiple copy ticket documenting the load and its weight. The load ticket shall serve as the load manifest for transport and disposal to the Columbia Ridge Landfill. If weighing the load discloses that the container is not properly loaded or is overloaded, the Contractor shall move the container to an off-load area for payload adjustments by the transfer station contractor and thereafter return the container to the scale for re-weighing. Contractor shall note on the manifest the corrected weights, new seal number and that an adjustment occurred.

- B. Contractor shall deliver loads of waste to the Columbia Ridge Landfill, and shall comply with all landfill entrance policies to ensure proper coordination of site access and unloading activities.
- C. Contractor shall be able to access any on-site staging area during times of day that are not included in standard Columbia Ridge Landfill operating hours.
- D. Contractor shall be responsible for unloading waste at the working face of the Columbia Ridge Landfill during the normal hours of operation of 7 a.m. to 4 p.m. weekdays as instructed by the Columbia Ridge Landfill operator, and Contractor shall utilize its own Solid Waste tipping equipment, or obtain the services of the Columbia Ridge Landfill in obtaining the operation of tipping equipment.
- E. Contractor shall document that the transport containers have remained secure and sealed during transport to Columbia Ridge Landfill. Documentation must include exchange of custody between the Contractor and the landfill operator (WMDS), including the exchange of the transaction ticket for each load.
- F. Contractor shall be responsible for implementing a written contingency plan for the transport of waste in the event that normal operations are disrupted.

PERFORMANCE STANDARDS

The following shall constitute the standards of performance required of Contractor in performing its obligations under this Agreement. It is the intent of these standards to ensure that Contractor's equipment and performance is suitable for the arduous, heavy-duty service connected with Solid Waste transport; that all contractor-furnished equipment is properly maintained in a safe working condition at all times; and that all equipment is part of a continuous examination program that documents any need for equipment repairs and the completion of such repairs.

Upon commencement of service under this Agreement, Contractor shall provide all new tractors and trailers for the performance of its obligations, and shall maintain such equipment as necessary to ensure continued compliance with all provisions of this Agreement, including, without limitation, these Performance Standards.

Equipment Performance Standards

Size of Fleet

Contractor shall maintain a fleet of no fewer than twenty-seven (27) tractors, of no fewer than one hundred twenty (120) trailers, and of no fewer than seven shuttle vehicles dedicated solely to the performance of Contractor's obligations under this Agreement.

Power Equipment

All tractors and shuttle vehicles used in the performance of this Agreement shall be uniform in appearance.

Upon commencement of service under this Agreement, Contractor shall provide new tractors and shuttle vehicles for the performance of its obligations. Contractor shall provide 2009 year model shuttle equipment suitable to perform the needs and requirements of Metro and Contractor for the purpose of loading, weighing and unloading of each trailer. All tractors shall be model year 2010 Mack units, model number CXU-613.

All tractors and shuttle vehicles used in the performance of this Agreement shall be replaced at the later of 60 months when the mileage on such vehicles exceeds 800,000 miles. All replacement tractors and shuttle vehicles shall meet emission standards in effect for the year in which Contractor shall acquire such vehicles.

Throughout the performance of service under this Agreement, all vehicles shall operate on a minimum percentage of bio-diesel fuels of no less than five percent (5%) and in all circumstances at the maximum bio-diesel mix designated by manufacturer's warranties.

Trailer Performance Requirements

General trailer requirements

Upon commencement of service under this Agreement, Contractor shall provide new trailers consistent in each and every respect with the drawing depicted on Exhibit __ which is incorporated by this reference as if set forth in full. All trailers used in the performance of this Agreement shall meet all applicable U.S. Department of Transportation specifications, shall be of standard construction, and shall be completely enclosed, rigid, and constructed of non-permeable materials with smooth interior walls, roof and floor capable of withstanding the extreme abuse expected from receiving compacted Solid Waste. Trailers shall be capable of being completely sealed with no leakage of any kind whatsoever. Trailers shall be of the rear-load design capable of receiving an extruded load of waste from the compactors used at the transfer stations during the life of this Agreement. Each trailer must meet all standards of the U.S. Department of Transportation. Trailers shall be consistent in dimensions and tare weight so as to allow the transfer station operator to maximize the weight of each load without special adjustments or delay. The trailers shall be adequate in all respects to bear a payload of thirty-five (35) tons.

Contractor shall be fully responsible for replacing any trailer equipment which does not meet these standards.

Trailer Testing Requirements

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

Additionally, each trailer must be tested for water-tightness prior to acceptance from the trailer manufacturer. Testing shall include pumping a minimum six (6) inches of water into the closed trailer, during which the trailer shall remain free from the escape of water. Such test waters shall be reused to the fullest extent possible to minimize the volume of waste water. Documentation of such testing shall be made available to Metro.

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

Trailer Storage

All staging areas used in the performance of this Agreement should comply fully with all federal, state and local laws. Storage areas should be clean in appearance and free of litter and debris.. Any spill shall be cleaned immediately. No staging area owned by any third party shall be used for any maintenance purpose except as permitted by the owner. No staging area owned by Metro shall be used for any maintenance purpose except maintenance that is necessary to safely move equipment on public highways. No loaded trailer may be stored in any staging area owned by

Metro for more than thirty-six (36) hours nor may any trailer be stored in any staging area owned by any third party for more than forty-eight (48) hours.

Trailer Cleaning & Repair

Contractor shall clean the interior and exterior of trailers as often as necessary to prevent odor, unsightliness, attraction of vectors, or any condition that may alter the hauling capacity of the trailer. Any repair or replacement of any trailer shall not decrease the payload weight of such trailer from the minimum payload size of thirty-five (35) tons required under this Agreement.

Equipment Technology Requirements

All transfer tractors, and shuttle equipment used to weigh Solid Waste loads shall be equipped at all times with fully functioning radio frequency identification (“RFID”) technology provided by Metro to facilitate weighing.

All trucks and shuttle vehicles, shall be equipped at all times with real-time, Global Positioning System data devices that will allow Metro to determine the location, travel path and current status of each piece of equipment.

All tractors used in the performance of this Agreement shall be equipped with a two-way radio capable of communicating with the Contractor’s office and the appropriate personnel at all transport sites.

Operational Performance Standards

Provision & Staging of Trailers

Contractor shall provide an empty trailer to be attached to the compactor and otherwise be ready to receive a load whenever the transfer station operator indicates a load is ready. Contractor shall not exceed the trailer capacity of any staging area utilized in the performance of this Agreement.

Determination of Legal Payload

Contractor shall haul any payload that is determined to be legally permissible for transport on Oregon highways and roads, based upon the calculation performed when the loaded container is weighed in accordance with the Scope of Work. Such calculation shall be based on the equipment configuration set forth on the drawing depicted on Exhibit __ which is incorporated by this reference as if set forth in full, as well as the tare weights of the equipment used and the payload received.

