



METRO

Agenda

MEETING: METRO COUNCIL
DATE: October 16, 2008
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. GOVERNMENT FINANCE OFFICERS ASSOCIATION DISTINGUISHED BUDGET PRESENTATION AWARD

4. AUDITOR'S ANNUAL REPORT

Flynn

5. CONSENT AGENDA

5.1 Consideration of Minutes for the October 2, 2008 Metro Council Regular Meeting.

5.2 **Resolution No. 08-3995**, Making Committee Appointments and Extending Sunset Dates on 2035 Regional Transportation Plan and Convention Center Hotel Council Projects.

5.3 **Resolution No. 08-3994**, Authorizing the Naming of the Schweitzer Restoration Area of Johnson Creek.

6. ORDINANCES – FIRST READING

6.1 **Ordinance No. 08-1196**, For the Purpose of Amending Metro Code Chapter 5.05 Solid Waste Flow Control to Ensure that all of the Region's Non-Putrescible Waste Undergoes Material Recovery before Disposal, and Declaring an Emergency

7. RESOLUTIONS

7.1 **Resolution No. 08-4000**, For the Purpose of Entering an Order Approving Extensions of Time For Compliance With New Requirements in Title 4 of the Urban Growth Management Functional Plan For Clackamas County, and the Cities of Beaverton, Damascus, Durham, Fairview, Gresham, Happy Valley, Lake Oswego, Milwaukie, Oregon City, Portland, Sherwood, Tigard, and Wood Village. (**PUBLIC HEARING**)

Collette

8. CONTRACT REVIEW BOARD

8.1 **Resolution 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. Harrington

**9. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660(1)(e).
DELIBERATIONS WITH PERSONS DESIGNATED TO NEGOTIATE
REAL PROPERTY TRANSACTIONS.**

9.1 **Resolution No. 08-3969**, Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement with the City of Portland and the North Clackamas Parks and Recreation District Regarding the Purchase and Management of Property in the Johnson Creek Target Area Acquired Pursuant to the 2006 Natural Areas Bond Measure. Collette

9.2 **Resolution No. 08-3970** Authorizing the Chief Operating Officer to Purchase Property in the Johnson Creek Target Area under the 2006 Natural Areas Bond Measure and Subject to an Unusual Circumstance. Collette

10. CHIEF OPERATING OFFICER COMMUNICATION

11. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for October 16, 2008 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 – Community Access Network www.tvctv.org – (503) 629-8534 2 p.m. Thursday, October 16 (Live)</p>	<p>Portland Channel 30 (CityNet 30) – Portland Community Media www.pcmv.org – (503) 288-1515 8:30 p.m. Sunday, October 19 2 p.m. Monday, October 20</p>
<p>Gresham Channel 30 – MCTV www.mctv.org – (503) 491-7636 2 p.m. Monday, October 20</p>	<p>Washington County Channel 30 – TVC-TV www.tvctv.org – (503) 629-8534 11 p.m. Saturday, October 18 11 p.m. Sunday, October 19 6 a.m. Tuesday, October 21 4 p.m. Wednesday, October 22</p>
<p>Oregon City, Gladstone Channel 28 – Willamette Falls Television www.wftvaccess.com – (503) 650-0275 Call or visit website for program times.</p>	<p>West Linn Channel 30 – Willamette Falls Television www.wftvaccess.com – (503) 650-0275 Call or visit website for program times.</p>

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

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

AUDITOR'S ANNUAL REPORT

Metro Council Meeting
Thursday, October 16, 2008
Metro Council Chamber



SUZANNE FLYNN
Metro Auditor

600 NE Grand Avenue
Portland, OR 97232
tel: 503-797-1892
fax: 503-797-1831
www.oregonmetro.gov/auditor

ANNUAL REPORT

September 2008

Citizens of the Metro Region,

The Fiscal Year 2007-2008 was the first full fiscal year that the Office of the Metro Auditor was under my complete direction. This has been a productive and rewarding year. Among our accomplishments:



- The Office completed five audits. Each audit was well received by management and the Metro Council. For a brief description see page 4.
- We made a total of 38 recommendations that, when implemented, will improve the effectiveness of Metro and MERC programs and the quality of information available to the public.
- An Ethics Line began operation under the administration of the Metro Auditor in November 2007. This provides a way for employees and citizens to report confidentially concerns about Metro or MERC services by using a toll-free number or a web site.
- In a national competition, the Association of Local Government Auditors awarded our office the 2007 Gold Knighton Award for our Natural Areas Audit.
- The Metro Council approved additional funding for a new staff auditor position to begin FY08-09. The Office now has four auditors which will allow us to increase the number of audits completed annually of Metro and MERC Services.

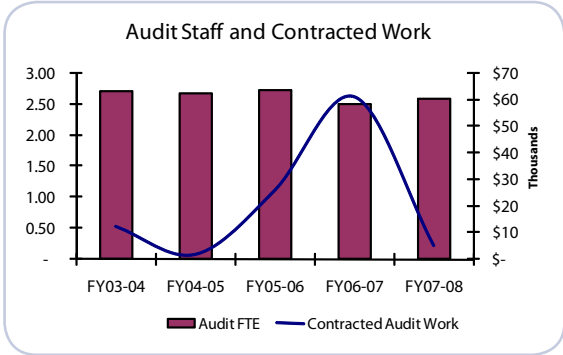
I appreciate the strong support received from the Metro Council and the cooperation extended to us by management and staff. I look forward to continuing our work with the Metro Council, MERC Commission and management, the Metro Chief Operating Officer, management and staff in finding ways to improve productivity and effectiveness. I also thank citizens who, over the past year, have supported this office's work or provided input in improving services.

Sincerely,

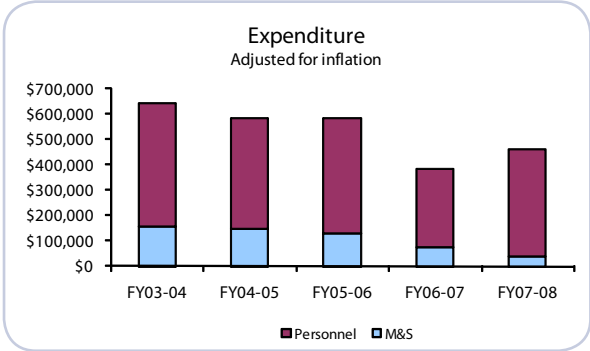
A handwritten signature in black ink, appearing to read "Suzanne Flynn".

Suzanne Flynn
Metro Auditor

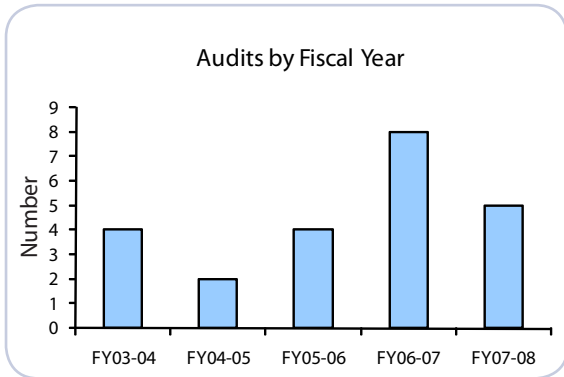
Audit Office Statistics



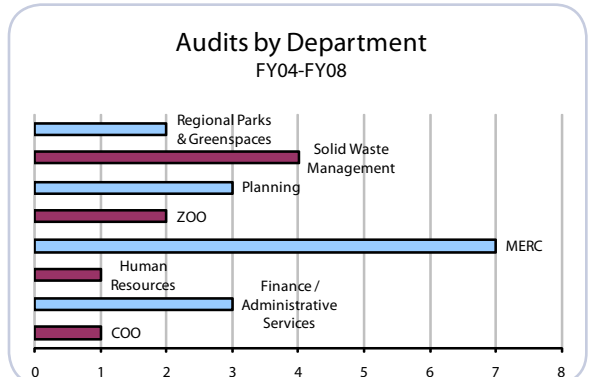
In FY07, several audits were completed by contracted auditors and audits were smaller in scope. As a result, while FTE remained relatively the same as FY08, more audits were completed. Although the office was budgeted for 3.0 FTE in FY08, the lower FTE was due to an extended leave.



Spending overall has decreased 28%. The largest percent decline was in Materials and Services (M&S). A large portion of the decrease in M&S occurred when funding for the external audit was removed from the Office's budget. Personnel spending increased from FY07 to FY08 due to staff vacancies being filled.



Five audits were completed in FY08 which represented almost 2 (1.93) audits per FTE. This is a fairly high level of productivity which was aided by the completion of some audit work by a contractor and the Metro Auditor completing two of the smaller audits.



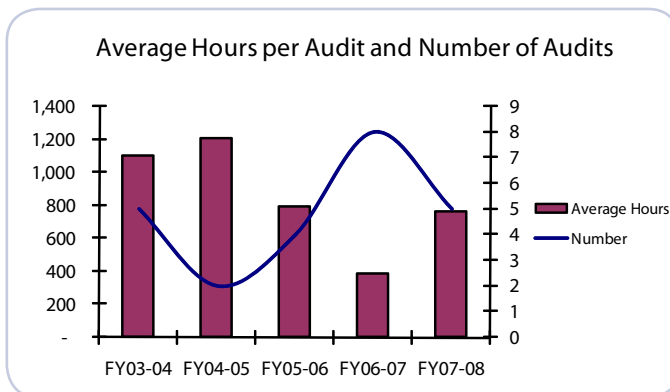
Over the past five years, the number of audits completed on MERC programs was considerably higher than other Metro programs. Audits are currently being conducted on Solid Waste Management and Planning programs and an audit of the Zoo is scheduled to begin in the spring of 2009.

Our Mission

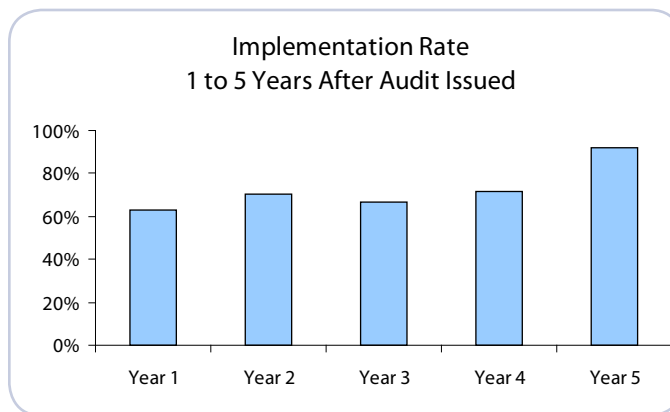
- Ensure that Metro is accountable to the public
- Ensure that Metro activities are transparent
- Improve the efficiency, effectiveness and quality of Metro services and activities by conducting independent and objective assessments and reporting our findings and recommendations

Audit Performance

The number of hours to complete an audit in FY08 ranged from 99 to 1586. Audit hours vary because of the complexity of the analysis or scope of the audit. The narrower the scope and the simpler the analysis, the fewer hours it will take to complete the audit. In FY07, a higher number of audits were completed although staffing levels were similar. The difference was caused by contracted audits completed in addition to audits completed by staff.



The implementation rate is based upon an annual survey to auditees that asks for a report on the status of recommendations. It represents the percent of recommendations that were implemented by year from the date the audit was issued. A positive trend would show the percentage increasing as time from audit completion increases. According to the survey completed in January 2008, by the fifth year from an audit's completion, 92% of recommendations were implemented.



AUDIT STAFF:

Suzanne Flynn: Metro Auditor
suzanne.flynn@oregonmetro.gov

Fred King, Senior Management Auditor
fred.king@oregonmetro.gov

Kristin Lieber, Senior Management Auditor
kristin.lieber@oregonmetro.gov

Brian Evans, Senior Management Auditor
brian.evans@oregonmetro.gov

Elizabeth Wager, Senior Management Auditor
elizabeth.wager@oregonmetro.gov

Lisa Braun, Administrative Assistant
lisa.braun@oregonmetro.gov

Metro Ethics Line

The Metro Ethics Line gives employees and citizens an avenue to report misconduct, waste or misuse of resources in any Metro or Metropolitan Exposition Recreation Commission (MERC) facility or department.

The ethics line is administered by the Metro Auditor's Office. All reports are taken seriously and responded to in a timely manner. The auditor contracts with a hotline vendor, EthicsPoint, to provide and maintain the reporting system. Your report will serve the public interest and assist Metro in meeting high standards of public accountability.

Confidentially report online or call toll free:

www.metroethicsline.org
888-299-5460

Audits Completed, Underway and Scheduled

Audits Completed in FY 2007-08

Below is a summary of audits completed last fiscal year by the Auditor and staff

MERC Performance Measures (Sept 2007). The Metropolitan Exposition Recreation Commission is a unit of Metro that oversees three of the region's main public assembly facilities - the Oregon Convention Center, the Portland Metropolitan Exposition Center and the Portland Center for the Performing Arts. The audit assessed the adequacy of MERC's performance measurement system and if it could provide management with the information needed to operate effectively. We found that MERC has taken steps towards developing a good performance measurement system; however, areas were found that could be strengthened.

(Audit team: DeShais, Lieber)

Natural Areas Program (Oct 2007). This audit was intended to assist management and the Metro Council in establishing a strong foundation to begin the 2006 bond measure program. We followed up on recommendations made in two previous audits and a review by a consulting firm. It was the conclusion of the audit that the Program now needs to direct some of its future efforts to building a performance measurement system, improving communication and using past experience to continuously improve operations.

(Audit team: King, Lieber)

System to Review Local Compliance with Metro Standards (March 2008). This audit covered the process used by the Planning Department to determine compliance with the Urban Growth Management Functional Plan. It was intended to assist the Department in its redesign of the compliance process. We made recommendations to strengthen the process by developing a plan and time lines and noted potential barriers.

(Audit team: Lieber, King)

Financial Condition of Metro FY1998-2007 (April 2008). This report provided a check-up of how well Metro was doing financially based upon financial indicators recommended by the International City/County Management Association.

(Auditor: Flynn)

Hazardous Waste Disposal Contract (May 2008). The scope of this audit was to review the contract with Metro's hazardous waste contractor to determine the quality of its performance. The audit also looked at whether the Program had adequate procedures in place to administer the contract and monitor performance.

(Auditor: Flynn)

Audits Underway

The following audits are currently underway, with the anticipated audit report release dates noted

	Start Date	Expected Completion
Waste Reduction and Outreach	underway	Oct 2008
Sustainability Management System	underway	Jan 2009
Procurement Card Program	underway	Jan 2009

Future Audits

Following are audits projected to begin in the upcoming months

	Start Date	Expected Completion
IT-Software Controls	Nov 2008	Apr 2009
Oregon Zoo	Mar 2009	Aug 2009
Natural Areas Audit Follow-up	Apr 2009	May 2009
Regional Transportation Projects	Apr 2009	Aug 2009

Audit Wins Knighton Gold Award

The Office of the Auditor was awarded with the Gold Award for Small Shops at the 2007 Association of Local Government Auditors Conference. The award went to the NATURAL AREAS audit completed in October 2007.

Agenda Item Number 5.1

Consideration of Minutes of the October 2, 2008 Metro Council Regular Meeting

Consent Agenda

Metro Council Meeting
Thursday, October 16, 2008
Metro Council Chamber

MINUTES OF THE METRO COUNCIL MEETING

Thursday, October 2, 2008
Metro Council Chamber

Councilors Present: Robert Liberty (Deputy Council President), Rod Park, Carl Hosticka, Kathryn Harrington

Councilors Absent: Rex Burkholder (excused), David Bragdon (excused), Carlotta Collette (excused)

Deputy Council President Liberty convened the Regular Council Meeting at 2:02 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Sharon Nasset, 1113 N. Baldwin, Portland Oregon 97217 said we have a lovely Zoo. She thought it was important that we maintain our Zoo at its highest quality. She talked about feeding the animals at the Zoo and the high expense of that food. She had previously recommended using lands in the Oregon area to create an area to grow food for Oregon Zoo animals. This food could help feed other Zoos feed their animals and create revenue for the Oregon Zoo.

3. CONSENT AGENDA

3.1 Consideration of minutes of the September 25, 2008 Regular Council Meeting.

3.2 **Resolution No. 08-3973**, For the Purpose of Approving the Air Quality Conformity Determination for the Oregon Highway 213/Redland Road Improvements as Part of the Federal Component of the Amended 2035 Regional Transportation Plan and Amended 2008-11 Metropolitan Transportation Improvement Program (MTIP).

3.3 **Resolution No. 08-3974**, For the Purpose of Amending the Federal Component of the 2035 Regional Transportation Plan (RTP) and the 2008-11 Metropolitan Transportation Improvement Program (MTIP) to add the Highway 213 and Redland Road Intersection Project.

Motion:

Councilor Park moved to adopt the meeting minutes of the September 25, 2008 Regular Metro Council.
--

Vote:

Councilors Harrington, Park, Hosticka and Deputy Council President Liberty voted in support of the motion. The vote was 4 aye, the motion passed.

4. RESOLUTIONS

4.1 **Resolution No. 08-3954**, For the Purpose of Amending the Greenspaces Master Plan By Updating the Regional Trails System Map.

Motion:	Councilor Hosticka moved to adopt Resolution No. 08-3954.
Seconded:	Councilor Park seconded the motion

Councilor Hosticka said this resolution updated the trails map. We did these updates periodically. We revised the map by making additions to the map. The additions were made through nominations by citizens and local governments. Mary Ann Cassin, Sustainability Center, provided a review of the 10 additions to the map which we re included in exhibit A. Councilor Harrington asked about the name, Power Line Trail now referred to as Westside Trail. Mel Huie, Sustainability Center, said it was now called the Westside Trail. Councilor Liberty asked how many miles were included in the total trail system. Mr. Huie said about 900 miles of trails.

Vote:

Councilors Park, Harrington, Hosticka and Deputy Council President Liberty voted in support of the motion. The vote was 4 aye, the motion passed.

5. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordan, COO, said it was day two of the Sustainability Metro Initiative. He said he had been checking in with the new groups. He had been getting good feedback on the change. He felt they would see some interesting proposals in the next couple of months. Councilor Harrington felt this was an exciting project. Mr. Jordan said they have an agreement with the new Human Resource Director. He would be making an announcement soon. He also talked about the Communications Director final interviews. Molly Chidsey had been hired as the Sustainability Coordinator. He talked about her background. Mr. Jordan said they had rescheduled the budget work session for November 5th 10:00 a.m.-12:00 noon.

6. COUNCILOR COMMUNICATION

Councilor Harrington said yesterday she and some Metro staff members had met with the Gilliam County Board of Commissioners about the waste transport contract. There was also representation from the contractor at the meeting. Commissioner Bettencourt was on the commission when the landfill was started. He had high praise for Metro. He said he had a lot of faith in Metro so he had confidence in the transport contract. Next Tuesday, she will be going to Salem to present the reserve program to the Oregon House Agriculture Committee. Councilor Park said this Saturday in Gresham there would be the East Area Parks and Tree Summit. He announced that the annual Salmon Festival at Oxbow Park was October 11th and 12th.

Councilor Liberty said at the Oregon Zoo Foundation Board met this morning. They had met their goal for the Serengeti exhibit and attained 20% more money than their goal. He had asked Ina Zucker to draft a resolution in gratitude for their work of the committee led by Suzanne Bishop. They achieve their goals in less time than anticipated and achieved 20% more than their original goal. He had also gone out to see Mayor Dirksen of Tigard to talk about light rail and the line on Barbur Blvd. He set aside the entire afternoon. They toured the city and talked about the city's plan. There were real changes in perspective around the region about ambitions for the cities and what they want.

7. ADJOURN

There being no further business to come before the Metro Council, Deputy Council President Liberty adjourned the meeting at 2:20 p.m.

Metro Council Meeting
10/02/08
Page 3

Prepared by

Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF
OCTOBER 2, 2008**

Item	Topic	Doc. Date	Document Description	Doc. Number
3.1	Minutes	9/25/08	Metro Council Meeting Minutes of September 25, 2008	100208c-01

Agenda Item Number 5.2

Resolution No. 08-3995, Making Committee Appointments and
Extending Sunset Dates on 2035 Regional Transportation Plan and
Convention Center Hotel Council Projects.

