



**METRO**

**Agenda**

MEETING: METRO COUNCIL  
DATE: December 11, 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 December 4, 2008 Metro Council Regular Meeting.

3.2 **Resolution No. 08-3972**, For the Purpose of Confirming the Appointment Of Nancy Neuman to the Metro Committee for Citizen Involvement (MCCI).

3.3 **Resolution No. 08-4004**, For the Purpose of Extending the Term and Confirming Appointments of the Brownfields Task Force

**4. ORDINANCES – FIRST READING**

4.1 **Ordinance No. 08-1206**, Amending the FY 2008-09 Budget and Appropriations Schedule Creating the Strategy Center, Recognizing Intergovernmental Revenue, and Providing Appropriation for the Council Office, and Declaring An Emergency.

4.2 **Ordinance No. 08-1207**, For the Purpose of Annexing Lands on the North Edge of Wilsonville Road at its Intersection with Willamette Way West to the Metro Jurisdictional Boundary.

4.3 **Ordinance No. 08-1208**, Amending the FY 2008-09 Budget and Appropriations Schedule by Transferring Appropriations from Contingency to the Office Of the Metro Attorney, adding 0.5 FTE Legal Secretary and Declaring an Emergency.

**5. ORDINANCES - SECOND READING**

5.1 **Ordinance No. 08-1203**, Amending the FY 2008-09 Budget and Appropriations Schedule Recognizing a Grant from the Oregon Community Foundation for the Connecting Green Blue Ribbon Committee for Trails, and Declaring an Emergency. Burkholder

5.2 **Ordinance No. 08-1205**, Amending the FY 2008-09 Budget and Appropriations Schedule Transferring Appropriation from Contingency to Debt Service, Authorizing Defeasance of Certain Solid Waste Revenue Bonds, and Declaring an Emergency. Park

## 6. RESOLUTIONS

6.1 **Resolution No. 08-3985**, Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to American Sanitary Services, Inc. for Delivery of Putrescible Waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center. Burkholder

6.2 **Resolution No. 08-3986**, Authorizing the Chief Operating Office to Issue a Renewed Non-System License to Arrow Sanitary Services, Inc. for Delivery of Putrescible Waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center. Burkholder

6.3 **Resolution No. 08-3987**, Authorizing the Chief Operating Office to Issue a Renewed Non-System License to Willamette Resources, Inc. for Delivery of Putrescible Waste to Coffin Butte Landfill. Hosticka

6.4 **Resolution No. 08-3988**, Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Crown Point Refuse, Inc. for Delivery of Putrescible Waste to the Wasco County Landfill. Park

## 7. CHIEF OPERATING OFFICER COMMUNICATION

## 8. COUNCILOR COMMUNICATION

## ADJOURN

**Television schedule for December 11 , 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, December 11 (Live)</p>	<p><b>Portland</b>  Channel 30 (CityNet 30) – Portland Community Media  <a href="http://www.pcmv.org">www.pcmv.org</a> – (503) 288-1515  8:30 p.m. Sunday, December 14  2 p.m. Monday, December 15</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, December 15</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, December 13  11 p.m. Sunday, December 14  6 a.m. Tuesday, December 16  4 p.m. Wednesday, December 17</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).

Agenda Item Number 3.1

Consideration of Minutes of the December 4, 2008 Metro Council Regular Meeting

*Consent Agenda*

Metro Council Meeting  
Thursday, December 11, 2008  
Metro Council Chamber

Agenda Item Number 3.2

**Resolution No. 08-3972**, For the Purpose of Confirming the Appointment of Nancy Neuman to the Metro Committee for Citizen Involvement (MCCI).

*Consent Agenda*

Metro Council Meeting  
Thursday, December 11, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE	)	RESOLUTION NO. 08-3972
APPOINTMENT OF NANCY NEUMAN TO THE	)	
METRO COMMITTEE FOR CITIZEN	)	Introduced by Council President David
INVOLVEMENT (MCCI)	)	Bragdon
	)	

WHEREAS, the Metro Charter calls for the creation of an Office of Citizen Involvement, and the establishment of a citizens committee therein; and

WHEREAS, Section 28 (1) of the Metro Charter states that the Metro Office of Citizen Involvement (MCCI) is created to develop and maintain programs and procedures to aid communication between citizens and the Metro Council; and

WHEREAS, the Metro Council has created MCCI (Metro Code Section 2.19.100); and

WHEREAS, there are several vacancies in MCCI membership with one appointment to be made in a District 5 position; and

WHEREAS, a recruitment and selection process has been initiated, resulting in the nomination by MCCI of citizen Nancy Neuman (Exhibit A) for a two-year term, beginning December 11, 2008, and;

WHEREAS, the Council President has appointed citizen Nancy Neuman to serve on MCCI representing District 5, subject to Metro Council confirmation; now therefore

BE IT RESOLVED that the Metro Council confirms the appointment of Nancy Neuman as a member of MCCI.

