



**METRO**

**Agenda**

MEETING: METRO COUNCIL  
DATE: November 6, 2008  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

**1. INTRODUCTIONS**

**2. CITIZEN COMMUNICATIONS**

**3. CONSENT AGENDA**

3.1 Consideration of Minutes for the October 23, 2008 Metro Council Regular Meeting.

3.2 **Resolution No. 08-3999**, Amending the Natural Areas Acquisition Refinement Plan for the Forest Park Connections Target Area and Authorizing the Chief Operating Officer to Lease Property to the Audubon Society of Portland, Oregon.

**4. ORDINANCES - SECOND READING**

4.1 **Ordinance No. 08-1202**, Amending the FY 2008-09 Budget and Appropriations Schedule By Transferring Appropriations From Contingency For the Sustainable Metro Initiative, Adding 1.0FTE Project Manager, Amending The FY 2008-09 Through FY 2012-13 Capital Budget and Declaring an Emergency. Park

**5. RESOLUTIONS**

5.1 **Resolution No. 08-4002**, For the Purpose of Amending the Capital Budget For Fiscal Years 2008-09 Through 2012-13 Increasing Several Currently Approved Capital Projects. Park

5.2 **Resolution No. 08-3976**, Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Waste Management of Oregon, Inc. For Delivery of Putrescible Solid Waste From the Troutdale Transfer Station to the Columbia Ridge Landfill and Riverbend Landfill. Park

5.3 **Resolution No. 08-3983**, Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Epson Portland, Inc. For Delivery of Industrial Solid Waste and Putrescible Solid Waste to the Covanta Harrington

Waste-To-Energy Facility

5.4 **Resolution No. 08-3984**, Authorizing the Chief Operating Officer to Issue a Renewed Non-System License Jointly to Willamette Resources, Inc. And Allied Waste of Clackamas and Washington Counties for Delivery of Putrescible Solid Waste to the Covanta Waste-To-Energy Facility. Hosticka

5.5 **Resolution No. 08-4001**, For the Purpose of Authorizing the Study of Lands to Complete a Suitability Analysis in Anticipation of Designating Urban Reserves and Rural Reserves. Harrington

**6. CHIEF OPERATING OFFICER COMMUNICATION**

**7. COUNCILOR COMMUNICATION**

**ADJOURN**

**Television schedule for November 6, 2008 Metro Council meeting**

<p><b>Clackamas, Multnomah and Washington counties, and Vancouver, Wash.</b>          Channel 11 – Community Access Network  <a href="http://www.tvctv.org">www.tvctv.org</a> – (503) 629-8534          2 p.m. Thursday, November 6 (Live)</p>	<p><b>Portland</b>          Channel 30 (CityNet 30) – Portland Community Media  <a href="http://www.pcmtv.org">www.pcmtv.org</a> – (503) 288-1515          8:30 p.m. Sunday, November 9          2 p.m. Monday, November 10</p>
<p><b>Gresham</b>          Channel 30 – MCTV  <a href="http://www.mctv.org">www.mctv.org</a> – (503) 491-7636          2 p.m. Monday, November 10</p>	<p><b>Washington County</b>          Channel 30 – TVC-TV  <a href="http://www.tvctv.org">www.tvctv.org</a> – (503) 629-8534          11 p.m. Saturday, November 8          11 p.m. Sunday, November 9          6 a.m. Tuesday, November 11          4 p.m. Wednesday, November 12</p>
<p><b>Oregon City, Gladstone</b>          Channel 28 – Willamette Falls Television  <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> – (503) 650-0275          Call or visit website for program times.</p>	<p><b>West Linn</b>          Channel 30 – Willamette Falls Television  <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> – (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](http://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).

Consideration of Minutes for the October 23, 2008 Metro Council  
Regular Meeting

***Consent Agenda***

Metro Council Meeting  
Thursday, November 6, 2008  
Metro Council Chamber

## MINUTES OF THE METRO COUNCIL MEETING

Thursday, October 23, 2008  
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Kathryn Harrington, Robert Liberty, Rex Burkholder, Rod Park, Carl Hosticka, Carlotta Collette

Councilors Absent:

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

### 1. INTRODUCTIONS

There were none.

### 2. CITIZEN COMMUNICATIONS

There were none.

### 3. Removed from agenda

### 4. REPORT ON NATURAL AREAS OVERSIGHT COMMITTEE

Peter Krainock, Natural Areas Oversight Committee Chair, provided a review of the regional natural areas and Nature in Neighborhood (NIN) capital grants program. He highlighted the work of the committee over the last year. He talked about being imbedded in the program itself. The committee was encouraged to become experts in the natural areas. Council provided clear direction to the committee. The Metro Auditor also provided recommendations on the process. Mr. Krainock noted that the acquisitions program was working. The administrative costs were under the national average. He commended the Metro Council for the remarkable lack of politics in the processes. The staff proceeded based upon the science. The staff was highly qualified. He noted the double appraisal system; it was an enormous safeguard to protect the public's money. He spoke to outcomes, including financial costs. Metro was encouraged to devise performance measures that were unique. He then talked about the capital grants process and the committee's participation in the capital grants. He spoke to equitable distribution of Nature in Neighborhoods grants because the program was designed to be a regional grant program. They also encouraged learning from any contact. They encouraged developing additional matrices in case of a future program. They would also like to see an additional cost analysis in the coming year. They encouraged thinking big and looking at leveraging the money. Look at this program and do some things that hadn't been done before; be a government that learns.

Councilor Harrington wanted to understand the recommendation on outreach. What were they suggesting as the desired outcome? Mr. Krainock said this recommendation was related to the Nature in Neighborhoods grants. He provided further details on how to reach out to make sure there was equitable distribution. Councilor Harrington asked about practices that could be replicated. Mr. Krainock said they would be happy to provide feedback. Councilor Harrington talked about following the directive from the voters. Mr. Krainock said they did see some opportunities to leverage the bond measure money with local jurisdictions. Councilor Burkholder asked about using the previous analysis of past purchases to provide guidance for future purchases. Mr. Krainock said they would utilize this analysis to learn lessons. Councilor Burkholder urged looking at equity that was not necessarily geographic. He felt their job was to look at these things in other ways than geographic because it was not the only way to define equity. Mr.

Krainock said it was important to report to the general public that efforts had been made to address the geographic issue. Councilor Liberty said he had been concerned about the governmental capacity. He felt the partnership requirement might be an issue. He felt the staff outreach was substantial.

Councilor Collette thanked them for the report. She asked him to talk more about thinking big. Mr. Krainock said creating the new performance measurements process was unique. It provided flexibility. They had seen flexibility in staff as well.

Councilor Park thanked the committee for their work. He said over time the economy changes. Some of the purchases that had been made were great. He suggested putting economic markers into the performance measures. Mr. Krainock thought that was a very good suggestion. He would add this in the coming years. Councilor Park also talked about the non-capital NIN grants. Staff had done a lot of outreach and that grant program had experienced the same issues of geographic equity. Staff had provided workshops on how to write grants. Geographic equity may not be the only equity component. Mr. Krainock said they would be looking at enhancing the performance measures for the coming year.

Council President Bragdon felt the character of the committee had been very useful to the Council and the staff, and that the committee had been very proactive in helping shape the program. He talked about the economy of today and that the real estate market was now in flux. He talked about appraisals and how they could integrate that discussion into their committee review. Council President Bragdon spoke to dead deals and learning from them. He was in favor of documenting the dead deals but wouldn't characterize those deals as failures. Mr. Krainock said it was a question of contacts that never became deals and was there a way of improving these contacts. Council President Bragdon asked about the refinement process and if it was sufficient. Mr. Krainock said this was what provided the framework to make the program successful. Council President Bragdon said the Council was very involved in the refinement process.

## 5. CONSENT AGENDA

### 5.1 Consideration of minutes of the October 16, 2008 Regular Council Meeting.

Motion: 

Councilor Burkholder moved to adopt the meeting minutes of the October 16, 2008 Regular Metro Council.
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Vote: 

Councilors Burkholder, Harrington, Liberty, Park, Collette, Hosticka and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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## 6. ORDINANCES – FIRST READING

### 6.1 **Ordinance No. 08-1202**, Amending the FY 2008-09 Budget and Appropriations Schedule by Transferring Appropriations from Contingency for the Sustainable Metro Initiative, adding 1.0FTE Project Manager, Amending The FY 2008-09 Through FY 2012-13 Capital Budget and Declaring an Emergency.

Council President Bragdon assigned Ordinance No. 08-1202 to Council.

## 7. ORDINANCES – SECOND READING

### 7.1 Removed from agenda.

**8. RESOLUTIONS**

8.1 **Resolution No. 08-3989**, For the Purpose of Granting a Variance Request Submitted by Waste Management of Oregon for the Hillsboro Landfill.

Motion:	Councilor Liberty moved to adopt Resolution No. 08-3989.
Seconded:	Councilor Harrington seconded the motion

Councilor Liberty introduced the resolution and explained that this variance for the Hillsboro Landfill. He spoke to Enhanced Dry Waste Recovery Program (EDWRP) and the deadline of January 1, 2009. If a facility could not meet the deadline, the landfill had to request a variance. He said the recommendation of the Chief Operating Office was to grant the variance with specific conditions (a copy of these conditions was included in the staff report).

Dean Kampfer, Waste Management, 7227 NE 55<sup>th</sup> Avenue Portland OR 9728 said they were here to discuss the variance and to provide an update on the dry waste facility. He thanked the Metro staff for reviewing their variance. Due to conditions outside of Waste Management's control, the Material Recovery Facility (MRF) would not be completed by January 1, 2009 but would be by July 1, 2009.

Dan Wilson, District Manager of Waste Management, 3205 SE Minter Bridge Rd Hillsboro OR 97123 provided an overview of the facility site and the new Material Recovery Facility (MRF) and maintenance facility. He talked about the timeline from February 2008 through July 2009.

Councilor Liberty asked about a realistic recovery rate before the process line was completed. Mr. Kampfer said that was difficult to tell at this point because of the different variables such as weather.

Councilor Park asked about the enforcement level and how that would be done to recover at least 25%. Mr. Kampfer said he assumed there would be no enforcement over the six months.

Scott Robinson, Deputy Chief Operating Officer, introduced the staff recommendation (a copy of his summary was included in the staff report). The COO recommended granting the variance.

Councilor Park asked about the standards for their recovery plan during that six month delay. Roy Brower, Regulatory Affairs, responded to his question. Councilor Park asked what standards the other facilities would be held to. Mr. Brower responded to his question and talked about the phase-in period. Councilor Harrington said one of her concerns was the ability for the ecosystem to continue to work. She assumed that the tonnage the Hillsboro Landfill received would go through the temporary MRFing. Mr. Brower said they were waiting to see what the proposal would be from Waste Management. Councilor Harrington commented on the regional waste system and the tonnage that was in play. Mr. Brower said she was correct in her analysis.

Council President Bragdon opened a public hearing. No one came forward. Council President Bragdon closed the public hearing

Councilor Burkholder explained his yes vote. He urged paying close attention to the recovery plan that was due to Metro on November 15<sup>th</sup>. He thought it was a reasonable request. Councilor Harrington thanked Councilor Park for exploring potential options. She was concerned about the solid waste recovery plan, particularly for the west side. She would be supporting this resolution. Councilor Liberty asked about recovery rates during that six month period, and was this discussed? Why wouldn't the waste go to the facility that had the capacity? Mr. Robinson responded to his question. Councilor Liberty disclosed

that they were applying pre-existing standards so he considered this as a quasi-jurisdictional proceeding therefore he disclosed an ex-parte contact, Ray Phelps. Councilor Park talked about the competitive market. He appreciated staff's response about not creating unfair advantages. He would be voting in favor. Council President Bragdon explained his yes vote.

Vote:

Councilors Park, Burkholder, Collette, Harrington, Liberty, Hosticka and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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8.2 **Resolution No. 08-3990**, For the Purpose of Denying a Variance Request Submitted By Lakeside Reclamation Landfill.

Motion:	Councilor Liberty moved to adopt Resolution No. 08-3990.
Seconded:	Councilor Harrington seconded the motion

Councilor Liberty explained the variance request. The recommendation was for a denial. He explained what a yes vote would be.

Larry Davidson, Grabborn Attorney, 1 SW Columbia #1850 Portland OR 97258, introduced Howard Grabborn, who said he had asked staff to pull this resolution off the agenda. They had not had time to fully respond to what they had just received over the last week. They wanted time to look at the new materials. If Council did proceed with the variance request, he commented that Lakeside could not build a MRF. He couldn't get the county approval to MRF. They couldn't change their operations for just six months. He said part of the reason for the denial were the citations from Department of Environmental Quality (DEQ). This governing body couldn't make a decision based on unfounded allegations. Lakeside Landfill was a small operation. He felt the six month delay was warranted. Lakeside had been responsible (a copy of his letter was included in the record). As of July 1, 2009 Lakeside would be gone. They thought they had met the purpose and intent of EDWRP. Councilor Harrington asked about his comment about the process being accelerated. Mr. Davidson said he didn't think he had said this. Councilor Liberty said the variance in the case of Lakeside would not get to the objective of 15% residual. Mr. Davidson responded to his comment. Councilor Hosticka said he was trying to understand what Council was expected to do; if this were removed from the agenda, what would this allow Lakeside to do? Mr. Davidson said it would allow them to review the new materials. He talked about the consideration of the Designated Facility Agreement (DFA) in December. They would like to come back and talk to Council about the variance. If Lakeside were shut down, those loads would go to Hillsboro or Metro. Councilor Hosticka said if they allowed a delay of the resolution, would that give them what they wanted. Mr. Davidson responded to his question. Councilor Liberty asked clarifying questions. Mr. Davidson responded that business would be as usual.

Mr. Robinson introduced the COO's recommendation (a copy of his summary was included in the staff report). Councilor Park asked about the timeline. Mr. Robison said if the COO's recommendation was upheld and the variance was denied, Lakeside still had the opportunity to seek a DFA. Councilor Hosticka said if Council upheld the recommendation to deny the variance, they could apply in six months? Dan Cooper, Metro Attorney, said if Council denied a variance, then November 1 became the real deadline. If Lakeside sought a DFA, they could continue to take waste from the Metro region until July 1, 2009. Councilor Hosticka asked if there had been any difference in failing to act and acting to accept the COO's recommendation. Mr. Cooper responded to his question. It was his advice to take a clean action on the recommendation today. Councilor Park asked further clarifying questions. Mr. Brower said it was Metro's intent to follow the EDWRP standards for Metro's facilities. Councilor Liberty asked further questions. Mr. Robinson said his summary was correct. Council President Bragdon said our Code was fairly clear. It

required certain things of facilities. If the facilities can't meet those requirements, it was appropriate to seek a variance. In terms of the testimony today, would the recommendation change? Mr. Robinson said nothing would change in terms of the recommendation.

Council President Bragdon opened a public hearing.

Art Kamp, 14520 SW Pleasant Valley Rd, Beaverton OR 97007 provided his testimony for the record.

Larry Davidson said 90% of the waste that comes from Lakeside came from Metro so if they denied the waste, it would shut down Lakeside. He talked about their request and noted one of the Councilors had commented that his request was vague. Councilor Liberty asked if the client was notified that pictures were going to be taken. Mr. Davidson said he wasn't sure. Mr. Brower said when an inspector showed up at Lakeside, they checked in with the office. Those pictures were provided to the facility in the individual inspection reports. Councilor Harrington asked Mr. Davidson about the percent of business that Lakeside received from Metro. She clarified that the waste was from the Metro region. Mr. Davidson said yes.

Council President Bragdon closed the public hearing.

Councilor Liberty asked Mr. Cooper if there was a legal duty to provide them with more time. Mr. Cooper said no.

Councilor Hosticka said he was interested in the request for a delay from Lakeside. He felt the issue had gone on much too long. He thought the Council should deny the variance. He would support the resolution.

Councilor Park summarized that if they denied the variance, Lakeside could come back and ask for a DFA. He would be supporting the staff recommendation. Councilor Harrington concurred with Councilor Hosticka and explained why. Council President Bragdon concurred with the other Councilors comments about supporting the COO's recommendation.

Vote:

Councilors Park, Burkholder, Collette, Harrington, Liberty, and Council President Bragdon voted in support of the motion. The vote was 7 aye, the motion passed.
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## **9. CHIEF OPERATING OFFICER COMMUNICATION**

Scott Robinson, Deputy COO, noted the significant efforts of the Information Systems group to migrate to a new email system. The Oregon Zoo had achieved their goals for the Predators of the Serengeti exhibit.