Consent Agenda

Metro Council Meeting
Thursday, October 16, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

MAKING COMMITTEE APPOINTMENTS AND) Resolution No. 08-3995
EXTENDING SUNSET DATES ON 2035)
REGIONAL TRANSPORTATION PLAN AND) Introduced by Council President David
CONVENTION CENTER HOTEL COUNCIL) Bragdon
PROJECTS)

WHEREAS, the Metro Charter provides that the Council President appoints members of committees, commissions and boards; and

WHEREAS, the Council President has consulted with members of the Metro Council and identified several new committee appointments; and

WHEREAS, two previously-designated Council Projects require a time extension;
now therefore

BE IT RESOLVED:

1. The Council confirms Councilor Collette to replace Councilor Hosticka on the Regional Water Consortium.
2. The Council confirms Councilor Liberty to replace Council President Bragdon on the PSU Institute for Metropolitan Studies Board.
3. The Council confirms Councilor Hosticka to serve as legislative liaison to the 2009 Oregon legislature.
4. The Council confirms Councilor Burkholder to serve as a liaison to the Convention Center Hotel Council Project with Councilor Park continuing to serve as lead councilor on that project.
5. The sunset date of the Convention Center Hotel Council Project will be March 1, 2009 and the sunset date of the 2035 Regional Transportation Plan will be December 31, 2009.

ADOPTED by the Metro Council this October 9th, 2008.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Resolution No. 08-3994, Authorizing the Naming of the Schweitzer
Restoration Area of Johnson Creek.

Consent Agenda

Metro Council Meeting
Thursday, October 16, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE NAMING OF THE SCHWEITZER
RESTORATION AREA ON JOHNSON CREEK

RESOLUTION NO. 08-3994

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, Metro Area voters approved the Open Spaces, Parks and Streams Bond Measure (Ballot Measure 26-26) on May 16, 1995, which authorized Metro to issue \$135.6 million in general obligation bonds to finance land acquisition, to protect and enhance natural areas; and

WHEREAS, pursuant to Metro's Open Spaces, Parks and Streams Bond Measure, the East Buttes and Boring Lava Domes were identified as a regional acquisition target area; and

WHEREAS, on October 9, 1998, Metro and the City of Portland Bureau of Parks and Recreation ("the City") entered into an Intergovernmental Agreement ("Agreement") to purchase 15.7 acres ("the Property,") located on the Springwater Corridor Trail, east of SE 158th Avenue, at the confluence of Kelley Creek and Johnson Creek; and

WHEREAS, Metro and the City purchased the Property from Jeff Brownwood on September 22, 1999, and Metro holds a 71.2% ownership interest in the Property and the City holds a 28.8% ownership interest; and

WHEREAS, under the Agreement the City is responsible for managing the Property; and

WHEREAS, since the early 20th century, the fertile Johnson Creek floodplain supported family farms, which were an important part of Johnson Creek's rich cultural heritage; and

WHEREAS, Daniel and Dorothea Schweitzer and their children lived on the Property for over 50 years, raising dairy cows and cattle, growing strawberries for market, hunting in the area, and fishing for trout and salmon in Johnson Creek; and

WHEREAS, the Agreement called for the City's Bureau of Environmental Services ("Environmental Services") to excavate and revegetate the Property to create a wetland environment, with associated water quality, fish and wildlife, and flood storage benefits; and

WHEREAS, Environmental Services, with financial support from the Oregon Watershed Enhancement Board and Johnson Creek Watershed Council, completed a floodplain restoration project on the Property; and

WHEREAS, the City has designed an interpretive sign in accordance with the Agreement with Metro to be placed on the Springwater Corridor Trail and this sign will provide trail users with information about the ways people have interacted with and altered Johnson Creek over the past century; and

WHEREAS, the sign will describe the Schweitzer family's history on the property and the floodplain restoration work completed by the City as examples of changes along Johnson Creek;

WHEREAS, neighbors of the Property have long called it the Schweitzer farm; and

WHEREAS, Metro Code Section 2.16.020(f) provides that individual parts of facilities owned or operated by Metro "may be named after a person or persons . . . by adoption of a resolution by the Metro Council;" and

WHEREAS, in recognition of Schweitzer family's historical connection to the Property, the City has requested that the Property be named the "Schweitzer Restoration Area," in accord with the Metro Code provisions governing naming parts of Metro facilities; now therefore

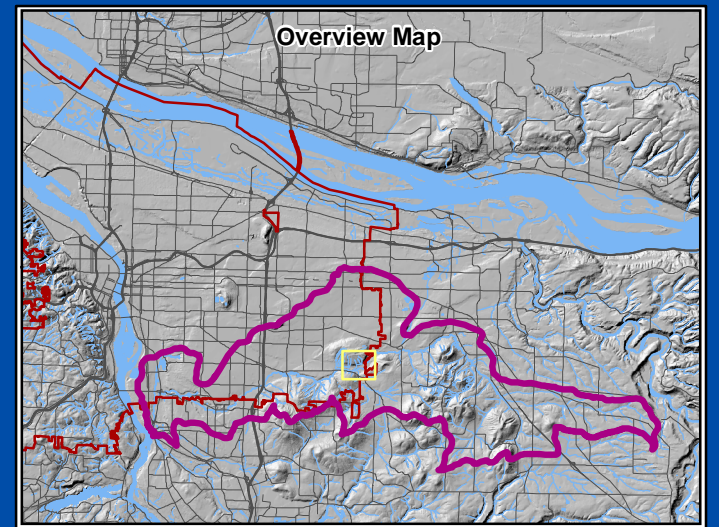
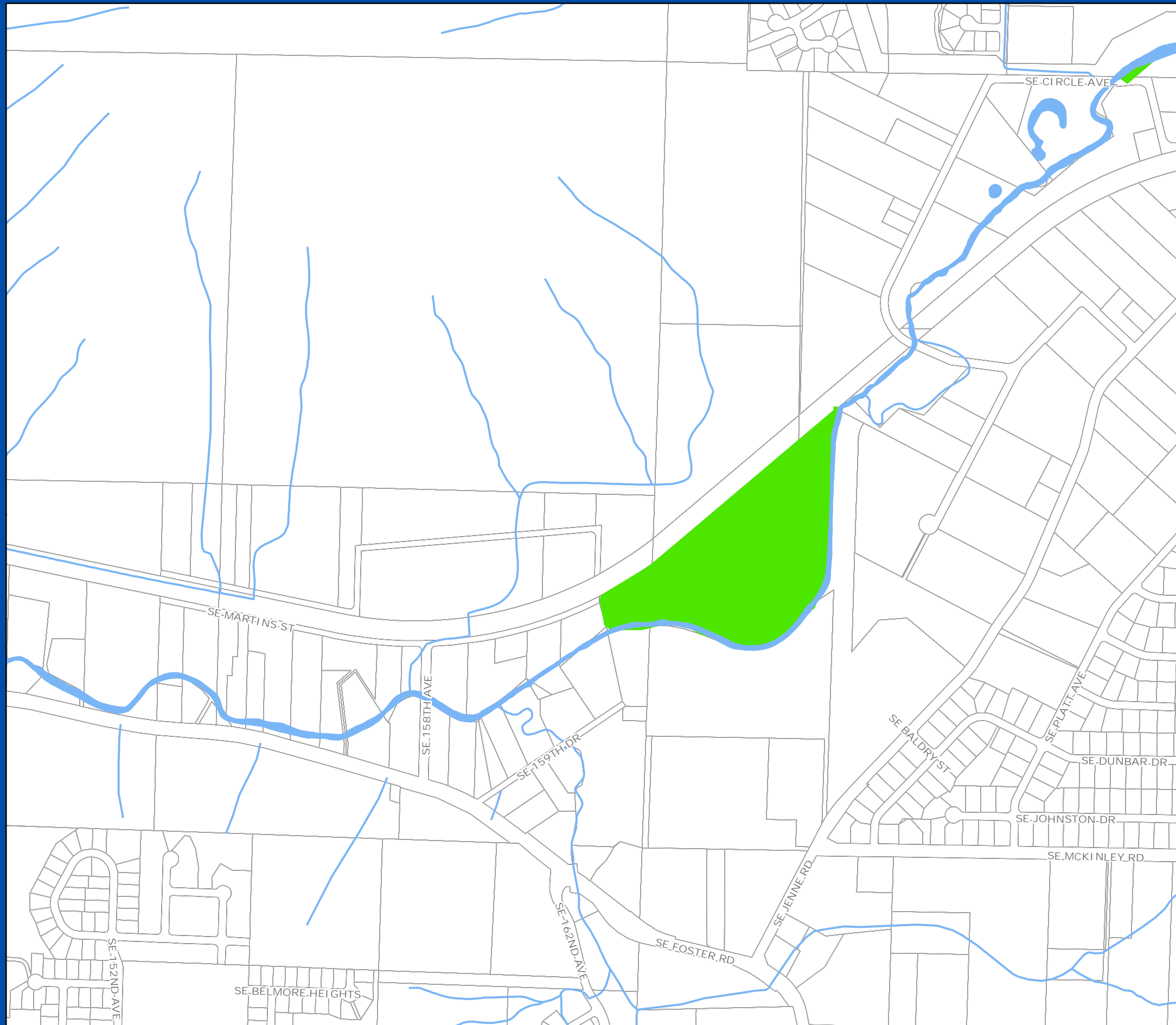
BE IT RESOLVED, in recognition of the Schweitzer family's history on the Property, the Metro Council approves the dedication and naming of the 16-acre Metro- and City of Portland-owned Property, identified in Exhibit A, as the "Schweitzer Restoration Area."

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

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney



- Proposed Schweitzer Restoration Area
- Major Waterbodies

1 inch equals 526 feet

**Johnson Creek Watershed
Willing Seller Acquisition Program
Powell Butte Target Area**

**City of Portland
Environmental Services**

Date Printed:

July 18, 2008

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3994 AUTHORIZING THE NAMING OF THE SCHWEITZER RESTORATION AREA ON JOHNSON CREEK.

Date: October 9, 2008

Prepared by: Heather Nelson Kent

BACKGROUND

In 1999, Metro and the City of Portland jointly purchased 15.7 acres of open space located on the Springwater Corridor Trail, east of SE 158th Avenue, at the confluence of Kelley Creek and Johnson Creek, in the East Buttes and Boring Lava Domes target area. Metro used funds from the 1995 Open Spaces Bond Measure to purchase a 71.2 percent ownership in the property with the City of Portland owning the remaining 28.8 percent ownership interest. The joint purchase was implemented pursuant to an intergovernmental agreement (IGA) between Metro and the City. The IGA called for the City of Portland to manage the property and to restore the flood plain of the property by excavating and replanting the area and creating a wetland environment for water quality, flood storage and wildlife habitat benefits. Portland's Bureau of Environmental Services recently completed this restoration project and the City would like to recognize the family that previously owned the property by naming the area in their honor and placing an interpretive sign on the site. The Schweitzer family lived on the property for more than 50 years and the sign describes their history and the historic and present day uses of the property and the changes along Johnson Creek over time.

Section 2.16.020 of the Metro Code sets forth the policy for the Council to approve the naming of facilities or parts of facilities owned or operated by Metro, such as this property which is part of Metro's acquisitions within the East Buttes and Boring Lava Domes Target Area.. The proposal to name this property, jointly owned by Metro and Portland, is consistent with Metro's policy.

ANALYSIS/INFORMATION

1. **Known Opposition**

None.

2. **Legal Antecedents**

Metro Code Chapter 2.16 establishes Metro's policy for the naming of facilities owned or operated by Metro.

3. **Anticipated Effects**

The City of Portland will place a sign on the Springwater Corridor adjacent to the property describing the history of the Schweitzer family and changes in the Johnson Creek watershed over time.

4. **Budget Impacts**

None anticipated. The City will continue to manage and maintain the property under the existing agreement with Metro, including fabrication, installation and maintenance of the interpretive sign.

RECOMMENDED ACTION

The Chief Operating Officer recommends passage of Resolution No. 08-3994.

Ordinance No. 08-1196, For the Purpose of Amending Metro Code
Chapter 5.05 Solid Waste Flow Control to Ensure that all of the
Region's Non-Putrescible Waste Undergoes Material Recovery Before
Disposal, and Declaring an Emergency

First Reading

Metro Council Meeting
Thursday, October 16, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 08-1196
CODE CHAPTER 5.05 SOLID WASTE FLOW)	
CONTROL TO ENSURE THAT ALL OF THE)	Introduced by Councilor Rod Park
REGION'S NON-PUTRESCIBLE WASTE)	
UNDERGOES MATERIAL RECOVERY)	
BEFORE DISPOSAL, AND DECLARING AN)	
EMERGENCY)	

WHEREAS, on August 16, 2007, the Metro Council adopted Ordinance No. 07-1147B, Amending Metro Code Chapters 5.01, 5.02, 5.05, and 7.01 to Ensure That All of the Region's Non-Putrescible Waste Undergoes Material Recovery Prior to Disposal, To Eliminate the Regional System Fee and Excise Tax Credit Program, and to Make Related Changes;

WHEREAS, Ordinance No. 07-1147B requires that after December 31, 2008, facilities located outside the Metro Region may accept Metro Region non-putrescible waste only if the out-of-region facility (1) receives the waste from a facility authorized by Metro to perform material recovery; or (2) performs material recovery on the non-putrescible waste to achieve substantial compliance with the performance goals and related administrative procedures applicable to facilities located in the Metro Region;

WHEREAS, Ordinance No. 07-1147B requires that any applicant who seeks to deliver non-putrescible waste to a non-system facility after December 31, 2008, must demonstrate that the non-system facility will be in substantial compliance with the material recovery requirements applicable to facilities located in the Metro Region;

WHEREAS, it was the intent of the Metro Council to provide a six-month period, beginning January 1, 2009, for facilities located in the Metro Region to meet the performance standard required by Ordinance No. 07-1147B;

WHEREAS, based on circumstances that have changed since the August 16, 2007 adoption date of Ordinance No. 07-1147B, a June 30, 2009 effective date for non-putrescible waste transported outside the Metro Region is necessary;

WHEREAS, a June 30, 2009 effective date is consistent with the intent of the Metro Council to subject all dry waste from the Metro Region to processing for material recovery and to assist the Metro Region in recovering an additional 33,000 tons of dry waste per year; and

WHEREAS, a June 30, 2009 effective date is consistent with the intent of the Metro Council to provide a six-month period for facilities located in the Metro Region to meet the performance standard; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Section 5.05.030 Designated Facilities of the System is amended as set forth in the attached Exhibit A;

2. Metro Code Section 5.05.035 License to Use Non-System Facility is amended as set forth in the attached Exhibit B; and
3. That this Ordinance being necessary for the health, safety, and welfare of the Metro area because an emergency is declared to exist and this Ordinance shall take effect immediately, pursuant to Metro Charter Section 39(1).

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

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

5.05.030 Designated Facilities of the System

(a) Designated Facilities. The following described facilities constitute the designated facilities of the system, the Metro Council having found that said facilities meet the criteria set forth in Metro Code Section 5.05.030(b):

- (1) Metro South Station. The Metro South Station located at 2001 Washington, Oregon City, Oregon 97045.
- (2) Metro Central Station. The Metro Central Station located at 6161 N.W. 61st Avenue, Portland, Oregon 97210.
- (3) Facilities Subject to Metro Regulatory Authority. All disposal sites and solid waste facilities within Metro which are subject to Metro regulatory authority under Chapter 5.01 of the Metro Code.
- (4) Lakeside Reclamation (limited purpose landfill). The Lakeside Reclamation limited purpose landfill, Route 1, Box 849, Beaverton, Oregon 97005, subject to the terms of an agreement between Metro and the owner of Lakeside Reclamation authorizing receipt of solid waste generated within Metro only as follows:
 - (A) As specified in an agreement entered into between Metro and the owner of the Lakeside Reclamation Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

- (5) Hillsboro Landfill (limited purpose landfill).
The Hillsboro Landfill, 3205 S.E. Minter Bridge Road, Hillsboro, Oregon 97123, subject to the terms of an agreement between Metro and the owner of Hillsboro Landfill authorizing receipt of solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and the owner of the Hillsboro Landfill authorizing receipt of such waste;
or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (6) Columbia Ridge Landfill. The Columbia Ridge Landfill owned and operated by Waste Management Disposal Services of Oregon, Inc. (dba Oregon Waste Systems, Inc.), subject to the terms of the agreements in existence on November 14, 1989, between Metro and Oregon Waste Systems, Inc., and between Metro and Jack Gray Transport, Inc., including any subsequent amendments thereto. In addition, Columbia Ridge Landfill may accept solid waste generated within Metro:
- (A) As specified in an agreement entered into between Metro and Waste Management Disposal Services of Oregon, Inc., authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

- (7) Roosevelt Regional Landfill. The Roosevelt Regional Landfill, located in Klickitat County, Washington. Roosevelt Regional Landfill may accept solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and Regional Disposal Company authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (8) Finley Buttes Regional Landfill. The Finley Buttes Regional Landfill, located in Morrow County, Oregon. Finley Buttes Regional Landfill may accept solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and Finley Buttes Landfill Company authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (9) Coffin Butte Landfill. The Coffin Butte Landfill, located in Benton County, Oregon, which may accept solid waste generated within Metro only as follows:

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

- (A) As specified in an agreement entered into between Metro and the owner of the Coffin Butte Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (10) Wasco County Landfill. The Wasco County Landfill, located in The Dalles, Oregon, which may accept solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and the owner of the Wasco County Landfill authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to the facility solid waste not specified in the agreement.
- (11) Cedar Grove Composting, Inc. The Cedar Grove Composting, Inc., facilities located in Maple Valley, Washington, and Everett, Washington. Cedar Grove Composting, Inc., may accept solid waste generated within Metro only as follows:
- (A) As specified in an agreement entered into between Metro and Cedar Grove composting, Inc., authorizing receipt of such waste; or
 - (B) Subject to a non-system license issued to a person transporting to Cedar Grove Composting, Inc., solid waste not specified in the agreement.
- (12) Weyerhaeuser Regional Landfill. The Weyerhaeuser Regional Landfill, located in Castle Rock, Washington, and the Weyerhaeuser Material Recovery Facility, located in Longview, Washington. The Weyerhaeuser Material Recovery

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

Facility is hereby designated only for the purpose of accepting solid waste for transfer to the Weyerhaeuser Regional Landfill. The Weyerhaeuser Regional Landfill and the Weyerhaeuser Material Recovery Facility may accept solid waste generated within Metro only as follows:

- (A) As specified in an agreement entered into between Metro and Weyerhaeuser, Inc., authorizing receipt of such waste; or
- (B) Subject to a non-system license issued to a person transporting to the Weyerhaeuser Regional Landfill or the Weyerhaeuser Material Recovery Facility solid waste not specified in the agreement.

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

- (1) The degree to which prior users of the facility and waste types accepted at the facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the facility's owner and operator with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations;

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

- (3) The adequacy of operational practices and management controls at the facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of the designation with Metro's existing contractual arrangements;
- (6) The record of the facility regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement; and
- (7) Other benefits or detriments accruing to residents of the region from Council action in designating a facility, or amending or deleting an existing designation.

(c) The Chief Operating Officer is authorized to execute an agreement, or an amendment to an agreement, between Metro and a designated facility for Non-putrescible waste. Effective July 1, 2008, an existing designated facility authorized to receive non-putrescible waste shall notify Metro of its intent to seek an agreement to recover non-putrescible waste from the Metro region in accordance with subsection (g), or to only take processed non-putrescible waste from authorized facilities included in subsection (f). ~~No later than December 31, 2008,~~ ~~The~~ The Chief Operating Officer shall modify existing agreements to ensure substantial compliance with either subsection (f) or (g) of this section as appropriate. If the Chief Operating Officer and a designated facility are not able to establish an agreement by ~~November 1, 2008~~ March 1, 2009, then the Chief Operating Officer shall terminate the existing agreement following termination procedures described in the existing agreement, but no later than ~~December 31, 2008~~ June 30, 2009.

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

(d) An agreement or amendment to an agreement between Metro and a designated facility for Putrescible waste shall be subject to approval by the Metro Council prior to execution by the Chief Operating Officer.

(e) An agreement between Metro and a designated facility shall specify the types of wastes from within Metro boundaries that may be delivered to, or accepted at, the facility.