Sustainable Operations Practices

—Contractor shall to the maximum extent possible utilize sustainable practices in conducting its activities in the performance of this Agreement, and shall supply Metro with documentation of such practices upon request or at the time of any audit. Required sustainable practices shall

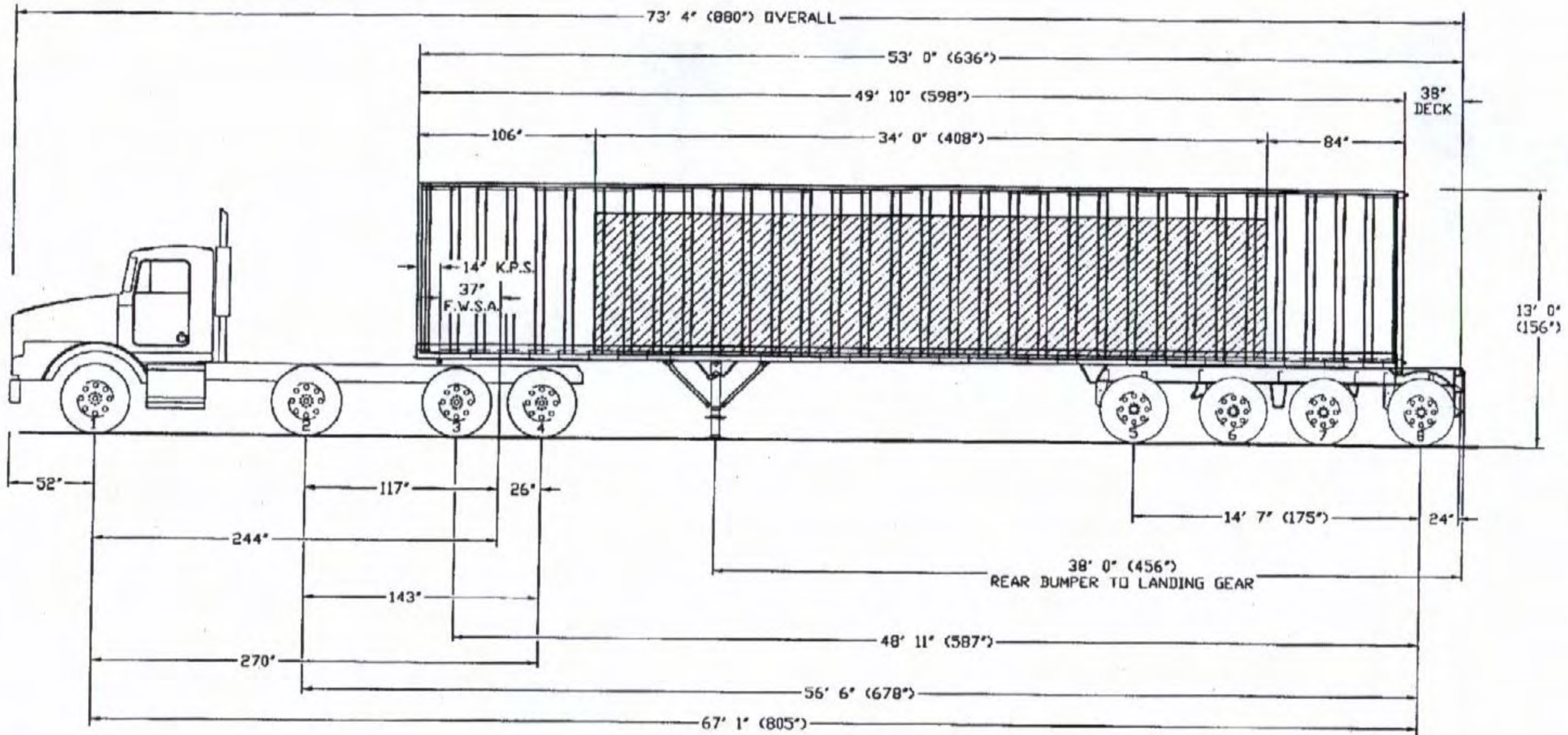
include creation of recycling systems for office paper, office trailers and other office activities; the use of two-sided copying of documents whenever possible; and shall include, without limitation, use of the following:

- Re-refined oils, lubricants and hydraulic fluids in equipment and rolling stock, provided that the use of such oils, lubricant and fluids does not invalidate any manufacturer's warranty;
- Bio-based fuels for diesel operated equipment and vehicles or other low-polluting fuels and/or pollution control equipment minimizing emissions provided that the use of such fuels does not invalidate any manufacturer's warranty;
- Reused wood and other similar materials or use of Forest Stewardship Council-certified wood;
- Plastic alternatives to lumber or use of Forest Stewardship Council-certified wood in place of treated wood;
- Recycled paper for all office purposes with a minimum post-consumer content of at least thirty percent (30%);
- Toilet tissue, paper towels, and paper napkins that meet minimum U.S. EPA post-consumer fiber standards;
- Reusable dishware, cups and utensils;
- Metro recycled latex paint;
- Use of compact fluorescent lighting or similar energy-efficient lighting;
- Use of remanufactured toner cartridges for document copying equipment;
- Use of environmentally preferable cleaners;
- Use of storage containers, plastic and paper bags, and traffic management equipment with recycled content.

EQUIPMENT USED IN THE PERFORMANCE OF THIS AGREEMENT

[INSERT DRAWING]

3/8/2008 1:22:35 PM, mbanks



102" WIDE TRAILER
NOTE: TRAILER VOLUME IS 127.2 CUBIC YARDS

AXLE LOADINGS (lbs)			VEHICLE WEIGHTS (lbs)		
GROUP	MAX WGT.	ACTUAL	GROUP	MAX WGT.	ACTUAL
1	13,200	12,825	3-8	83,000	82,883
1-4	57,500	51,618	5-8	52,000	52,090
1-8	104,000	103,708			
2	8000	8000			
2-4	45,000	38,794			
2-8	91,000	90,883			
3-4	34,000	30,794			

REV B: _____ BY: _____
 REV A: _____

WESTERN TRAILERS®
 (208) 344-9928 6701 BUSINESS WAY, BOISE, IDAHO 83716 www.westerntrailer.com

**PORTLAND METRO PROJECT
 53' REFUSE FLATFLOOR SEMI**

STATES: OREGON

SCALE: 1/8"=1'-0" DATE: 02-18-08 DRAWN BY: M.E.B. MODEL NO. 99-WALSH

This drawing is the sole property of Western Trailer Company, and cannot be used for any purpose detrimental to our interests. To do so would be in violation of U.S. Copyright Code Public Law No. 94-533.

p.3
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WESTERN TRAILER
Mar 08 2008 1:54PM

STAFF REPORT

IN CONSIDERATION OF NO. 08-3997, FOR THE PURPOSE OF AUTHORIZING
THE CHIEF OPERATING OFFICER TO ENTER INTO A SOLID WASTE
TRANSPORTATION AGREEMENT WITH WALSH TRUCKING CO., LTD.

Date: September 29, 2008

Prepared by: Mike Hoglund
Paul Ehinger

PURPOSE

The Metro Council's approval of this Resolution would authorize the Chief Operating Officer to execute a contract with Walsh Trucking Co., Ltd. for the transportation of solid waste from the Metro South and Metro Central transfer stations to the Columbia Ridge Landfill for disposal.