## **10. COUNCILOR COMMUNICATION**

Councilor Hosticka said he had attended a meeting yesterday where they talked about building three arterials using existing connections to I-5. This was a positive outcome.

Councilor Collette updated the Council on the High Capacity Transit (HCT) think tank. Councilor Harrington asked if the meeting was noticed so they didn't have to worry about a quorum.



Councilor Burkholder said he participated in a federal transportation forum. The discussion was about vision of transportation in the State as well as how the federal government could help with that vision. He also talked about the joint Metro Policy Advisory Committee/Joint Policy Advisory Committee on Transportation/Council meeting which looked at the land use scenarios. He felt the discussion went well.

Councilor Liberty updated the Council on the regional revolving housing loan fund. He also talked about the Sellwood Bridge costs. He now had the information and felt this would make Council's discussion much more useful.

Council President Bragdon said the Lone Fir Working Committee met last night. Staff had done a great job in facilitating the discussion to design a memorial area. He talked about the groups who were involved to commemorate a variety of groups. Second, the Deputy COO was preparing a list of federal requests. He also noted that Council would not meet next week. Councilor Burkholder suggested emphasizing green projects.

Councilor Harrington said there were two Listening Posts for the Metropolitan Transportation Improvement Program (MTIP) in Oregon City and at Metro in the chambers next week.

## **11. ADJOURN**

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 4:04 p.m.

Prepared by

A handwritten signature in black ink, appearing to read 'Chris Billington', written in a cursive style.

Chris Billington  
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF  
 OCTOBER 23, 2008**

<b>Item</b>	<b>Topic</b>	<b>Doc. Date</b>	<b>Document Description</b>	<b>Doc. Number</b>
5.1	Minutes	10/16/08	Metro Council Meeting Minutes of October 16, 2008	102308c-01
8.2	Email and attachment	10/16/08	To: Metro Council From: Jodie Scholz Re: Lakeside Landfill	102308c-02
8.2	Letter	9/26/08	To: Metro Council From: Brian Wegener, Watershed Watch Coordinator Tualatin Riverkeepers Re: Lakeside Landfill	102308c-03
8.2	Letter and request for variance	10/1/08	To: Metro Council From: Howard Grabborn., President Grabborn Inc Re: Lakeside Landfill	102308c-04
8.2	Email	10/20/08	To: Metro Council From: Meredith Jaeger Re: Lakeside Landfill	102308c-05
4.0	Report	October 2008	To: Metro Council From: Natural Areas Oversight Committee Re: A report to the community from the Natural Areas Program Performance Oversight Committee	102308c-06
8.1 & 8.2	Western Metro Region Waste System report	10/23/08	To: Metro Council From: Roy Brower, Solid Waste Regulatory Affairs Re: Report on Flow control	102308c-07
8.2	Testimony	10/23/08	To: Metro Council From: Art Kamp Re: Lakeside's request for variance	102308c-08
8.2	Testimony	10/23/08	To: Metro From: Larry Davidson Re: Lakeside's request to remove Res. No. 08-3990 from October 23, 2008 agenda	102308c-09
10	Map	10/23/08	To: Metro Council From: Council Hosticka Re: Revised Alternate Concept	102308c-10
1	Revised agenda	10/23/08	Metro Council Agenda for October 23, 2008 revised	102308c-11

Agenda Item Number 3.2

**Resolution No. 08-3999**, Amending the Natural Areas Acquisition Refinement Plan for the Forest Park Connections Target Area and Authorizing the Chief Operating Officer to Lease Property to the Audubon Society of Portland, Oregon.

*Consent Agenda*

Metro Council Meeting  
Thursday, November 6, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AMENDING THE NATURAL AREAS ACQUISITION)  
REFINEMENT PLAN FOR THE FOREST PARK ) RESOLUTION NO. 08-3999  
CONNECTIONS TARGET AREA AND )  
AUTHORIZING THE CHIEF OPERATING OFFICER ) Introduced by Chief Operating Officer  
TO LEASE PROPERTY TO THE AUDUBON ) Michael J. Jordan, with the concurrence of  
SOCIETY OF PORTLAND, OREGON ) Council President David Bragdon

WHEREAS, in November, 2006, voters in the Metro Area approved a \$227.4 million ballot measure 26-80, the 2006 Natural Areas Bond Measure; and,

WHEREAS, the Forest Park Connections Target Area was identified in the Measure as one of 27 regional target areas for land acquisition, building on the success of land acquisitions in the Forest Park Target Area pursuant to Metro’s 1995 Open Spaces Bond Measure Program; and

WHEREAS, Metro has purchased over 865 acres in the Forest Park Target Area pursuant to the 1995 Open Spaces Bond Measure and the associated implementation work plan; and

WHEREAS, on September 6, 2007, by its approval of Resolution No. 07-3833, the Metro Council adopted a refinement plan for the Forest Park Connections target area which authorized the purchases of sites illustrated in a confidential tax-lot specific map identifying priority properties for acquisition; and

WHEREAS, a goal of the Forest Park Connections target area refinement planning focuses on acquiring key properties to connect Forest Park to other public lands; and

WHEREAS, a Tier II objective of the Forest Park Connections target area refinement plan is to acquire important headwater areas within the Balch, Saltzman, Doane and Miller Creek watersheds, on the east side of the ridgeline, primarily using conservation easements; and

WHEREAS, a Partnership Objective of the Forest Park Connections target area refinement plan is to pursue partnership opportunities with local land trusts to leverage regional bond dollars targeted to the Forest Park Connections area; and

WHEREAS, the Oregon Parks Foundation, an Oregon non-profit corporation that holds land for the purpose of preserving natural areas (hereafter the “OPF”), is the owner of an 86.45 acre parcel of land, known as the Collins Sanctuary, that is currently being leased by the Audubon Society and used as a nature preserve open to the public (hereafter the “Property”); and

WHEREAS, the OPF intends to sell its real property assets and dissolve its corporate status within approximately one year; and

WHEREAS, the OPF is willing to sell its property to Metro at a below-market price of \$1,000 per acre; and

WHEREAS, the OPF property meets the above-referenced standard for the Forest Park Connections target area in that it is adjacent to Forest Park and the Audubon Society land which connects to Forest Park and is open to the public; it contains a creek that is a headwater of Balch Creek; and acquisition of the OPF property leads to a mutually beneficial partnership with the Audubon Society; and

WHEREAS, the refinement plan map for Tiers I and II of the Forest Park Connections target area does not currently include the 86 acre Property identified in Exhibit A to this resolution; and

WHEREAS, the Audubon Society is willing to manage and maintain trails on the Property under a lease agreement that will share Property management costs with Metro, pursuant to the lease terms attached as Exhibit B to this resolution; now therefore

BE IT RESOLVED that the Metro Council amends the Forest Park Connections regional target area refinement plan to include the property identified in Exhibit A to this resolution and authorizes the Chief Operating Officer to enter into an agreement to lease the Property to the Audubon Society substantially in conformance with the lease attached as Exhibit B to this resolution.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
David Lincoln Bragdon, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**Target Area** FOREST PARK CONNECTIONS

**Description** Staff has identified an opportunity to protect 86.45 acres of vacant land with valuable natural resources, close in to the city of Portland. The majority of the Oregon Parks Foundation property, also known as the Collins Sanctuary, is steeply sloped and has significant growth of Maple, Hemlock, Red Cedar, Alder and Douglas Fir trees. It is not currently developable for residential uses. Although it is zoned as Commercial Forest Use, no timber cruise has been done. The property also has Multnomah County zoning overlays to protect wildlife habitat (SEC-h), streams (SEC-s) and steep slopes (Hillside Development Overlay), emphasizing the fragile ecosystem that exists. Some of the larger bird populations on the property include the Chestnut Backed Chickadee, Steller's Jay, Varied Thrush and Mourning Doves.

Primary access to the property is from a trailhead on Cornell Road and there is also street frontage on NW Queens Drive. The property is adjacent to the Portland Urban Growth Boundary and has proximity to Forest Park and Macleay Park. It is currently being used as part of the Audubon Society's headquarters and sanctuaries complex. The Collins Sanctuary is larger than the Founders and Pittocks Sanctuaries and is connected to them through trails. The current trail on the OPF Property was once a wagon road for the homestead that was located there. Balch Creek traverses the property with approximately 5,500 feet of creek frontage and joins with another Balch tributary to go under Cornell Road via culvert, continuing on through the Pittock Sanctuary area of the Audubon Society complex. A population of native cutthroat trout is in the lower creek, isolated by culverts.

The Audubon Society headquarters, nature store and wildlife care center are located on Cornell Road about one-eighth of a mile from the property. Therefore, the Audubon Society is in a good position to monitor the property and effect routine maintenance, repairs and restoration projects on the property. The proposed Lease contains restrictions on the Audubon activities and provides a process for general management responsibility and approval by Metro for special projects or uses for the property

Although the OPF property is not threatened by development at this time, it would be subject to timber harvest if the property was in private hands, and its adjacency to the Portland Urban Growth Boundary suggests that it may be considered for urban development in the future.

- Bond Criteria Addressed**
- Resolution No. 06-3672B, passed by the Metro Council in March, 2006, states that Bond Measure funds will be used “for the purposes of preserving natural areas and stream frontages, maintaining and improving water quality, and protection of fish and wildlife habitat”. The Oregon Parks Foundation Property is unique in that the property currently serves these purposes and provides additional public access and enjoyment benefits through the Audubon Society’s operations. Acquisition of the Property ensures that these values and benefits will continue.
  - The below market purchase price is similar to conservation easement values, identified in the Forest Park Connections Target Area refinement plan as a primary tool to acquire headwater areas within the Balch Creek watershed.
  - Protection of this level of intact canopy on such a large acreage property drainages to the main stem of Balch Creek will keep water temperatures low, a major water quality benefit.
  - The long term lease of the property to the Audubon Society achieves the partnership objective of leveraging regional bond dollars, as the Audubon’s responsibility for managing trails, education programs and public enjoyment of the property reduces Metro’s obligations in those areas.

**Property identification** Township 1 North, Range 1 East, Section 31BD, Lot 00500  
Township 1 North, Range 1 East, Section 31AC, Lot 00400  
Township 1 North, Range 1 East, Section 31CB, Lot 00100  
Township 1 North, Range 1 East, Section 31CO, Lot 00100

**Sellers** Oregon Parks Foundation, Inc. an Oregon non-profit corporation

**Size** 86.45 Acres

**Stream** Balch Creek

**Frontage** Approximately 5,500 feet

**Conditions** Standard due diligence

**DRAFT  
LEASE**

LESSOR (“Metro”):

Metro, an Oregon municipal corporation  
600 NE Grand Avenue  
Portland, Oregon 97232-2736

LESSEE (“Audubon Society”):

Audubon Society of Portland, Oregon, an Oregon non-profit corporation  
5151 NW Cornell Road  
Portland, Oregon 97210

EFFECTIVE DATE: November \_\_\_\_\_, 2008

WHEREAS, Metro has entered into a purchase and sale agreement to acquire title to approximately 87 acres of real property, together with all the improvements thereon and all rights appurtenant thereto (including but not limited to access rights, timber rights, water rights, grazing rights, development rights and mineral rights), located at North Cornell Road in the County of Multnomah, State of Oregon, commonly known as Tax Lots 1N1E31AC-00400, 1N1E31BD-00500, 1N1E31C-00100, and 1N1E31CB-00100, Willamette Meridian, and more particularly described on the attached Exhibit A (the “Property”).

WHEREAS, Metro’s purpose in purchasing the Property is to preserve, protect, and enhance the fish and wildlife habitat and water quality benefits provided by the Property;

WHEREAS, the Audubon Society of Portland, an Oregon 501(c)(3) non-profit organization founded in 1902, exists as a vital protector of the Portland metropolitan area’s wildlife and natural resources;

WHEREAS, the Audubon Society utilizes land under its care as sheltered bird and animal habitat and outdoor classrooms, with goals in alignment with Metro’s 2006 Natural Areas Bond Measure;

WHEREAS, the Audubon Society currently leases such Property from its current owner for the purpose of using the Property for public recreation as a wildlife sanctuary and for education and research programs related thereto, and for maintaining the natural condition of the Property;

WHEREAS, Metro and the Audubon Society wish to enter into this Lease, which will be effective upon Metro’s closing on its acquisition of the Property, so that the Audubon Society may continue to lease the Property for the purposes stated herein below;



NOW THEREFORE, Metro and the Audubon Society enter into this Lease as provided in the following terms and conditions:

**Section 1. Description of Leased Property.** In consideration of the agreements described herein, Metro leases to the Audubon Society the property commonly known as Tax Lots 1N1E31AC-00400, 1N1E31BD-00500, 1N1E31C-00100, and 1N1E31CB-00100, Willamette Meridian, and more particularly described on the attached Exhibit A.

**Section 2. Term.** This Lease commences on the date that Metro takes title to the Property and terminates on October 31, 2018. Metro and the Audubon Society may, by written agreement signed by both parties, jointly terminate all or part of this Agreement based upon a determination that such action is in the public interest. Termination under this provision shall be effective as provided in such termination agreement. The Audubon Society acknowledges, consents to, and agrees that its prior lease of the Property dated February 1, 2005, from its prior owner, the Oregon Parks Foundation, Inc., is hereby terminated, without penalty, as of the Effective Date of this Lease.

**Section 3. No Rent.** The Audubon Society shall not be obligated to pay any rent to Metro for use of the Property. The consideration for this lease is the mutual agreements of the parties contained herein.

**Section 4. Metro's Right of Entry; Property To Be Managed As Natural Area.** Notwithstanding this Lease, Metro may go on the Property at any time to undertake any activities as Metro deems appropriate. Metro shall consult with the Audubon Society prior to undertaking any management activities on the Property and shall make its best effort to coordinate with and not to interfere with the Audubon Society's activities on and use of the Property. The Audubon Society acknowledges that Metro intends to manage the property as a natural area and to undertake management activities to improve the natural ecosystem and wildlife habitat on the Property as Metro deems appropriate in Metro's sole discretion. In order for the Property to reach its potential to create a high functioning natural habitat, Metro's management activities may include, without limitation, the removal of invasive plants, the planting of native plants, and the removal of trees, using any method that Metro deems appropriate in its sole discretion, including, without limitation, the possible use of herbicides and pesticides. Metro also may repair, reconstruct, and move the specific locations of trails and trail bridges, at Metro's sole discretion and cost, to mitigate trail impacts on the Property's natural resources, such as erosion and water quality impacts; provided, however, that the basic trail network depicted on the "Sanctuary Nature Trails" map attached hereto as Exhibit B (the trails identified as the Collins, North Collins, and South Collins Trails are on the Property, as is part of the Founders Trail) is maintained and that Metro has consulted with Audubon prior to undertaking such projects."

**Section 5. Audubon Society's Authorized Use and Care of Property.**

**5.1 Trails.** The Audubon Society shall operate, manage, maintain, and repair a pedestrian, low-impact, public trail system on the Property. Such trails shall be located in the approximate locations as indicated on Exhibit B. Such trail maintenance and repair

shall include, without limitation, the obligation to maintain and repair all bridges currently in place as of the Effective Date of this Lease. Such trails shall be open for the use of the general public during all daylight hours throughout the year, with no holidays or closure days except as approved in writing by Metro, in its sole discretion. The Audubon Society may close some trails temporarily, without having to obtain Metro's approval, for the purpose of completing trail repair or management projects, provided that other trails on the Property remain open during such activities. The Audubon Society shall never charge any fee for use of the trails on the Property and shall clearly communicate, in signage and in written and oral responses to inquiries, that public use is permitted free of charge. The location of trails shall not be altered or moved from their locations as indicated on Exhibit B, and as they existed as of the Effective Date of this Lease, without consultation with Metro and Metro's written authorization.

**5.2 Education and Volunteer Programs and Wildlife Research.** The Audubon Society may provide and manage public volunteer and education programs on the Property. The Audubon Society may undertake wildlife research projects on the Property using its employees and volunteers, provided that such volunteers are trained and appropriately supervised by its employees.

**5.3 Signage.** The Audubon Society may continue to use existing signage on the Property, and may erect new signage at the trailhead parking area to provide the public with information about the trails on the Property, trail use rules, educational information about the ecology, habitat, and natural history of the Property, and that the Audubon Society is managing the Property. Any such new signage erected shall comply with Section 7 of this Lease.