(f) An agreement between Metro and a designated facility shall not authorize the facility to accept non-putrescible waste originating or generated within Metro boundaries after ~~December 31, 2008~~June 30, 2009, unless:

- (1) Such non-putrescible waste is received from a facility that has been issued a license or franchise pursuant to Chapter 5.01 authorizing such facility to perform material recovery on non-putrescible waste;
- (2) Such non-putrescible waste is received from a designated facility that has entered into an agreement with Metro, in accordance with subsection (f) of this section, authorizing such designated facility to perform material recovery on non-putrescible waste; or
- (3) The facility has entered into an agreement with Metro, in accordance with subsection (f) of this section, authorizing the facility to perform material recovery on non-putrescible waste that has not yet undergone material recovery.

(g) An agreement between Metro and a designated facility that, after ~~December 31, 2008~~June 30, 2009, authorizes the facility to accept non-putrescible waste that has not yet

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

undergone material recovery, is not comprised of processing residual, and originated or was generated within Metro boundaries shall:

- (1) Require such designated facility to perform material recovery on such waste; and
- (2) Demonstrate, in a manner that can be verified and audited, that such processing achieves material recovery substantially comparable to that required of in-region material recovery facilities by Metro Code subsections 5.01.125(a) and (b) by either:
 - (A) Meeting such material recovery requirements for all non-putrescible waste received at the facility, whether or not from within Metro boundaries; or
 - (B) Keeping all non-putrescible waste received from within Metro boundaries segregated from other waste throughout processing, keeping processing residual from such processing segregated from other solid waste after processing, and meeting such material recovery requirements for all such non-putrescible waste.
- (3) Demonstrate, in a manner that can be verified and audited, that such facility substantially complies with (A) the performance goals described in Metro Code Sections 5.01.067(i) (as amended by Section 1 of Metro Ordinance No. 07-1138) and 5.01.075(c) (as amended by Section 2 of Metro Ordinance No. 07-1138), and (B) the performance standards, design requirements, and operating requirements applicable to licensed and

Exhibit A to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.030 Designated Facilities of the System

franchised material recovery facilities operating within the Metro region and adopted by Metro as administrative procedures pursuant to Metro Code Section 5.01.132 (as amended by Section 3 of Metro Ordinance No. 07-1138).

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

5.05.035 License to Use Non-System Facility

A waste hauler or other person may transport solid waste generated within Metro to, or to utilize or cause to be utilized for the disposal or other processing of any solid waste generated within Metro, any non-system facility only by obtaining a non-system license in the manner provided for in this Section 5.05.035. Applications for non-system licenses for Non-putrescible waste, Special waste and Cleanup Material Contaminated By Hazardous Substances shall be subject to approval or denial by the Chief Operating Officer. Applications for non-system licenses for Putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council.

(a) Application for License. Any waste hauler or other person desiring to obtain a non-system license shall make application to the Chief Operating Officer, which application shall be filed on forms or in the format provided by the Chief Operating Officer. Applicants may apply for a limited-duration non-system license which has a term of not more than 120 days and is not renewable. An application for any non-system license shall set forth the following information:

- (1) The name and address of the waste hauler or person making such application;
- (2) The location of the site or sites at which the solid waste proposed to be covered by the non-system license is to be generated;
- (3) The nature of the solid waste proposed to be covered by the non-system license;
- (4) The expected tonnage of the solid waste proposed to be covered by the non-system license:

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

- (A) The total tonnage if the application is for a limited duration non-system license; or
 - (B) The annual tonnage if the application is for any other non-system license;
- (5) A statement of the facts and circumstances which, in the opinion of the applicant, warrant the issuance of the proposed non-system license;
- (6) The non-system facility at which the solid waste proposed to be covered by the non-system license is proposed to be transported, disposed of or otherwise processed; and
- (7) The date the non-system license is to commence; and, for limited duration non-system licenses, the period of time the license is to remain valid not to exceed 120 days.

In addition, the Chief Operating Officer may require the applicant to provide, in writing, such additional information concerning the proposed non-system license as the Chief Operating Officer deems necessary or appropriate in order to determine whether or not to issue the proposed non-system license.

An applicant for a non-system license that authorizes the licensee to transport non-putrescible waste that has not yet undergone material recovery, is not processing residual, and originated or was generated within Metro boundaries shall provide documentation that the non-system facility is in substantial compliance with the facility performance standards, design requirements and operating requirements adopted pursuant to Metro Code Chapter 5.01.132 for non-putrescible waste material recovery facilities. Any applicant or licensee that is authorized or seeks to deliver non-putrescible waste to a non-

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

system facility after ~~December 31, 2008~~June 30, 2009, must demonstrate that the non-system facility will be in substantial compliance with the material recovery requirements in Metro Code Section 5.01.125.

(b) Every application shall be accompanied by payment of an application fee, part of which may be refunded to the applicant in the event that the application is denied, as provided in this section. The following application fees shall apply:

- (1) For an application for a limited duration non-system license, the application fee shall be two hundred fifty dollars (\$250), no part of which shall be refunded to the applicant in the event that the application is denied.
- (2) For an application for a non-system license seeking authority to deliver no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be five hundred dollars (\$500), two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of no more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250); provided, however, that if the result of granting the application would be to give the applicant the authority to deliver more than 500 tons of solid waste per year to a non-system facility, the application fee shall be \$500, two hundred fifty dollars (\$250) of which shall be refunded to the applicant in the event the application is denied. An application for renewal of a non-system license authorizing the delivery of no more than 500 tons of solid waste

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

per year to a non-system facility shall be one hundred dollars (\$100).

- (3) For all applications for a non-system license seeking authority to deliver more than 500 tons of solid waste per year to a non-system facility, whether they be new applications or applications for the renewal of existing licenses, the application fee shall be one thousand dollars (\$1,000), five hundred dollars (\$500) of which shall be refunded to the applicant in the event the application is denied. For an application for a change in authorization to an existing non-system license authorizing the delivery of more than 500 tons of solid waste per year to a non-system facility, the application fee shall be two hundred fifty dollars (\$250).
- (4) For an application for a non-system license seeking to deliver solid waste that is exempt from paying the Metro fees described in Section 5.01.150, the application fee shall be one hundred dollars (\$100) as well as a fifty dollar (\$50) fee to either renew or amend such licenses.

(c) Factors to Consider To Determine Whether to Issue Non-System License. The Chief Operating Officer or Metro Council, as applicable, shall consider the following factors to the extent relevant to determine whether or not to issue a non-system license:

- (1) The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;
- (2) The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements, including

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

but not limited to public health, safety and environmental rules and regulations;

- (3) The adequacy of operational practices and management controls at the non-system facility;
- (4) The expected impact on the region's recycling and waste reduction efforts;
- (5) The consistency of the designation with Metro's existing contractual arrangements;
- (6) The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations; and
- (7) Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.

(d) Timetables To Determine Whether to Issue a Non-System License.

- (1) Non-system licenses for Non-putrescible waste, Special waste, Cleanup Material Contaminated By Hazardous Substances, or any other solid waste other than Putrescible waste.
 - (A) New licenses. The Chief Operating Officer shall determine whether or not to issue the non-system license and shall inform the applicant in writing of such determination

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

within 60 days after receipt of a new completed application, including receipt of any additional information required by the Chief Operating Officer in connection therewith.

- (B) License renewals. An application for renewal of an existing non-system license shall be substantially similar to the existing non-system license with regard to waste type, quantity and destination. A holder of a non-system license shall submit a completed application to renew the license at least 60 days prior to the expiration of the existing non-system license, including receipt of any additional information required by the Chief Operating Officer in connection therewith. The Chief Operating Officer shall determine whether or not to renew the non-system license and shall inform the applicant in writing of such determination prior to the expiration of the existing non-system license. The Chief Operating Officer is not obligated to make a determination earlier than the expiration date of the existing license even if the renewal request is filed more than 60 days before the existing license expires.
- (2) Non-system licenses for Putrescible waste. The Chief Operating Officer shall formulate and provide to the Council recommendations regarding whether or not to issue or renew a non-system license for Putrescible waste. If the Chief Operating Officer recommends that the non-system license be issued or renewed, the Chief Operating Officer shall recommend to the council specific conditions of the non-system license.

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

- (A) New licenses. The Council shall determine whether or not to issue the non-system license and shall direct the Chief Operating Officer to inform the applicant in writing of such determination within 120 days after receipt of a completed application for a non-system license for Putrescible waste, including receipt of any additional information required by the Chief Operating Officer in connection therewith.
- (B) License renewals. An application for renewal of an existing non-system license shall be substantially similar to the existing non-system license with regard to waste type, quantity and destination. A holder of a non-system license shall submit a completed application to renew the license at least 120 days prior to the expiration of the existing non-system license, including receipt of any additional information required by the Chief Operating Officer in connection therewith. The Council shall determine whether or not to renew the non-system license and shall inform the applicant in writing of such determination prior to the expiration of the existing non-system license. The Council is not obligated to make a determination earlier than the expiration date of the existing license even if the renewal request is filed more than 120 days before the existing license expires.
- (3) At the discretion of the Chief Operating Officer or the Council, the Chief Operating Officer or Council may impose such conditions on the issuance of a new or renewed non-system license

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

as deemed necessary or appropriate under the circumstances.

(e) Issuance of Non-System License; Contents. Each non-system license shall be in writing and shall set forth the following:

- (1) The name and address of the waste hauler or other person to whom such non-system license is issued;
- (2) The nature of the solid waste to be covered by the non-system license;
- (3) The maximum total, weekly, monthly or annual quantity of solid waste to be covered by the non-system license;
- (4) The non-system facility or facilities at which or to which the solid waste covered by the non-system license is to be transported or otherwise processed;
- (5) The expiration date of the non-system license, which date shall be not more than:
 - (A) 120 days from the date of issuance for a limited-duration non-system license;
 - (B) Three years from the date of issuance for a new full-term license; and
 - (C) Two years from the date of issuance of a renewed full-term non-system license.
- (6) Any conditions imposed by the Chief Operating Officer as provided above which must be complied with by the licensee during the term of such non-system license, including but not limited to

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

conditions that address the factors in Section 5.05.035(c).

(f) Requirements to be met by License Holder. Each waste hauler or other person to whom a non-system license is issued shall be required to:

- (1) Maintain complete and accurate records regarding all solid waste transported, disposed of or otherwise processed pursuant to the non-system license, and make such records available to Metro or its duly designated agents for inspection, auditing and copying upon not less than three days written notice from Metro;
- (2) Report in writing to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, the number of tons of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month; and
- (3) Pay to Metro, not later than the 15th day of each month, commencing the 15th day of the month following the month in which the non-system license is issued and continuing through the 15th day of the month next following the month in which the non-system license expires, a fee equal to the Regional System Fee multiplied by the number of tons (or fractions thereof) of solid waste transported, disposed or otherwise processed pursuant to such non-system license during the preceding month.
- (4) When solid waste generated from within the Metro boundary is mixed in the same vehicle or container with solid waste generated outside the Metro boundary, the load in its entirety shall be

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

reported to Metro by the non-system licensee as having been generated within the Metro boundary and the Regional System Fee and Excise Tax shall be paid on the entire load unless the licensee provides Metro with documentation regarding the total weight of the solid waste in the vehicle or container that was generated within the Metro boundary, or unless Metro has agreed in writing to another method of reporting.

(g) Failure to Comply with Non-System License. In the event that any waste hauler or other person to whom a non-system license is issued fails to fully and promptly comply with the requirements set forth in Section 5.05.035(e) above or any conditions of such non-system license imposed pursuant to Section 5.05.035(c), then, upon discovery of such non-compliance, the Chief Operating Officer shall issue to such licensee a written notice of non-compliance briefly describing such failure. If, within 20 days following the date of such notice of non-compliance or such longer period as the Chief Operating Officer may determine to grant as provided below, the licensee fails to:

- (1) Demonstrate to the satisfaction of the Chief Operating Officer either that the licensee has at all times fully and promptly complied with the foregoing requirements and the conditions of such non-system license or that the licensee has fully corrected such non-compliance; and
- (2) Paid in full, or made arrangements satisfactory to the Chief Operating Officer for the payment in full of, all fines owing as a result of such non-compliance;

Then, and in such event such non-system license shall automatically terminate, effective as of 5:00 p.m. (local time) on such 20th day or on the last day of such longer period as the Chief Operating Officer may determine to grant as provided

Exhibit B to Ordinance No. 08-1196
Metro Code Chapter 5.05 Solid Waste Flow Control
Section 5.05.035 License to Use Non-System Facility

below. If, in the judgment of the Chief Operating Officer, such non-compliance cannot be corrected within such 20-day period but the licensee is capable of correcting it and within such 20-day period diligently commences such appropriate corrective action as shall be approved by the Chief Operating Officer, then and in such event such 20-day period shall be extended for such additional number of days as shall be specified by the Chief Operating Officer in writing, but in no event shall such the local period as so extended be more than 60 days from the date of the notice of non-compliance.

(h) Notwithstanding any other provision in this section, and unless contrary to any other applicable law, the Chief Operating Officer shall not accept any application for a new non-system license for mixed putrescible solid waste until September 2, 2008. Neither the Chief Operating Officer nor the Metro Council shall issue a new non-system license for mixed putrescible solid waste whose term commences before January 1, 2009.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1196, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.05 SOLID WASTE FLOW CONTROL TO ENSURE THAT ALL OF THE REGION'S NON-PUTRESCIBLE WASTE UNDERGOES MATERIAL RECOVERY BEFORE DISPOSAL, AND DECLARING AN EMERGENCY.

Date: October 13, 2008

Prepared by: Jacob Brennan

BACKGROUND

On August 16, 2007, the Metro Council approved Ordinance No. 07-1147B adopting the Enhanced Dry Waste Recovery Program (EDWRP). The purpose and intent of EDWRP is to achieve higher recovery levels beginning January 1, 2009, to meet state-mandated recovery goals. By adopting Ordinance No. 08-1196, the Metro Council will amend the effective date of EDWRP for solid waste transported outside the Metro Region so that the amended effective date is consistent with the EDWRP enforcement date for solid waste facilities located inside the Metro Region.

Recent discussions have revealed ambiguity about the January 1, 2009 date. We propose this amendment to eliminate uncertainty about the effective date of EDWRP and the timing for enforcement of EDWRP's performance standard.

Specifically, Metro Code Section 5.01.125 requires that, effective January 1, 2009, a material recovery facility located inside the Metro Region shall, among other things, process non-putrescible waste to a 15% material recovery performance standard. EDWRP's ordinance recitals and staff report suggest a six-month period, beginning January 1, 2009, for these facilities to meet EDWRP's 15% material recovery performance standard. While the Metro Code does not explicitly provide a grace period on enforcement of the performance standard, Metro will not enforce the 15% material recovery performance standard on in-region facilities until July 1, 2009.

The Metro Code, however, does not contain a similar six-month grace period for facilities located outside the Metro Region to meet EDWRP's 15% material recovery performance standard. Metro does not regulate facilities located outside the Metro Region. Instead, under Metro Code Section 5.05.030, Metro enters into a designated facility agreement ("DFA") with an out-of-region facility in which the facility receives certain types of solid waste generated in the Metro Region and agrees to collect and remit Regional System Fee and Excise Tax on that waste. EDWRP amended Metro Code Sections 5.05.030 (c), (f), and (g) to require that after December 31, 2008, a DFA shall require the facility to accept processing residual or include provisions requiring material recovery to the standard applicable to in-region facilities. Because

Metro's relationship with an out-of-region facility is contractual rather than regulatory, there is no separate, later enforcement date for these facilities.

Similarly, for waste haulers that seek to transport Metro Region waste to a non-system facility located outside the Metro Region, Metro Code Section 5.05.035 (c) requires the hauler to demonstrate that the non-system facility will be in compliance with the 15% material recovery performance standard. Again, there is no separate, later enforcement date.

Adopting Ordinance No. 08-1196, which provides a June 30, 2009 EDWRP effective date for non-putrescible waste transported outside the Metro Region to designated facilities or by non-system license, will allow the Metro Council to apply EDWRP consistently to facilities located inside and outside the Metro Region.

ANALYSIS/INFORMATION

1. **Known Opposition:** Staff anticipates that neighbors of Lakeside Reclamation Landfill who have historically favored its closure may oppose any extension. The extension may generate unknown reactions from other solid waste operators who are preparing for changes made in Ordinance No. 07-1147B under Metro Code Chapters 5.01, 5.02, and 7.01. Hillsboro Landfill, Inc., which applied for a variance from the January 1, 2009 date, is not anticipated to oppose the amendment.
2. **Legal Antecedents:** ORS 268.317, Metro Code Chapters 5.01, 5.02, 5.05, 7.01 and the Metro Charter.
3. **Anticipated Effects:** The economic and environmental effects for Ordinance No. 08-1196 are anticipated to resemble effects discussed in April 26, 2007 Staff Report regarding Ordinance No. 07-1147B. These effects would be delayed by six months. Please read attached Staff Report Ordinance No. 07-1147B for additional information.
4. **Budget Impacts:** The budget impact anticipated for Ordinance No. 08-1196, resembles the budget impact detailed in April 26, 2007 Staff Report regarding Ordinance No. 07-1147B. The impact would be delayed by six months. Please read attached Staff Report Ordinance No. 07-1147B for additional information.

RECOMMENDED ACTION

Councilor Rod Park recommends that the Metro Council consider approving Ordinance 08-1196.

Agenda Item Number 7.1

Resolution No. 08-4000, For the Purpose of Entering an Order Approving Extensions of Time For Compliance With New Requirements in Title 4 of the Urban Growth Management Functional Plan For Clackamas County, and the Cities of Beaverton, Damascus, Durham, Fairview, Gresham, Happy Valley, Lake Oswego, Milwaukie, Oregon City, Portland, Sherwood, Tigard, and Wood Village.

Public Hearing

Metro Council Meeting
Thursday, October 16, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENTERING AN ORDER)
APPROVING EXTENSIONS OF TIME FOR)
COMPLIANCE WITH NEW REQUIREMENTS IN) Resolution No. 08-4000
TITLE 4 OF THE URBAN GROWTH MANAGEMENT)
FUNCTIONAL PLAN FOR CLACKAMAS COUNTY)
AND THE CITIES OF BEAVERTON, DAMASCUS,)
DURHAM, FAIRVIEW, GRESHAM, HAPPY) Introduced by Chief Operating Officer
VALLEY, LAKE OSWEGO, MILWAUKIE, OREGON) Michael Jordan with the concurrence of
CITY, PORTLAND, SHERWOOD, TIGARD, AND) Council President David Bragdon
WOOD VILLAGE)

WHEREAS, the Metro Council revised requirements to protect Industrial and Regionally Significant Industrial Areas in Title 4 (Industrial and Other Employment Areas) of the Urban Growth Management Functional Plan (UGMFP) by Ordinance No. 04-1040B (For the Purpose of Amending the Metro Urban Growth Boundary, the Regional Framework Plan and the Metro Code to Increase the Capacity of the Boundary to Accommodate Growth in Industrial Employment) on June 24, 2004; and

WHEREAS, the Land Conservation and Development Commission acknowledged the revisions to Title 4 in Periodic Review Task 2 Partial Approval and Remand Order 05-WKTASK-001673 on July 22, 2005; and

WHEREAS, the deadline for cities and counties in the region to revise their land use regulations to comply with the 2004 revisions to Title 4 was July 22, 2007, two years following acknowledgement of the revisions by LCDC; and

WHEREAS, the local governments named in the caption of this resolution have not yet completed the revision of their land use regulations to comply with Title 4 and have asked the Council for more time to complete the revisions; and

WHEREAS, section 3.07.850 authorizes the Metro Council to extend the time for compliance with Title 4 for the reason that (1) the city or county is making progress toward revision of its regulations or (2) there is good cause for the city's or county's failure to complete the revision; and

WHEREAS, The Council held a public hearing on the proposed extensions on October 16, 2008; now, therefore

BE IT RESOLVED that the Metro Council

1. Enters Order 08-048 attached to this resolution as Exhibit A, which approves extensions of time for compliance with Title 4 of the UGMFP for the county and cities in the caption of this resolution.
2. Directs the Chief Operating Officer to send a copy of Order No. 08-048, to the county and cities, the Metropolitan Policy Advisory Committee, the Oregon Department of Land Conservation and Development and any person who participated in the public hearing on the extension.