BACKGROUND

Metro's current Waste Transport Services Contract expires at the end of 2009. The contract provides for the transport of waste received at Metro's two transfer stations to the Columbia Ridge Landfill owned by Waste Management Disposal Services. Metro must obtain replacement transport services to continue transporting waste to this landfill through 2019 at which time the disposal contract expires. In late 2006, the Metro Council approved the project work plan entitled *New Waste Transport Contract* to obtain these replacement services. An interdepartmental project team was assembled with representatives from Solid Waste & Recycling, Planning, Finance & Administrative Services, and Office of the Metro Attorney. In addition the consulting firm of CH2M Hill was retained to assist the project team to review waste transport modal options and to facilitate development of the request for proposals evaluation criteria.

Phase I – Transportation Study

The first phase of this project consisted of the Metro Solid Waste Transportation Study, which investigated the alternative approaches available to Metro for replacement transport services. The consulting firm of CH2M Hill presented this study to the Metro Council at its May 29, 2007 meeting, concluding the study phase of the project.

The major findings of the study involved the feasibility of the possible modes available, how the values of the Metro Council could be used to evaluate proposals to provide the needed services and an analysis of policy issues. The study demonstrated that all three modes (barge, rail and truck) were capable of providing the necessary logistics and services required. It also indicated substantial variation amongst the modes when evaluated utilizing criteria derived from the Council values, and identified the factors proposers needed to address in relation to those values in their proposals. A major policy finding was that the possibilities of backhaul were limited and should not be emphasized during the request for proposals (RFP) process.

Phase II – Public Outreach and Procurement

Phase II of the project consists of conducting a procurement process, beginning with the drafting of a request for proposals (RFP). Based on the study and feedback from the Metro Council, staff drafted an RFP that was distributed for review and comment by potential proposers and interested parties in October and early November 2007.

Three public meetings were held in Condon, Hood River and in Portland. Total attendance at these meetings was **108**. In addition a survey has been available at the public meetings and online; **84** people responded to the survey.

The outreach campaign has been supported by ads in community and metropolitan newspapers and industry publications and press releases.

The Solid Waste and Recycling department also conducted a postal mailing and two emailings to more than **800** interested parties as well as numerous mailings to the industry email list. Generally comments received stressed the importance of environmental and socioeconomic factors over cost. The reliability and efficiency of the transport system were also important.

Over twenty interested firms were contacted regarding the draft and comments were received from approximately half. Generally these comments addressed the technical and legal requirements of the RFP.

Based on the comments received, a presentation was made to the Metro Council on November 27th, which included sensitivity analysis around how changing evaluation points or emission assumptions might affect the ranking of different modes. The analysis showed that while the relative ranking between modes did not differ from the original analysis, the difference in rankings narrowed. Based on this analysis and subsequent discussion, the Council agreed to reallocate evaluation points as shown below, and to continue the approaches regarding soliciting a single contractor and the handling of fuel as contained in the draft RFP.

Change in Evaluation Points

Evaluation Criteria	Draft RFP	Final RFP
Cost	60	45
Environmental Impacts	15	20
Socioeconomic Impacts	5	10
Operations/Risk	20	25

On January 17, 2008, Council approved Resolution No. 08-3889 authorizing release of the RFP

Procurement Process

The RFP was mailed to approximately thirty firms in the trucking, barging and rail transportation sectors and a number of additional firms subsequently downloaded the document from the project's website. Three addenda were issued. The majority of items contained in the addenda clarified various provisions in the RFP. Two items made minor modifications to the RFP.

On March 12, 2008, Metro received eight proposals for the project. An additional proposal was received after the deadline and was rejected unopened from Lynden Transport.

List of Firms Submitting Proposals in Response to Metro RFP # 08-1254-SWR (Solid Waste Transportation Services):

1. R&J Trucking, Inc.- Youngstown, OH
2. UPS Ground Freight Inc.- Richmond, VA
3. Ecology Auto Parts, Inc.- Cerritos, CA

4. Ruan Transportation Corporation- Des Moines, Iowa
5. Walsh Trucking Co., Ltd.- Troutdale, OR
6. Mr. Bult's, Inc.- Burnham, IL
7. Tidewater Barge Lines, Inc.- Vancouver, WA
8. Links Freight Management LLC- Grand Junction, CO

Evaluation Process

Metro formed an evaluation committee that was tasked with developing a numeric score for each proposer. The evaluation committee consisted of the following four individuals:

- Deena Platman, Principal Transportation Planner, Metro Planning Department
- Jim Watkins, Assistant Director Metro Solid Waste & Recycling Department- Engineering & Environmental Services Division
- David Williams, Manager, Planning and Development Section, Oregon Department of Transportation Region 1- retired
- Kevin Downing, Clean Diesel Program Coordinator, Air Quality Division, Oregon Department of Environmental Quality.

The evaluation committee was supported by technical staff that conducted an initial review of the proposals and conducted various technical analyses. The main technical support staff included:

- Chuck Geyer, Principal Solid Waste Planner, who was Metro's project manager for the procurement and was the main point of contact with proposers for clarifications.
- Tom Chaimov, Metro Senior Solid Waste Planner, who calculated the cost of each proposal and directed a review of the financial strength of each proposer.
- Dan Pitzler, CH2M HILL Consulting Economist, who facilitated the evaluation committee, provided guidance about evaluation methodology implementation, and calculated emissions results. Mr. Pitzler is CH2M HILL's practice lead for decision analysis in the Northwest region of the United States who specializes in the facilitation of sound decision processes, multi-objective analysis of alternatives, and risk assessment and management.

The evaluation committee and technical staff read each proposal and participated in four 5-hour meetings in which the evaluation committee developed numeric scores for each proposer in accordance with the evaluation criteria outlined in the RFP.

Additional assistance in the evaluation process was provided Bob Wallace, WIH Resources Group, an expert in solid waste transportation logistics, who conducted reference checks and provided guidance in evaluating logistics, maintenance, and safety; Penny Erickson, Metro's Operations Supervisor for the transfer stations, who provided a review of the operational aspects of each proposer; Jeff Broyles of JBL&K Risk Services, LLC who provided a review of the financial strength of each proposer from a surety's perspective; and Bill Spofford with ODOT who confirmed maximum theoretical payloads in accordance with Oregon laws.

The evaluation committee concluded its deliberations in April 2008. A copy of its report is attached. The final scoring of the proposals was as follows:

Walsh Trucking	81.8
MBI	77.9
Ecology Auto Parts	72.5

Tidewater Barge Lines	71.5
R&J Trucking	68.1
Ruan	66.8
UPS Ground Freight	65.9
Links Freight Management	59.5

After scoring each proposal, the evaluation committee members and technical staff presented the results of their evaluation to a negotiating committee on April 16, 2008.

Negotiations Process

The negotiating committee was responsible for negotiating with the top rated firm or firms and consisted of the following individuals.

- Mike Hoglund, Director, Metro Solid Waste & Recycling Department
- Darin Matthews, Metro Procurement Officer
- Paul Ehinger, Assistant Director, Metro Solid Waste & Recycling Department
- Marv Fjordbeck, Senior Attorney, Office of Metro Attorney

After considering the evaluation committee's report, the negotiating committee chose to institute negotiations with the top rated firm- Walsh Trucking. It is a forty nine year old family- owned trucking company based in Troutdale, Oregon with an extensive history of hauling truckload bulk freight as well as extensive experience in the transport of solid waste. The committee based this decision on the overall strength and balance of the firm's proposal in relation to the evaluation criteria, as reflected in its final score.