**5.4 No Waste.** The Audubon Society shall maintain the Property in good condition and shall not commit, permit, or suffer waste to the Property.

**5.5 Maintenance of Signs/Facilities.** The Audubon Society shall maintain all of the signs, the parking areas, and any other structures used by the Audubon Society on the Property in as good a condition and repair as they were at the commencement of this Lease, reasonable wear and tear excepted, and always subject to the repair covenants of this Lease.

**Section 6. Third Party Requests for Use of Property.** The Audubon Society may not grant authority for use of the Property by any person or entity except as described in Section 5, above. The Audubon Society shall direct to Metro all requests for easements, rights of way, leases, licenses, and any other uses on or affecting the Property. Metro will respond to such requests as appropriate, and 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. Provided that Metro follows such policy, this Lease does not prohibit or limit Metro's right or authority to grant any such easement, right of way, lease, license or other use on or affecting the Property. Metro will consult with Audubon prior to granting access or permission as referenced above.

**Section 7. Acknowledgement.** The Audubon Society and Metro shall collaborate to recognize and document in any new on-site signage, written and electronic publications, media presentations, or other public presentations referencing the Property that are produced by or at the direction of the Audubon Society, that Metro is the owner of the Property and that funding for acquisition of the Property came from the 2006 Metro Natural Areas Bond Measure. The Audubon Society shall include such recognition of Metro at the Audubon Society's own cost and expense. At the Audubon Society's request, Metro will provide the Audubon Society with Metro's logo and script graphics, in whatever format Audubon Society requests, for inclusion in any such materials. The Audubon Society shall incorporate Metro's logo and script in a size equal and comparable to the size of the Audubon Society's logo and script in such publication or information. If either party plans and holds any community or media events to publicize the Property, such party agrees to provide the other party 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 representatives from the other party and appropriate recognition of the source of funding for acquisition of the Property.

**Section 8. Quitting Property at End of Lease; Condition of Property.** The Audubon Society shall peaceably surrender, quit, and give up the Property at the termination or earlier expiration of this Lease. At the termination of this Lease, the Property shall be returned to Metro in no worse physical and ecological condition as at the commencement of this Lease, all repairs being completed as required in this Lease, reasonable wear to any fixtures being excepted (except for repair obligations).

**Section 9. Compliance with Law and Hazardous Materials.**

**9.1** The Audubon Society, at its sole expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county, and municipal authorities pertaining to the Audubon Society's use of the Property, and with all recorded covenants, conditions, and restrictions, regardless of when they become effective. These include, without limitation, any required alteration of the Property because of the Audubon Society's specific use, and all applicable federal, state, local laws, regulations, or ordinances pertaining to air and water quality, Hazardous Materials as defined in Section 9.4 below, waste disposal, air emissions and other environmental matters, and all zoning and other land use matters.

**9.2** The Audubon Society shall not cause or permit any Hazardous Material to be brought on, kept, or used in or about the Property by the Audubon Society, the Audubon Society's agents, employees, contractors, or invitees without the prior written consent of Metro, which shall not be unreasonably withheld as long as the Audubon Society demonstrates to Metro's reasonable satisfaction that such Hazardous Material is necessary to the Audubon Society's business and will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Materials brought upon or used or kept in or about the Property.

**9.3** The Audubon Society shall indemnify, defend, and hold Metro harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including without limitation, diminution in value of the Property, damages for the loss or restriction on use or rent of the Property, damages arising from any adverse impact on marketing of the Property, and sums paid in settlement of claims, attorney fees, consultant fees, and expert fees) that arise during or after the lease term due to contamination by Hazardous Materials as a result of the Audubon Society's, or its employees', volunteers', agents', or contractors', use of or activities on the Property. This indemnification of Metro by the Audubon Society includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Materials present in the soil or groundwater or under the Property. Without limiting the foregoing, if the presence of any Hazardous Material on the Property caused or permitted by the Audubon Society or the Audubon Society's employees, volunteers, agents, or contractors results in any contamination of the Property, the Audubon Society shall promptly take all actions at the Audubon Society's sole expense as are necessary to return the Property to the condition existing prior to the release of any such Hazardous Material onto the Property, provided that Metro's approval of such action shall first be obtained, and approval shall not be unreasonably withheld, as long as such actions would not potentially have any material adverse long-term or short-term effect on the Property. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

**9.4** As used in this Lease, the term *Hazardous Material* means any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101), or by the United States Environmental Protection Agency as hazardous substances (40 CFR pt 302) and amendments thereto, petroleum products, or other such substances, materials, and wastes that are or become regulated under any applicable local, state, or federal law

**Section 10. Taxes.** The Audubon Society shall pay all taxes, if any, on any of the Audubon Society's personal property used on the Property.

**Section 11. Liens.** The Audubon Society shall pay when due all claims for work done on the Property, and for services rendered or material furnished to the Audubon Society incurred for the Audubon Society's repair responsibilities for the Property and improvements; and the Audubon Society shall keep the Property free of any liens arising out of the failure to pay such claims or arising out of any other activity of the Audubon Society. If the Property or improvements are subjected to any lien because of the activities of the Audubon Society, and a lien is not discharged within 10 days, Metro may discharge the lien, and recover the cost from the Audubon Society on demand, plus interest at the rate of 12% per annum from the date of expenditure. Such action by Metro shall not constitute a waiver of any right or remedy that Metro may have on account of the Audubon Society's default. If the Audubon Society in good faith elects to contest the lien, then the Audubon Society shall, on Metro's written request, deposit with Metro

cash or sufficient corporate surety bond or other security satisfactory to Metro, to discharge the lien plus costs and interest.

**Section 12. Indemnification.** The Audubon Society shall indemnify and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with the performance of this Lease by the Audubon Society or the Audubon Society's officers, agents, or employees.

**Section 13. Insurance.** The Audubon Society shall purchase and maintain, at the Audubon Society's expense, the following types of insurance covering the Audubon Society, its employees and agents:

A. Broad form comprehensive general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. Metro and its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.

B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. Metro and its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to METRO thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover the Audubon Society's operations under this Contract, whether such operations be by Audubon Society's or by any subcontractor or anyone directly or indirectly employed by either of them. The Audubon Society shall provide Metro with a certificate of insurance complying with this article and naming Metro as an additional insured within fifteen (15) days of execution of this Contract or Metro's closing on its acquisition of the Property, whichever date is earlier.

**Section 14. Oregon Constitution and Tax Exempt Bond Covenants.** The source of funds for Metro's acquisition of the Property is from the sale of voter-approved general obligation bonds that are to be repaid using ad valorem property taxes exempt from the limitations of Article XI, sections 11, 11b, 11c, 11d and 11e of the Oregon Constitution, and that the interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The Audubon Society covenants that it will take no actions that would jeopardize the current status of the real property taxes imposed to repay these bonds as exempt from Oregon's constitutional property tax limitations or the income tax exempt status of the bond interest under IRS rules. In the event the Audubon Society breaches this covenant, the Audubon Society shall undertake whatever actions are necessary to cure the default and to compensate Metro for any loss it may suffer as a result thereof. In such an event, Metro shall work cooperatively with the Audubon Society to address such breach.

**Section 15. Laws of Oregon; Public Contracts.** The laws of the State of Oregon shall govern this License, 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 Lease.

**Section 16. Assignment.** Neither party may assign any of its rights or responsibilities under this Agreement without prior written consent from the other party, except that a party may delegate or subcontract for performance of any of its responsibilities under this Agreement. If consent to an assignment is provided, this Lease shall be binding on and inure to the benefit of such approved successors and assigns.

**Section 17. Notices.** All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by both (1) electronic mail or fax, and (2) regular mail. Notices shall be deemed delivered on the date personally delivered or the date of such electronic or fax correspondence, unless such delivery is on a weekend day, on a holiday, or after 5:00 p.m. on a Friday, in which case such notice shall be deemed delivered on the next following weekday that is not a holiday.

To Metro: Director, Metro Natural Areas Program  
600 N.E. Grand Avenue  
Portland, OR 97232-2736  
Phone: 503-797-1948  
Fax: 503-797-1849  
[Kathleen.Brennan-Hunter@oregonmetro.gov](mailto:Kathleen.Brennan-Hunter@oregonmetro.gov)

Copy to: Office of Metro Attorney  
600 N.E. Grand Avenue  
Portland, OR 97232-2736  
Phone: 503-797-1661  
Fax: 503-797-1792  
[Paul.Garrahan@oregonmetro.gov](mailto:Paul.Garrahan@oregonmetro.gov)

To Audubon Society: Executive Director, Audubon Society of Portland, Oregon  
1120 SW 5<sup>th</sup> Avenue, Suite 1302  
Portland, OR 97204-1933  
Phone: 503-292-6855  
Fax: 503-  
[mredisch@audubonportland.org](mailto:mredisch@audubonportland.org)

**Section 18. 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 to the terms and requirements of applicable law and the intent of this Agreement.

**Section 19. Entire Agreement; Modifications.** 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, amendment, or other change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

**Section 20. Default; Remedies.**

**20.1** The following shall be events of default:

A. Dissolution, termination of existence, insolvency, business failure, discontinuance as a going business (except for labor disputes), assignment for the benefit of creditors, or commencement of any proceedings under any bankruptcy or insolvency laws by or against the Audubon Society.

B. Failure of the Audubon Society to comply with any other term or condition, or fulfill any other obligation of the lease within 30 days after written notice by Metro specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 10-day period, this provision shall be complied with if the Audubon Society begins correction of the default within the 10-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as possible.

C. Abandonment of the Property by the Audubon Society.

**20.2** In the event of default, Metro shall have the right to re-enter, take possession of the Property, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. Such right shall be cumulative and in addition to all other remedies available to Metro under applicable law.

**Section 21. Covenants of Title.** Metro covenants that Metro will have full right and authority to lease the Property and will protect the Audubon Society from all other claimants except as noted on Metro's deed to the Property.

**Section 22. Nonwaiver.** Failure by either party at any time to require performance by the other of this Lease shall in no way affect that party's right to enforce any Lease provisions; nor shall any waiver of any breach be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

**Section 23. Partial Invalidity.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and other provisions shall remain in full force and effect.

**Section 24. Representations and Warranties.** The Audubon Society accepts the Property, improvements, and the personal property, if any, included in this Lease in their present condition, AS IS, without any representation or warranties, express or implied, except as otherwise set forth in this Lease. It is understood and agreed that the Audubon Society has inspected the Property and that the Audubon Society has made his or her own determination of the value of the Property.

**Section 25. Section Headings.** The section headings to the sections of this Lease are not part of the Lease and shall have no effect upon the construction or interpretation of any part of it.

**Section 26. Complete Agreement.** There are no oral agreements between Metro and the Audubon Society affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, advertising, agreements and understandings, oral or written, if any, between Metro and the Audubon Society or displayed by Metro or its agents to the Audubon Society with respect to the subject matter of this Lease or the Property. There are no representations between Metro and the Audubon Society other than those contained in this Lease and all reliance with respect to any representations is solely upon representations contained in this Lease.

**Section 27. Third Parties.** Metro and the Audubon Society are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, or indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

**METRO,**  
an Oregon municipal corporation

**Audubon Society of Portland, Oregon,**  
an Oregon non-profit corporation

\_\_\_\_\_  
Michael Jordan  
Metro Chief Operating Officer

\_\_\_\_\_  
Meryl Redisch  
Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

- Exhibit A - Property Legal Description
- Exhibit B - Audubon's Sanctuary Nature Trails Map
- Exhibit C - Metro Easement Policy



**Exhibit A**  
**Property Legal Description**

PARCEL I:

A tract of land in Section 31, Township 1 North, Range 1 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

Beginning at a point on the half section line, 24 chains West of the quarter section corner between Sections 31 and 32 in Township 1 North, Range 1 East of the Willamette Meridian; thence running West tracing half section line, 36 chains; thence North 11.11 chains; thence East 36 chains; thence South 11.11 chains to the place of beginning, EXCEPTING 2 acres conveyed to Multnomah County by John Hale and wife on the 20th day of July 1891, as shown by deed bearing date of July 20, 1891, and recorded the same day in Deed Book 158, Page 453, Records of said Multnomah County, and ALSO EXCEPTING THEREFROM 4.123 acres, conveyed by the Scottish American Investment Company to Melchoir Kehrlri by deed bearing date of October 18, 1904, and which was recorded October 19, 1904, in Deed Book 328, Page 270, Deed Records of said Multnomah County; ALSO EXCEPTING THEREFROM 8.2 acres conveyed by Percy H. Blyth et ux to N. Q. Tanquary, Trustee by deed recorded October 8, 1909 in Book 472, Page 151, Deed Records.

PARCEL II:

All that part of the following described tract which lies South and West of the Southwesterly boundary line of the N. W. Cornell Road No. 1409:

Beginning at a point in the East and West center line of Section 31, Township 1 North, Range 1 East, Willamette Meridian, in the County of Multnomah and State of Oregon, which is located 2213.40 feet West of the one-quarter corner of the East line of said section; thence West on said center line 305.70 feet; thence North 285.00 feet; thence East parallel to said center line 305.70 feet; thence South 285.00 feet to the place of beginning.

PARCEL III:

A tract of land in Section 31, Township 1 North, Range 1 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

Beginning at the Northwest corner of the William Naylor Donation Land Claim; running thence East along the North line of said claim 20 chains; thence South and at right angles with the North line of said claim 20 chains; thence Westerly and at right angles to last mentioned line 20 chains; to the West line of said claim; thence Northerly along said West line 20 chains to the point of beginning.

PARCEL IV:

All that part of the West half of the Southwest quarter of Section 31, Township 1 North, Range 1 East of the Willamette Meridian, in the County of Multnomah and State of Oregon, described as follows:

Beginning at the Northeast corner of said West half of the Southwest one-quarter of Section 31, Township 1 North, Range 1 East, running thence Westerly 40 rods, tracing the North side line of the aforementioned West half of the Southwest one-quarter of Section 31, Township 1 North, Range 1 East; thence Southerly 80 rods; thence Easterly 40 rods; thence Northerly 80 rods tracing the East side line of said West one-half of Southwest one-quarter of Section 31, Township 1 North, Range 1 East to the place of beginning.