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

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

**Exhibit "A" to Resolution No. 08-4000
Order No. 08-048**

**RELATING TO THE REQUEST BY CLACKAMAS COUNTY AND THE CITIES OF
BEAVERTON, DAMASCUS, DURHAM, FAIRVIEW, GRESHAM, HAPPY VALLEY, LAKE
OSWEGO, MILWAUKIE, OREGON CITY, PORTLAND, SHERWOOD, TIGARD, AND WOOD
VILLAGE TO EXTEND THE TIME FOR COMPLIANCE WITH TITLE 4 OF THE URBAN
GROWTH MANAGEMENT FUNCTIONAL PLAN**

APPLICABLE LAW

The local governments named in the caption of this order requested an extension of time to complete revisions to their land use regulations to comply with Title 4 of the Urban Growth Management Functional Plan, due for completion by July 22, 2007. Metro Code section 3.07.850 sets for the process and criteria for an extension of time for compliance with a requirement of the Urban Growth Management Functional Plan:

"The Council may grant an extension only if it finds that:

- (1) the city or county is making progress toward accomplishment of its compliance work; or
- (2) there is good cause for failure to meet the deadline for compliance."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Metro Council revised requirements to protect Industrial and Regionally Significant Industrial Areas in Title 4 (Industrial and Other Employment Areas) of the Urban Growth Management Functional Plan (UGMFP) by Ordinance No. 04-1040B on June 24, 2004. LCDC acknowledged the revisions to Title 4 on July 22, 2005. By operation of law, cities and counties had two years following acknowledgement to bring their land use regulations into compliance with the revisions to Title 4. ORS 268.390(5)(a). Compliance was due July 22, 2007.

The named county and cities have not completed the required revisions to their land use regulations. For the reasons set forth in the Staff Report dated September 29, 2008, the Council grants the extensions.

IT IS HEREBY ORDERED THAT:

The request of Clackamas County and the Cities of Beaverton, Damascus, Durham, Fairview, Gresham, Happy Valley, Lake Oswego, Milwaukie, Oregon City, Portland, Sherwood, Tigard, and Wood Village for extensions of time under Metro Code section 3.07.850 to complete revisions to their land use regulations to comply with Title 4 of the Urban Growth Management Functional Plan are approved. The new deadline for Damascus is July 31, 2009. For all other local governments, the new deadline is April 3, 2009.

ENTERED this 16th day of October, 2008.

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-4000, FOR THE PURPOSE OF ENTERING AN ORDER APPROVING EXTENSIONS OF TIME FOR COMPLIANCE WITH NEW REQUIREMENTS IN TITLE 4 OF THE URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN FOR CLACKAMAS COUNTY AND THE CITIES OF BEAVERTON, DAMASCUS, DURHAM, FAIRVIEW, GRESHAM, HAPPY VALLEY, LAKE OSWEGO, MILWAUKIE, OREGON CITY, PORTLAND, SHERWOOD, TIGARD, AND WOOD VILLAGE

Date: September 29, 2008

Prepared by: Sherry Oeser

BACKGROUND

The Regional Framework Plan calls for a strong economic climate in this region by balancing economic growth throughout the region and by encouraging the efficient use of land for industrial and commercial uses. To improve the region's economic climate, Title 4 of the Urban Growth Management Functional Plan requires local governments to provide and protect the supply of sites for jobs as well as to protect the capacity and efficiency of the region's transportation system to move goods and services. As part of the June 2004 urban growth boundary (UGB) decision to add employment land, the Council amended Title 4 and limited the types and scale of non-industrial uses in Regionally Significant Industrial Areas (RSIAs) and Industrial Areas. The Council and the Land Conservation and Development Commission (LCDC) relied upon these limits on non-industrial uses to provide some of the needed capacity for industrial use and to reduce the need to expand the UGB.

To comply with the new Title 4 requirements, local governments with either a designated RSIA or Industrial Area need to review and, if necessary, revise their land use regulations and submit documentation. The deadline for compliance with Title 4 was July 22, 2007, two years after acknowledgement by the state Land Conservation and Development Commission of the Council's decision.

A city or county may seek an extension of time for compliance with the functional plan. Title 8 of the Functional Plan details the process for an extension request. The Council may grant an extension if it finds that 1) the city or county is making progress toward complying with the requirement, or 2) there is good cause for failure to meet the deadline for compliance. The Council must issue an order on the request.

Of the 21 jurisdictions in the region that have either an RSIA or an Industrial Area, 15 are requesting extensions. Resolution 08-4000 grants an extension to all those jurisdictions requesting one and Attachment 1 details the reason the Council grants the extension.

The new deadline to comply with Title 4 is April 3, 2009 for all jurisdictions except the City of Damascus. The deadline for the City of Damascus is July 31, 2009.

ANALYSIS/INFORMATION

1. **Known Opposition:** No known opposition
2. **Legal Antecedents:** Ordinance 04-1040B, Ordinance 02-969B
3. **Anticipated Effects:** The extension would provide local jurisdictions additional time to bring their land use regulations into compliance with Title 4. In the interim, local jurisdictions must apply Title 4 requirements to land use applications they receive, so granting these extensions will not adversely affect protection of RSIA's or Industrial Areas.
4. **Budget Impacts:** There is no overall budget impact. Staff time will be required to review the documentation submitted by each local government which was not assumed in the FY 08-09 budget. Depending on the complexity of the documentation submitted and the extent to which Metro staff must work with local staff, these reviews are estimated to take between 100 to 300 hours for all jurisdictions. Staff time will be reallocated from local government technical assistance to functional plan compliance so that these Title 4 reviews are completed.

RECOMMENDED ACTION

Adoption of Resolution No. 08-4000

Title 4 Extension Requests – Revised 9/29/08

Jurisdiction	Extension Request	Reason for Request
Beaverton	Yes	The City is making progress. City is currently preparing to update Development Code and will include Title 4 changes as part of larger Code update project.
Cornelius	No	(In compliance)
Damascus	Yes	The City is making progress. City is working on a comprehensive plan framework map, Goal 5 ESEE analysis, Goal 9 (Economic Development) and Goal 10 (Housing). Cannot fully address Title 4 until comprehensive planning work is completed
Durham	Yes	The City has good cause for not meeting the deadline. The city has limited funds and staff to complete work. The city wants to integrate all revisions of Land Use Code at one time rather than amend it piecemeal and, given the city's limited staff, most of the work must be performed by consultants. Funds are included in the 08-09 budget.
Fairview	Yes	The City has good cause for not meeting the deadline. The city has limited staff resources and competing departmental priorities. The city is starting a process to identify needed corrections to Title 4 map.
Forest Grove	No	(In compliance)
Gresham	Yes	The City is making progress. City is working on an Industrial Land Use Assessment project this year. Staff turnover and limited staffing prevented this project from getting underway in 2007.
Happy Valley	Yes	The City is making progress. The city has begun working on the East Happy Valley Comprehensive Plan and hired a consultant to assist in this project.
Hillsboro	No	Metro staff is reviewing documentation

Jurisdiction	Extension Request	Reason for Request
Lake Oswego	Yes	The City has not met the deadline because it believes there is a mapping error and will use the extension to request a map amendment to change the designation from “industrial” to “employment”.
Milwaukie	Yes	The City has good cause for not meeting the deadline. Staff only recently became aware that a code amendment would be necessary. The work program for 2008-09 includes a number of code amendments including Title 4.
Oregon City	Yes	The City is making progress and is in the process of changing its code for industrial uses proposed in the concept plan for Beaver Creek Road. Current code conforms to Title 4 requirements.
Portland	Yes	The City has made progress on meeting Title 4 requirements but needs more time to comply with two sections of Title 4, those restricting retail and commercial uses and the partition of large lots in RSIA and Industrial Areas.
Sherwood	Yes	The City has good cause for not meeting the deadline. The city’s Planning Department has been understaffed and has seen significant staff turnover in recent years. The city has audited its development Code and is starting a process to address Title 4 requirements.
Tigard	Yes	The City is making progress on Title 4 compliance, having recently updated policies in the Comprehensive Plan. The city believes there is a mapping error and is requesting clarification from Metro on the process to amend the Title 4 map.
Tualatin	No	(In compliance)
Wilsonville	No	(In compliance)
Jurisdiction	Extension Request	Reason for Request
Wood Village	Yes	The City is making progress. The city is starting a process for code changes for Titles 4 and 13 and will be receiving a state technical assistance grant to fund a two-year process for code changes.
Clackamas County	Yes	The County is making progress. The county believes that it is in

		compliance with Title 4 requirements except for the section relating to standards for land divisions of parcels that are greater than 50 acres.
Washington County	No	(In compliance)

M:\plan\lrpp\projects\COMPLIANCE\Title 4\Title 4 Extension Requests 2008 Chart.doc

Agenda Item Number 8.1

Resolution 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.

Contract Review Board

Metro Council Meeting
Thursday, October 16, 2008
Metro Council Chamber

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 __ day of _____, 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.

TABLE OF CONTENTS

**METRO-WALSH TRANSPORT CO., LTD. AGREEMENT
FOR SOLID WASTE TRANSPORT SERVICES**

Recitals..... 5

Article 1 – Definitions..... 5

Article 2 – Term of Agreement..... 7

Article 3 – General Obligations of Contractor..... 7

 A. Contractor’s Performance of Contractual Duties..... 7

 B. Contractor’s Acquisition of Approval 8

 C. Contractor’s Retention of Transaction Records..... 8

 D. Contractor’s Provision of GPS Equipment and Use of RFID Tags..... 8

 E. Contractor’s Coordination of Activities..... 8

 F. Contractor’s Obligation to Provide Back-up Transport System 9

 G. Additional General Obligations of Contractor..... 9

Article 4 – Obligations of Contractor Following Execution of Agreement & Prior
to Commencement of Service 11

Article 5 – Obligations of Contractor Regarding Operations in Gilliam County, Oregon 13

Article 6 – Title to Solid Waste 14

Article 7 – General Obligations of Metro 14

Article 8 – Obligations of Metro Regarding Fuel Purchase..... 14

 A. Provision of Fuel for Shuttle Operations 14

 B. Provision of Fuel for Over-the-Road Operations..... 15

 C. Use of Alternative Fuel Technologies 16

Article 9 – Separate Contracts 16

Article 10 – Payment..... 17

 A. Per Load Payment Provisions 17

 B. Additional Payment Provisions..... 18

Article 11 – Contractor as Independent Contractor 21

Article 12 – Contractor’s Use of Subcontractors	21
Article 13 – Inspections of Contractor / Records Retention	22
A. Inspections	22
B. Records Retention.....	22
Article 14 – Indemnification	24
Article 15 – Insurance	25
Article 16 – Contractor’s Performance Bond	27
Article 17 – Metro’s Rights and Remedies for Contractor’s Defaults in Performance (Including Penalties for Delayed Loading).....	28
A. Liquidated Damages	28
B. Damages Other Than Liquidated Damages	30
C. Additional Penalty Provisions.....	30
Article 18 – Metro’s Right to Suspend or Terminate Agreement.....	31
A. Termination or Suspension of Contractor’s Contract	31
B. Termination or Suspension of Contractor’s Performance of this Agreement.....	31
C. Procedure for Termination or Suspension of this Agreement by Metro.....	31
D. Metro’s Remedies if Contractor Becomes Insolvent, Dissolved, Bankrupt, Files for Bankruptcy, Makes a General Assignment for Creditors.....	32
E. Procedures and Remedies for Metro Termination in the Event that Landfill Agreement is Terminated.....	32
F. Procedures and Remedies for Metro Termination for the Convenience of Metro	32
G. Provision of Equipment to Metro	33
Article 19 – Contractor’s Right to Terminate	33
Article 20 – Allocation of Risk / Force Majeure	34
A. Representations of Parties.....	34
B. Effect of Force Majeure on Parties’ Obligations	34
C. Notice of Force Majeure	34
Article 21 – Contractor’s Assignment of Contractual Obligations.....	35
Article 22 – Contractors Assignment of Metro of Antitrust Rights.....	35
Article 23 – Change of Contractor’s Ownership	36

Article 24 – Permits and Regulations	37
Article 25 – Taxes and Fees	37
Article 26 – Arbitration.....	37
Article 27 – Attorney’s Fees	38
Article 28 – Minority, Women and Emerging Small Business Program.....	38
Article 29 – Hours of Labor for Contractor’s Employees	39
Article 30 – Parties’ Representatives and Notices	40
Article 31 – News Releases and Media Relations	41
Article 32 – Miscellaneous Provisions.....	41
Article 33 – Walsh Leasing II, LLC/Agreement to be Bound.....	42
Scope of Work	43
Performance Standards	45
Operational Performance Standards	47
Equipment Used in the Performance of this Agreement	49

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: _____

M:\ATTORNEY\CONFIDENTIAL\09 SOLID WASTE\10TNSPRT.SRV\27-2007-08 SW TRANSPORT RFP\FINAL WALSH CONTRACT 092808.DOC

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]

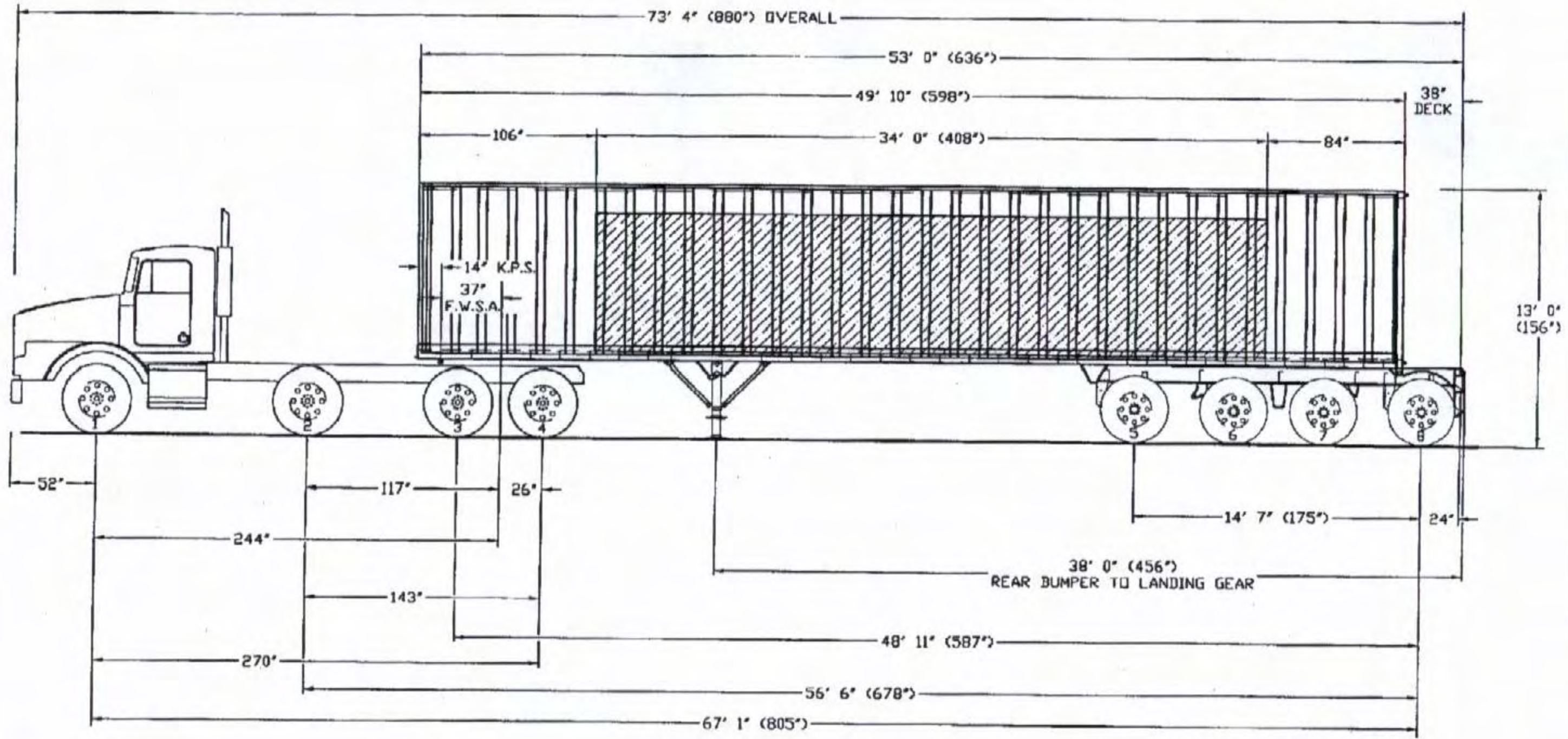
3/8/2008 1:22:35 PM, mbanks

P.3

2083421046

WESTERN TRAILER

Mar 08 2008 1:54PM



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

AXLE LOADINGS (lbs)						VEHICLE WEIGHTS (lbs)		REV B:
GROUP	MAX WGT.	ACTUAL	GROUP	MAX WGT.	ACTUAL	UNIT	WEIGHT	REV A:
1	13,200	12,825	3-8	83,000	82,883	TRACTOR	18,536	BY:
1-4	57,500	51,618	5-8	52,000	52,090	TRAILER	14,672	
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						

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.

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.

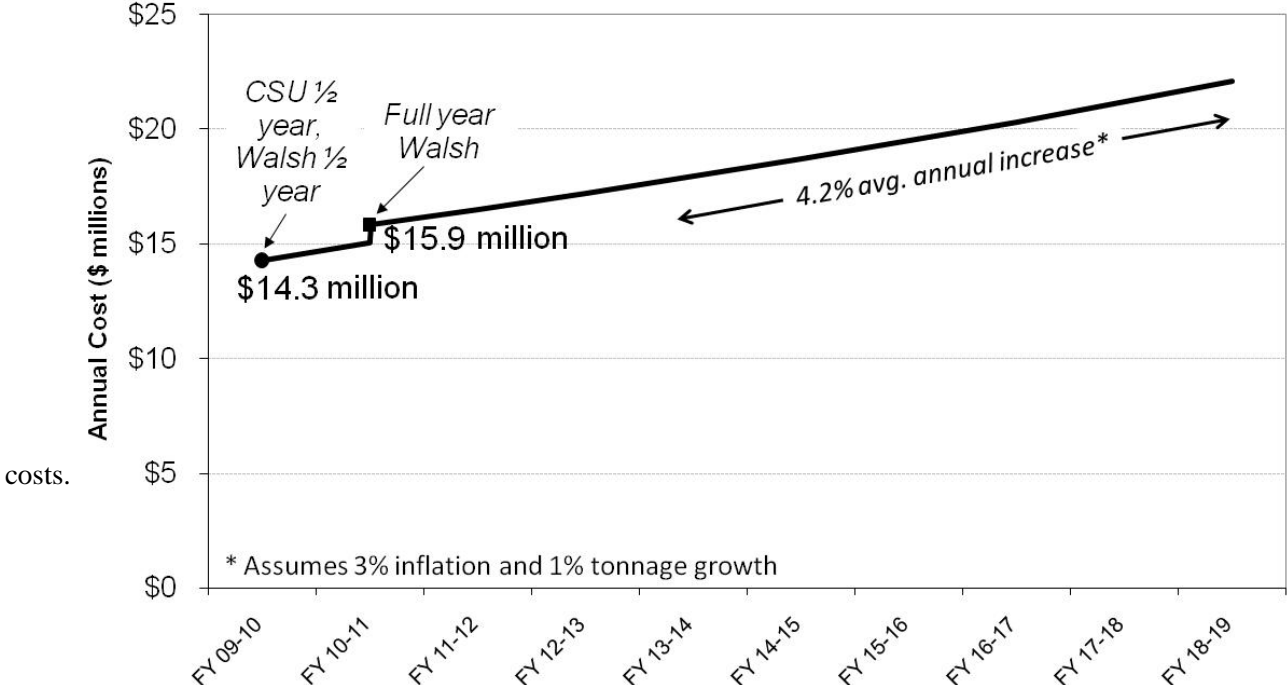
4. Budget Impacts

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.

M:\rem\remdept\projects\Transport\project\Council\Award\award Stfrpt.doc

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

Table of Contents

Section	Page
1 Overview of Request for Proposals (RFP) Process	1-1
1.1 Background	1-1
1.2 Proposal Evaluation Process	1-1
2 Evaluation Methodology	2-1
Evaluation Criteria	2-1
Cost	2-1
Environmental Impacts	2-1
Socioeconomic Impacts.....	2-1
Operational Considerations/Reduction of Risk to Metro	2-2
Scoring the Environmental, Socioeconomic, and Operational Aspects of Proposals.....	2-2
Value Modeling Overview	2-3
Scores and Points.....	2-5
3 Evaluation Results	3-1

Exhibits

2-1	Generalized Representation of Value Modeling
2-2	Environmental Impact Scoring and Points
2-3	Socioeconomic Impact Scoring and Points
2-4	Operational Considerations Scoring and Points
3-1	Initial Evaluation of Proposals
3-2	Proposal Scores
3-3	Evaluation Results

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.