The negotiating committee has successfully negotiated a contract which Metro's Chief Operating Officer is recommending for award. The contract is attached to Resolution No. 08-3997(Attachment #2).

Phase III – Mobilization and Begin Operations

Phase III of this project will occur after execution of a contract. Operations under the new contract will commence January 1, 2010. Between the time of contract execution and the start of operations, the Contractor must acquire the equipment, personnel, facilities as well as put into place the administrative and logistical elements to successfully prepare for the start of operations.

Significant Features of the New Contract

General Features

- Contract term is for ten years from January 1, 2010 to December 31st, 2019
- A minimum of 27 trucks and 120 trailers will be provided to haul the waste
- An estimated 6.7 million total tons will be hauled, averaging about 70 trips per weekday
- Total contract cost is approximately \$120 million
- In addition Metro will purchase over-the-road fuel
- Metro's tip fee will increase about \$3.25 per ton over inflation-adjusted status quo

Sustainability Features

- Use of recycled materials and products, particularly in the purchase of antifreeze and retreaded tires.
- Use of Bio-based fuels to the maximum extent allowed under engine manufacturer's warranty;
- Initial truck fleet must be new and comply with 2009 emission standards (including diesel particulate reduction)

- All replacement tractors and shuttle vehicles shall meet emission standards in effect for the year in which Contractor shall acquire such vehicles (ensure NOx reductions)
- 11% reduction in trips due to increase payloads
- Creation of recycling systems for administrative/maintenance activities and use of sustainable practices such as two-sided copying of documents and solvent recycling
- Use of non-toxic cleaners, fluids and solvents to the maximum extent possible
- Use of sustainable practices in the construction and operation of the new maintenance facility

Gilliam County Provisions

- Contractor is obligated to use best faith efforts to establish a maintenance facility in the county that would also serve as a base of operations for Contractor’s general manager, primary dispatch, clerical staff, and the majority of the drivers.
- Contractor shall make all best efforts to purchase supplies and incidental equipment from vendors and providers located in Gilliam County, including fuels, oils and tires.
- Emissions will decline as fewer diesel particulates will be emitted, with eventual reduction in NOx emissions
- Traffic impacts, particularly on the City of Arlington, will decline by approximately 11% due to the increased payload each trailer can legally carry.

Fuel Provisions

- Metro will purchase the fuel for the over-the-road portion of the work. This will result in a savings of approximately \$250,000 annually through avoidance of the federal excise tax on fuel.
- The contract contains provisions to make the contractor responsible for fuel costs exceeding a target per trip fuel consumption level, and provisions the sharing of savings below the target between Metro and the Contractor.

New Contract Form

- The contract used for this project has been substantially changed to improve its usefulness. The majority of contractual requirements regarding operations have been integrated into the contract from the scope of work. Placing these responsibilities together results in a more efficient and easily managed contract format.
- The contract also contains a termination for the convenience of the government unlike previous major contracts. This allows Metro the flexibility to terminate after five years, purchase the contractor’s equipment with a declining lump sum termination fee based and the year in which the contract is terminated.
- Fully variable payments based on the number of loads actually transported

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to proceeding with the project.

2. Legal Antecedents

Resolution of any appeals prior to the award of a contract.

3. Anticipated Effects

- *Costs* will increase as described in the Budget Impacts section below.
- *Environmental Impacts* from operations should decline from current practices. There will be at least a 90% decrease in diesel particulate matter emitted through the use of diesel particulate filters. NOx emissions will decline significantly when the initial fleet of trucks is replaced near the midway point of the contract. There are also provisions to decrease CO₂ through fuel consumption incentives/disincentives.
- *Socioeconomic* impacts of operations will decline.
 - Increased payloads will cause an 11% decline in the number of trips needed to transport the waste over current operations. This will in turn lower the impacts on neighborhoods, enhance regional freight mobility and lessen the traffic (and environmental) impacts in the Columbia River NSA.
 - Gilliam County-based operations will continue the creation of living wage jobs in the county and the purchase of supplies from local vendors, while adding a new maintenance facility to be built in the county.
- *Operational Considerations/Reductions of Risk to Metro* is improved over current operations.
 - The performance history, financial strength, proposed maintenance and operating plans and the management expertise of the proposed contractor indicate that performance and the reliability of operations should improve dramatically. Performance standards, incentives and disincentives have been installed in the contract to ensure levels of service are maintained.
 - Sustainable practices have been incorporated into the contract emphasizing the use of biofuels, re-refined lubricants and fluids, retreaded tires and administrative practices.

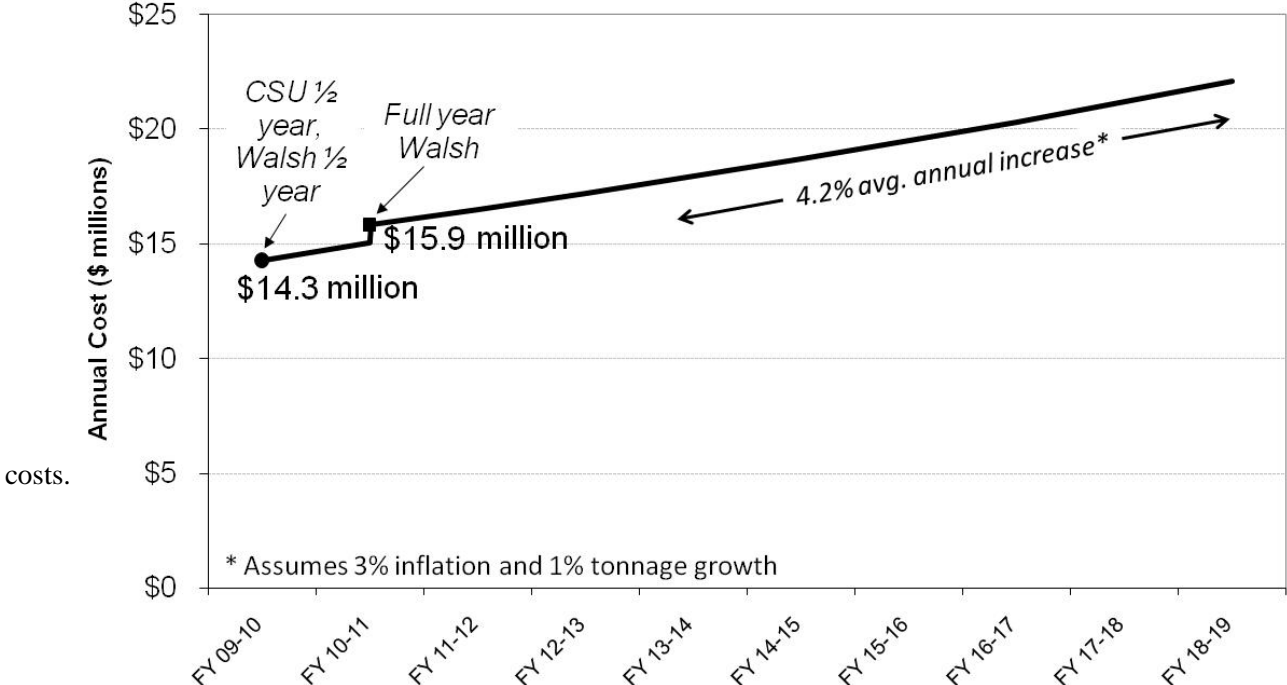
4. Budget Impacts

Adopting this legislation should cause no budget or rate impact during the current fiscal year, FY 2008-09. In FY 2009-10 and beyond, Metro’s costs for long-haul transport are projected to be higher than in the past for two principal reasons: 1. higher per-load prices for transport services; and 2. higher fuel costs. These higher costs will be somewhat ameliorated by the new, more efficient Walsh Trucking operations in which fewer, but larger; loads are shipped to the Columbia Ridge Landfill.