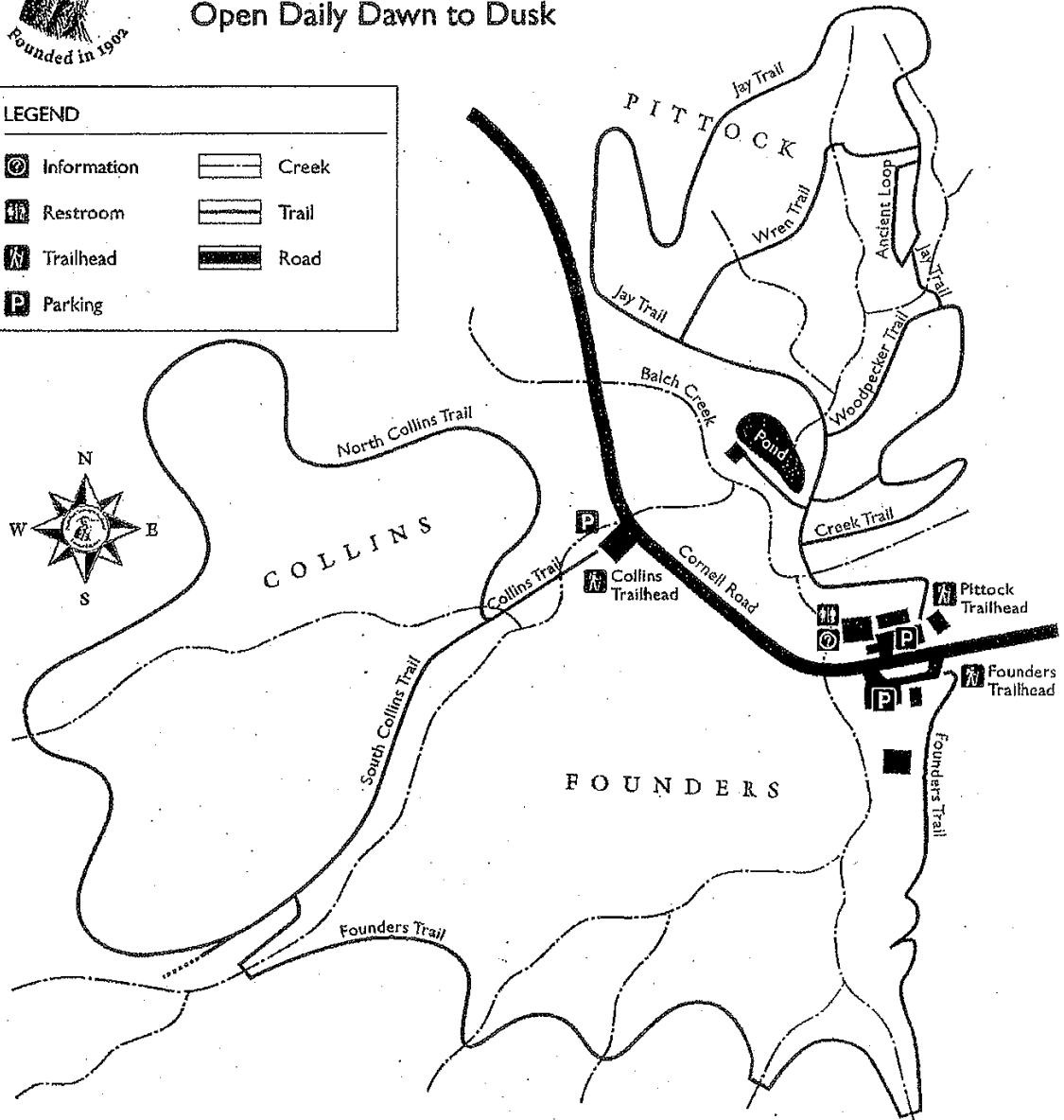
**Exhibit B**  
**Audubon's Sanctuary Nature Trails Map**



# Sanctuary Nature Trails

Open Daily Dawn to Dusk

LEGEND	
Information	Creek
Restroom	Trail
Trailhead	Road
Parking	



**Exhibit C  
Metro Easement Policy**

BEFORE THE METRO COUNCIL

IS A COMPLETE AND EXACT COPY OF THE ORIGINAL THEREOF.

Rebecca V. Shoemaker, Archivist  
Clerk of the Metro Council

RESOLUTION NO. 97-2539B

FOR THE PURPOSE OF APPROVING GENERAL )  
POLICIES RELATED TO THE REVIEW OF )  
EASEMENTS, RIGHT OF WAYS, AND LEASES )  
FOR NON-PARK USES THROUGH PROPERTIES )  
MANAGED BY THE REGIONAL PARKS AND )  
GREENSPACES DEPARTMENT. )

Introduced by  
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 6<sup>th</sup> day of November, 1997.

Jon Kvistad  
Jon Kvistad, Presiding Officer

ATTEST:

Cheryl  
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 the 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**

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**

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 requirement.

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 08-3999 AMENDING THE NATURAL AREAS ACQUISITION REFINEMENT PLAN FOR THE FOREST PARK CONNECTIONS TARGET AREA AND AUTHORIZING THE CHIEF OPERATING OFFICER TO LEASE PROPERTY TO THE AUDUBON SOCIETY OF PORTLAND, OREGON

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Date: November 6, 2008

Prepared by: Kathleen Brennan-Hunter

## BACKGROUND

On September 6, 2007, the Metro Council approved Resolution 07-3833 for the purpose of approving a refinement plan for the Forest Park Connections Target Area, including a confidential, tax-lot specific refinement map (the "Map") outlining areas in which Metro is authorized to purchase properties under the 2006 Natural Areas Bond Measure. The only Tier One objective is to acquire and protect additional lands along the corridor at the north end of the park to line Forest Park with other publicly owned parcels northwest of Newberry Road. In March, 2007, Metro acquired a 57.5 acre property that represented a significant step toward achieving this goal. The property's northern boundary is adjacent to Metro property and a single parcel lies between the southern boundary and Forest Park.

One of the Tier Two objectives of the refinement plan is to acquire important headwater areas within the Balch, Saltzman, Doane, and Miller Creek watersheds, on the east side of the ridgeline, using conservation easements as the primary tool. The Metro Council also adopted Partnership Objectives for the refinement plan, including an objective to "Pursue partnership opportunities with Friends of Forest Park, Trust for Public Land, The Three Rivers Land Conservancy, and other local land trusts to leverage regional bond dollars targeted to the Forest Park Connections area."

Metro staff have entered into an agreement with the Oregon Parks Foundation (the "OPF") to acquire an 86.45 acre property (the "Property"), subject to Metro Council approval. The OPF is a non-profit organization that intends to sell its real property assets and dissolve its corporate status within the next year, therefore putting the Property on the market. The Property is located on Cornell Road, across the road from Forest Park, and adjacent to the Audubon Society headquarters. It was donated to the OPF by the Collins family of Portland, and is currently leased to the Audubon Society. Metro intends to continue leasing the Property to the Audubon Society under substantially the terms and conditions contained in the lease attached as Exhibit B to the resolution.

The Audubon Society has approximately 10,000 members and operates The Audubon Wildlife Care Center, a gift shop, offices and meeting space at its headquarters. The Audubon Society's operations also include a trail system on the Property, also known as the Collins Sanctuary, in its Sanctuary Nature Trails tour, along with the Pittock Bird Sanctuary and the Founders Sanctuary, comprising an educational nature walk visited by more than 55,000 people annually. The Property is traversed by a headwater creek that flows into Balch Creek. The forest includes Douglas fir, Hemlock and Western Red Cedar and is still dominated by an Alder forest. The purchase price of \$86,500, at \$1,000 per acre, is significantly below the market value. A conservation easement is not appropriate in this instance because the OPF does not intend to keep ownership of the Property.

The confidential, tax-lot specific refinement map omitted the Property because it was regarded as already preserved in perpetuity. The change in status of the OPF negates that assumption and as the Property is zoned CFU (Commercial Forest Use) there is a probability that a new owner could change the character

of the property and disallow the use of the property by the Audubon Society and the general public when the current lease expires. This resolution will amend the refinement map to add the Property and authorize Metro's purchase of the Property and its subsequent lease to the Audubon Society, ensuring continued use and enjoyment by the public.

The OPF has entered into a purchase and sale agreement with Metro, subject to the Metro Council's approval of the acquisition. In order to acquire the Property, Metro must amend the Forest Park Connections refinement map.

## **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," adopted on March 9, 2006.

The voters' approval of 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," adopted by the Metro Council on March 1, 2007, established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 07-3833, "Approving the Natural Areas Acquisition Refinement Plan for the Forest Park Connections Target Area," adopted by the Metro Council on September 6, 2007.

### **3. Anticipated Effects**

Resolution No. 08-3999 would approve an amendment to the Forest Park Connections Target Area confidential refinement map to authorize the acquisition of the property identified in Exhibit A to the resolution. The resolution would also authorize the Chief Operating Officer to enter into a lease of the Property with the Audubon Society.

### **4. Budget Impacts**

Metro's purchase of the Property, and stabilization costs thereafter, shall be funded utilizing 2006 Regional Bond proceeds. Property management costs will be mitigated somewhat due to the lease to the Audubon Society.

## **RECOMMENDED ACTION**

Staff recommends adoption of Resolution No. 08-3999.



Agenda Item Number 4.1

**Ordinance No. 08-1202**, Amending the FY 2008-09 Budget and Appropriations Schedule by Transferring Appropriations from Contingency for the Sustainable Metro Initiative, adding 1.0FTE Project Manager, Amending The FY 2008-09 Through FY 2012-13 Capital Budget and Declaring an Emergency.

*Second Reading*

Metro Council Meeting  
Thursday, November 6, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AMENDING THE FY 2008-09 BUDGET AND ) ORDINANCE NO. 08-1202  
APPROPRIATIONS SCHEDULE BY )  
TRANSFERRING APPROPRIATIONS FROM ) Introduced by Michael Jordan, Chief  
CONTINGENCY FOR THE SUSTAINABLE ) Operating Officer, with the concurrence of  
METRO INITIATIVE, ADDING 1.0 FTE PROJECT ) Council President David Bragdon  
MANAGER, AMENDING THE FY 2008-09 )  
THROUGH FY 2012-13 CAPITAL  
BUDGET AND DECLARING AN EMERGENCY

WHEREAS, the Metro Council has reviewed and considered the need to increase appropriations within the FY 2008-09 Budget; and

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

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

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. That the FY 2008-09 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of amending the General Fund and Metro Capital Fund to fund projects in support of the Sustainable Metro Initiative.
2. That the FY 2008-09 through FY 2012-13 Capital Budget is hereby amended to include the project shown in Exhibit C to this Ordinance.
3. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
David Bragdon, Council President

Attest:

Approved as to Form:

\_\_\_\_\_  
Christina Billington, Recording Secretary

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**Exhibit A  
Ordinance No. 08-1202**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>Council Office</b>							
<b><i>Personal Services</i></b>							
<i>SALWGE</i>	<i>Salaries &amp; Wages</i>						
5000	Elected Official Salaries						
	Council President	1.00	111,132	-	0	1.00	111,132
	Councilor	6.00	222,264	-	0	6.00	222,264
5010	Reg Employees-Full Time-Exempt						
	Assistant to the Council President	1.00	81,504	-	0	1.00	81,504
	Chief Operating Officer	1.00	174,239	-	0	1.00	174,239
	Confidential Secretary	1.00	48,111	-	0	1.00	48,111
	Council President Policy Coordinator	1.00	48,747	-	0	1.00	48,747
	Deputy Chief Operating Officer	1.00	148,240	-	0	1.00	148,240
	Manager II	1.00	78,251	-	0	1.00	78,251
	Program Analyst II	4.00	200,615	-	0	4.00	200,615
	Program Analyst III	1.75	98,633	0.66	42,587	2.41	141,220
	Program Supervisor II	1.00	76,494	-	0	1.00	76,494
	Administrative Assistant II	1.00	41,424	-	0	1.00	41,424
	Administrative Assistant III	1.00	42,829	-	0	1.00	42,829
5030	Temporary Employees		62,000		0		62,000
5080	Overtime		1,750		0		1,750
5089	Salary Adjustments						
	Elected Officials Adjustment		10,002		0		10,002
	Merit Adjustment Pool (non-represented)		14,939		639		15,578
	Other Adjustments (non-represented)		14,939		0		14,939
	Other Adjustments (Class & Comp Study)		14,939		0		14,939
<i>FRINGE</i>	<i>Fringe Benefits</i>						
5100	Fringe Benefits						
	Base Fringe (variable & fixed)		529,416		15,862		545,278
5190	PERS Bond Recovery		45,757		1,363		47,120
<b>Total Personal Services</b>		<b>21.75</b>	<b>\$2,066,225</b>	<b>0.66</b>	<b>\$60,451</b>	<b>22.41</b>	<b>\$2,126,676</b>
<b><i>Materials &amp; Services</i></b>							
<i>GOODS</i>	<i>Goods</i>						
	5201 Office Supplies		57,793		0		57,793
	5205 Operating Supplies		2,207		0		2,207
	5210 Subscriptions and Dues		7,891		0		7,891
<i>SVCS</i>	<i>Services</i>						
	5240 Contracted Professional Svcs		60,243		125,000		185,243
	5246 Sponsorships		2,000		0		2,000
	5251 Utility Services		2,781		0		2,781
	5260 Maintenance & Repair Services		1,269		0		1,269
	5265 Rentals		823		0		823
	5280 Other Purchased Services		5,643		0		5,643
<i>OTHEXP</i>	<i>Other Expenditures</i>						
	5450 Travel		7,619		0		7,619
	5455 Staff Development		9,082		68,500		77,582
	5470 Council Costs		24,500		0		24,500
	5490 Miscellaneous Expenditures		6,202		0		6,202
<b>Total Materials &amp; Services</b>			<b>\$188,053</b>		<b>\$193,500</b>		<b>\$381,553</b>
<b>TOTAL REQUIREMENTS</b>		<b>21.75</b>	<b>\$2,254,278</b>	<b>0.66</b>	<b>\$253,951</b>	<b>22.41</b>	<b>\$2,508,229</b>

**Exhibit A  
Ordinance No. 08-1202**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>General Expenditures</b>							
<i>Interfund Transfers</i>							
INDTEX	<i>Interfund Reimbursements</i>						
5800	Transfer for Indirect Costs						
	* to Risk Mgmt Fund-Liability		309,234		0		309,234
	* to Risk Mgmt Fund-Worker Comp		385,818		0		385,818
EQTCHG	<i>Fund Equity Transfers</i>						
5810	Transfer of Resources						
	* to Smith & Bybee Lakes Fund		91,740		0		91,740
	* to General Revenue Bond Fund-Zoo		402,089		0		402,089
	* to Metro Capital Fund-FAS Capital Account		65,000		0		65,000
	* to Metro Capital Fund-IT Projects		25,000		115,000		140,000
	* to Gen'l Revenue Bond Fund-Debt Serv Acct		1,504,342		0		1,504,342
	* to MERC Operating Fund		11,937		0		11,937
	* to MERC Capital Fund (Tourism Opp. & Compt. Acc		746,146		0		746,146
	* to General R&R Fund-General R&R		404,459		0		404,459
	* to General R&R Fund-IT Renewal & Replacement		257,815		0		257,815
	* to General R&R Fund-Regional Center R&R		277,000		0		277,000
	* to Metro Capital Fund-Parks Cap (per ton on SW)		270,000		0		270,000
	* to General R&R Fund- Parks R&R (earned on SW rev		200,000		0		200,000
	* to Solid Waste Revenue Fund		100,348		0		100,348
<b>Total Interfund Transfers</b>			<b>\$5,050,928</b>		<b>\$115,000</b>		<b>\$5,165,928</b>
<i>Contingency &amp; Unappropriated Balance</i>							
CONT	<i>Contingency</i>						
5999	Contingency						
	* Contingency		3,152,085		(368,951)		2,783,134
	* Opportunity Account		100,000		0		100,000
	* Reserved for Future Planning Needs		351,000		0		351,000
	* Reserved for Future Election Costs		290,000		0		290,000
	* Reserved for Nature in Neighborhood Grants		250,000		0		250,000
	* Reserved for Reg. Afford. Housing Revolving Funct		1,000,000		0		1,000,000
	* Reserved for Metro Regional Center Remodel		378,000		0		378,000
	* Reserved for Diesel Retrofit matching grants		400,000		0		400,000
	* Recovery Rate Stabilization reserve		1,771,867		0		1,771,867
UNAPP	<i>Unappropriated Fund Balance</i>						
5990	Unappropriated Fund Balance						
	* Stabilization Reserve		2,320,000		0		2,320,000
	* Reserve for Future Natural Areas Operations		1,023,070		0		1,023,070
	* PERS Reserve		2,782,174		0		2,782,174
	* Computer Replacement Reserve (Planning)		90,000		0		90,000
	* Tibbets Flower Account		201		0		201
	* Reserve for Future Debt Service		2,521,852		0		2,521,852
<b>Total Contingency &amp; Unappropriated Balance</b>			<b>\$16,430,249</b>		<b>(\$368,951)</b>		<b>\$16,061,298</b>
<b>TOTAL REQUIREMENTS</b>		<b>433.15</b>	<b>\$103,347,466</b>	<b>0.66</b>	<b>\$0</b>	<b>433.81</b>	<b>\$103,347,466</b>