- Tom Chaimov, Metro Senior Solid Waste Planner, who calculated the cost of each proposal and conducted 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, CH2M HILL's practice lead for decision analysis in the Northwest region of the United States, 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 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.

- Mike Hoglund, Director, Metro Solid Waste & Recycling Department
- 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.

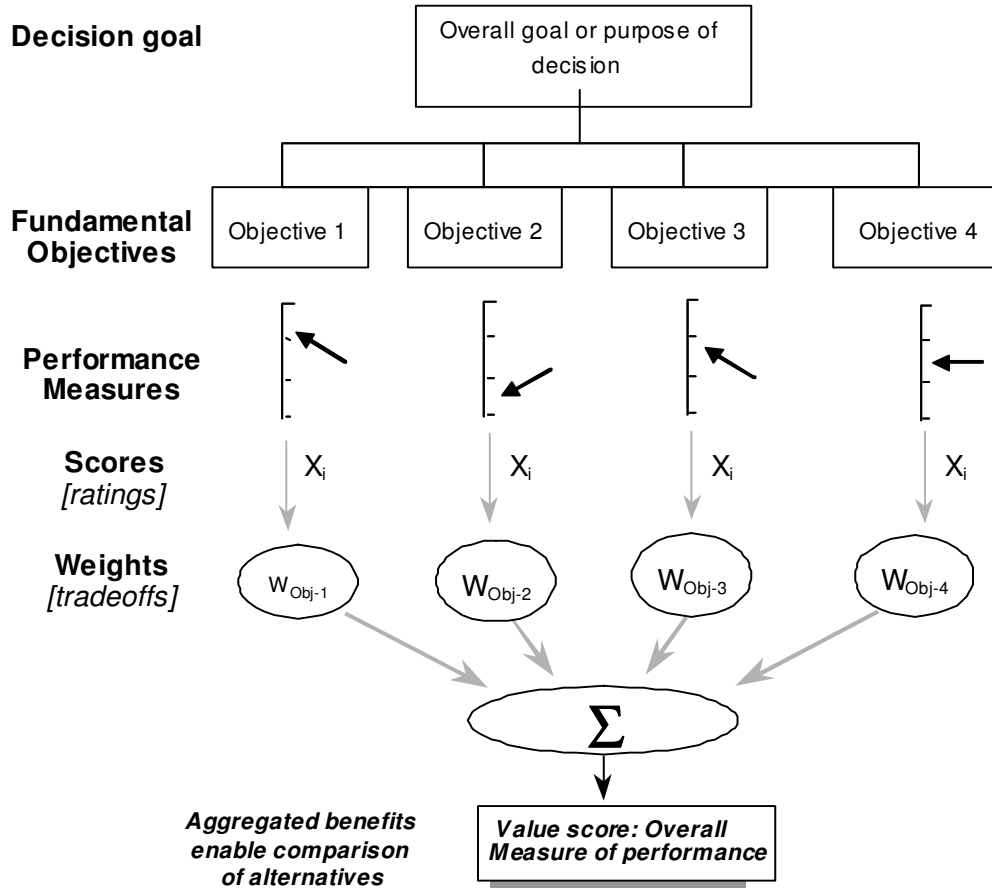
Performance Measures

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.

Agenda Item Number 9.1

Resolution No. 08-3969, Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement with the City of Portland and the North Clackamas Parks and Recreation District Regarding the Purchase and Management of Property in the Johnson Creek Target Area Acquired Pursuant to the 2006 Natural Areas Bond Measure.

Executive Session

Metro Council Meeting
Thursday, October 16, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER)
TO EXECUTE AN INTERGOVERNMENTAL) RESOLUTION NO. 08-3969
AGREEMENT WITH THE CITY OF PORTLAND)
AND THE NORTH CLACKAMAS PARKS AND) Introduced by Chief Operating Officer
RECREATION DISTRICT REGARDING THE) Michael J. Jordan, with the concurrence of
PURCHASE AND MANAGEMENT OF PROPERTY) Council President David Bragdon
IN THE JOHNSON CREEK TARGET AREA)
ACQUIRED PURSUANT TO THE 2006 NATURAL)
AREAS BOND MEASURE)

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved the 2006 Natural Areas Bond Measure, authorizing Metro to sell \$227.4 million in general obligation bonds to fund natural area acquisition and water quality protection;

WHEREAS, the Johnson Creek Target Area was identified in the 2006 Natural Areas Bond Measure as one of 27 regional target areas for land acquisition;

WHEREAS, on September 13, 2007, the Metro Council adopted Resolution No. 07-3851 “Approving The Natural Areas Acquisition Refinement Plan For The Johnson Creek Target Area” authorizing the Chief Operating Officer to acquire properties in the Johnson Creek Target Area consistent with the Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan;

WHEREAS, Metro staff has identified an opportunity to partner with the North Clackamas Parks and Recreation District and the City of Portland Bureau of Environmental Services to enter into an intergovernmental agreement (the “IGA” or “Agreement”), a form of which is attached hereto as Exhibit A, to jointly contribute towards the purchase of several adjoining properties, covering more than 13 acres, identified as Tier II acquisition priorities in the 2006 Natural Areas Bond Measure Johnson Creek Target Area Refinement Plan, which properties are identified and further described as Parcels A, B and C in Exhibit A to the IGA (the “Properties”); and

WHEREAS, the Properties include approximately 2,000 feet of stream frontage along Johnson Creek, abut the Springwater Trail, are currently in a degraded environmental condition, and are in an area of the region considered nature-deficient and in need of additional, accessible parks for nearby residents; and

WHEREAS, Metro staff has entered into a purchase agreement with the owner of Parcel A, a ten acre property that includes over 1,400 feet of stream frontage along Johnson Creek and is the primary acquisition target among the Properties; and

WHEREAS, the IGA provides for BES to contribute one third of the purchase price of the Properties in return for easements to allow BES to repair and realign a sewer pipe that crosses Parcel A and to undertake a major channel change, flood prevention, and natural restoration project along the full length of Johnson Creek on the Properties, for which BES already has budgeted funds available; and

WHEREAS, the IGA provides for NCPRD to contribute one third of the purchase price of the Properties in return for a 50% ownership interest in the Properties in order to develop a park on the upland portion of the site, and for NCPRD to manage and maintain the Properties after their acquisition; and

WHEREAS, the IGA provides for Metro to contribute one third of the purchase price of the Properties in return for a 50% ownership interest in the Properties in order to protect fish and wildlife habitat and water quality in the Johnson Creek watershed; and

WHEREAS, acquisition of the Properties will further the Johnson Creek Target Area goal of partnering with other local governments to acquire key parcels adjacent to existing publicly protected resource areas; and

WHEREAS, BES and NCPRD will be able to undertake their restoration and park development projects, respectively, with the acquisition of Parcel A alone, although the successful subsequent acquisition of Parcels B and C would improve and enhance both access to Parcel A for NCPRD's park uses and the scope and impact of the natural area restoration project that BES intends to undertake on the Properties; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to execute an intergovernmental agreement with the City of Portland Bureau of Environmental Services and the North Clackamas Parks and Recreation District to acquire the Properties in substantially the form attached hereto as Exhibit A.

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

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

M:\attorney\confidential\16 BondMeas.2006\04 Acquisitions\29 Johnson Creek Target Area\29.009 Emmert Lents II\Res 08-3969 IGA final 100108.doc

Exhibit A
Form of Intergovernmental Agreement

INTERGOVERNMENTAL AGREEMENT

LENTS II

Acquisition and Co-ownership Agreement

This Intergovernmental Agreement (“Agreement”), entered into on the last date of signature below (the “Effective Date”), is by and between Metro, an Oregon municipal corporation (“Metro”); the City of Portland, an Oregon municipal corporation, through its Bureau of Environmental Services (“BES”); and the North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451 (“NCPRD”) (collectively, the “Parties,” and each individually a “Party”).

RECITALS

WHEREAS, the Parties have agreed to cooperate in the purchase and co-ownership of fee simple or easement property interests in the following certain properties, located in unincorporated Clackamas County, more particularly described in Exhibit A, attached hereto and incorporated herein (collectively, the “Properties”):

- Parcel A (intended fee simple ownership): At address 8855 SE 76th Drive, Portland, Oregon, commonly known as Tax Lots 3609, 3700 and 3800, in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian;
- Parcel B (intended fee simple ownership): At address 7800 SE Luther Road, Portland, Oregon, commonly known as Tax Lot 3500 in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian; and
- Parcel C (intended easement ownership): At address 8710 SE 76th Drive, Portland, Oregon, commonly known as Tax Lot 3604 in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian.

WHEREAS, NCPRD will contribute funds from its System Development Charges to purchase an undivided interest in the Properties as a tenant in common or as a co-easement holder, in order to develop a park on a portion of the Properties; and

WHEREAS, Metro will contribute funds from the Natural Areas Bond Measure, approved by the voters in 2006, to purchase an undivided interest in the Properties as a tenant in common or as co-easement holder, in order to protect fish and wildlife habitat and water quality within the Metro Natural Area Acquisition Program’s Johnson Creek Target Area; and

WHEREAS, BES will contribute funds to purchase easements across the Properties to complete the BES Lents II Sewer and Restoration Project (the “Sewer and Restoration Project”), which will include the construction and maintenance of improvements to its sewer line traversing the Properties (for which the City already owns existing sewer easements), the construction of an overflow side channel for Johnson Creek, and the replanting and natural area restoration of its

construction zone as described and shown on the attached Exhibit B (the “Sewer, Channel Change, and Temporary Construction Easements”); and

WHEREAS, Metro shall represent the Parties in negotiations to acquire the Properties according to the terms described herein; and

WHEREAS, NCPRD will manage the Properties after acquisition; and

WHEREAS, the Parties acknowledge that the separate owners of Parcels A, B, and C may or may not be willing to sell their properties, or an easement interest in their properties, to the Parties, and the Parties will therefore communicate with one another and collectively determine whether to proceed with acquisition of one or more of the parcels based on the success of Metro’s negotiations;

NOW, THEREFORE, the Parties agree as follows:

1. Acquisition: Negotiation, Due Diligence, Financial Contributions and Closing

- 1.1 Metro has negotiated a purchase and sale agreement to acquire Parcel A, and Metro shall be responsible for attempting to negotiate the terms of one or more additional purchase and sale agreements for Parcels B and C, or for easement interests Parcels B and C (each referred to as “Purchase Agreement,” or collectively as the “Purchase Agreements”). Metro shall enter into the Purchase Agreements on behalf of the Parties. Metro shall consult with the other Parties during Metro’s negotiations to determine whether all or part of Parcels B and C should also be acquired, conditioned on whether the sellers are willing to sell to the Parties.
- 1.2 Metro shall coordinate due diligence with the Parties where possible, and the Parties shall name each other as co-clients on any third-party due diligence contracts whenever possible. Metro shall conduct commercially reasonable due diligence, as Metro deems appropriate and in accord with Metro Natural Areas Bond Measure practices (see Metro Resolution No. 07-3766A), prior to closing on acquisition of the Properties. BES shall pay for the appraisal and the phase one environmental site assessment for Parcel A. Metro shall pay for the appraisals and for the phase one environmental site assessments for Parcels B and C. BES and Metro shall each pay for one-half of the cost of any phase two environmental site assessments that Metro deems necessary to be performed as part of due diligence pursuant to this Agreement. BES and NCPRD each shall be solely responsible for conducting and paying for any additional due diligence, beyond that which Metro deems necessary and performs as described above, that either BES or NCPRD determines is necessary for its own purposes.
- 1.3 Subject to the review of the results of Metro’s due diligence and approval by all Parties, at closing on the purchase of the Properties each Party shall contribute one-third (1/3) of the negotiated Purchase Price for each Parcel to be acquired, in consideration of which Metro and NCPRD each shall receive an undivided one-half (1/2) interest in the Properties as tenants-in-common and BES shall be entitled to the Sewer and

Restoration Project Easement on the property as provided in Section 2 of this Agreement. BES and NCPRD shall each ensure that its one-third share of the Purchase Price for each Parcel is deposited not later than two days prior to Closing into the escrow account provided by the Title Company designated by Metro in the Purchase Agreement.

- 1.4 Metro shall coordinate closing on the acquisitions of the Properties, including without limitation preparing buyer's escrow instructions. Metro shall pay the recording fees, escrow fees, and other customary closing costs, if any, relating to the acquisitions, in accordance with the terms of the Purchase Agreement(s).

2. BES Lents II Sewer and Restoration Project and Easements

- 2.1 Throughout all phases of the Sewer and Restoration Project, BES shall make a reasonable good faith effort to keep the Parties timely informed of the general planning, design and construction specifications of the Sewer and Restoration Project and any changes thereto, including, without limitation, the total area of the Properties that will be affected by temporary construction activities and that will be permanently affected by the Sewer and Restoration Project. Drafts of the Sewer, Channel Change, and Temporary Construction Easements are attached as Exhibit B to this Agreement, including a depiction of the easement areas for each such easement. Such easements include: a temporary construction easement (TCE) covering the entire site, a permanent channel change easement (PCCE) covering all areas on the site not designated for active park use development, and a new permanent sewer easement (PSE) over the Lents Interceptor sewer extending 15 feet on each side of the pipe centerline for a total width of 30 feet along the alignment. BES reserves the right to modify the easement areas of these easements within the limits described in 3.1 below to accommodate the sewer and restoration design at the site.
- 2.2 The Sewer, Channel Change, and Temporary Construction Easements shall be consistent with the provisions of Section 2.3, below, and shall be in a form substantially similar to the drafts attached as Exhibit B. BES shall prepare a survey of the easement areas to be attached to the final Sewer, Channel Change, and Temporary Construction Easements, which survey and easements shall be subject to review and approval by staff of both Metro and NCPRD, which approvals shall not be unreasonably withheld. If no such easements are agreed to within ten years from the latest date of acquisition for the Properties, then this requirement shall terminate. BES shall be responsible for management of any enhancement and restoration activities performed in the area protected by the Sewer and Channel Change Easements, if any, in accord with the terms of this Agreement and the terms of such Easements. Such management by BES shall include a commitment to maintain such enhancement and restoration activities for a minimum of five years beginning with the completion of the restoration work, and until such time as BES satisfies the survivability and performance criteria stipulated by regulatory permitting agencies for the project. Following the management period BES will meet with NCPRD on an annual basis to discuss project performance in the PCCE area.

- 2.3 By their approval of this Agreement, the Metro Council and the NCPRD Board authorize their respective staffs, upon acquisition of one or more of the Properties, to grant the Sewer, Channel Change, and Temporary Construction Easements to BES, in a form substantially in conformance with the provisions of this Agreement. In addition to any other applicable provisions of this Agreement regarding such easements, such easements shall:
- 2.3.1 Permit and require BES to access, repair, reconstruct, construct, maintain, and monitor the existing sewer pipe that traverses the Properties, including remedying the fact that the sewer pipe is currently exposed where it traverses Johnson Creek;
 - 2.3.2 Permit BES to access, construct, manage, and monitor an overflow side channel to Johnson Creek on the Properties and other natural area habitat and water quality enhancement and restoration activities on the Properties;
 - 2.3.3 Provide BES with access to an area no greater than the area generally described in Exhibit B, attached hereto and incorporated herein;
 - 2.3.4 Require BES to obtain any local, state, or federal permits necessary to undertake any work on the Properties authorized by the Sewer and Restoration Project Easement; and
 - 2.3.5 Require BES to restore all areas on the Properties that BES disturbs as part of its construction activities.

3. NCPRD Park Development and Management of Lents II Park and Natural Area

- 3.1 NCPRD shall be responsible for development and management of a park that will provide and allow active recreational park uses (“Park Development”). Such park shall occupy approximately four (4) acres of the Properties, but in no event shall it occupy more than five (5) acres of the Properties (unless approved by the partners during a joint master planning process), and it shall not occupy any of the area of the Properties described on Exhibit B within the PCCE area.
- 3.2 The Park Development shall occur after the Sewer and Restoration Project is completed in conformance with the Sewer, Channel Change, and Temporary Construction Easements. In the event that NCPRD is prepared to move forward with the Park Development before the Sewer and Restoration Project has commenced or has been completed, then BES and NCPRD shall agree to terms of a separate intergovernmental agreement to coordinate construction activities on the Properties.
- 3.3 NCPRD shall be responsible for obtaining any local, state or federal permits necessary to undertake any work on the Properties related to the Park Development.

- 4. Grant of Access Easement Across Springwater Trail.** BES shall secure an access easement over the Springwater Trail granted by the City of Portland benefiting Metro and NCPRD as owners of Parcel A, as provided in this Section, and BES as an easement holder on the parcel. Metro and NCPRD shall not be obligated to close on acquisition of Parcel A unless such access easement has been approved by the City of Portland, which approval may be conditioned on the acquisition of Parcel A by Metro and NCPRD. Such access easement shall permit Metro, NCPRD and BES staff vehicles, and vehicles of contractors hired by Metro, NCPRD and BES to undertake park-related work on the Properties, and to travel on and across the Springwater Trail from where said trail crosses Luther Road and thence along said trail to the southeast until the point where Parcel A no longer abuts said trail. Such easement may require that Metro and NCPRD repair any damage caused by such use of the Springwater Trail to at least a condition comparable to said trail's condition prior to any such use.
- 5. Public Uses and Permits.** Any public uses of the Properties authorized by NCPRD or Metro and any permits granted to third parties by any of the Parties for the Properties shall comply with the terms, requirements, and restrictions set forth in the Sewer, Channel Change, and Temporary Construction Easements and this Agreement.
- 6. Property Stabilization.** Prior to closing on the acquisition of the Properties (as permitted by the prior landowner) and in the period immediately following closing on the purchase of the Properties, Metro may take whatever actions it deems appropriate to stabilize Metro's ownership interest in the Properties, at Metro's discretion, cost, and expense. Such stabilization activities may include construction, maintenance, or repair of facilities, projects, or improvements such as fences, gates, removal of invasive or competing plants, and replanting of native plants. Metro will consult with the BES and NCPRD before taking such actions to ensure that the actions will not unreasonably affect NCPRD's ongoing management responsibilities for the Property or BES's Sewer and Restoration Project. To the extent NCPRD objects to such stabilization activities, Metro may continue with the activities; provided, however, that notwithstanding Section 7.1 hereof, Metro shall then be responsible for the operation, management and maintenance of such stabilization activity projects.
- 7. NCPRD Shall Manage, Maintain, and Operate the Properties.**

 - 7.1 NCPRD shall be responsible for the ongoing management, maintenance, and operation of the Properties at all times, in accordance with the terms of this Agreement. Except for the area of the Properties within the Park Development, the Properties shall be managed, maintained, operated, and protected in accordance with their intended use as natural areas, one of the goals being protection of the Properties' natural resources, enhancement and protection of wildlife habitat, and another goal being public recreation. NCPRD's responsibilities shall include management, maintenance, and operation of any facilities, projects, or improvements (e.g. fences, gates, removal of invasive plants, replanting of native plants, etc.) made by Metro pursuant to Section 6 of this Agreement with NCPRD's consent. By accepting management responsibility for the Properties, NCPRD agrees to be responsible for funding the operation and

maintenance of the Properties, including, but not limited to payment of taxes and assessments, with NCPRD's own financial and staffing resources. Metro shall periodically review the Properties to ensure that their management is in accordance with this Agreement.