Walsh Trucking will transport Metro’s waste for ten years, beginning January 1, 2010. Following is a ten-year projection of annual transport costs (including fuel).

Figure 1. Projection of annual transport

Annual Cost of Waste Transport Including Fuel
(\$ Millions)



Assuming a \$4.00 gallon of diesel fuel this year, Metro's total annual budget for transport services in the first full fiscal year of new operations (FY 2010-11) is projected to be \$15.9 million including fuel, an increase of about \$2.14 million over inflation-adjusted status-quo costs.

Fiscal Impact

Metro's recent (July 2008) cost for long-haul transport was approximately \$21 per ton, with \$14 per ton for transport services plus an equivalent of \$7 per ton for fuel. As expected, the January 1, 2010 price will be higher, in large part due to the below-market pricing that Metro currently enjoys as an outcome of the 1999 Change Order 24 provisions. On January 1, 2010, the new unit cost for transport will be approximately \$25.40 per ton: \$17.40 for transport service plus \$8.00 for fuel. The increase to Metro's tip fee would be about \$3.25 per ton over the inflation-adjusted status quo. The total ten year estimated contract cost with Walsh Trucking Co., Ltd. is \$124 million; and the total ten year estimated fuel cost paid by Metro is \$60 million - saving about \$2.9 million in Federal fuel taxes from which governments are exempt.

RECOMMENDED ACTION

Approve Resolution No. 08-3997 to authorize the Chief Operating Officer to execute a contract with Walsh Trucking Co., Ltd. for the transportation of solid waste from the Metro South and Metro Central transfer stations to the Columbia Ridge Landfill for disposal.

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ATTACHMENT #1

EVALUATION REPORT FOR PROPOSALS RECEIVED IN RESPONSE TO RFP 08-1254-SWR

Final Evaluation Report

Metro Solid Waste Transportation Request for Proposals

Prepared for



May 2008

Prepared by

CH2MHILL
CH2M HILL
P.O. Box 91500
Bellevue, WA 98009

In association with WIH Resources Group

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Overview of Request for Proposals (RFP) Process

1.1 Background

Metro currently contracts with a private firm to transport waste from its two transfer stations; Metro Central, located in northwest Portland and Metro South, located near Oregon City, to the Columbia Ridge Landfill (CRL) located in Gilliam County, Oregon. Metro's current solid waste transportation contract expires in December, 2009. In response, Metro issued an RFP for Solid Waste Transportation Services on January 24, 2008. On March 12, 2008, proposals were received from the following firms:

- Ecology Auto Parts
- Links Freight Management
- MBI Mr. Bults
- R&J Trucking
- Ruan
- Tidewater Barge Lines
- UPS Ground Freight
- Walsh Trucking

1.2 Proposal Evaluation Process

Metro formed an evaluation committee that was tasked with evaluating the responses and assigning points to each proposal. The evaluation committee consisted of the following four individuals:

- Kevin Downing, Clean Diesel Program Coordinator, Air Quality Division, Oregon Department of Environmental Quality.
- Deena Platman, Principal Transportation Planner, Metro Planning Department
- Jim Watkins, Assistant Director Metro Solid Waste & Recycling Department-Engineering & Environmental Services Division
- David Williams, Manager, Planning and Development - Region 1, Oregon Department of Transportation (ODOT) - retired

The evaluation committee was supported by technical staff that conducted an initial review of the proposals and conducted various technical analyses. The main technical support staff included:

- Chuck Geyer, Principal Solid Waste Planner, who was Metro's project manager for the procurement and was the main point of contact with proposers for clarifications.

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The evaluation committee and technical staff read each proposal and participated in four 5-hour meetings in which the evaluation committee developed numeric scores for each proposer in accordance with the evaluation criteria outlined in the RFP.

Additional assistance in the evaluation process was provided by Bob Wallace, WIH Resources Group, an expert in solid waste transportation logistics, who conducted reference checks and provided guidance in evaluating logistics, maintenance, and safety; Penny Erickson, Metro's Operations Supervisor for the transfer stations, who provided a review of the operational aspects of each proposer; Jeff Broyles of JBL&K Risk Services, LLC who provided a review of the financial strength of each proposer from a surety's perspective; and Bill Spofford with ODOT, who confirmed maximum theoretical payloads in accordance with Oregon laws.

After scoring each proposal, the evaluation committee members and technical staff presented the results of their evaluation to a negotiating committee on April 16, 2008. The negotiating committee is responsible for negotiating with the top rated firm or firms and consists of the following individuals.

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- Darin Matthews, Metro Procurement Officer
- Jim Watkins, Assistant Director, Metro Solid Waste & Recycling Department
- Marv Fjordbeck, Senior Attorney, Office of Metro Attorney
- Tom Chaimov, Senior Solid Waste Planner
- Chuck Geyer, Principal Solid Waste Planner
- Penny Erickson, Metro Operations Supervisor

SECTION 2

Evaluation Methodology

The evaluation committee was tasked with assigning points to each proposal on the basis of criteria established in Metro's RFP. The evaluation criteria stated in the RFP follows.

Evaluation Criteria

Metro's RFP states that points would be assigned to proposals in four key areas:

- Cost 45 points
- Environmental Impacts 20 points
- Socioeconomic Impacts 10 points
- Operational Considerations/Reduction of Risk to Metro 25 points

Cost

The total cost of each proposal was determined using the following information submitted by proposers: price per load, price per load for fuel, the maximum per-container payload, and a percent of the consumer price index that will be used to annually adjust per-load prices. Using a formula specified in the RFP, the total cost of each proposal was calculated. The lowest total cost proposal received 45 points. As specified in the RFP, other proposals were allocated points based on a percentage of the lowest cost proposal.

Environmental Impacts

The evaluation committee analyzed the environmental impacts of each proposal using information provided by proposers, and information and assumptions included in an analysis of transportation options for this project contained in the *Metro Solid Waste Transportation Study, Final White Paper*, CH2M HILL, May 2007 (the White Paper). The types of emissions examined included:

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

Socioeconomic Impacts

The committee examined both Metro regional impacts, as well as the impacts along transportation routes and in Gilliam County, Oregon. The impacts considered included:

- a. Noise and traffic effects on neighborhoods.
- b. Enhancement of regional freight mobility in the Metro area.