**Exhibit A  
Ordinance No. 08-1202**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget		
		FTE	Amount	FTE	Amount	FTE	Amount	
<b>Metro Capital Fund</b>								
<b>Resources (this fund formerly included renewal &amp; replacement now budgeted in a separate fund)</b>								
<b><u>Resources</u></b>								
<i>BEBAL</i>	<i>Beginning Fund Balance</i>							
3500	* Prior year ending balance		7,547,235		0		7,547,235	
3500	* Prior year PERS Reserve		6,553		0		6,553	
<i>GRANTS</i>	<i>Grants</i>							
4100	Federal Grants-Direct		104,973		0		104,973	
4105	Federal Grants-Indirect		820,000		0		820,000	
4110	State Grants-Direct		1,340,800		0		1,340,800	
4115	State Grants-Indirect		100,000		0		100,000	
4120	Local Grants-Direct		413,764		0		413,764	
<i>INTRST</i>	<i>Interest Earnings</i>							
4700	Interest on Investments		110,854		0		110,854	
<i>DONAT</i>	<i>Contributions from Private Sources</i>							
4750	Donations and Bequests		3,698,027		0		3,698,027	
<i>MISCRV</i>	<i>Miscellaneous Revenue</i>							
4890	Miscellaneous Revenue		2,751,919		0		2,751,919	
<i>EQTREV</i>	<i>Fund Equity Transfers</i>							
4970	Transfer of Resources							
	* from General Renewal & Replacement Fund		375,000		0		375,000	
	* from General Fund (per ton on SW)		270,000		0		270,000	
	* from General Fund-FAS projects		65,000		0		65,000	
	* from General Fund-IT Projects		25,000		115,000		140,000	
<b>TOTAL RESOURCES</b>			<b>\$17,629,125</b>		<b>\$115,000</b>		<b>\$17,744,125</b>	
<b>Total Personal Services</b>		<b>2.00</b>	<b>\$179,631</b>	<b>-</b>	<b>\$0</b>	<b>2.00</b>	<b>\$179,631</b>	
<b>Total Materials &amp; Services</b>			<b>\$540,000</b>		<b>\$0</b>		<b>\$540,000</b>	
<b><u>Capital Outlay</u></b>								
<i>CAPNON</i>	<i>Capital Outlay (non-CIP Projects)</i>							
5750	Office Furniture & Equip		25,000		115,000		140,000	
<i>CAPCIP</i>	<i>Capital Outlay (CIP Projects)</i>							
5710	Improve-Oth thn Bldg		8,453,800		0		8,453,800	
5720	Buildings & Related		100,000		0		100,000	
5730	Exhibits and Related		5,296,000		0		5,296,000	
5740	Equipment & Vehicles		135,959		0		135,959	
5750	Office Furniture & Equip		150,000		0		150,000	
<b>Total Capital Outlay</b>			<b>\$14,160,759</b>		<b>\$115,000</b>		<b>\$14,275,759</b>	
<b>Subtotal Appropriations</b>			<b>\$14,880,390</b>		<b>\$115,000</b>		<b>\$14,995,390</b>	
<b>Total Interfund Transfers</b>			<b>\$97,174</b>		<b>\$0</b>		<b>\$97,174</b>	
<b>TOTAL REQUIREMENTS</b>			<b>2.00</b>	<b>\$17,629,125</b>	<b>-</b>	<b>\$115,000</b>	<b>2.00</b>	<b>\$17,744,125</b>

**Exhibit B**  
**Ordinance 08-1202**  
**Schedule of Appropriations**

	<u>Current Appropriation</u>	<u>Revision</u>	<u>Revised Appropriation</u>
<b>GENERAL FUND</b>			
Council Office	2,254,278	253,951	2,508,229
Finance & Administrative Services	5,489,506	0	5,489,506
Human Resources	1,737,211	0	1,737,211
Information Technology	2,808,244	0	2,808,244
Metro Auditor	651,286	0	651,286
Office of Metro Attorney	1,981,157	0	1,981,157
Oregon Zoo	26,677,562	0	26,677,562
Planning	24,768,035	0	24,768,035
Public Affairs & Government Relations	1,988,582	0	1,988,582
Regional Parks & Greenspaces	8,521,362	0	8,521,362
Special Appropriations	3,538,480	0	3,538,480
Former ORS 197.352 Claims & Judgments	100	0	100
Non-Departmental			
Debt Service	1,450,486	0	1,450,486
Interfund Transfers	5,050,928	115,000	5,165,928
Contingency	7,692,952	(368,951)	7,324,001
Unappropriated Balance	8,737,297	0	8,737,297
<b>Total Fund Requirements</b>	<b>\$103,347,466</b>	<b>\$0</b>	<b>\$103,347,466</b>
<b>METRO CAPITAL FUND</b>			
Capital Program	14,880,390	115,000	14,995,390
Non-Departmental			
Interfund Transfers	97,174	0	97,174
Contingency	2,293,857	0	2,293,857
Unappropriated Balance	357,704	0	357,704
<b>Total Fund Requirements</b>	<b>\$17,629,125</b>	<b>\$115,000</b>	<b>\$17,744,125</b>

*All other appropriations remain as previously adopted*

**EXHIBIT C**  
**Ordinance 08-1202**  
**Capital Project Detail**

**Capital Project Request - Project Detail**

**Project Title:** Learning Management System **Fund:** General Fund Capital Fund - 612

**Project Status:** Incomplete **Funding Status:** Funded **FY First Authorized:** 2008-09 **Department:** Information Technology

**Project Number:** TEMP **Active:**  **Dept. Priority:** 0 **Facility:** Information Technology **Division:** Information Technology

**Source Of Estimat:** Preliminary **Source:**  **Start Date:** 11/08 **Date:** 10/13/2008 **Cost Type:** Equipment

**Type of Project:** New **Request Typ:** Initial **Completion Date:** 6/13 **Prepared By:** Ann Wawrukiewicz

Project Estimates	Actual	Budget/Est	Prior						
Capital Cost:	Expend	2007-2008	Years	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	Total
Equipment/Furnishings	\$0	\$0	\$0	\$115,000	\$0	\$0	\$0	\$0	\$115,000
<b>Total:</b>	\$0	\$0	\$0	\$115,000	\$0	\$0	\$0	\$0	\$115,000

Funding Source:	Actual	Budget/Est	Prior						
	Expend	2007-2008	Years	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	Total
Fund Balance	\$0	\$0	\$0	\$115,000	\$0	\$0	\$0	\$0	\$115,000
<b>Total:</b>	\$0	\$0	\$0	\$115,000	\$0	\$0	\$0	\$0	\$115,000

**Annual Operating Budget Impact**

**Annual Expenditures**

Materials and Services				\$0	\$13,000	\$13,000	\$13,000	\$13,000	\$52,000
Subtotal, Expenditures:				\$0	\$13,000	\$13,000	\$13,000	\$13,000	\$52,000
<b>Net Operating Contribution (Cost):</b>				\$0	(\$13,000)	(\$13,000)	(\$13,000)	(\$13,000)	(\$52,000)

**Project Description / Justification:** **Estimated Useful Life (yrs):** 5 **First Full Fiscal Year of Operation:** 2009-10

As part of the Sustainable Metro Initiative, Metro will acquire an online training system which would deliver curriculum offerings in an anytime, anywhere format. The system would allow online registration tracking as well as individual development plan tracking as well as compliance training.

## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1202, AMENDING THE FY 2008-09 BUDGET AND APPROPRIATIONS SCHEDULE BY TRANSFERRING APPROPRIATIONS FROM CONTINGENCY FOR THE SUSTAINABLE METRO INITIATIVE, ADDING 1.0 FTE PROJECT MANAGER, AMENDING THE FY 2008-09 THROUGH FY 2012-13 CAPITAL BUDGET AND DECLARING AN EMERGENCY

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Date: October 13, 2008

Prepared by: Scott Robinson

### BACKGROUND

This action requests amended appropriation authority for the Metro COO to increase spending authority resulting from the initial work of the Sustainable Metro Initiative.

Metro is undertaking an agency-wide project to clarify strategic direction, vision and mission, align organizational structure and to enhance efficiency and collaboration. As part of this effort, Metro staff has focused on identifying business and management policies and practices which require improvement in order to provide consistency and to provide staff the tools they need to effectively accomplish their work.

Many current business and management policies are inconsistently practiced and documented in a way that does not provides standardized guidance to managers and employees, creating a lack of uniformity.

The initiative supported by this amendment has four components:

1. Engagement with an organizational development firm on the management values, practices, standards manual and on-going cultural development with the management team to migrate the Metro organization to a cohesive unit.
2. Provision of onsite staff development for high priority management practices surrounding employee performance management (\$68,500 in fiscal 2008-09).
3. Consulting support from an organization such as the National Institute of Governmental Purchasing (NIGP) or Government Finance Officers Association (GFOA) to develop and train staff in consistent agency wide best practices (\$25,000 in FY 2008-09).
4. Acquisition of an online learning management system (LMS) to facilitate employee development plans, track course registration and offerings, provide online access to some course materials and to track employee progress towards development goals (\$115,000 initial capital expenditure and \$13,000 annual maintenance).

A scope of work and three year fiscal impact analysis are included the Attachment to this amendment.

The work of this amendment will be the responsibility of the Deputy COO, coordinated through the Office of the COO. A new 1.0 FTE Program Analyst III will serve as project coordinator for the effort. We are requesting the transfer of \$368,951 from General Fund contingency, including an appropriation of \$115,000 transferred to the Metro Capital Fund for acquisition of the Learning Management System.

<b>Request</b>	<b>General Fund</b>	<b>\$253,951</b>
	<b>General Fund Transfer to Capital Fund</b>	<b><u>115,000</u></b>
<b>Total</b>		<b>\$368,951</b>



## **ANALYSIS/INFORMATION**

- 1. Known Opposition:** None known.
- 2. Legal Antecedents:** ORS 294.450 provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction.
- 3. Anticipated Effects:** This action provides the necessary resources to successful move forward with the Sustainable Metro Initiative. This increase is needed to ensure appropriate development and implementation of management and business standards and practices.
- 4. Budget Impacts:** This action increases the personal services and materials and services operating appropriations in the Council Office, and decreases contingency in the General Fund by \$368,951. It also increases the appropriation in the Metro Capital Fund by \$115,000. Additional expenditures in years two and three of this project, anticipated to be \$337,211, will be presented as an add package to the FY 2009-10 budget.

## **RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of this Ordinance.

## **SCOPE OF WORK AND THREE-YEAR BUDGET IMPACT**

Through the Sustainable Metro Initiative (SMI), Metro has undertaken a significant effort to move the alignment and culture of the agency and prepare for the challenges we will face in the near future. In order to fulfill the promise of the effort to date, significant practical changes need to take place regarding both business processes and management and personnel practices. This budget amendment provides the resources to create the standards, common practices, reference guides and training tools necessary to make a sustained impact on the organization. Without this budget amendment, business and management practices will remain uncoordinated and non-standardized, leading to inefficient and ineffective use of resources.

### **PROPOSED SCOPE OF WORK**

#### **Part I – Human Resource Management and Management Practices**

1. Working with senior management staff, create a set of management values.
2. Develop a code of conduct that ensures behavior is consistent with the law, the Metro Charter and public expectations and promotes ethical conduct in all we do.
3. Develop a comprehensive management policies and practices manual. Review against best practice in other agencies.
4. Facilitate implementation and rollout of the values, Code of Conduct and business and management policies and practices.
5. Make recommendations for further management training or organizational development, as applicable.

#### **Part II – Manager Training**

1. Employee training in fiscal 2008-09: \$68,500
2. Additional training costs anticipated in 2009-10: \$85,500

#### **Part III – Business Practices**

1. Review and assess current business (Contracting, Projects Management, Records Management, Security Practices, Safety, Budgeting, and Financial Management) and management (Personnel) policies and practices. Make recommendations regarding what is applicable and useable and what needs to be revised.
2. Develop a comprehensive business policies and practices manual. Review against best practice in other agencies.
3. Provide training to affected management staff . Assumes training provided by internal staff.

#### **Part IV – Learning Management System**

1. Specify and acquire an online training system which would deliver curriculum offerings in an anytime, anywhere format. The system would allow online registration tracking as well as individual development plan tracking as well as compliance training.

**THREE-YEAR BUDGET IMPACT**

Sustainable Metro Initiative 3 Year View

		2008/09	2009/10	2010/11
Project Manager FTE (incl. Fringe)	Personal Services	60,451	93,284	97,427
Organization Development*	Professional Services	100,000		-
Staff Development	Materials and Services	68,500	85,500	10,000
Systems Development	Professional Services	25,000	25,000	-
Learning Management System (LMS)	Capital	115,000	-	-
LMS maintenance and content	Maint. Services**	-	13,000	13,000
<b>Total Expenditure Request</b>		<b>368,951</b>	<b>216,784</b>	<b>120,427</b>

Assumes project manager for 8 months in 08-09

\*Assumes an RFP process yielding a 2-person 5 mo. engagement at 20 hrs per week at \$125/hr.

\*\* While the initial \$115,000 for LMS will be capitalized, annual maintenance will be M&S.

Agenda Item Number 5.1

**Resolution No. 08-4002**, For the Purpose of Amending the Capital Budget For Fiscal Years 2008-09 Through 2012-13 Increasing Several Currently Approved Capital Projects.

Metro Council Meeting  
Thursday, November 6, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE CAPITAL ) RESOLUTION NO. 08-4002  
IMPROVEMENT PLAN FOR FISCAL YEARS 2008-09 ) Introduced by  
THROUGH 2012-13 INCREASING SEVERAL ) David Bragdon, Council President  
APPROVED CAPITAL PROJECTS )

WHEREAS, Metro recognizes the need to prepare a long-range plan estimating the timing, scale and cost of its major capital projects & equipment purchases; and

WHEREAS, Metro departments have inventoried existing major capital assets, prepared status reports on current capital projects and assessed future capital needs; and

WHEREAS, Metro’s Council conducted a public hearing and subsequently approved Resolution 08-3941A Adopting the FY 2008-09 through FY 2012-12 Capital Budget on June 26 2008; and

WHEREAS, Metro’s Capital Asset Management Policies, readopted by the Metro Council on the same date, require that the Capital Improvement Plan accurately reflect Metro’s major capital spending needs over the next five years; and

WHEREAS, anticipated costs of certain major projects have changed significantly enough to require a modification of the Capital Improvement Plan; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes that the Predators of the Serengeti project budget be increased to \$5,200,000; authorizes that the Cooper Mountain Nature Park increase to \$3,393,400 and the Stafford Field Station be increased to \$81,514.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
David Bragdon, Metro Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 08-4002, AMENDING THE FY 2008-09 THROUGH 2012-13 CAPITAL IMPROVEMENT PLAN INCREASING SEVERAL APPROVED CAPITAL PROJECTS**

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Date: October 21, 2008

Prepared by: Craig M. Stroud/Jeff Tucker/Karen Feher

## **BACKGROUND**

### **PROJECTS TO BE AMENDED:**

#### **Predators of the Serengeti**

Metro consultants originally estimated the construction costs for the Predators of the Serengeti exhibit at \$4 million. Construction entails converting the Alaska Tundra exhibit into African themed exhibits with lions, wild dogs, cheetahs, and caracals. In the time since the estimate, construction material prices experienced sharp increases, with steel and concrete increasing more than 30 percent.

Over this same period, The Oregon Zoo Foundation's capital fundraising campaign to finance the project's construction has been extremely successful. Through September 2008, the foundation raised \$5.2 million restricted by donors to exhibit construction, surpassing the \$4 million goal. In addition, the foundation successfully raised the \$1 million operating reserve to help fund increased zoo operating costs associated with the exhibit.

This resolution amends the Predators of the Serengeti capital improvement project by increasing the approved project cost to \$5.2 million.

#### **Cooper Mountain Nature Park**

Cost increases are the result of additional ROW (Right of Way) improvements required by Washington County, significant wetland mitigation and restoration costs, and construction bids coming in higher than engineer estimates. Additional cost increases are due to the increase in the cost of materials (especially asphalt and steel) in the time since the estimates were completed, as well as construction and design options that improve the green building features of the project, (including the photovoltaic system, the use of certified lumber, and radiant floor heating in the Nature House, in addition to "integrating habitat" site improvements). These changes were discussed with and approved by the Metro Council at work session in July 2008. The overall project increases \$340,212 to \$3,393,400.

#### **Stafford Field Station Office**

Cost increases are the result of issues disclosed during the permitting process such as a more extensive survey and higher than expected utility connection charges. This project is increasing from \$70,000 to about \$82,000. The additional funding will be transferred from operating funds to the capital fund.

### **INFORMATIONAL ITEMS:**

#### **Red Ape Reserve**

The Red Ape Reserve exhibit was originally estimated at \$1.8 million. The project constructs a new indoor exhibit; new holding/shift rooms; and renovates existing outdoor exhibits for the zoo's orangutans. The sharp construction price increases experienced with the Predators project are also impacting the Red

Ape Reserve project. The zoo is reviewing the project's scope and value engineering exhibit elements in an attempt to keep construction costs in-line with available funds. Once these reviews and recommendations are complete, the zoo will provide Council with updated project information.