- 7.2 NCPRD and Metro shall coordinate to respond in a timely manner to resolve nuisance complaints, with NCPRD taking the primary responsibility for such matters, as the manager of the Properties. If Metro is issued a nuisance notice for the Properties by a governmental body with authority to issue a notice that is not also issued to NCPRD as co-owner of the Property, Metro shall forward such notice to NCPRD. To the extent a governmental body with authority requires the expenditure of significant funds with respect to the Property, NCPRD and Metro agree to meet and discuss the nature of the requirement and appropriate cost-sharing.
- 7.3 As required by Metro's Metropolitan Greenspaces Master Plan, the long-term management guidelines for the Properties must be set forth in a Master Plan for the site ("Master Plan"). This Agreement sets forth (1) the interim protection guidelines and use limitations applicable to the Properties, and (2) the requirements applicable to NCPRD's development of a Master Plan for the Properties.
- 7.4 In accordance with the Metro Greenspaces Master Plan, formal public use of a Property and site development on the Property shall not begin until a Master Plan for the Property has been completed.
- 7.5 NCPRD shall be responsible for obtaining any authorizations or permits necessary for management, maintenance, and operation of the Properties. Any permits granted by NCPRD to users of the Properties shall comply with the terms and limitations set forth in this Agreement and in the applicable Master Plan for the Properties. NCPRD shall be responsible for contacting and coordinating with other local or state agencies regarding any and all management, maintenance, and operational issues that may arise with respect to the Properties. Metro will be consulted not fewer than twenty (20) days prior to NCPRD applying for any development permit.
- 7.6 All requests for easements, rights of way, and leases on or affecting the Properties shall be submitted to Metro in accordance with the Metro Easement Policy, Resolution No. 97-2539B, passed by the Metro Council on November 6, 1997, attached hereto as Exhibit C, except that the Sewer, Channel Change, and Temporary Construction Easements shall be exempt from this requirement. Requests shall also be submitted to NCPRD for review and approval by the NCPRD Board of Directors. No easement or other real property interest in the Property, including a security interest, may be granted without the express written consent of both the Metro Council and the NCPRD Board of Directors.

8. Interim Protection Guidelines.

- 8.1 In the interim period prior to the adoption of a Master Plan (the “Interim Period”), the Properties shall be managed, maintained, and operated by NCPRD in accordance and in a manner consistent with the Metro Greenspaces Master Plan, the 2006 Natural Areas Bond Measure, NCPRD’s Comprehensive Plan, the Sewer and Restoration Project Easement, and this Agreement, specifically Section 7 of this Agreement (this Agreement and these plans collectively referred to herein as the “Plans”). In case of conflict among Plans, the Plan affording the greatest level of detail shall govern unless such Plan is inconsistent with the Sewer and Restoration Project, the 2006 Natural Areas Bond Measure, or with the Park Development.
- 8.2 In the Interim Period, NCPRD shall use commercially reasonable efforts to control access to the Properties.
- 8.3 In the Interim Period, NCPRD may, at its discretion, allow informal public access to the Properties for passive recreation, habitat enhancement, pedestrian activity, and non-motorized bicycle use; provided, however, that no such passive recreation, including without limitation pedestrian or bicycle access, shall be permitted in any area that is part of the Sewer and Restoration Project described in Section 2 of this Agreement. All uses of the Properties in the Interim Period shall be consistent with this Agreement and with the Plans. NCPRD shall not allow any such informal use if to do so would, in NCPRD’s reasonable judgment, effectively preclude any other likely potential uses of the Properties that could later be allowed in the Master Plan.
- 8.4 In the Interim Period, NCPRD shall not allow or permit any alteration of any water, timber, mineral, or other resource on the Properties, except for the control of exotic, non-native, invasive, or pest plant species, as necessary to prevent the Properties’ degradation, or to address public safety concerns. If NCPRD believes that an improvement, trail, or alteration of any water or timber resource on the Properties is necessary prior to adoption of a Management Plan for the Properties, Metro shall have the right to approve of such action, which approval shall not be unreasonably withheld or conditioned, and NCPRD shall provide Metro 60 days advance written notice of its intent to construct any improvements, trails, or alteration of water or timber resource on the Properties. In any event, no capital improvements or trails shall be constructed on the Properties and no alteration of water or timber resource shall occur, that are inconsistent with this Agreement or that would effectively preclude any potential uses of the Properties that could later be allowed in the Management Plan.

9. Resource Management/Master Plan for The Properties.

- 9.1 NCPRD shall undertake a good faith effort to develop and adopt an area-specific Master plan for the Properties. The Master Plan shall set forth the acceptable management, operation, maintenance, and types and levels of programmed and public use and trail and improvement standards applicable to the Properties. If not previously completed, NCPRD shall take an inventory of the natural resources and improvements

on the Properties as part of the process of developing the Master Plan. The Master Plan shall ensure that the Properties are managed, maintained and operated in accordance with the Metro Greenspaces Master Plan and with this Agreement, and that all trails and improvements on the Properties comply with the Metro Greenspaces Master Plan and with this Agreement. The Master Plan shall also ensure that, except as otherwise provided in the Sewer and Permanent Channel Change Easements or by the Park Development, the Properties are maintained as a natural area open space, with the primary goals being protection and restoration of the Properties' natural resources, enhancement and protection of wildlife habitat, and public recreation.

- 9.2 As part of NCPRD's process of developing and adopting a Master Plan, NCPRD shall regularly consult with a Metro staff member designated by the Metro Parks and Greenspaces Department Director. In addition to any other approvals required by NCPRD, the Master Plan shall be subject to review and approval by the Metro Council prior to the plan's implementation, which approval shall not be unreasonably withheld and shall be based on consistency with this Agreement, the Metro Greenspaces Master Plan, and the intent of the 2006 Natural Areas Bond Measure.

10. Signage and Acknowledgement.

- 10.1 Each Party shall recognize and document in any on-site signs, publications, media presentations, web site information, press releases, or other written materials or presentations referencing the Properties, that are produced by or at the direction of such Party, that funding for acquisition of the Properties came in part from the Metro 2006 Natural Areas Bond Measure, in part from NCPRD, and in part from BES. As part of NCPRD's Park Development, NCPRD shall install signs at the Properties consistent with this paragraph, and if BES installs signs regarding its restoration work at the Properties they also shall be consistent with this paragraph. Signs erected on the Properties shall be in prominent and highly visible locations near each primary public access point or viewing access area to acknowledge the property acquisition funding partnership described in this Agreement. Regarding acknowledgment of Metro's funding share, such signage shall be either: (a) a standard, free-standing sign provided by Metro, which Metro shall make available to NCPRD and BES upon request, or (b) the inclusion of Metro's logo and script in NCPRD's and BES's signage, with Metro's logo and script of a size equal and comparable to the size of NCPRD's and BES's logo and script (Metro shall make its graphics available to NCPRD and BES upon request). If NCPRD or BES chooses to incorporate Metro's logo and script into its own sign, it shall do so at its own cost and expense.
- 10.2 When the Properties are opened to the public, if any party plans and holds any community/media events to publicize the Properties, such party agrees to provide the other parties with written notice of any such event at least three weeks prior to the scheduled event in order to coordinate with and allow for participation by staff and elected officials from all parties and appropriate recognition of the sources of funding for acquisition of the Properties.

11. General Provisions

- 11.1 Mutual Indemnification. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Metro shall defend, indemnify and hold harmless the other parties to this Agreement, their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from Metro's performance of its responsibilities under this Agreement. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, BES shall defend, indemnify and hold harmless the other parties to this Agreement, their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from BES' performance of its responsibilities under this Agreement. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, NCPRD shall defend, indemnify and hold harmless the other parties to this Agreement, their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from NCPRD's performance of its responsibilities under this Agreement.
- 11.2 Oregon Constitution and Tax-Exempt Bond Covenants. The source of Metro's contribution to the acquisition of the Properties is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bondholders is currently exempt from federal and Oregon income taxes. BES and NCPRD covenant that they will take no actions that would cause Metro to be unable to maintain the current exemption from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event BES and/or NCPRD breach this covenant, Metro shall be entitled to whatever remedies are available either to cure the default or to compensate Metro for any loss it may suffer as a result thereof.
- 11.3 Term. This Agreement shall continue in perpetuity unless terminated as provided in Section 11.4 or 11.5.
- 11.4 Joint Termination for Convenience. The Parties hereto may mutually agree to terminate all or part of their responsibilities and obligations under this Agreement, based upon a determination that such action is in the public interest. Termination under this

provision shall be effective ten (10) days following the execution of a written agreement to terminate, signed by all Parties to this Agreement.

- 11.5 Termination for Cause. Any party may terminate this Agreement, whenever that party determines, in its sole discretion, that another party has failed to comply with a material term or condition of this Agreement and is therefore in default. The terminating party shall promptly notify the other parties in writing of that determination and document such default with reasonable particularity. The defaulting party shall then be provided with thirty (30) days to cure the problem, or to substantially pursue such a cure, if it is not possible to complete a cure within thirty days.
- 11.6 Laws of Oregon; Public Contracts. This Agreement shall be governed by the laws of the State of Oregon, and the Parties agree to submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS chapters 279A, 279B, and 279C, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated by this reference as if such provisions were a part of this Agreement.
- 11.7 Amendment. This Agreement may be amended at any time with the written consent of all Parties.
- 11.8 Assignment. Except as otherwise provided herein, the Parties may not assign any of their rights or responsibilities under this Agreement without prior written consent from the other Parties, except the Parties may delegate or subcontract for performance of any of their responsibilities under this Agreement.
- 11.9 Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by fax and regular mail, addressed as follows:

To Metro: Metro Natural Areas Bond Measure Program Director
 Kathleen Brennan Hunter
 600 N.E. Grand Avenue
 Portland, OR 97232-2736
 Tel. 503-797-1948
 Fax 503-797-1849

To NCPRD: North Clackamas Parks and Recreation District
 Director
 9101 SE Sunnybrook Blvd.
 Clackamas, OR 97015
 Tel. 503-353-4661
 Fax 503-794-8005

To BES: City of Portland
 Bureau of Environmental Services
 Attn: Maggie Skendarian
 1120 SW Fifth Ave., 10th Floor
 Portland, Oregon 97204
 Tel. 503-823-5334

- 11.10 Severability. If any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.
- 11.11 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to the Properties. No waiver, consent, modification or change of terms of this Agreement shall bind the Parties unless in writing and signed by each party.

[Signature Page Follows]

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

METRO

NORTH CLACKAMAS PARKS AND RECREATION DISTRICT

Michael Jordan
Chief Operating Officer

By: _____

Title: _____

Date: _____

Date: _____

**CITY OF PORTLAND
BUREAU OF ENVIRONMENTAL SERVICES**

By: _____

Title: _____

Date: _____

- Exhibit A Property Descriptions
- Exhibit B Sewer, Channel Change, and Temporary Construction Easements
- Exhibit C Metro Easement Policy, Resolution No. 97-2539B

M:\attorney\confidential\16 BondMeas.2006\04 Acquisitions\29 Johnson Creek Target Area\29.009 Emmert Lents II\LENTS II ACQ IGA final 100108.doc

Exhibit A Property Descriptions

PARCEL A (Lots 3609, 3700 and 3800)

Tax Lot 3609

Part of the North one-half of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point 2.00 chains South and 18.01 chains East of the Northwest one-quarter of the Northeast one-quarter of said Section, said point also being the Northwest corner of that tract conveyed to Herbert C. Wilton, et ux, by Deed recorded February 12, 1974, Recorder's Fee No. 74-3543, Clackamas County Records; thence South along the West line of said Wilton Tract to a point on the Southerly line of that tract conveyed to The Oregon Water Power and Railway Company by Deed recorded February 19, 1903, in Book 86, page 239, Clackamas County Deed Records, and the true point of beginning; thence continuing South along the West line of said Wilton Tract to a point in the thread of Johnson Creek said point also being the most Northerly corner of JOHNSON CREEK-76th INDUSTRIAL PARK, a recorded plat; thence Southerly along the thread of Johnson Creek and the boundary of said recorded plat to a point on the South line of the Northwest one-quarter of the Northeast one-quarter of said Section; thence West along said South line to the Southeast corner of that tract described as Parcel III in Affidavit executed by Augusta L. Wie recorded May 11, 1971, Recorder's Fee No. 71-10059, Clackamas County Records; thence North along the East line of said Wie Tract 385 feet, more or less, to a point on the Southerly line of the aforementioned Oregon Water Power and Railway Company Tract; thence Northeasterly along said Southerly line to the true point of beginning.

TOGETHER WITH an Easement for ingress and egress over the following described tracts:

A tract of land being a portion of Lots 1, 4 and 5, JOHNSON CREEK-76TH INDUSTRIAL PARK, in the County of Clackamas and State of Oregon, to-wit:

Beginning at a point in the South boundary of Lot 1, JOHNSON CREEK-76TH INDUSTRIAL PARK, which point is 10 feet North 89°50' East from the Southeast corner of Lot 5, of said JOHNSON CREEK-76TH INDUSTRIAL PARK; thence Northerly to a point which is 10 feet West from an iron rod which is North 0°01' West 169.06 feet from the aforesaid Southeast corner of Lot 5; thence continuing Northerly to the North boundary of said Lot 5, in the thread of Johnson Creek; thence upstream along the thread of Johnson Creek to a point which is 32 feet Easterly from the previous described line when measured at right angles therefrom; thence Southerly, parallel with and 32 feet Easterly from the first line herein described, to the South boundary of Lot 1, JOHNSON CREEK-76TH INDUSTRIAL PARK; thence tracing said South boundary, South 89°50' West to the place of beginning.

AND a tract of land in the Southwest one-quarter of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, to-wit:

Beginning at the East one-quarter corner of Section 29, Township 1 South, Range 2 East of the Willamette Meridian; thence North 89°55' West 1303.2 feet; thence North 0°01' East 1312.5 feet; thence South 89°48' West 407.06 feet to the Northeast corner of the tract conveyed to Glenn S. Cook, et ux, in Book 402, page 628; thence continuing South 89°48' West along the North boundary of said Cook tract, 65 feet to the true point of beginning of the tract herein to be described; thence continuing South 89°48' West along the North boundary of said Cook Tract 50 feet; thence South 0°01' East a distance of 217 feet to a point on the North line of Parcel II in that Mortgage recorded January 21, 1970, Recorder's Fee No. 70-1309; thence North 89°48' East parallel with the North line of said Cook Tract 50 feet; thence North 0°01' West parallel with the West boundary of said Cook Tract 217 feet to the true place of beginning.

AND a tract of land in the Southwest one-quarter of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, to-wit:

The Easterly 40 feet of the following described property, as measured along the Northerly line thereof;

Beginning at the East one-quarter corner of Section 29, Township 1 South, Range 2 East of the Willamette Meridian; thence North 89°55' West 1303.2 feet; thence North 0°01' East 1312.5 feet; thence South 89°48' West 607.05 feet; thence South 0°01' East 217 feet to the true point of beginning; thence continuing South 0°01' East 83 feet; thence North 89°48' East 85 feet; thence South 0°01' East to the Northerly line of Johnson Creek Boulevard; thence Northeasterly along the Northerly line of said Johnson Creek Boulevard, to the Southwesterly corner of a tract conveyed to Harold R. Stier and Charlotte Stier, husband and wife, by Deed recorded in Deed Book 466, page 646; thence North 0°01' West along the Westerly line of said Stier Tract to the Northwest corner thereof; thence South 89°48' West, a distance of 125 feet to the true point of beginning.

Exhibit A Property Descriptions

A portion of the North one-half of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Southeast corner of that tract conveyed as Parcel B in that Deed to Ben Bader, recorded September 20, 1944 in Book 331, page 692, Deed Records, said corner being on the South line of Government Lot 3 in said Section, and 147.5 feet East of the Southwest corner thereof; thence East 95 feet, more or less, to the Southwest corner of that tract conveyed to Ben Bader by Deed recorded February 13, 1945 in Book 339, page 26, Deed Records; thence North along the West line of said Bader Tract 385 feet, more or less, to the Northwest corner thereof, said corner being on the South line of The Oregon Water Power Railway Company's right-of-way; thence Southwesterly along said South right-of-way line 130 feet, more or less, to the Northeast corner of that tract conveyed as Parcel B to Ben Bader in Book 331, page 692, Deed Records; thence South along the East line of said Bader Tract 298 feet, more or less, to the place of beginning.

Beginning at the most Southerly Southwest corner of Government Lot 3, Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon; thence East on the South line of said Lot, 147.5 feet to a line parallel with and 365.5 feet East of the center line of Kindorf Road extended Southerly; thence North to the Southerly line of the right-of-way of The Portland Railway Light and Power Co., formerly Oregon Water Power and Railway Company; thence Westerly along said Southerly line to the East line of the Hector Campbell Donation Land Claim; thence South on said East line to the place of beginning.

Tax Lot 3700

A portion of the North one-half of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Southeast corner of that tract conveyed as Parcel B in that Deed to Ben Bader, recorded September 20, 1944 in Book 331, page 692, Deed Records, said corner being on the South line of Government Lot 3 in said Section, and 147.5 feet East of the Southwest corner thereof;

Thence East 95 feet, more or less, to the Southwest corner of that tract conveyed to Ben Bader by Deed recorded February 13, 1945 in Book 339, page 26, Deed Records; thence North along the West line of said Bader Tract 385 feet, more or less, to the Northwest corner thereof, said corner being on the South line of The Oregon Water Power Railway Company's right-of-way;

Thence Southwesterly along said South right-of-way line 130 feet, more or less, to the Northeast corner of that tract conveyed as Parcel B to Ben Bader in Book 331, page 692, Deed Records;

Thence South along the East line of said Bader Tract 298 feet, more or less, to the place of beginning.

Tax Lot 3800

BEGINNING AT THE MOST SOUTHERLY SOUTHWEST CORNER OF GOVERNMENT LOT 3, SECTION 29, TOWNSHIP 1 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON; THENCE EAST ON THE SOUTH LINE OF SAID LOT, 147.5 FEET TO A LINE PARALLEL WITH AND 365.5 FEET EAST OF THE CENTER LINE OF KINDORF ROAD EXTENDED SOUTHERLY; THENCE NORTH TO THE SOUTHERLY LINE OF THE RIGHT-OF-WAY OF THE PORTLAND RAILWAY LIGHT AND POWER CO., FORMERLY OREGON WATER POWER AND RAILWAY COMPANY; THENCE WESTERLY ALONG SAID SOUTHERLY LINE TO THE EAST LINE OF THE HECTOR CAMPBELL D.L.C.; THENCE SOUTH ON SAID EAST LINE TO THE PLACE OF BEGINNING.

**Exhibit A
Property Descriptions**

PARCEL B

Tax Lot 3500

PART OF THE NORTHWEST ONE-QUARTER OF SECTION 29, TOWNSHIP 1 SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING 2 CHAINS SOUTH AND 18.01 CHAINS EAST OF THE NW CORNER OF THE NE 1/4 OF SAID SECTION;
THENCE SOUTH 24 RODS;
THENCE EAST 20 RODS;
THENCE NORTH 24 RODS;
THENCE WEST 20 RODS TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM 20 FEET ON THE EAST SIDE OF THE ROAD AND EXCEPTING ALSO THE RIGHT OF WAY CONVEYED TO THE OREGON WATER POWER AND RAILWAY COMPANY.

PARCEL C

PARCEL I:

A TRACT OF LAND SITUATED IN SECTION 29, TOWNSHIP 1 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING 2 CHAINS SOUTH AND 18.01 CHAINS EAST OF THE NORTHWEST CORNER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION;
THENCE SOUTH 24 RODS TO A POINT;
THENCE EAST 20 RODS TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;
THENCE SOUTH 100 FEET TO A POINT;
THENCE WEST 200 FEET TO A POINT;
THENCE NORTH 100 FEET TO A POINT;
THENCE EAST 200 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH AND SUBJECT TO AN EASEMENT FOR INGRESS AND EGRESS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED PROPERTY;
THENCE NORTH ALONG THE WEST BOUNDARY LINE OF A TRACT OF LAND CONVEYED TO EVA VAN GALDER, ET AL, BY DEED RECORDED AUGUST 9, 1965, FEE NO. 13262, DEED RECORDS, A DISTANCE OF 476 FEET TO THE SOUTH RIGHT OF WAY LINE OF LUTHER ROAD;
THENCE WEST ALONG THE SOUTH RIGHT OF WAY THEREOF, A DISTANCE OF 20 FEET;
THENCE SOUTH ALONG THE EAST BOUNDARY LINE OF A TRACT OF LAND CONVEYED TO ALVIN ELLEFSON, ET UX, BY BOOK 263, PAGE 537, DEED RECORDS, AND ITS SOUTHERLY EXTENSION, A DISTANCE OF 476 FEET;
THENCE EAST A DISTANCE OF 20 FEET TO THE POINT OF BEGINNING.

ALSO TOGETHER WITH A 15 FOOT SEWER EASEMENT DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE ABOVE DESCRIBED TRACT;
THENCE SOUTH A DISTANCE OF 15 FEET;
THENCE WEST TO THE CENTERLINE OF THE CITY OF PORTLAND SEWER AS DESCRIBED IN BOOK 174, PAGE 281, DEED RECORDS;
THENCE NORTH 38° 26' EAST ALONG SAID CENTERLINE TO A POINT WHICH IS DUE WEST FROM THE SOUTHWEST CORNER OF A TRACT OF LAND DESCRIBED CONTRACT OF SALE TO HERBERT C. WILTON, ET UX, BY INSTRUMENT RECORDED OCTOBER 25, 1962, BOOK 612, PAGE 409, DEED RECORDS;
THENCE EAST TO THE SOUTHWEST CORNER OF AFORESAID WILTON TRACT;
THENCE CONTINUING EAST ALONG THE SOUTH BOUNDARY LINE OF SAID WILTON TRACT TO THE POINT OF BEGINNING.