- c. Supporting economic development in Gilliam County.
- d. Positive/negative effects on the Columbia River Gorge NSA.
- e. Minority, Women, and Emerging Small Business (MWESB) utilization of subcontractors and suppliers.

Operational Considerations/Reduction of Risk to Metro

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

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

Scoring the Environmental, Socioeconomic, and Operational Aspects of Proposals

As discussed above, Metro's RFP outlines the points to be allocated to each of the four main evaluation criteria and specifies how costs will be calculated. For the non-cost criteria, the evaluation committee was tasked with developing a process for determining how to assign points for each proposal. The evaluation committee elected to use the value modeling methodology outlined in the White Paper to ensure that points were assigned in a logical, consistent manner that would be fair to all proposers. A brief overview of this methodology follows.

Value Modeling Overview

Value modeling is a quantitative technique for making decisions that involve multiple financial, environmental, and social objectives. It is a form of multi-criteria decision analysis based on the principles of multi-attribute utility theory. The specific approach used for this analysis is SMART, the Simple Multi-Attribute Rating Technique¹. This section provides a brief overview of the technique.

Value modeling proceeds through a series of defined steps. To clarify the discussion of steps in this introduction, a simple example is developed. The steps, illustrated in Exhibit 2-1 below, are:

- Establish the decision goal and specify a hierarchy of objectives
- Develop performance measures to assess project performance against objectives
- Add technical detail to the performance measures, and assign scores to the performance measures
- Assign weights to the objectives
- Calculate value scores and conduct sensitivity analysis

These steps are discussed in detail in the following sections.

Decision Goal and Objectives

The decision goal is the overall purpose of the evaluation, in this case evaluating the extent to which each proposal meets Metro's stated objectives. In this instance, the objectives are the specific evaluation criteria that will be used to score proposals. The RFP listed the four fundamental objectives (evaluation criteria) and gave some guidance as to other sub-criteria that should be considered in evaluating those objectives. These sub-criteria are organized into a hierarchy of objectives typically referred to as an objectives hierarchy.

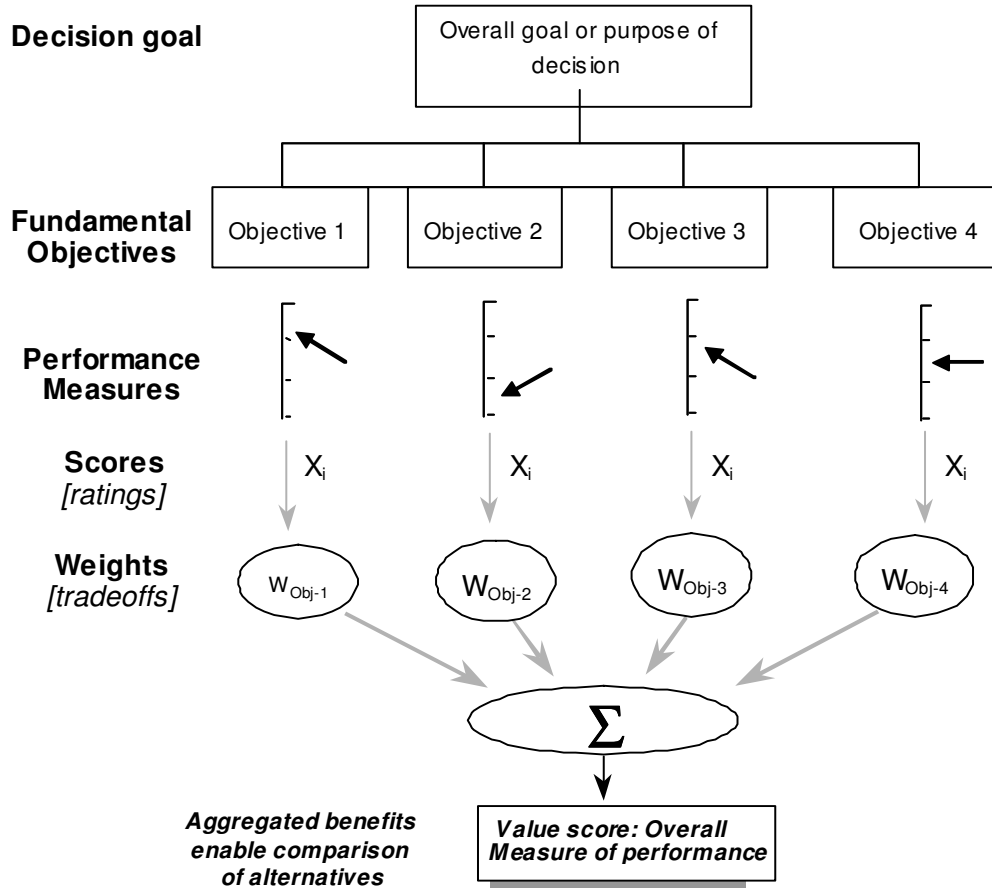
Performance Measures

The sub-criteria then need to be refined into a set of performance measures so that the proposals can be assigned specific scores that represent how well each proposal performs in meeting the stated evaluation criteria. In Exhibit 2-1, performance measures are represented as scales beneath the objectives. Performance measures may be quantitative or qualitative, depending upon the objective and the availability of data for each measure.

¹ Edwards, W. How to use Multiattribute Utility Theory for Social Decision Making, IEEE Transactions on Systems, Man, and Cybernetics 7,326-340, 1977, and Von Winterfelt, D. and W. Edwards. Decision Analysis and Behavioral Research, Cambridge University Press, 1986.

EXHIBIT 2-1**Generalized Representation of Value Modeling**

See text for discussion of the figure. X_i represents the score of alternative "i" on the given objective. Weights are the relative importance assigned to each objective. Σ is the rule for aggregating scores.



Each performance measure is arithmetically transformed to a scale of zero-to-one. For example, if a cost scale ranging from \$1,000 to \$2,000 were converted to a zero-to-one scale, then \$1,000 would rate a "one" on the new scale; \$2,000 would rate a "zero;" and \$1,500 would rate a 0.5. This zero-to-one scale described above implies a linear relationship between cost and value. This means that increasing cost from \$1,000 to \$1,500 is as important as increasing cost from \$1,500 to \$2,000. The two incremental changes are of equivalent value. Scales can also be nonlinear when changes along the scale have different degrees of importance.

Alternatives

In this case the set of alternatives is clear: the eight proposals received by Metro for the transportation project.

Weighting Objectives

Based on the value system of the decision-maker(s), some objectives may be more or less important than other objectives. This leads to the concept of “weighting” objectives. Assigning weights to objectives is a subjective exercise based on the values of the decision maker(s). In this case, the RFP stated the points that should be assigned to each of the four main criteria. However, the evaluation committee needed to assign points (i.e., weights) to the sub-criteria (such as the five socioeconomic sub-criteria). The evaluation committee assigned points under the guidance of an experienced facilitator (Dan Pitzler, CH2M HILL).

Scoring Proposals

Points were assigned to each proposal using a weighted averaging process. This consisted of multiplying the percentage of the maximum possible score for each sub-criterion by the available points for that criterion, and summing the total points over all sub-criteria. For example, if the lowest and highest possible scores for a sub-criterion are 1 and 5 respectively and the sub-criterion has 4 points available, a score of 4 would result in assigning 3 points to that sub-criterion, calculated as follows: $(1 - (5-4)/(5-1)) * 4 = 3$.