### **M. James Gleason Boat Ramp Renovation Phase II**

The amount needed for this \$2.5 million dollar project is not changing. What is changing is the mix of where the money is coming from to pay for the renovation. Originally it was hoped that grants from the state and Federal Fish and Wildlife programs would pay for 85 percent of the project. After all of the outside funding was settled only 79 percent came through. Since the majority of this project is renewal and replacement the additional funding will be transferred from the renewal and replacement fund. This increase of \$150,000 will be incorporated into the renewal and replacement analysis at mid year and if necessary a budget amendment will be completed to bring the necessary funding into this fiscal year.

#### **ANALYSIS/INFORMATION**

- 1. Known Opposition:** None known.
- 2. Legal Antecedents:** Resolution No. 08-3941A, For the Purpose of Adopting the Capital Budget for Fiscal Years 2008-09 Through 2012-13, established the current Capital Improvement Plan.
- 3. Anticipated Effects:** Adoption increases the Predators of the Serengeti total project construction cost from \$4 million to \$5.2 million funded by additional donations from the Oregon Zoo Foundation

Adoption increases the Cooper Mountain Nature Park from \$3,053,188 to \$3,393,400 funded by the Natural Areas Bond funds.

Adoption increases the Stafford Field Station Office from \$70,000 to \$81,514.

- 4. Budget Impacts:** This resolution has no current year budget impact from the Predators of the Serengeti. The zoo believes the fiscal year 2009 project appropriation is sufficient for current year project expenditures. The Predators project construction will extend into fiscal year 2010, and the fiscal year 2010 requested budget will include appropriation for the increased project costs. This resolution's impact from the increased cost of the Cooper Mountain Nature Park is funded by the existing appropriation in the Natural Area Bond fund. A transfer from Parks operating funds to the Capital Fund provides for the additional funding needs of the Stafford Road Office. A transfer from Renewal and Replacement provides additional funding needs for the M James Gleason project in the Capital Fund. It is anticipated that there is currently sufficient transfer appropriations to meet both the Stafford Road and M James Gleason needs. This situation will be monitored closely and appropriate budget action taken if necessary.

#### **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Resolution 08-4002.

**Resolution No. 08-3976**, Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Waste Management of Oregon, Inc. For Delivery of Putrescible Solid Waste From the Troutdale Transfer Station to the Columbia Ridge Landfill and Riverbend Landfill.

Metro Council Meeting  
Thursday, November 6, 2008  
Metro Council Chamber



BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER ) RESOLUTION NO. 08-3976  
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO )  
WASTE MANAGEMENT OF OREGON, INC. FOR ) Introduced by Michael Jordan,  
DELIVERY OF PUTRESCIBLE WASTE FROM THE ) Chief Operating Officer, with the  
TROUTDALE TRANSFER STATION TO THE ) concurrence of David Bragdon,  
COLUMBIA RIDGE LANDFILL AND RIVERBEND ) Council President  
LANDFILL

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Waste Management of Oregon, Inc. (“WMO”) holds a Metro Solid Waste Facility Non-System License No. N-001-06, which expires on December 31, 2008; and

WHEREAS, WMO has applied for the renewal of the non-system license to deliver putrescible waste from the Troutdale Transfer Station to the Columbia Ridge Landfill and the Riverbend Landfill for disposal under the provisions of Metro Code Chapter 5.05, “Solid Waste Flow Control”; and

WHEREAS, the Metro Code Section provides that 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; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Ordinance; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- 1. The non-system license renewal application of WMO is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Ordinance.
- 2. The Chief Operating Officer is authorized to issue to WMO a renewed Solid Waste Facility Non-System License substantially similar to the one 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

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1650 | FAX 503 813 7544



**METRO**

**METRO SOLID WASTE FACILITY  
NON-SYSTEM LICENSE**

**No. N-001-08**

<b>LICENSEE:</b>
Waste Management of Oregon, Inc. dba Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, OR 97060
<b>CONTACT PERSON:</b>
Dan Wilson Phone: (503) 667-5264 Fax: (503) 667-6237 E-mail: <a href="mailto:danwilson@wm.com">danwilson@wm.com</a>
<b>MAILING ADDRESS:</b>
Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, OR 97060

**ISSUED BY METRO:**

\_\_\_\_\_  
Michael Jordan, Chief Operating Officer

\_\_\_\_\_  
Date



<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Putrescible solid waste generated within the Metro boundary and received at Troutdale Transfer Station in accordance with Metro Solid Waste Facility Franchise No. F-001-08.
<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	Licensee is authorized to deliver to the non-system facilities described in Section 3 of this license up to 70,000 tons per calendar year of the waste described in Section 1 of this license. This license does not increase the total tonnage that the Licensee is authorized to accept under Metro Solid Waste Facility Franchise No. F-001-08.
<b>3</b>	<b>NON-SYSTEM FACILITIES</b>
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facility:</p> <p style="padding-left: 40px;">Columbia Ridge Landfill 18177 Cedar Springs Lane Arlington, OR 97812</p> <p>And, during certain unusual circumstances and emergency situations as described in Section 7(a) of this license, the Licensee is authorized to deliver the above referenced waste to the following non-system facility:</p> <p style="padding-left: 40px;">Riverbend Landfill 13469 SW Highway 18 McMinnville, OR 97128</p> <p>This license is issued on condition that the non-system facilities named in this section are authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality that these non-system facilities are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2009 and expire at midnight on December 31, 2010, unless terminated sooner under Section 7 of this license.



<b>5</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.

<b>6</b>	<b>RECORD KEEPING AND REPORTING</b>
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facilities described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facilities:</p> <ul style="list-style-type: none"><li>i. Ticket or weight slip number from the non-system facility;</li><li>ii. Material category designating the type of material transferred to the non-system facility;</li><li>iii. Date the load was transferred to the non-system facility;</li><li>iv. Time the load was transferred to the non-system facility;</li><li>v. Net weight of the load; and</li><li>vi. Fee charged by the non-system facility</li></ul> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none"><li>i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;</li><li>ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li><li>iii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.</li></ul> <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facilities named in Section 3, above.</p>



<b>7</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This license shall be subject to the following conditions:</p> <ul style="list-style-type: none"><li>(a) The Licensee is authorized to deliver putrescible waste to the Riverbend Landfill only during certain unusual circumstances and emergency situations, such as the closure of Interstate 84 or the temporary breakdown of a compactor at the Troutdale Transfer Station, which would prevent the Licensee from delivering such waste to the Columbia Ridge Landfill.</li><li>(b) If the Licensee delivers putrescible waste to the Riverbend Landfill as provided above in Section 7(a), the Licensee shall:<ul style="list-style-type: none"><li>i. Report the unusual circumstance or emergency situation to Metro within 12 hours of its discovery; and</li><li>ii. Notify Metro in writing if such delivery of waste to the Riverbend Landfill continues for more than three consecutive business days. The written notification required by this section shall include a detailed description of the particular circumstance resulting in such deliveries and its expected duration.</li></ul></li><li>(c) The permissive transfer of solid waste to the non-system facilities, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li><li>(d) This license shall be subject to amendment, modification, or termination by Metro's Chief Operating Officer (the "COO") in the event that the COO determines that:<ul style="list-style-type: none"><li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li><li>ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Oregon Waste Systems, Inc.; or</li><li>iii. Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 of this license be transferred to, and disposed of at, a facility other than the facilities listed in Section 3.</li></ul></li><li>(e) This license shall, in addition to subsections (d)(i) through (c)(iii), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.</li><li>(f) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</li><li>(g) This license shall terminate upon the execution of designated facility agreements with the facilities listed in Section 3 that authorizes those facilities to accept the waste described in Section 1 of this license.</li></ul>



	<p>(h) This license authorizes the delivery of solid waste to the facilities listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than those specified in this license is prohibited unless authorized in writing by Metro.</p>
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<b>8</b>	<b>COMPLIANCE WITH LAW</b>
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the Licensee shall be deemed part of this license as if specifically set forth herein.</p>

<b>9</b>	<b>INDEMNIFICATION</b>
	<p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3976 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO WASTE MANAGEMENT OF OREGON, INC. FOR DELIVERY OF PUTRESCIBLE WASTE FROM THE TROUTDALE TRANSFER STATION TO THE COLUMBIA RIDGE LANDFILL AND RIVERBEND LANDFILL

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October 17, 2008

Prepared by: Warren Johnson

## BACKGROUND

### Description of the Resolution

In January 2007, Waste Management of Oregon, Inc. (WMO) was granted a non-system license (NSL) to deliver a maximum of 65,000 tons per calendar year of solid waste, consisting primarily of putrescible waste, from the Troutdale Transfer Station (TTS) to the Columbia Ridge Landfill (CRLF) in Arlington, Oregon, and the Riverbend Landfill (RLF) in McMinnville, Oregon. WMO needed an NSL to deliver putrescible waste from TTS to CRLF because the landfill is not designated, as provided in Metro Code Section 5.05.030(a)(6) and Metro's designated facility agreement (Contract No. 902859), to accept putrescible solid waste from the Metro region. The existing NSL (No. N-001-06) also authorized the delivery of solid waste to RLF in the case of emergency situations, such as the closure of Interstate 84, that would prevent the delivery of waste to CRLF. The license commenced on January 1, 2007 and will expire on December 31, 2008. On September 2, 2008, WMO submitted to Metro an application to renew this NSL.

Approval of Resolution No. 08-3976 will authorize the Chief Operating Officer to issue a renewed NSL to WMO to deliver a maximum of 70,000 tons per calendar year of putrescible solid waste to the CRLF and, under certain unusual circumstances and emergency conditions, to the RLF. This proposed NSL would replicate the existing authority with the exception that the tonnage limitation of the NSL has been increased by 5,000 tons to match it with the limit stipulated in TTS' Solid Waste Facility Franchise No. F-001-08. In addition to the tonnage increase, the proposed NSL clarifies the conditions under which WMO may deliver waste to the RLF.

## ANALYSIS/INFORMATION

### 1. Known Opposition

There is no known opposition to the proposed NSL.

### 2. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Metro Council shall consider the following factors to the extent relevant to such determination.

- (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;*

The CRLF is a general-purpose landfill that began accepting waste in January 1990. The landfill has synthetic and clay liner systems that are consistent with federal Subtitle D regulations. Since beginning operation, the landfill has been only filling lined cells and operating with the environmental controls required by the Oregon Department of Environmental Quality (DEQ). The landfill has no known history of landfilling waste that poses a risk of environmental contamination.

The RLF first came into use during the mid-eighties. When RLF became a Subtitle D landfill in 1993, the original unlined cells were capped. Since 1993, the landfill has been filling only lined cells and operating with the environmental controls required by the DEQ. The landfill deliberately accepted asbestos containing materials earlier in its operation but has not done so for the past ten years. In 2006, RLF inadvertently accepted and landfilled a load of bagged subflooring and tile containing asbestos in violation of its DEQ permit. Other than that, Metro staff has not found any evidence that the landfill has accepted wastes that it was not permitted by DEQ to accept. It appears that the future risk of environmental contamination is likely to be minimal, provided that the synthetic liner system remains intact, leachate is collected and properly treated, groundwater is monitored for contamination migration, and the DEQ is diligent in its oversight of the facility.

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

CRLF and RLF are permitted by the DEQ. On October 6, 2008, Metro staff received e-mail confirmation from John Straughen, Environmental Engineer with the DEQ's Eastern Region Office, that the CRLF is in compliance with federal, state and local requirements and has a good compliance record with public health, safety and environmental rules and regulations.

Metro staff has also received verbal confirmation that the DEQ considers the RLF to be a well-run facility that is in compliance with state requirements. In the past five years RLF has received one notice of non-compliance from the DEQ for elevated levels of suspended solids in stormwater discharge.

Recently, property owners neighboring RLF have alleged to Metro that certain portions of the landfill are currently in violation of Yamhill County's flood plain elevation requirements. Metro staff has been unable to obtain from Yamhill County any form of written verification regarding the compliance status of RLF. However, it is expected that more information regarding this matter will become available in December 2008 when the Metro Council intends to consider adoption of an ordinance that would list RLF as a designated facility in the Metro Code.

Although Metro staff has not yet verified RLF's compliance status with respect to Yamhill County's requirements, staff recommends that the proposed NSL renewal include RLF as a contingency facility pending further consideration by the Metro Council. The proposed NSL renewal would authorize WMO to deliver solid waste from TTS to RLF only as a contingency measure during unusual circumstances that would prevent the delivery of waste to CRLF. Staff recommends renewing the licensee's existing authority in order to minimize potential disruption to the solid waste system.

- (3) *The adequacy of operational practices and management controls at the non-system facility;*

Both CRLF and RLF use operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of health, safety and the environment.



- (4) *The expected impact on the region's recycling and waste reduction efforts;*

The waste subject to the proposed license is putrescible solid waste, which has little potential for recovery. Approval of this NSL renewal is therefore unlikely to impact the region's recycling and waste reduction efforts.

- (5) *The consistency of the designation with Metro's existing contractual arrangements;*

Metro has committed to deliver 90 percent of the total tons of putrescible solid waste that Metro delivers to general purpose landfills to landfills operated by Metro's waste disposal contract operator, WMO. The waste subject to the proposed license is to be delivered to the CRLF and the RLF, which are WMO facilities. Thus, renewal of this NSL will not conflict with Metro's disposal contract or any of its 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*

Within the last five years, TTS received one Notice of Violation for failing to maintain the Metro-required recovery rate at the TTS. On September 23, 2005, Metro issued Notice of Violation No. NOV-148-05 to WMO for dropping slightly below 25-percent recovery for the month of August 2005. Metro calculated the recovery rate based on a 12-month rolling average. There was no penalty associated with this minor recovery rate violation. Metro afforded WMO an opportunity to abate the violation by taking immediate corrective action to improve material recovery operations at TTS.

TTS is currently in compliance with its Metro-issued franchise and NSL. With the exception of the above referenced violation, TTS has had no violations related to public health, safety or environmental regulations. Additionally, TTS has not had any significant compliance issues regarding other Metro requirements in the last five years.

- (7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

TTS currently operates under authority of Metro Solid Waste Facility Franchise No. F-001-03. On September 25, 2008, the Metro Council adopted Ordinance No. 08-1192 authorizing the Chief Operating Officer to issue a renewed Solid Waste Facility Franchise (No. F-001-08) to TTS. The renewed franchise, which becomes effective on January 1, 2009, stipulates that TTS shall not accept more than 70,000 tons of putrescible waste originating from inside the Metro region within each calendar year. The issuance of the proposed NSL authorizing the delivery of up to 70,00 tons of putrescible solid waste to CRLF and RLF does not increase the total tonnage that TTS is authorized to accept under the terms of the renewed franchise.

The moratorium on applications for new NSLs for mixed putrescible waste does not apply to this license renewal application.

### **3. Anticipated Effects**

The effect of Resolution No. 08-3976 will be to issue a two-year NSL authorizing TTS to deliver up to 70,000 tons per calendar year of putrescible solid waste to the CRLF and, under certain unusual circumstances and emergency conditions, to the RLF. The proposed NSL includes a tonnage limitation of

70,000 tons (which is a 5,000-ton increase above the existing license) in order to match it with the limit stipulated in TTS' Solid Waste Facility Franchise No. F-001-08.

#### **4. Budget Impacts**

Both CRLF and RLF are owned and operated by Waste Management; this NSL will not impact Metro's obligations under its disposal contract. The regional system fee and excise tax will continue to be collected on in-Metro waste delivered to the CRLF and RLF under the authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. 001-06). Therefore, the financial impact has already been factored into the budget.

#### **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Resolution No. 08-3976, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035 and issuance of an NSL substantially similar to the NSL attached to the resolution as Exhibit A.

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Agenda Item Number 5.3

**Resolution No. 08-3983**, Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Epson Portland, Inc. For Delivery of Industrial Solid Waste and Putrescible Solid Waste to the Covanta Waste-To-Energy Facility.