**Exhibit A
Property Descriptions**

THENCE SOUTH 100 FEET TO A POINT;
THENCE WEST 200 FEET TO A POINT;
THENCE NORTH 100 FEET TO A POINT, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;
THENCE WEST ALONG THE SOUTH BOUNDARY LINE OF A TRACT OF LAND CONVEYED TO HERBERT C. WILTON, ET UX, BY CONTRACT OF SALE, RECORDED OCTOBER 25, 1962, IN BOOK 612, PAGE 409, DEED RECORDS, TO THE SOUTHWEST CORNER THEREOF;
THENCE NORTH ALONG THE WEST BOUNDARY LINE THEREOF A DISTANCE OF 8 FEET TO THE CENTERLINE OF THE CITY OF PORTLAND SEWER AS DESCRIBED IN BOOK 174, PAGE 281, DEED RECORDS;
THENCE SOUTH 38° 26' WEST ALONG THE SAID CENTERLINE TO A POINT WHICH IS WEST 1 FOOT FROM THE WEST BOUNDARY LINE OF SAID WILTON TRACT WHEN MEASURED AT RIGHT ANGLES THERETO;
THENCE SOUTH PARALLEL WITH WEST BOUNDARY LINE THEREOF A DISTANCE OF 6.86 FEET;
THENCE EAST TO A POINT WHICH IS SOUTH FROM THE TRUE POINT OF BEGINNING;
THENCE NORTH 1 FOOT TO THE TRUE POINT OF BEGINNING.

Draft

PERMANENT SEWER EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that, Metro, an Oregon municipal corporation, and the North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451 (“NCPRD”), collectively “Grantors,” in consideration of the sum of * (\$*) and no/100 Dollars, and other good and valuable consideration, to them* paid by the City of Portland, a municipal corporation of the State of Oregon (Grantee), do* hereby grant unto said City of Portland, an exclusive and perpetual sewer easement of not more than thirty (30) feet in width for the purpose of laying down, constructing, reconstructing, operating, inspecting, monitoring and maintaining a sewer or sewers and appurtenances, through, under, over and along the property described commonly known as Tax Lots 3609, 3700 and 3800, in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian, and more specifically described in **Exhibit A** attached hereto and by this reference made a part hereof (the Property), as depicted in **Exhibit B** attached hereto and by this reference made a part hereof..

IT IS UNDERSTOOD and agreed that:

- A. Grantee shall obtain any local, state, or federal permits necessary to undertake any work on the Properties authorized by this Easement
- B. Grantee will restore the easement area to a condition that is as good as or better than the condition existing prior to the original construction, except as to permanent changes made necessary by and authorized under the easement.
- C. No other utilities, buildings, facilities, easements, material storage, grade change or tree planting will be allowed within the easement boundaries without prior written consent of the Director of the Bureau of Environmental Services. Landscaping which by its nature is shallow-rooted and may be easily removed to permit access to the sewer lines and facilities authorized by this easement, shall not require consent.

After Recording Return to:

- D. Grantee agrees that it will make every reasonable effort to minimize construction impacts and will maintain Grantors' access and use of the easement area during revegetation, to the extent practicable.
- E. This easement does not grant or convey to Grantee any right or title to the surface of the soil along the route of said sewer except for the purpose of laying down, constructing, reconstructing, operating, inspecting and maintaining the same.
- F. Grantors reserve all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted.
- G. This easement shall bind the heirs and assigns of Grantors and shall inure to the benefit of the successors in title of Grantee.
- H. The parties acknowledge that they each have disclosed to the other parties all knowledge of any release of hazardous substances onto or from the property, and disclosed any known report, investigation, survey, or environmental assessment regarding the subject property. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- I. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantee, its successors and assigns, agrees to defend, indemnify and hold harmless the Grantors, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- J. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantors, their successors and assigns, agree to defend, indemnify and hold harmless the Grantees, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantors. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- K. If the parties to this agreement (Grantors and Grantee) discover preexisting environmental contamination at the site it is agreed that the contamination will be remediated and the cost for such remediation will be split equally in thirds between the parties.

IN WITNESS WHEREOF, the Grantors above named, have hereunto set their hands this _____ day of _____, 2008.

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on _____, 2008,
by *.

Notary Public for Oregon
My Commission expires _____

APPROVED AS TO FORM:

City Attorney

APPROVED:

Bureau of Environmental Services Director
or his designee

Draft

PERMANENT CHANNEL CHANGE EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that Metro, an Oregon municipal corporation, and the North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451 (“NCPRD”), collectively “Grantors,” in consideration of the sum of * and no/100 Dollars (\$*), and other good and valuable consideration, to them* paid by the City of Portland, a municipal corporation of the State of Oregon (“Grantee”), do hereby grant unto said City of Portland, an exclusive and perpetual easement for a channel change over and across the property commonly known as Tax Lots 3609, 3700 and 3800, in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian, and more specifically described in **Exhibit A** attached hereto and by this reference made a part hereof (the Property), as depicted in **Exhibit B** attached hereto and by this reference made a part hereof.

IT IS UNDERSTOOD and agreed that:

- A. Grantee shall have the right to go upon the Property for the purpose of making a channel change in Johnson Creek as necessitated by the construction and improvement of the Lents II Interceptor Project. Grantee may use and appropriate for the project, without additional compensation, all material excavated in the making of said channel change.
- B. Grantee shall obtain any local, state, or federal permits necessary to undertake any work on the Properties authorized by this Easement.
- C. Upon completion of the channel change, the relocated channel shall become the natural channel of Johnson Creek for all intents and purposes. Grantee and Grantors acknowledge that Johnson Creek is a natural system and its channel and floodplain may change over time. The Permanent Channel Change Easement area is established to accommodate reasonable changes in the Johnson Creek channel alignment. Grantee shall have the right, although it is not obligated to do so, to manage, monitor, repair and replace said Johnson Creek in its relocated channel and Grantee may go

After Recording Return to: _____

upon the Property as necessary for such purposes. Grantee agrees to coordinate with Grantors regarding proposed channel modifications and Grantors agree to defer to Grantees judgment regarding proposed channel changes within the Permanent Channel Change Easement area.

- D. In the event that Johnson Creek leaves or threatens to leave the Permanent Channel Change Easement area, Grantee and Grantors agree to cooperate in any flood mitigation and channel change measures that are pursued and to share personnel and other costs as agreed to by the parties at that time.
- E. Grantee will restore the easement area to a condition that is as good as or better than the condition existing prior to the original construction, except as to permanent changes made necessary by and authorized under the easement.
- F. No other utilities, buildings, facilities, easements, material storage, or grade change will be allowed within the easement boundaries without prior written consent of the Director of the Bureau of Environmental Services.
- G. Grantors reserve all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted.
- H. This easement shall bind the heirs and assigns of Grantors and shall inure to the benefit of the successors in title of Grantee.
- I. The parties acknowledge that they each have disclosed to the other parties all knowledge of any release of hazardous substances onto or from the property, and disclosed any known report, investigation, survey, or environmental assessment regarding the subject property. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- J. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantee, its successors and assigns, agrees to defend, indemnify and hold harmless the Grantors, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- K. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantors, their successors and assigns, agree to defend, indemnify and hold harmless the Grantees, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers,

agents or employees of the Grantors. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.

- L. If the parties to this agreement (Grantors and Grantee) discover preexisting environmental contamination at the site it is agreed that the contamination will be remediated and the cost for such remediation will be split equally in thirds between the parties.

IN WITNESS WHEREOF, the Grantors above named, have hereunto set their hands this _____ day of _____, 2008.

*

*

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on _____, 2008,
by *.

Notary Public for Oregon
My Commission expires _____

APPROVED AS TO FORM:

City Attorney
APPROVED:

Bureau of Environmental Services Director
or his designee

Draft

TEMPORARY CONSTRUCTION EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that Metro, an Oregon municipal corporation, and the North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451 (“NCPRD”), collectively “Grantors,” in consideration of the sum of One (\$1.00) and other good and valuable consideration, to them* paid by the City of Portland, a municipal corporation of the State of Oregon (Grantee), do* hereby grant unto said City of Portland a temporary easement for the purpose of construction, construction support and revegetation activities associated with the Lents II Interceptor Project through, under, over and along the property commonly known as Tax Lots 3609, 3700 and 3800, in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian, and more specifically described in **Exhibit A** attached hereto and by this reference made a part hereof (the Property), as depicted in **Exhibit B** attached hereto and by this reference made a part hereof.

IT IS UNDERSTOOD and agreed that:

- A. This temporary easement is granted for a term of six years, commencing no earlier than May 15, 2011, and terminating no later than May 14, 2017, for the following activities: (a) Grantee shall have exclusive use of the easement area for construction and construction support activities from May 15, 2011, to December 21, 2011; (b) non-exclusive use of the easement area between December 22, 2011, and May 15, 2012, for the purpose of revegetation and stream restoration activities, and; (c) non-exclusive use of the easement area for 4 days each year between May 16, 2012, and May 14, 2017, for the purpose of monitoring, revegetation establishment and construction activities necessary to assure conformance with project design criteria.
- B. Grantee agrees to provide Grantors* with at least seven (7) days written notice prior to commencing work under this easement.

State ID #*	<u>After Recording Return to:</u>
R/W #	<u>106/800/Teresa Talbott</u>
	<u>Tax Statement shall be sent to:</u>
	<u>No Change</u>

Sewer, Channel Change, and Temporary Construction Easements

- C. Grantee agrees that it will make every reasonable effort to minimize construction impacts and will maintain Grantors'* access and use of the easement area during revegetation and reconstruction to the extent practicable.
- D. Grantee will restore the easement area to a condition that is as good as or better than the condition existing prior to the original construction.
- E. Grantors* reserve* all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted.
- F. This easement shall bind the heirs and assigns of Grantors* and shall inure to the benefit of the successors in title of Grantee.
- M. Grantee will provide Grantors* a copy of the revegetation plan for the easement area.
- N. Grantors* agree* not to disturb the plantings in the easement area during the term of this easement.
- O. The parties acknowledge that they each have disclosed to the other parties all knowledge of any release of hazardous substances onto or from the property, and disclosed any known report, investigation, survey, or environmental assessment regarding the subject property. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- P. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantee, its successors and assigns, agrees to defend, indemnify and hold harmless the Grantors, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- Q. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, Grantors, their successors and assigns, agree to defend, indemnify and hold harmless the Grantees, their officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions and suits (including attorney fees and costs) resulting from the release of hazardous substances onto or from the property caused by the officers, agents or employees of the Grantors. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- R. If the parties to this agreement (Grantors and Grantee) discover preexisting environmental contamination at the site it is agreed that the contamination will be remediated and the cost for such remediation will be split equally in thirds between the parties.

IN WITNESS WHEREOF, the Grantors* above named, have* hereunto set their* hand*
this _____ day of _____, 200*.

*

*

STATE OF OREGON

County of Multnomah

This instrument was acknowledge before me on _____, 200*,
by *.

Notary Public for Oregon
My Commission expires _____

APPROVED AS TO FORM:

City Attorney

APPROVED:

Bureau of Environmental Services Director
or his designee

Exhibit B
Sewer, Channel Change, and Temporary Construction Easements

Exhibit A to Resolution 08-3969

Produced by Systems Analysis: Map Request 4803 (KDR, TJP) September, 16th, 2008 \\Cassio\GIS\Projects_Arc\16947\MD\DLents_II_Interceptor_Easments.mxd

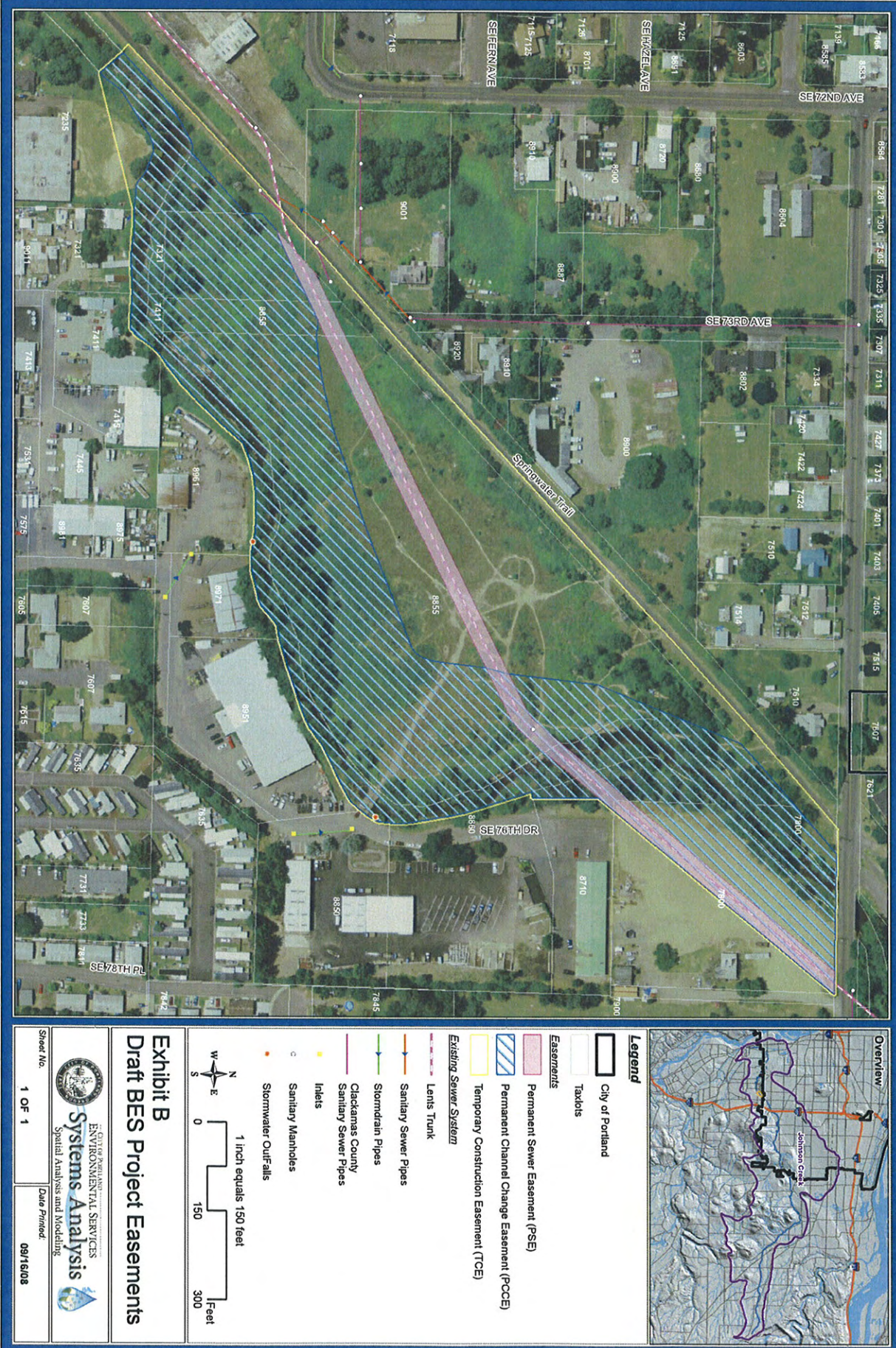


EXHIBIT C
Metro Easement Policy, Resolution No. 97-2539B

I HEREBY CERTIFY THAT THE FOREGOING
IS A COMPLETE AND EXACT COPY OF THE
ORIGINAL THEREOF

BEFORE THE METRO COUNCIL

Rebecca Y. Sheemaker
METRO COUNCIL ARCHIVIST

FOR THE PURPOSE OF APPROVING GENERAL) RESOLUTION NO. 97-2539B
POLICIES RELATED TO THE REVIEW OF)
EASEMENTS, RIGHT OF WAYS, AND LEASES)
FOR NON-PARK USES THROUGH PROPERTIES)
MANAGED BY THE REGIONAL PARKS AND) Introduced by
GREENSPACES DEPARTMENT.) Mike Burton, Executive Officer

WHEREAS, Metro currently owns and manages more than 6,000 acres of regional parks, open spaces, natural areas, and recreational facilities; and

WHEREAS, additional lands are being acquired through the Open Space, Parks, and Streams Bond Measure, approved by voters in May of 1995; and

WHEREAS, the primary management objectives for these properties are to provide opportunities for natural resource dependent recreation, protection of fish, wildlife, and native plant habitat and maintenance and/or enhancement of water quality; and

WHEREAS, Metro will be approached with proposals to utilize regional parks, open spaces, natural areas, and recreational facilities property for utility, transportation, and other non-park purposes; and

WHEREAS, Metro seeks to insure that these uses have no negative impact upon the primary management objectives of Metro Regional Parks and Greenspaces properties; and

WHEREAS, it would be in Metro's best interest to provide for the orderly evaluation and consideration of proposals to utilize portions of Metro Regional Parks and Greenspaces properties for utility, transportation and other non-park uses; NOW THEREFORE,

BE IT RESOLVED, that the Metro Council hereby adopts the policy attached as Exhibit "A" for any and all requests related to formal proposals for the use of Metro Regional Parks and Greenspaces properties for the purposes noted therein.

ADOPTED by the Metro Council this 6th day of November, 1997.

Jon Kvistad
Jon Kvistad, Presiding Officer

ATTEST:

Cheryl B...
Recording Secretary

Approved as to Form:

Daniel B. Cooper
Daniel B. Cooper, General Counsel

EXHIBIT C
Metro Easement Policy, Resolution No. 97-2539B

Exhibit "A"

METRO POLICY RELATED TO THE REVIEW OF
EASEMENTS, RIGHT OF WAYS, AND LEASES
FOR NON-PARK USES

Metro owns and manages , either on its own or in partnership with other government and private entities, several thousand acres of regional parks, open spaces, natural areas and recreational facilities. These facilities are maintained to promote and preserve natural resources and recreational opportunities for the public consistent with the Greenspaces Master Plan adopted by the Metro Council in 1992, the Open Spaces Bond Measure approved by the voters in 1995 and other restrictions limiting the uses of specific properties in existence at the time of its acquisition by the public. Nothing in this policy shall be construed to allow these facilities to be used in any manner which detracts from this primary purpose. This policy is written from the perspective of Metro as the property owner, however, in those cases in which Metro co-owns a property with other entities, all decisions concerning the use of the property in question will be fully coordinated with the other owners. In addition, all new development and all proposed work within Water Quality Resource Areas or other environmentally sensitive work will be conducted in accordance with Metro or local government policies, to include where appropriate, application for permits and completion of environmental reviews. In event that local government policies are less restrictive than the Metro Model ordinances, Metro will apply the more restrictive Metro policies.

Regarding requests for easements, right of ways, and leases for non-park uses in Metro owned or managed regional parks, natural areas or recreational facilities, it is Metro's policy to:

- 1) Provide for formal review of all proposed easements, right of ways, and leases for non-park, uses by the Regional Parks and Greenspaces Advisory Committee, the Regional Facilities Committee and the full Council. Notwithstanding satisfaction of the criteria set forth herein, the final determination of whether to approve a proposed easement, right of way, or lease is still subject to the review and approval by the full Metro Council.
- 2) Prohibit the development of utilities, transportation projects and other non-park uses within corridors or on sites which are located inside of Metro owned or managed regional parks, natural areas, and recreational facilities except as provided herein.
- 3) Reject proposals for utility easements, transportation right of ways and leases for non-park uses which would result in significant, unavoidable impacts to natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management.
- 4) Accommodate utility easements, transportation right of ways or other non-park uses when the Regional Parks and Greenspaces Department (the Department) determines that a proposed easement, right of way or non-park use can be accommodated without significant impact to

EXHIBIT C
Metro Easement Policy, Resolution No. 97-2539B

natural resources, cultural resources, recreational facilities, recreational opportunities or their operation and management; and that the impacts can be minimized and mitigated.

5) Require full mitigation and related maintenance, as determined by the Department, of all unavoidable impacts to natural resources, recreational facilities, recreational opportunities or their operation and management associated with the granting of easements, right of ways, or leases to use Metro owned or managed regional parks, natural areas or recreational facilities for non-park uses.