Scores and Points

As discussed above, the RFP provided a specific formula for determining cost scores plus general guidance about factors to consider when scoring the non-cost criteria. The evaluation committee used that guidance to develop specific metrics for developing scores for each proposal on the non-cost criteria. A discussion of those metrics, data sources for the metrics, and the points assigned by the committee to subcriteria follows.

Cost

As specified in the RFP, the low cost proposal was given the maximum points for the cost criterion (45). All other proposals had points deducted from 45 in proportion to the percentage that proposal's cost was above the low cost proposal. For example, a proposal that was 10 percent above the low cost proposal would be assigned 40.5 points $(45 - (45 * .1) = 40.5)$.

The total cost of each proposal was calculated using a formula specified in the proposal that used projected tons per year from each transfer station, an assumed inflation rate, and the following elements provided by each proposer:

- per-load price
- per-load price for fuel
- fuel use per trip
- maximum road-legal payload
- percent of the consumer price index

The maximum road-legal payload was verified by the Oregon Department of Transportation using information about the proposed tractor-trailer configuration provided by proposers.

Environmental Impacts

The methods used to score environmental impacts and the points assigned to each environmental criterion are shown in Exhibit 2-2. As indicated, emissions per gallon of fuel use were taken from the White Paper.

For truck emissions, the proposer's maximum road-legal payload was used to calculate the number of trips, and emissions were calculated assuming EPA standards are met for the engine year proposed (2007 or 2010), and adjustments were made for proposers that committed to using a biodiesel blend (B10 for UPS and B5 for Walsh).

Information provided by Tidewater was used to clarify and refine fuel use and emissions for waste moved by barge. Tidewater proposed that Metro consider emission offsets, which would reduce Tidewater's total emissions by the reduction in emissions realized by new cleaner burning engines recently installed in some of the tugs in its fleet (which would have resulted in negative PM₁₀ and NO_x emissions). The evaluation committee elected to disallow such offsets because those offsets would be realized on non-Metro barge tows. Instead, emissions from the barge portion of the Tidewater proposal was calculated using the fleet average of the tugs Tidewater said would be candidates for towing barges that included waste from Metro. Other barge emission assumptions that differed from Tidewater's proposal include:

- Light tows (tows where a Metro barge is added to an existing barge with excess capacity) were assumed to be unavailable during lock closure. This resulted in slightly fewer barge trips than proposed by Tidewater.
- On-river hours were calculated between Tidewater's Vancouver Terminal to Boardman. Tidewater assumed on-river hours to Pasco (the end destination for a barge tow). This resulted in less fuel use and emissions than proposed by Tidewater.

EXHIBIT 2-2
Environmental Impact Scoring and Points

Proposal Evaluation Criteria	Method Used to Score Proposals	Points
2.a PM ₁₀	PV of tons, 2010-19, calculated per white paper	7.0
2.b-1 NO _x in CR Gorge National Scenic Area	PV of tons, 2010-19, calculated per white paper	2.0
2.b-2 Fuel Use in CR Gorge National Scenic Area (proxy for SO _x)	PV of gallons of fuel, 2010-19, calculated per white paper	5.0
2.c Greenhouse gases (CO ₂)	PV of tons, 2010-19, calculated per white paper	6.0

Socioeconomic Impacts

The method used to score socioeconomic impacts and the points assigned to each criterion is shown in Exhibit 2-3. All of the scoring for socioeconomic impacts was done using a 1-5 scale, with care taken to explicitly define the rationale for differences in the relative scores assigned to different proposals.

EXHIBIT 2-3

Socioeconomic Impact Scoring and Points

Proposal Evaluation Criteria	Method Used to Score Proposals	Points
3.a Minimize noise and traffic effects on neighborhoods (in Portland/Vancouver region)	1-5 scale, 5=same as existing; 1 = staging at Troutdale	3.0
3.b Enhance regional freight mobility in the Metro area	1-5 scale, extent to which proposal would avoid peak traffic	1.0
3.c Support economic development in Gilliam County	1-5 scale, jobs and purchases in Gilliam County	3.0
3.d Positive/negative effects on the Columbia River Gorge NSA	1-5 scale, minimizing truck traffic during daylight hours in Gorge	2.5
3.e MWESB utilization of subcontractors and suppliers	1-5 scale, based on strength of commitment	0.5

Scoring Operational Considerations

The method used to score operational considerations and the points assigned to each criterion is shown in Exhibit 2-4. In addition to evaluating information provided in the proposals, the evaluation committee considered a review of proposer's operating plans, prepared by Metro's operations supervisor, and a review of proposer's maintenance plans and a report on the responses of reference checks, provided by Bob Wallace. Information from the Federal Motor Carrier Safety Administration on a two-year average of vehicle out-of-service and driver out-of-service records of each trucking firm was used to as one way to assess the Proposer's record on safety compliance.

EXHIBIT 2-4

Operational Considerations Scoring and Points

Proposal Evaluation Criteria	Method Used to Score Proposals	Points
4.a Ability to move waste in a timely manner by providing sufficient equipment and personnel	1-5 scale, based on weighted scores of three sub-objectives below	
No. of Trucks (low number makes contingency plans difficult)	1-5 scale. 50 trucks = 5. Tidewater evaluated considering its operating plan	2.4
No. of Trailers	1-5 scale, 150 trailers = 5, Tidewater evaluated considering its operating plan	2.4
Garbage hauling experience	1-5 scale. 5 = well beyond the 250K ton/year hauling experience threshold (RFP threshold), 3 = a bit above RFP threshold, 1 = below threshold	1.2
4.b Operational procedures/location of supervisory personnel will ensure coordination resulting in reliable, timely service	1-5 scale, based on weighted scores of five sub-objectives below	
Evaluation of operating plans and procedures submitted in proposals including local supervision and mgt.	1-5 score based on committee review of the evaluation conducted by Metro's operations supervisor	4.4

EXHIBIT 2-4

Operational Considerations Scoring and Points

Proposal Evaluation Criteria	Method Used to Score Proposals	Points
Evaluation of maintenance plans submitted in proposals	1-5 scale. Committee evaluated Bob Wallace's review and assigned twice as much weight on preventative maint. and maint. plans vs. equipment replacement and miscellaneous	0.6
Prior performance based on opinions provided by references	1-5 scale, committee assigned points based on Bob Wallace's report on proposer's references	3.9
Vehicle out-of-service records in past two years	1-5 scale, 3 = national average, others up or down accordingly	1.7
Driver out-of-service records in past two years	1-5 scale, 3 = national average, others up or down accordingly	0.6
4.f Ability to maximize payloads over time - trailer floors and effects on maintenance	1-5 scale, 5 if hardox or trailers replaced after 5 years, otherwise 3	2.0
4.j Financial strength of proposing entity as determined by, but not limited to, corporate credit ratings, common financial ratios, management continuity, reputation, and ability to support indemnification and performance guarantees	1-5 scale based on assets/revenues, liquidity, solvency, profitability, covenants violated, and likelihood to quality for long-term surety guarantee	4.0
4.k Sustainable practices proposed	1-5 scale - based on the number of non-fuel related sustainability measures proposed	2.0

SECTION 3

Evaluation Results

After the conclusion of its first two meetings on April 3, 2008, the evaluation committee had scored proposals on cost, environmental impacts, and socioeconomic impacts, and initial scores were complete for operational considerations. For operations, the financial and safety evaluations were incomplete, thus all proposals were given a score of 3 (out of 5) at this time. The likelihood of delivering reliable, timely service had been scored strictly based on the information provided in the proposals prior to reference checks. At that time, the proposal scores were as shown in Exhibit 3-1, and the evaluation committee reasoned that there was no way that the three proposers with the lowest scores would be able to improve substantially enough to be considered as a top proposer for the purpose of conducting negotiations. Thus, at this point, they were subsequently dropped from further consideration prior to reference checks and more detailed analysis of financial strength and safety records.