Metro Council Meeting  
Thursday, November 6, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER ) RESOLUTION NO. 08-3983  
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO )  
EPSON PORTLAND, INC. FOR DELIVERY OF ) Introduced by Michael Jordan,  
INDUSTRIAL SOLID WASTE AND PUTRESCIBLE ) Chief Operating Officer, with the  
WASTE TO THE COVANTA WASTE-TO-ENERGY ) concurrence of David Bragdon,  
FACILITY ) Council President

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Epson Portland, Inc. ("Epson") holds a Metro Solid Waste Facility Non-System License No. N-028-05, which expires on December 31, 2008; and

WHEREAS, Epson has filed a completed application seeking renewal of the non-system license to deliver industrial solid waste and putrescible waste to the Covanta Waste-to-Energy Facility for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and

WHEREAS, the Metro Code Section provides that 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; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Ordinance; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The non-system license renewal application of Epson is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Ordinance.
2. The Chief Operating Officer is authorized to issue to Epson a renewed Solid Waste Facility Non-System License substantially similar to the one 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

Resolution No. 08-3983

WJ:bjl

M:\council\projects\Legislation\2008\08-3983res.doc

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736  
TEL 503 797 1650 | FAX 503 813 7544



**METRO**

**METRO SOLID WASTE FACILITY  
NON-SYSTEM LICENSE**

**No. N-028-08**

<b>LICENSEE:</b>
Epson Portland, Inc. 3950 NW Aloclek Place Hillsboro, OR 97124
<b>CONTACT PERSON:</b>
Kimberley Sackman Phone: (503) 617-5462 Fax: (503) 617-6746 E-mail: <a href="mailto:kimberley.sackman@epi.epson.com">kimberley.sackman@epi.epson.com</a>
<b>MAILING ADDRESS:</b>
Epson Portland, Inc. 3950 NW Aloclek Place Hillsboro, OR 97124

**ISSUED BY METRO:**

\_\_\_\_\_  
Michael Jordan, Chief Operating Officer

\_\_\_\_\_  
Date



<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Industrial solid waste, consisting primarily of non-recoverable plastics, commingled with up to ten percent putrescible waste, including restroom and food waste, generated at the Epson Portland, Inc. site located at 3950 NW Aloclek Place in Hillsboro, Oregon.
<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	Licensee is authorized to deliver to the non-system facility described in Section 3 of this license up to 125 tons per calendar year of the waste described in Section 1 of this license.
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 only to the following non-system facility:</p> <p style="text-align: center;">Covanta Waste-to-Energy Facility 4850 Brooklake Road, NE Brooks, OR 97305</p> <p>This license is issued on condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
<b>4</b>	<b>TERM OF LICENSE</b>
	The term of this license will commence on January 1, 2009 and expire at midnight on December 31, 2010, unless terminated sooner under Section 7 of this license.
<b>5</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles of its transportation carrier during the loading and transporting of the solid waste on behalf of the Licensee.



<b>6</b>	<b>RECORD KEEPING AND REPORTING</b>
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facility described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facility:</p> <ul style="list-style-type: none"><li>i. Ticket or weight slip number from the non-system facility;</li><li>ii. Material category designating the type of material transferred to the non-system facility;</li><li>iii. Date the load was transferred to the non-system facility;</li><li>iv. Time the load was transferred to the non-system facility;</li><li>v. Net weight of the load; and</li><li>vi. Fee charged by the non-system facility</li></ul> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none"><li>i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;</li><li>ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li><li>iii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.</li></ul> <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in Section 3, above.</p>

<b>7</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This license shall be subject to the following conditions:</p> <p>(a) The permissive transfer of solid waste to the non-system facility, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</p> <p>(b) This license shall be subject to amendment, modification, or termination by Metro's Chief Operating Officer (the "COO") in the event that the COO</p>



	<p>determines that:</p> <ul style="list-style-type: none"> <li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li> <li>ii. The provisions of this license are actually or potentially in conflict with any provision in Metro’s disposal contract with Oregon Waste Systems, Inc.; or</li> <li>iii. Metro’s solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 of this license be transferred to, and disposed of at, a facility other than the facility listed in Section 3.</li> </ul> <ul style="list-style-type: none"> <li>(c) This license shall, in addition to subsections (b)(i) through (b)(iii), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.</li> <li>(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</li> <li>(e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.</li> <li>(f) This license authorizes the delivery of solid waste to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</li> </ul>
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<b>8</b>	<b>COMPLIANCE WITH LAW</b>
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee’s solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the Licensee shall be deemed part of this license as if specifically set forth herein.</p>





<b>9</b>	<b>INDEMNIFICATION</b>
	<p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 08-3983 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO EPSON PORTLAND, INC. FOR DELIVERY OF INDUSTRIAL SOLID WASTE AND PUTRESCIBLE WASTE TO THE COVANTA WASTE-TO-ENERGY FACILITY

October 17, 2008

Prepared by: Warren Johnson

## BACKGROUND

### Description of the Resolution

In December 2005, Epsom Portland, Inc. (Epsom) was granted a non-system license (NSL) to deliver a maximum of 125 tons per calendar year of solid waste, including putrescible waste, to the Covanta Waste-to-Energy Facility (Covanta) located in Brooks, Oregon. The license commenced on July 1, 2007 and was set to expire on December 31, 2007. On November 1, 2007, the Metro Council adopted Resolution No. 07-3866 for the purpose of authorizing the Chief Operating Officer to execute license amendments to extend the term of certain NSLs, including Epsom's NSL No. N-028-05, to expire on December 31, 2008.

Approval of Resolution No. 08-3983 will authorize the Chief Operating Officer to issue a renewed NSL to Epsom to deliver a maximum of 125 tons per calendar year of industrial solid waste and putrescible solid waste to Covanta for disposal. The requested disposal site is a waste-to-energy facility rather than a general-purpose landfill and thus granting this proposed NSL will not implicate Metro's obligations under its disposal contract.

## ANALYSIS/INFORMATION

### 1. Known Opposition

There is no known opposition to the proposed NSL.

### 2. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Metro Council shall consider the following factors to the extent relevant to such determination.

- (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;*

The proposed disposal site is a waste-to-energy facility rather than a landfill and thus does not pose the same potential environmental risk from waste delivered from prior users. A baghouse system minimizes emissions to the air and ash is disposed at a monofill that is permitted by the Oregon Department of Environmental Quality (DEQ).

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations;*

Covanta is permitted by the DEQ. In October 2008, Metro staff received e-mail confirmation from Hu Gao, Project Manager with the DEQ's Western Region Office, and Jeff Bickford, Senior Environmental Engineer with the Marion County Public Works Department, that Covanta is in compliance with federal, state and local requirements and the facility has a good compliance record with public health, safety and environmental rules and regulations.

- (3) *The adequacy of operational practices and management controls at the non-system facility;*

Covanta screens incoming waste for hazardous, radioactive, and other unacceptable materials and has a state-of-the-art emissions control system to minimize the risk of future environmental contamination.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

Epson has an aggressive internal recycling program and tracks its recycling and disposal percentages by material. Epson is seeking to deliver only its non-recyclable waste, including putrescible solid waste, to Covanta. Approval of this NSL renewal is therefore unlikely to impact the region's recycling and waste reduction efforts.

- (5) *The consistency of the designation with Metro's existing contractual arrangements;*

The waste subject to the proposed license will not be disposed at a general-purpose landfill. Thus, approval of the proposed license will not conflict with Metro's disposal contract. In addition, Metro also has a contract with Marion County (the "County") for the delivery of solid waste from Metro's transfer stations to Covanta. Renewal of this NSL is not inconsistent with any of these 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*

Epson is currently in compliance with its existing NSL (No. N-028-05) and the facility has not had any compliance issues regarding other Metro requirements within the last five years. To staff's knowledge, Epson has had no violations related to public health, safety or environmental regulations.

- (7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

Covanta is the primary disposal site for solid waste generated within the County. At certain times of the year the facility requires more solid waste than is generated within the County in order to operate efficiently. During these times, the County supports the Metro-authorized flow of solid waste to Covanta.

The moratorium on applications for new NSLs for mixed putrescible waste does not apply to this license renewal application.

### **3. Anticipated Effects**

The effect of Resolution No. 08-3983 will be to issue a two-year NSL authorizing Epson to deliver up to 125 tons per calendar year of industrial solid waste and putrescible solid waste to Covanta for disposal. This is the same tonnage limit and waste type that is authorized under the applicant's existing NSL (No. N-028-05).

### **4. Budget Impacts**

Covanta is not a general-purpose landfill. As such, this proposed NSL will not implicate Metro's obligations under its disposal contract. The application under consideration is the renewal of an existing NSL (No. N-028-05). Therefore, the financial impact has already been factored into the budget.

### **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Resolution No. 08-3983, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and issuance of an NSL substantially similar to the NSL attached to the resolution as Exhibit A.

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Agenda Item Number 5.4

**Resolution No. 08-3984**, Authorizing the Chief Operating Officer to Issue a Renewed Non-System License Jointly to Willamette Resources, Inc. and Allied Waste of Clackamas and Washington Counties for Delivery of Putrescible Solid Waste to the Covanta Waste-To-Energy Facility.

Metro Council Meeting  
Thursday, November 6, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER TO ) RESOLUTION NO. 08-3984  
ISSUE A RENEWED NON-SYSTEM LICENSE JOINTLY )  
TO WILLAMETTE RESOURCES, INC. AND ALLIED ) Introduced by Michael Jordan,  
WASTE OF CLACKAMAS AND WASHINGTON ) Chief Operating Officer, with the  
COUNTIES FOR DELIVERY OF PUTRESCIBLE WASTE ) concurrence of David Bragdon,  
TO THE COVANTA WASTE-TO-ENERGY FACILITY ) Council President

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Willamette Resources, Inc. (WRI) and Allied Waste of Clackamas and Washington Counties (Allied) hold a Metro Solid Waste Facility Non-System License No. N-005-07(2), which expires on June 30, 2009; and

WHEREAS, WRI and Allied have filed a completed application seeking renewal of the non-system license to deliver putrescible waste to the Covanta Waste-to-Energy Facility for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and

WHEREAS, the Metro Code Section provides that 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; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Ordinance; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- 1. The non-system license renewal application of WRI and Allied is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Ordinance.
- 2. The Chief Operating Officer is authorized to issue to WRI and Allied a renewed Solid Waste Facility Non-System License substantially similar to the one 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



METRO

**METRO SOLID WASTE FACILITY  
NON-SYSTEM LICENSE**

**No. N-005-08(2)**

**LICENSEE:**

Willamette Resources, Inc.  
10295 SW Ridder Road  
Wilsonville, OR 97070

Allied Waste of Clackamas  
and Washington Counties  
10295 SW Ridder Road  
Wilsonville, OR 97070

**CONTACT PERSON:**

	Todd Irvine	Ray Phelps	Frank Lonergan
Phone:	(503) 570-0625	(503) 570-0625	(503) 570-0625
Fax:	(503) 570-0523	(503) 570-0523	(503) 570-0523
E-Mail:	<a href="mailto:todd.irvine@awin.com">todd.irvine@awin.com</a>	<a href="mailto:ray.phelps@awin.com">ray.phelps@awin.com</a>	<a href="mailto:frank.lonergan@awin.com">frank.lonergan@awin.com</a>

**MAILING ADDRESS:**

Willamette Resources, Inc.  
10295 SW Ridder Road  
Wilsonville, OR 97070

Allied Waste of Clackamas and  
Washington Counties  
10295 SW Ridder Road  
Wilsonville, OR 97070

**ISSUED BY METRO:**

\_\_\_\_\_  
Michael Jordan, Chief Operating Officer

\_\_\_\_\_  
Date



<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	<p>(a) Putrescible solid waste generated within the Metro boundary and received at Willamette Resources, Inc. in accordance with Metro Solid Waste Facility Franchise No. F-005-08; and</p> <p>(b) Confidential records of customers generated within the Metro boundary and collected by Allied Waste of Clackamas and Washington Counties and delivered directly to the non-system facility described in Section 3 of this license.</p>
<b>2</b>	<b>CALENDAR YEAR TONNAGE LIMITATION</b>
	<p>Licensee is jointly authorized to deliver to the non-system facility described in Section 3 of this license up to 5,500 tons per calendar year of the waste described in Section 1 of this license.</p>
<b>3</b>	<b>NON-SYSTEM FACILITY</b>
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 only to the following non-system facility:</p> <p style="padding-left: 40px;">Covanta Waste-to-Energy Facility 4850 Brooklake Road, NE Brooks, OR 97305</p> <p>This license is issued on condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
<b>4</b>	<b>TERM OF LICENSE</b>
	<p>The term of this license will commence on January 1, 2009 and expire at midnight on December 31, 2010, unless terminated sooner under Section 7 of this license.</p>





<b>5</b>	<b>REPORTING OF ACCIDENTS AND CITATIONS</b>
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.

<b>6</b>	<b>RECORD KEEPING AND REPORTING</b>
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facility described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facility:</p> <ul style="list-style-type: none"><li>i. Ticket or weight slip number from the non-system facility;</li><li>ii. Material category designating the type of material transferred to the non-system facility;</li><li>iii. Date the load was transferred to the non-system facility;</li><li>iv. Time the load was transferred to the non-system facility;</li><li>v. Net weight of the load; and</li><li>vi. Fee charged by the non-system facility</li></ul> <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none"><li>i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;</li><li>ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li><li>iii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.</li></ul> <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in Section 3, above.</p>



<b>7</b>	<b>ADDITIONAL LICENSE CONDITIONS</b>
	<p>This license shall be subject to the following conditions:</p> <ul style="list-style-type: none"><li>(a) The permissive transfer of solid waste to the non-system facility, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.</li><li>(b) This license shall be subject to amendment, modification, or termination by Metro's Chief Operating Officer (the "COO") in the event that the COO determines that:<ul style="list-style-type: none"><li>i. There has been sufficient change in any circumstances under which Metro issued this license;</li><li>ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Oregon Waste Systems, Inc.; or</li><li>iii. Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 of this license be transferred to, and disposed of at, a facility other than the facility listed in Section 3.</li></ul></li><li>(c) This license shall, in addition to subsections (b)(i) through (b)(iii), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.</li><li>(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</li><li>(e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.</li><li>(f) This license authorizes the delivery of solid waste to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</li></ul>

<b>8</b>	<b>COMPLIANCE WITH LAW</b>
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the Licensee shall be deemed part of this license</p>



	as if specifically set forth herein.
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<b>9</b>	<b>INDEMNIFICATION</b>
	<p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

## STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 08-3984 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE JOINTLY TO WILLAMETTE RESOURCES, INC. AND ALLIED WASTE OF CLACKAMAS AND WASHINGTON COUNTIES FOR DELIVERY OF PUTRESCIBLE WASTE TO THE COVANTA WASTE-TO-ENERGY FACILITY

October 17, 2008

Prepared by: Warren Johnson

## BACKGROUND

### Description of the Resolution

In May 2007, Willamette Resources, Inc. (WRI) and Allied Waste of Clackamas and Washington Counties (Allied) were jointly granted a non-system license (NSL) to deliver a maximum of 5,500 tons per fiscal year of solid waste, consisting primarily of putrescible waste, to the Covanta Waste-to-Energy Facility (Covanta) located in Brooks, Oregon. The license commenced on July 1, 2007 and will expire on June 30, 2009.

Although the existing NSL (No. N-005-07(2)) is set to expire in June 2009, Metro staff requested that the applicants seek the early renewal of this license. The purpose of this early renewal is to place the term of the license on a calendar year basis and align its expiration date with that of all the other NSLs that authorize the delivery of putrescible solid waste to non-system facilities. Coordinating these expiration dates will allow the Metro Council to better consider options for allocating putrescible solid waste generated inside the Metro region and to act on all non-system license renewal applications concurrently. On September 3, 2008, WRI submitted to Metro an application to renew its NSL to deliver waste to Covanta.

Approval of Resolution No. 08-3984 will authorize the Chief Operating Officer to issue a renewed NSL to WRI and Allied to jointly deliver a maximum of 5,500 tons per calendar year of putrescible solid waste and confidential records to Covanta for disposal. The requested disposal site is a waste-to-energy facility rather than a general-purpose landfill and thus granting this proposed NSL will not implicate Metro's obligations under its disposal contract.

## ANALYSIS/INFORMATION

### 1. Known Opposition

There is no known opposition to the proposed NSL.

### 2. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Metro Council shall consider the following factors to the extent relevant to such determination.

- (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;*

The proposed disposal site is a waste-to-energy facility rather than a landfill and thus does not pose the same potential environmental risk from waste delivered from prior users. A baghouse system minimizes emissions to the air and ash is disposed at a monofill that is permitted by the Oregon Department of Environmental Quality (DEQ).

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements, including but not limited to public health, safety and environmental rules and regulations;*

Covanta is permitted by the DEQ. In October 2008, Metro staff received e-mail confirmation from Hu Gao, Project Manager with the DEQ's Western Region Office, and Jeff Bickford, Senior Environmental Engineer with the Marion County Public Works Department, that Covanta is in compliance with federal, state and local requirements and the facility has a good compliance record with public health, safety and environmental rules and regulations.