6) Limit rights conveyed by easements, right of ways, and leases for non-park uses to the minimum necessary to reasonably accomplish the purpose of any proposal.

7) Limit the term of easements, right of ways and leases to the minimum necessary to accomplish the objectives of any proposal.

8) Require "reversion", "non-transferable" and "removal and restoration" clauses in all easements, right of ways and leases.

9) Fully recover all direct costs (including staff time) associated with processing, reviewing, analyzing, negotiating, approving, conveying or assuring compliance with the terms of any easement, right of way, or lease for a non-park use.

10) Receive no less than fair market value compensation for all easements, right of ways, or leases for non-park uses. Compensation may include, at the discretion of the Department, periodic fees or considerations other than monetary.

11) Require full indemnification from the easement, right of way or lease holder for all costs, damages, expenses, fines or losses related to the use of the easement, right of way or lease. Metro may also require appropriate insurance coverage and/or environmental assurances if deemed necessary by the Office of General Counsel.

12) Limit the exceptions to this policy to: grave sales, utilities or transportation projects which are included in approved master/management plans for Metro regional parks, natural areas and recreational facilities; projects designed specifically for the benefit of a Metro regional park, natural area, or recreational facility; or interim use leases as noted in the Open Spaces Implementation Work Plan.

13) Provide for the timely review and analysis of proposals for non-park uses by adhering to the following process:

a) The applicant shall submit a detailed proposal to the Department which includes all relevant information including but not limited to: purpose, size, components, location, existing conditions, proposed project schedule and phasing, and an analysis of other alternatives which avoid the Metro owned or managed regional park, natural area or recreational facility which are considered infeasible by the applicant. Cost alone shall not constitute infeasibility.

EXHIBIT C
Metro Easement Policy, Resolution No. 97-2539B

b) Upon receipt of the detailed proposal, the Department shall determine if additional information or a Master Plan is required prior to further review and analysis of the proposal. For those facilities which have master plans, require that all proposed uses are consistent with the master plan. Where no master plan exists all proposed uses shall be consistent with the Greenspaces Master Plan. Deficiencies shall be conveyed to the applicant for correction.

c) Upon determination that the necessary information is complete, the Department shall review and analyze all available and relevant material and determine if alternative alignments or sites located outside of the Metro owned or managed regional park, natural area, or recreational facility are feasible.

d) If outside alternatives are not feasible, the Department shall determine if the proposal can be accommodated without significant impact to park resources, facilities or their operation and management. Proposals which cannot be accommodated without significant impacts shall be rejected. If the Department determines that a proposal could be accommodated without significant impacts, staff shall initiate negotiations with the applicant to resolve all issues related to exact location, legal requirements, terms of the agreement, mitigation requirements, fair market value, site restoration, cultural resources, and any other issue relevant to a specific proposal or park, natural area or recreational facility. The Department shall endeavor to complete negotiations in a timely and business-like fashion.

e) Upon completion of negotiations, the proposed agreement, in the appropriate format, shall be forwarded for review and approval as noted in item "1" above. In no event shall construction of a project commence prior to formal approval of a proposal.

f) Upon completion of all Metro tasks and responsibilities or at intervals determined by the Department, and regardless of Metro Council action related to a proposed easement, right of way or lease for a non-park use, the applicant shall be invoiced for all expenses or the outstanding balance on expenses incurred by Metro.

g.) Permission from Metro for an easement or right-of-way shall not preclude review under applicable federal, state or local jurisdiction requirements.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3969 AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND AND THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT REGARDING THE PURCHASE AND MANAGEMENT OF PROPERTY IN THE JOHNSON CREEK TARGET AREA ACQUIRED PURSUANT TO THE 2006 NATURAL AREAS BOND MEASURE

Date: October 16, 2008

Prepared by: Kathleen Brennan-Hunter

BACKGROUND

Metro staff desires to enter into an Intergovernmental Agreement (“IGA”) with City of Portland Bureau of Environmental Services (“BES”) and the North Clackamas Parks and Recreation District (“NCPRD”) for the purpose of acquiring, restoring, developing and managing three adjoining properties in the Johnson Creek Target Area of the 2006 Natural Areas Bond Measure. The properties are commonly known as “Lents II,” and are more specifically identified on Exhibit A to the IGA attached to this resolution (the “Properties”). Metro staff has entered into an agreement with a private landowner to purchase the largest of the properties, approximately 10 acres in size.

The Properties are located along the Springwater Corridor, with approximately 2,000 total feet of frontage on Johnson Creek, in unincorporated Clackamas County in the neighborhood of SE 76th Drive and Johnson Creek Boulevard. The Properties have been identified, as a Tier II acquisition priority in the Johnson Creek Target Area, to protect key properties adjacent to publicly owned resource areas and to promote partnership.

The IGA provides that the purchase of the Properties, if successfully negotiated, will be jointly funded by BES, NCPRD and Metro. BES will contribute funds to purchase one or more easements across the Property to complete a sewer project including the replanting and natural area restoration of the length of the creek on the property, improvement of two significant outfalls and construction of a side channel. NCPRD will contribute funds from its System Development Charges to purchase an undivided 50% fee interest in the Property as a tenant in common, in order to develop a community park on a portion of the Property; and Metro will contribute funds from the Natural Areas Bond Measure, approved by the voters in 2006, to purchase an undivided 50% fee interest in the Property as a tenant in common, in order to protect fish and wildlife habitat and water quality.

In its current state the Properties attract nuisance uses and are in a degraded environmental condition. BES’s commitment to a major restoration project, anticipated for construction in 2010, combined with future active park use to be developed by NCPRD, will make an enormous

impact on the health of Johnson Creek and for the entire neighborhood, providing a community amenity and flood abatement.

The IGA will provide as follows:

- 1) Metro shall be responsible for negotiating for purchase of, conducting due-diligence and coordinating closing for purchase and sale for the Properties;
- 2) Upon acquisition of one or more of the Properties, Metro and NCPRD agree to grant the sewer and restoration project easements to BES, to permit and require BES to access, repair, reconstruct, construct, maintain and monitor the existing sewer pipe that traverses the Properties, invest significantly in natural habitat and water quality enhancement and restoration activities along the creek and potentially replace a side channel to Johnson Creek on the Properties; and
- 3) NCPRD shall be responsible for development of active recreation on approximately four acres of the Properties and be responsible for long-term management and maintenance.

The proposed form of IGA is attached as Exhibit A to this resolution.

Acquisition, restoration and management of the Properties under the IGA is a unique collaboration of three agencies with different but aligned interests, pooling resources to establish a public asset to support improved water quality, habitat and create a community resource. Acquisition of the Properties will meet the Tier II and partnership objectives set forth in the Johnson Creek Target Area Refinement Plan, and will be conducted in accordance with the Natural Areas Work Plan.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Resolution No. 06-3672B, "For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisitions and Water Quality Protection," was adopted on March 9, 2006.

The voters approved Metro's 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," was adopted by the Metro Council on March 1, 2007, and established the Acquisition Parameters

and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

3. Anticipated Effects

Metro and NCPRD shall each hold a 50% interest in the Property and BES shall hold an easement for its sewer and related improvements. BES shall be responsible for restoration of the Properties and NCPRD for development of a community park and for the Properties' long-term maintenance and management.

4. Budget Impacts

The Properties will be purchased utilizing 2006 Regional Bond proceeds. Stabilization, restoration, and management costs will be borne exclusively by NCPRD and BES pursuant to the terms of the IGA.

RECOMMENDED ACTION

The Chief Operating Officer recommends passage of Resolution No. 08-3969.

M:\attorney\confidential\16 BondMeas.2006\04 Acquisitions\29 Johnson Creek Target Area\29.009 Emmert Lents II\Res 08-3969 IGA stfrpt final 100108.doc

Agenda Item Number 9.2

Resolution No. 08-3970, Authorizing the Chief Operating Officer to Purchase Property in the Johnson Creek Target Area under the 2006 Natural Areas Bond Measure and Subject to an Unusual Circumstance.

Executive Session

Metro Council Meeting
Thursday, October 16, 2008
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER
TO PURCHASE PROPERTY IN THE JOHNSON
CREEK TARGET AREA UNDER THE 2006 NATURAL
AREAS BOND MEASURE AND SUBJECT TO
UNUSUAL CIRCUMSTANCES

RESOLUTION NO. 08-3970

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved Measure 26-80, the 2006 Natural Areas Bond Measure submitted to the voters to preserve natural areas and clean water and protect fish and wildlife (the “Measure”); and

WHEREAS, the Johnson Creek Target Area was identified in the 2006 Natural Areas Bond Measure as one of 27 regional target areas for land acquisition;

WHEREAS, Metro staff has identified an opportunity to partner with the North Clackamas Parks and Recreation District (NCPRD) and the City of Portland Bureau of Environmental Services (BES) to jointly contribute towards the purchase of a specific property in the 2006 Natural Areas Bond Measure Johnson Creek Target Area, which property is identified and further described in Exhibit A to this resolution (the “Property”); and

WHEREAS, the ten acre Property includes over 1,600 feet of stream frontage along Johnson Creek and also abuts the Springwater Trail, is currently in a degraded condition, and is in an area of the region considered nature-deficient and in need of additional, accessible parks for nearby residents; and

WHEREAS, BES is contributing one third of the purchase of the Property in return for easements to allow BES to repair and realign a sewer pipe that crosses the Property and to undertake a major channel change, flood prevention, and natural restoration project along the full length of Johnson Creek on the Property, for which BES already has budgeted funds available; and

WHEREAS, NCPRD is contributing one third of the purchase price of the Property in return for a 50% ownership interest in the Property in order to develop a park on the upland portion of the site; and

WHEREAS, Metro is contributing one third of the purchase price of the Property in return for a 50% ownership interest in the Property in order to protect fish and wildlife habitat and water quality in the Johnson Creek watershed; and

WHEREAS, acquisition of the Property will further the Johnson Creek Target Area goal of partnering with other governments to acquire key parcels adjacent to existing publicly protected resource areas; and

WHEREAS, on March 1, 2007, the Metro Council adopted Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” (the “Acquisition Parameters and Due Diligence Guidelines”); and

WHEREAS, the Acquisition Parameters and Due Diligence Guidelines provide that the purchase price for property must be no more than the fair market value of the property as determined by an independent certified appraiser in an appraisal subject to no extraordinary assumptions, and as confirmed by a review appraisal by an independent certified appraiser; and

WHEREAS, the appraisal of the Property, which has been confirmed on review, included two extraordinary assumptions; one was the appraiser's assumption about the exact size of the area of the Property that could be developed as industrial land, consistent with its current zoning, and the other that it would be possible to obtain and construct access to the property sufficient to permit the Property to be developed as industrial land; and

WHEREAS, the inclusion of extraordinary assumptions in the appraisal of the Property is an "unusual circumstance," under the Acquisition Parameters and Due Diligence Guidelines, and the Council therefore must approve acquisition of the Property at the negotiated purchase price; and

WHEREAS, acquisition of the Property is warranted notwithstanding such unusual circumstance because of the opportunity for Metro to partner with BES and NCPRD to purchase and restore a property with extensive stream frontage along Johnson Creek and the Springwater Trail, and which is currently in a degraded condition; now, therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to acquire the property identified in Exhibit A (the "Property"), in partnership with BES and NCPRD, at the purchase price agreed to by the parties, notwithstanding the unusual circumstance that the appraisal for the Property included two extraordinary assumptions, provided that the acquisition is otherwise in accord with all of the Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

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

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 08-3970

**Target Area: JOHNSON CREEK
Lents II Property**

Description: Staff has identified an opportunity to acquire approximately 10 acres of land that will serve several restoration, conservation and recreation functions in the Johnson Creek Target Area. The property is located between the Springwater Corridor and Johnson Creek at 76th Drive, just south of the Multnomah and Clackamas County border. The property is approximately six miles from downtown Portland and west of the 205 Highway, therefore in one of the more heavily traveled segments of the Springwater Corridor trail.

The industrial-zoned property is relatively level and the majority of the site is suitable for intense restoration activity because it does not include high value plant life habitat. It is one of few large vacant parcels left in the area and surrounded by high density industrial, commercial and residential uses. An appraisal completed for Metro indicates that there is a strong demand for small manufacturing and light industrial spaces in this area of the City. Industrial development of the site would most likely wipe out the current opportunity to contribute to the health of Johnson Creek and provide a park area for the neighborhood and Springwater Trail users.

Currently, a sewer line and manhole are exposed at the creek, which has been channelized and eroded, rendering the creek separate from its natural floodplain. The BES project will grade the bed of the creek, bury the pipe, and raise the level of the creek, necessitating a side channel on the property. This will reconnect the floodplain and provide benefits for water quality and for species that depend on aquatic habitat. It will also allow for more water storage during heavy rain events. Approximately 4-5 acres of the property would be used for this purpose and planted in appropriate floodplain vegetation. The remainder acres would be restored and planned as a community park area although the proximity to the Springwater Trail will most likely bring more users than a typical community park.

- Bond Criteria Addressed:**
- Provides an uncommon opportunity to protect associated upland area in a densely developed area along Johnson Creek.
 - Improves water quality in Johnson Creek by restoring the floodplain function of the Creek to its more natural state.
 - Protects the health of the creek by allowing for preventive maintenance of sewer lines using best science currently available.
 - Fulfills refinement plan partnership objectives of working with the City of Portland's Bureau of Environmental Services and the North Clackamas Parks and Recreation District.
 - Leverages bond resources by limiting Metro investment to one third of the purchase price.
 - There has been strong community support and we anticipate active partnership in restoration.

Property identification: Tax Lots 3609, 3700 and 3800, Map 1S2E 29AB, Willamette Meridian; Clackamas County

Seller: Private Party

Size: 10.07 acres

Stream

Frontage: Johnson Creek, approximately 1,600 feet

Conditions: Standard due diligence; subject to unusual circumstance due to extraordinary assumptions in the appraisal regarding the developable area estimate and access issues.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3970 AUTHORIZING THE CHIEF OPERATING OFFICER TO PURCHASE PROPERTY IN THE JOHNSON CREEK TARGET AREA UNDER THE 2006 NATURAL AREAS BOND MEASURE AND SUBJECT TO UNUSUAL CIRCUMSTANCES

Date: October 16, 2008

Prepared by: Kathleen Brennan-Hunter

BACKGROUND

Metro staff has entered into an agreement with a private landowner (“Owner”) to purchase 10 acres of property in the Johnson Creek Target Area, which property is commonly known as “Lents 2” and is more specifically identified on Exhibit A attached to the resolution (the “Property”). The Property is located along the Springwater Corridor, with approximately 1,600 feet of frontage on Johnson Creek, in unincorporated Clackamas County in the neighborhood of SE 76th Drive and Johnson Creek Boulevard. The Property acquisition is a collaboration of the City of Portland Bureau of Environmental Services (“BES”), North Clackamas Parks and Recreation District (“NCPRD”) and Metro (collectively “the Parties”). The Property has been identified as a Tier II acquisition priority and partnership objective in the Johnson Creek Target Area.

The purchase of the Property is being jointly funded by the Parties with each party contributing one-third of the purchase price. BES will contribute funds in return for one or more easements across the Property to complete a sewer repair and channel restoration project. This project will include the replanting and natural area restoration of the length of Johnson Creek on the Property, improvement of two significant outfalls and construction of a side channel to improve floodplain capacity on the Property. NCPRD will contribute funds from its System Development Charges to purchase an undivided 50% fee interest in the Property as a tenant in common, in order to develop a community park on a portion of the Property; and Metro will contribute funds from the Natural Areas Bond Measure, approved by the voters in 2006, to purchase an undivided 50% fee interest in the Property as a tenant in common, in order to protect fish and wildlife habitat and water quality.

The Property is zoned industrial but has remained undeveloped likely due to access constraints. It is located in unincorporated Clackamas County in an area of mixed-use industrial property and lower cost housing. The current owner has used the property for long-term storage of construction debris and soil. In its current state the property attracts nuisance uses and is a blight along the Springwater Corridor Trail. BES’s commitment to a major restoration project, anticipated for construction in 2010, combined with future active park use by NCPRD will make an enormous impact on the health of Johnson Creek and the entire neighborhood. The City of Portland’s Bureau of Parks and Recreation has agreed to provide a permit of entry to the Parties to facilitate the development and maintenance of the Property, until future acquisitions might provide better access opportunities.

Metro has represented the Parties in negotiations to acquire the Property and will continue to represent the parties in negotiations to acquire two additional complementary properties. NCPRD will be responsible for future management of the Property. The terms of the roles of the parties are described in the Intergovernmental Agreement being presented to council concurrent with this resolution as Resolution No. 08-3969, "Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement with the City of Portland and the North Clackamas Parks and Recreation District Regarding the Purchase and Management of Property in the Johnson Creek Target Area Acquired Pursuant to the 2006 Natural Areas Bond Measure."

The appraisal of the Property, which has been confirmed on review, included two extraordinary assumptions. The first was the appraiser's assumption about the exact size of the area of the Property that could be developed as industrial land, consistent with its current zoning. The appraiser assumed that a total of six acres of the ten acre site could be developed. The appraiser listed this as an extraordinary assumption because any change in the developable area of the site would have a direct impact on the total valuation. The second extraordinary assumption was that it would be possible to obtain and construct access to the property sufficient to permit the Property to be developed as industrial land. As noted above, it is difficult to access the Property because it is located between the Springwater Corridor Trail and Johnson Creek. The area to its north, across the trail, is primarily a residential neighborhood. The area to its south, across Johnson Creek, is developed for light industrial uses. The Property is zoned for industrial use, but it is questionable whether the Property currently has sufficient legal access to permit it to be developed for that use. In addition, a bridge would have to be constructed to allow such use. At staff's request, the appraiser calculated the market value of the Property by assuming that access could be provided and by subtracting the value of the additional land that would be required to provide such access and the cost of the bridge that would need to be constructed.

Metro, BES, and NCPRD all acknowledge that such access issues also will affect plans to improve the Property as a park. That is why the partners have agreed, in a separate IGA, to continue to work to acquire additional properties in the area that could provide improved access. In addition, the Property will be easily accessible by pedestrians and cyclists using the Springwater Trail.

As a one-third contributor to the purchase price, Metro's contribution toward this purchase will not reduce the amount of bond funds available to purchase other critical, high priority target properties in the Johnson Creek Target Area. Metro's contribution to the purchase price is a critical factor in the property acquisition, without which the opportunity to protect and restore the Property may be lost.

Acquisition of the "Lents 2" Property with a one third contribution of regional bond funds is recommended because it will facilitate immediate restoration and ensure long-term protection of a unique urban 10-acre Johnson Creek and Springwater Corridor frontage Property. It will meet the goals and Tier II objectives set forth in the Johnson Creek Target Area Refinement Plan to partner with the City of Portland (and, in this case, NCPRD) to secure key parcels adjacent to existing publicly protected resource areas.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Resolution No. 06-3672B, “For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisitions and Water Quality Protection,” was adopted on March 9, 2006.

The voters approved Metro’s 2006 Natural Areas Bond Measure at the general election held on November 6, 2006.

Resolution No. 07-3766A, “Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan,” was adopted by the Metro Council on March 1, 2007, and established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 07-3851, “Approving the Natural Areas Acquisition Refinement Plan for the Johnson Creek and Watershed Target Area,” was adopted by the Metro Council on September 13, 2007.

Resolution No. 08-3969, “Authorizing the Chief Operating Officer to Execute an Intergovernmental Agreement with the City of Portland and the North Clackamas Parks and Recreation District Regarding the Purchase and Management of Property in the Johnson Creek Target Area Acquired Pursuant to the 2006 Natural Areas Bond Measure,” being introduced concurrently with this resolution.

3. Anticipated Effects

NCPRD, BES, and Metro shall pay equal thirds of the purchase price to acquire the Property. Metro and NCPRD shall each hold a half interest in the property and BES shall hold an easement for its sewer and Johnson Creek restoration-related improvements. BES shall be responsible for restoration of the property and NCPRD for development of a community park and for long-term maintenance and management of the Property.

4. Budget Impacts

Metro’s contribution to the Property shall be funded utilizing 2006 Regional Bond proceeds. Stabilization, restoration, and management costs will be borne exclusively by BES and NCPRD pursuant to the terms of the IGA.

RECOMMENDED ACTION

The Chief Operating Officer recommends passage of Resolution No. 08-3970.