EXHIBIT 3-1

Initial Evaluation of Proposals

Walsh Trucking	78.6
MBI	76.1
Ecology Auto Parts	67.8
Tidewater Barge Lines	70.0
R&J Trucking	68.0
Ruan	66.8
UPS Ground Freight	65.9
Links Freight Management	59.5

After completing the evaluation, proposals were scored as shown in Exhibit 3-2. The final points (weighted scores) for the top five rated proposers are shown in Exhibit 3-3 for the four main evaluation criteria. As shown, the two top rated firms, Walsh Trucking and MBI, were close or equivalent in cost, environmental, and socioeconomic impacts, but Walsh Trucking had a decided advantage in operational considerations.

The cost points were compiled using the formula outlined in the RFP as described in Section 2. MBI's proposal received the most points for cost (i.e., was the lowest cost proposal) with Walsh Trucking a close second, and Ecology Auto Parts' proposal received the fewest cost points.

EXHIBIT 3-2
Proposal Scores

Criteria	Proposer							
	Ecology	Links	MBI	R&J	Ruan	Tide-water	UPS	Walsh
1. Cost (points, 45 maximum)	32.3	35.4	45.0	37.2	30.3	40.1	43.5	44.7
2. Environmental								
2.a PM10 (tons)	4.3	4.2	4.2	4.1	4.5	6.2	4.1	4.0
2.b-1 NOx in CR Gorge National Scenic Area (tons)	62.0	22.0	53.3	21.4	56.6	95.4	55.4	60.5
2.b-2 Fuel Use in Gorge (SOx proxy, mgal)	4.9	5.4	5.2	6.6	4.5	3.1	4.8	5.3
2.c Greenhouse gases (CO2, 000 tons)	101	111	107	135	92	90	108	113
3. Socioeconomic (1-5 scale)								
3.a Noise and traffic effects on neighborhoods	3.0	5.0	5.0	1.0	5.0	2.0	5.0	5.0
3.b Enhance regional freight mobility	2.0	2.0	3.0	1.0	3.0	4.0	3.0	3.0
3.c Support economic development in Gilliam County	5.0	2.5	3.5	3.0	5.0	1.5	1.5	3.5
3.d Positive/negative effects on the Columbia River Gorge NSA	2.5	2.0	2.0	3.5	2.0	5.0	2.0	2.0
3.e MWESB utilization of subcontractors and suppliers	3.0	3.0	3.0	5.0	3.0	3.0	3.0	3.0
4. Operational Considerations/Reduction of Risk to Metro (1-5 scale)								
4.a Ability to move waste in a timely manner by providing sufficient equipment and personnel	5.0	1.4	3.5	4.6	3.9	4.6	1.1	2.2
No. of Trucks	5.0	1.0	1.3	5.0	3.2	5.0	1.3	1.6
No. of Trailers	5.0	2.0	5.0	4.0	5.0	5.0	1.0	2.5
Garbage hauling experience	5.0	1.0	5.0	5.0	3.0	3.0	1.0	3.0
4.b Operational procedures/location of supervisory personnel will ensure coordination resulting in reliable, timely service	3.7	1.0^a	3.3	4.4	3.5^a	3.1	1.0^a	4.5
Operating plans and procedures	3.0	1.0	3.0	4.8	3.5	3.0	1.0	4.0
Maintenance plans	3.1	Not rated	2.8	3.1	not rated	2.7	not rated	3.0
Prior performances from references	5.0	Not rated	4.0	4.0	not rated	4.0	not rated	5.0
Vehicle out-of-service records in past two years	2.5	Not rated	2.5	5.0	not rated	1.0	not rated	5.0
Driver out-of-service records in past two years	5.0	Not rated	4.0	4.0	not rated	4.0	not rated	5.0
4.f Payloads - trailer floors and effects on maintenance and trailer weight	5.0	5.0	3.0	3.0	3.0	3.0	3.0	3.0
4.j Financial strength	5.0	1.0^a	2.0	3.5	1.0^a	4.0	3.0^a	4.5
4.k Sustainable practices	3.0	3.0	4.0	2.0	1.0	5.0	2.0	5.0

^aScored using only an initial review because after that review the proposal was clearly not strong enough to be considered as a leading candidate for negotiations. Scores of 3.0 were used for all of these scores when the results in Exhibit 3-1 were compiled.

EXHIBIT 3-3
Evaluation Results

Criteria	Total Points				
	Ecology Auto Parts	MBI	R&J Trucking	Tide-water Barge Lines	Walsh Trucking
1. Cost	32.3	45.0	37.2	38.7	44.7
2. Environmental	13.8	13.0	8.5	11.0	12.9
3. Socioeconomic	5.9	6.3	3.6	4.6	6.3
4. Operational Considerations/Reduction of Risk to Metro	20.5	13.6	18.8	17.1	18.0
Total Points	72.5	77.9	68.1	71.5	81.8

The environmental impacts for the trucking elements varied based on the proposed engine year emission standard (2007 vs. 2010), the proposed fuel consumption, and the type of fuel proposed (ultra-low sulfur diesel or B5 or B10 biodiesel). The barge elements of Tidewater's proposal were calculated as described in Section 2. Once the truck drayage at either end of the barge tow is added, Tidewater's proposal resulted in the highest PM₁₀ and NO_x emissions, but the fuel efficiency of the barge tow resulted in Tidewater's proposal having the lowest fuel use and CO₂ emissions. R&J Trucking's proposal resulted in the lowest overall points for environmental impacts, largely because it included the poorest fuel economy of the proposers.

The proposals from MBI and Walsh Trucking rated the highest in the socioeconomic impact category by performing well on all five of the socioeconomic sub-criteria. R&J Trucking's proposal scored the lowest on socioeconomics largely because of its proposal to develop a hub in Troutdale. That was deemed to result in potential impacts to neighborhoods and freight mobility, but conversely, resulted in this proposal scoring well in the operational considerations category.

The Ecology Auto Parts proposal scored consistently well in the operational considerations criteria and was rated 2.5 points higher than the next closest proposal, R&J Trucking. MBI's proposal was rated the lowest of the top five proposals because of its performance on the financial strength sub-criterion and other operational considerations.

After scoring the proposals and doing one final recalibration of scores to ensure internal consistency, the evaluation committee presented the results of the scoring to the negotiating committee. This meeting was held on April 16, 2008.