- (3) *The adequacy of operational practices and management controls at the non-system facility;*

Covanta screens incoming waste for hazardous, radioactive, and other unacceptable materials and has a state-of-the-art emissions control system to minimize the risk of future environmental contamination.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

The waste subject to the proposed license is putrescible solid waste, which has little potential for recovery, and confidential records that require special management. Approval of this NSL renewal is therefore unlikely to impact the region's recycling and waste reduction efforts.

- (5) *The consistency of the designation with Metro's existing contractual arrangements;*

The waste subject to the proposed license will not be disposed at a general-purpose landfill. Thus, approval of the proposed license will not conflict with Metro's disposal contract. In addition, Metro also has a contract with Marion County (the "County") for the delivery of solid waste from Metro's transfer stations to Covanta. Renewal of this NSL is not inconsistent with any of these 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*

Within the last five years, WRI has received one Notice of Violation for exceeding its tonnage limitation in an NSL authorizing the delivery of waste to the Coffin Butte Landfill. On August 31, 2007, Metro issued Notice of Violation No. NOV-182-07 to WRI for violating the calendar year tonnage limitation stipulated in NSL No. N-005-015(3). WRI had exceeded its 45,000-ton limitation by 342 tons. There was no penalty associated with this minor tonnage cap violation. Metro afforded WRI an opportunity to abate the violation by submitting a letter describing the additional procedures that it would implement to prevent a recurrence of the violation. WRI submitted the letter as requested and, subsequently, the violation was deemed abated.

WRI is currently in compliance with its Metro-issued NSLs and Solid Waste Facility Franchise. With the exception of the above referenced NSL violation, WRI and Allied have had no violations related to public

health, safety or environmental regulations. Additionally, WRI and Allied have not had any significant compliance issues regarding other Metro requirements in the last five years.

- (7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

Covanta is the primary disposal site for solid waste generated within the County. At certain times of the year the facility requires more solid waste than is generated within the County in order to operate efficiently. During these times, the County supports the Metro-authorized flow of solid waste to Covanta.

The WRI currently operates under authority of Metro Solid Waste Facility Franchise No. F-005-03. On September 25, 2008, the Metro Council adopted Ordinance No. 08-1194 authorizing the Chief Operating Officer to issue a renewed Solid Waste Facility Franchise (No. F-005-08) to WRI. The renewed franchise, which becomes effective on January 1, 2009, stipulates that WRI shall not accept more than 70,000 tons of putrescible waste originating from inside the Metro region within each calendar year. The issuance of the proposed NSL authorizing the delivery of up to 5,500 tons of solid waste to Covanta does not increase the total tonnage that WRI is authorized to accept under the terms of the renewed franchise.

In addition to the above, WRI currently holds NSL No. N-005-05(3) authorizing the annual delivery of up to 45,000 tons per calendar year of solid waste to the Coffin Butte Landfill and NSL No. N-005-06 authorizing the annual delivery of up to 115,000 tons per calendar year of solid waste to the Riverbend Landfill. These two NSLs are set to expire on December 31, 2008.

The moratorium on applications for new NSLs for mixed putrescible waste does not apply to this license renewal application.

### **3. Anticipated Effects**

The effect of Resolution No. 08-3984 will be to issue a two-year NSL authorizing WRI and Allied to jointly deliver up to 5,500 tons per calendar year of putrescible solid waste and confidential records to Covanta for disposal. This is the same tonnage limit and waste type that is authorized under the applicants' existing NSL (No. N-005-07(2)).

### **4. Budget Impacts**

Covanta is not a general-purpose landfill. As such, this proposed NSL will not implicate Metro's obligations under its disposal contract. The application under consideration is the renewal of an existing NSL (No. N-005-07(2)). Therefore, the financial impact has already been factored into the budget.

## **RECOMMENDED ACTION**

The Chief Operating Officer recommends approval of Resolution No. 08-3984, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and issuance of an NSL substantially similar to the NSL attached to the resolution as Exhibit A.

WJ:bjl  
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**Resolution No. 08-4001**, For the Purpose of Authorizing the  
Study of Lands to Complete a Suitability Analysis in  
Anticipation of Designating Urban Reserves and Rural  
Reserves.

Metro Council Meeting  
Thursday, November 6, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 08-4001  
STUDY OF LANDS TO COMPLETE A )  
SUITABILITY ANALYSIS IN ANTICIPATION ) Introduced by Councilor Kathryn Harrington  
OF DESIGNATING URBAN RESERVES AND  
RURAL RESERVES

WHEREAS, the 2007 Oregon Legislature enacted Senate Bill 1011 (codified at ORS 195.137 et seq.), authorizing Metro and Multnomah, Washington and Clackamas Counties to designate urban reserves and rural reserves to support long-range planning for the region; and

WHEREAS, the Land Conservation and Development Commission adopted rules (OAR 660 Division 27) to implement Senate Bill 1011 and guide the process of designation of urban and rural reserves; and

WHEREAS, the four local governments established a Reserves Steering Committee (RSC), composed of representatives of local governments in the region, state agencies, businesses, development, conservation, social and economic equity organizations and others to advise it on the designation of reserves; and

WHEREAS, the four local governments have developed a work program that calls for identification of an initial study area for consideration of lands for designation of reserves applying the factors in OAR 660-Division 27; and

WHEREAS, the four local governments prepared a draft map of a study area based upon a preliminary application of the factors in OAR 660 Division 27 to lands generally within five miles of the regional urban growth boundary, with adjustments for significant natural landscape features and political boundaries; and

WHEREAS, the four local governments presented the draft study area map at a series of public workshops across the region during the month(s) of June and July, 2008; and

WHEREAS, the four local governments presented the draft study area map to the Metropolitan Policy Advisory Committee and its Metropolitan Technical Advisory Committee for comment on September 24 and June 4, 2008, respectively; and

WHEREAS, the RSC reviewed the draft study area map over a number of meetings and endorsed the map following revisions on September 10, 2008; now, therefore,

BE IT RESOLVED that the Metro Council

1. Endorses the Broad Study Area as shown and explained in the Staff Report dated October 10, 2008, as the geographic area that will be studied for suitability for designation as urban reserve or rural reserve by agreement among Metro and Multnomah, Washington and Clackamas Counties.



2. Directs the staff to study the lands in the Broad Study Area for suitability for designation as urban reserve or rural reserve, applying the factors in OAR 660 Division 27, in coordination with the staffs from Multnomah, Washington and Clackamas Counties.

ADOPTED by the Metro Council this \_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
David Bragdon, Council President

Approved as to form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 08-4001, FOR THE PURPOSE OF AUTHORIZING THE STUDY OF LANDS TO COMPLETE A SUITABILITY ANALYSIS IN ANTICIPATION OF DESIGNATING URBAN RESERVES AND RURAL RESERVES**

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Date: October 10, 2008

Prepared by: Tim O'Brien  
Principal Regional Planner

## **PROPOSED ACTION**

Authorizing the study of lands to complete a suitability analysis in anticipation of designating urban reserves and rural reserves.

## **BACKGROUND INFORMATION**

Senate Bill 1011, enacted by the 2007 Legislature, enables Metro and Metro area counties to designate "Urban and Rural Reserves". These reserves will determine where the Portland Metro region will and will not expand to accommodate population and employment growth over the next 40 to 50 years. The legislation directed the Land Conservation and Development Commission (LCDC) to adopt rules to implement the new statute. On January 24, 2008 LCDC adopted new urban and rural reserve administrative rules (OAR 660, division 27).

As a result of this LCDC action, Metro and Clackamas, Multnomah and Washington counties are leading a regional effort to designate urban and rural reserves to accommodate future growth and protect valuable farmland, forest land and natural areas that define the character of this region.

To assist with the study and development of urban and rural reserves, a Reserves Steering Committee was formed, consisting of officials from local cities, counties and Metro, as well as representatives of various business sectors, the agricultural community, the environmental conservation community, and social and economic equity organizations. The representatives of the Metro Council and the three counties are the only voting members of the Reserves Steering Committee, and are designated the Core 4. The Core 4 is composed of Clackamas County Commissioner Martha Schrader, Multnomah County Commissioner Jeff Cogen, Washington County Chair Tom Brian and Metro Councilor Kathryn Harrington.

## **ANALYSIS**

The Key Milestones for Designating Urban and Rural Reserves chart calls for the identification of a broad urban and rural reserve study area to take out for public input. At the April 9, 2008 Reserves Steering Committee (RSC) meeting, Metro staff outlined a proposal, developed with staff from Clackamas, Multnomah and Washington counties, for identifying a broad urban and rural reserve study area using a starting point of 5 miles from the current urban growth boundary (UGB). The RSC discussed this proposal and suggested that additional land in Marion County should be included in the study area. At the May 14<sup>th</sup> RSC meeting, Dick Benner of the Office of Metro Attorney summarized legal issues regarding extending the reserve study area to include land outside of Clackamas, Multnomah and Washington counties. In addition, the Core 4 reported that Marion and Yamhill counties have declined to join the reserves process. At the June 9, 2008 RSC meeting the Core 4 directed staff to gather public

comment on the draft study area map through a series of public open houses with the intent of formally adopting a reserves study area map at the September RSC meeting.

On June 4, 2008, the proposed reserves study area map was presented to the Metro Technical Advisory Committee (MTAC). No specific changes to the map were proposed.

Between June 16 and August 15, 2008 Clackamas, Multnomah and Washington counties and Metro collaborated on a variety of activities to engage citizens in a discussion of urban and rural reserves including hosting seven public open houses. The intent was to attract people both inside and outside the urban growth boundary to a regional conversation in a convenient and familiar location. The open houses were held in: Beaverton, Forest Grove, Gresham, Tualatin, Oregon City, central Portland (Metro) and NW Portland. Altogether more than 340 people attended the open houses. Additionally, team members have presented to more than 650 additional attendees at group and organizational discussions.

At the August 13, 2008 RSC meeting Mike Dahlstrom, Washington County Public Involvement Coordinator presented a summary of the Phase 2 Public Involvement activities. In general, people asked questions and raised issues ranging from very broad (save farmland or make better use of industrial land inside the UGB) to very specific (my land cannot be farmed). With regard to changes in the proposed study area boundary, there was little substantive feedback.

The proposed reserves study area map was also presented to the three county policy advisory committees for their review and comment. The Clackamas County Urban/Rural Reserves Policy Advisory Committee proposed one revision to the map on the north side of the city of Molalla. The revision is to remove the city of Molalla's potential urban reserve area from the Metro urban and rural reserve study area map.

At the September 10, 2008 RSC meeting, after much discussion regarding the land on the north side of Molalla, the RSC endorsed the reserves study area as proposed and seen in Attachment 1. Subsequent to this conversation, Clackamas County conducted additional discussions regarding the area around Molalla and concluded the map should remain as endorsed by the RSC.

The Metro Policy Advisory Committee (MPAC) reviewed the map in its current form on September 24, 2008 and had no additional comments.

## **INFORMATION**

### **Known Opposition**

At this point in time there is no known opposition to the study of the lands contained in the proposed urban and rural reserve study area. The Molalla CPO and the Hamlet of Mulino have expressed concern that the public was not properly included in the process of determining the extent of the study area in Clackamas County.

### **Legal Antecedents**

Oregon Administrative Rule 660-027 provides the process for designation of urban reserves and rural reserves in the Portland metropolitan area. This division establishes procedures for the designation of urban and rural reserves in the metropolitan area by agreement between and among local governments in the area and by amendments to the applicable regional framework plan and comprehensive plans. Statutory authority is provided by ORS 195.141 and ORS 197.040.

**Anticipated Effects**

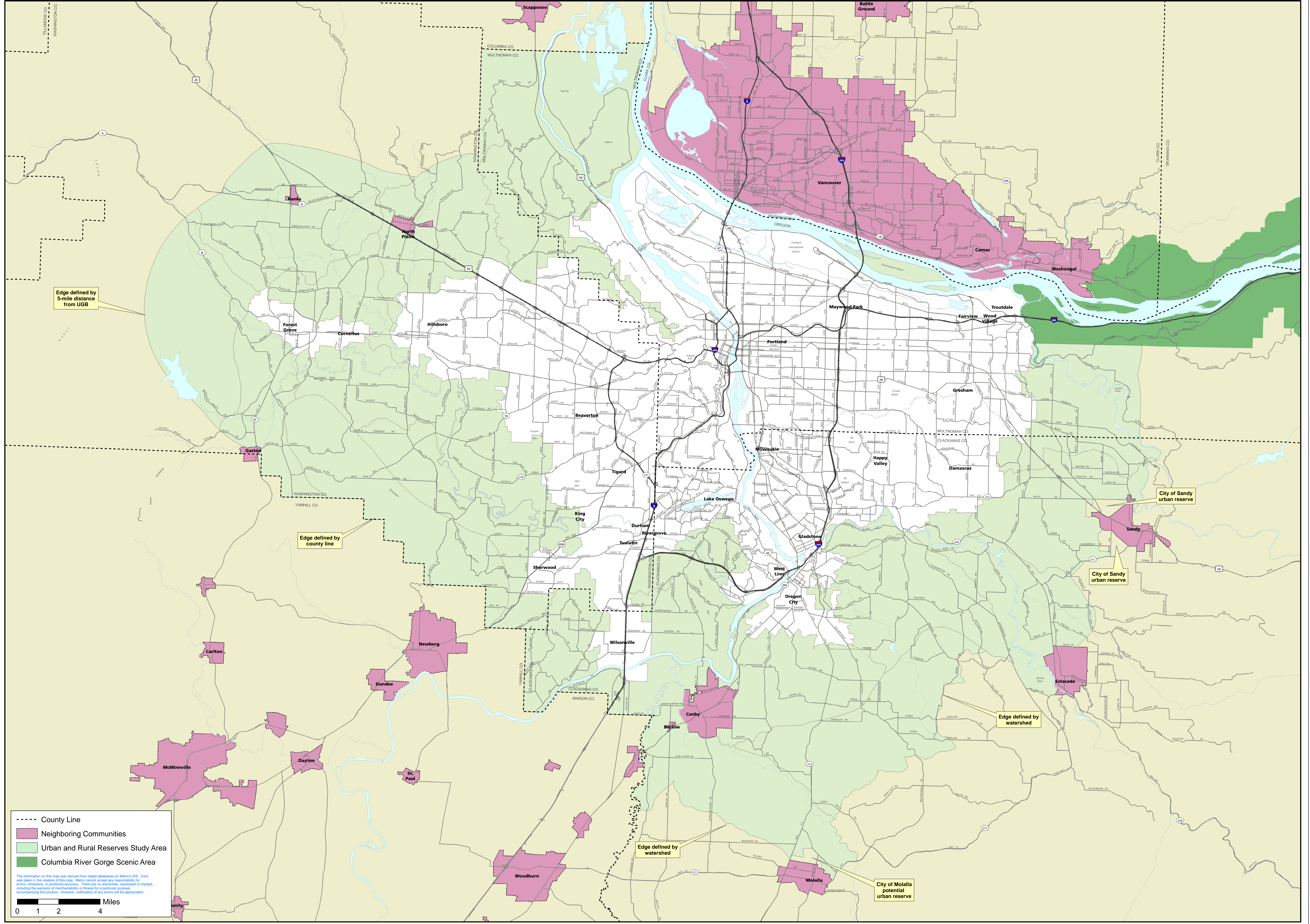
Adoption of Resolution No. 08-4001 will allow staff to proceed with an analysis of the suitability of the land in the study area, as shown on Attachment 1, for designation as a rural or urban reserve. It is anticipated that not all the land in the study area will be designated as a rural or urban reserve.

**Budget Impacts**

Metro staff in conjunction with our regional partners will complete the analysis of the study area for possible designation as rural or urban reserves. Staff time was included in the Planning Department's Fiscal Year 2008-09 Budget Proposal.

**RECOMMENDED ACTION**

Staff recommends that the Metro Council approve Resolution 08-4001 endorsing the reserve study area map as seen in Attachment 1 and authorizing staff to complete an analysis of the suitability of the land for designation as a rural or urban reserve in coordination with the staffs from Multnomah, Washington and Clackamas Counties.



- - - - County Line  
 Neighboring Communities  
 Urban and Rural Reserves Study Area  
 Columbia River Gorge Scenic Area

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