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

\_\_\_\_\_  
David L. Bragdon, Council President

Approved as to Form:

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

## **STAFF REPORT**

IN CONSIDERATION OF RESOLUTION NO. 08-3972, FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF NANCY NEUMAN TO THE METRO COMMITTEE FOR CITIZEN INVOLVEMENT.

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Date: November 25, 2008

Prepared by: Cheryl Grant

### **BACKGROUND**

The Metro Committee for Citizen Involvement (MCCI) has continued to attempt to fill its vacancies. MCCI has actively recruited new members, including soliciting stakeholders and local leaders for nominees, notifying agency staff, and advertising on a weekly basis.

Nancy Neuman resides in District 5. The MCCI Membership Committee has recommended Ms. Neuman for a District 5 position on the committee, citing her interest in community and land use planning. Ms. Neuman's application to the committee is attached to Resolution 08-3972 as Exhibit A.

### **ANALYSIS/INFORMATION**

#### **1. Known Opposition**

None.

#### **2. Legal Antecedents**

Section 28(1) of the Metro Charter and Metro Code Section 2.19.100, adopted on November 9, 2000, states that the Metro Office of Citizen Involvement (MCCI) is created to develop and maintain programs and procedures to aid communication between citizens and the Metro Council; and Ordinance No. 00-860A (For the Purpose of Adding a New Chapter 2.19 to the Metro Code Relating to Advisory Committees).

#### **3. Anticipated Effects**

That a new member will be appointed to MCCI.

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

None.

### **RECOMMENDED ACTION**

Staff recommends the adoption of Resolution No. 08-3972.

Agenda Item Number 3.3

**Resolution No. 08-4004**, For the Purpose of Extending the Term and  
Confirming Appointments of the Brownfields Task Force.

*Consent Agenda*

Metro Council Meeting  
Thursday, December 11, 2008  
Metro Council Chamber



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF EXTENDING THE  
TERM AND CONFIRMING  
APPOINTMENTS OF THE BROWNFIELDS  
TASK FORCE

RESOLUTION NO. 08-4004

Introduced by Michael Jordan, Chief Operating  
Officer with the Concurrence of Council  
President Bragdon

WHEREAS, establishing a Brownfields Program that complements ongoing planning efforts by cities and counties in the region will enhance the efficient use of land, eliminate environmentally contaminated sites and generate additional tax revenues for local governments; and

WHEREAS, identifying and prioritizing Brownfield sites in the region is an important part of increasing the developable short-term land supply in the region and could provide significant redevelopment opportunities for affordable housing, employment, and open spaces in local communities; and

WHEREAS, the Council, by Resolution 05-3644 (For the Purpose of Establishing a Brownfields Program and a Brownfields Task Force) adopted on December 1, 2005, directed the Chief Operating Officer to develop a strategic work program and a draft membership list for the Brownfields Task Force; and

WHEREAS, Metro received a two-year grant from the U.S. Environmental Protection Agency in 2006 for the purpose of developing and maintaining a region-wide inventory of Brownfields and environmental assessment of select sites; and

WHEREAS, the Metro Council, by Resolution No. 07-3765A, For the Purpose of Establishing the Duties and Responsibilities of the Brownfields Task Force and Confirming Appointment of Its Members adopted on January 25, 2007, established the duties and responsibilities of the Brownfields Task Force and confirmed appointment of its initial members; and

WHEREAS, Metro established the Brownfields Recycling Program, convened the Metro Brownfields Task Force, and with the recommendations of the task force, conducted outreach throughout the region, provided Phase I Environmental Site Assessments to five sites, multi-part Phase II environmental site assessments to four sites, and site-specific technical assistance to two additional sites; and

WHEREAS, Metro received a second grant from the U.S. Environmental Protection Agency in 2008 for the purpose of continuing Metro's Brownfields Recycling Program from 2009 through 2011 in order to conduct additional community outreach and environmental site assessments; and

WHEREAS, this additional grant work will extend the need for the Brownfields Task Force; and

WHEREAS, the service of the members of the Brownfields Task Force appointed in January, 2007 concludes in January, 2009; and

WHEREAS, the Council President has appointed members of the Brownfields Task Force subject to Council Confirmations; now, therefore

BE IT RESOLVED that the Metro Council:

1. Extends the duties of the Brownfields Task Force through January 31, 2012 to:
  - Provide recommendations on developing and maintaining Metro's brownfields inventory, focusing site research, working with property owners, and conducting community and specific stakeholder outreach;
  - Review criteria for selecting brownfield sites for environmental assessment;
  - Prioritize sites for environmental assessments; and
  - Provide recommendations regarding redevelopment of brownfield sites throughout local communities.
2. Confirms the appointment of the persons listed in Exhibit A, attached and incorporated into this resolution, to serve as the members of Metro's Brownfields Task Force.
3. Hereby directs the Brownfields Task Force to meet quarterly, with administrative and technical support from Metro staff, to submit recommendations to the Council on a periodic basis as approved by the Task Force.

ADOPTED by the Metro Council this 11<sup>th</sup> day of December 2008.

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David Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

**EXHIBIT A TO RESOLUTION NO. 08-4004**

**Members of Metro's Brownfields Task Force**

Mr. Clark Henry, Chair  
Portland Brownfield Program Manager, Bureau of Environmental Services, City of Portland

The Honorable Catherine Arnold  
Councilor, City of Beaverton

Mr. Scott Beard\*  
Senior Vice President, Pacific Continental Bank

The Honorable Hal Busch  
Councilor, City of Gladstone

Mr. Joshua Caldwell\*  
Business Development Manager, S.D. Deacon Corp. of Oregon

Ms. Sara Daley\*  
Real Estate Broker, Windermere/CCRGI

Ms. Mimi Doukas\*  
Director of Land Use Planning, WRG Design

Mr. Coby Graham\*  
Industrial Hygienist, Oregon Health and Sciences University

Ms. Karen Homolac  
Brownfields Program and Policy Coordinator, Oregon Economic and Community Development  
Department

Mr. Aaron Matusick\*  
Attorney, Bittner & Hahs PC

Mr. James McGrath\*  
Associate, ZGF Architects LLP

Ms. Renate Mengelberg  
Business and Economic Development Coordinator, Clackamas County

Ms. Cara Nolan  
Broker, Capacity Commercial Group

Mr. Peter Serrurier\*  
Partner, Stoel Rives LLP

Mr. Ramsay Weit  
Executive Director, Community Housing Fund

Mr. Gil Wistar\*  
Brownfields Coordinator, Environmental Cleanup Program, Oregon Department of Environmental  
Quality

\* Denotes new member appointed to fill vacancy on the Brownfields Task Force

## **STAFF REPORT**

### **IN CONSIDERATION OF RESOLUTION NO. 08-4004, FOR THE PURPOSE OF EXTENDING THE TERM AND CONFIRMING APPOINTMENTS OF THE BROWNFIELDS TASK FORCE**

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Date: November 13, 2008

Prepared by: Miranda Bateschell  
Associate Regional Planner

## **BACKGROUND**

The Metro Council adopted Resolution No. 07-3765A For the Purpose of Establishing the Duties and Responsibilities of the Brownfields Task Force and Confirming Appointment of Its Members on January 25, 2007.

As a result, Metro established the Brownfields Recycling Program and convened the Metro Brownfields Task Force. With the recommendations of the task force, staff conducted outreach throughout the region, provided Phase I Environmental Site Assessments to five sites, multi-part Phase II environmental site assessments to four sites, and site-specific technical assistance to two additional sites. The attached map, entitled Metro's Brownfields Recycling Program Sites, depicts the sites that have received assistance through the program.

In 2008, Metro received a second grant from the U.S. Environmental Protection Agency for the purpose of continuing Metro's Brownfields Recycling Program from 2009 through 2011 in order to conduct additional community outreach and environmental site assessments. This additional grant work will extend the need for the Brownfields Task Force to provide guidance in developing and implementing the Brownfields Recycling Program.

The duties of the Brownfields Task Force are to:

- Provide recommendations on developing and maintaining Metro's brownfields inventory, focusing site research, working with property owners, and conducting community and specific stakeholder outreach;
- Review criteria for selecting brownfield sites for environmental assessment;
- Prioritize sites for environmental assessments; and
- Provide recommendations regarding redevelopment of brownfield sites throughout local communities.

In recommending members for the Brownfields Task Force, staff carefully considered the varied expertise and perspectives that would be helpful to fulfill these duties and support the efforts of Metro's Brownfields Recycling Program. The members appointed represented a range of public and private sector experience in environmental and regulatory aspects of brownfields, economic development, affordable housing, construction project

managements, industrial and commercial real estate, financial institutions, local government and community development.

The service of the initial members of the Brownfields Task Force appointed in January, 2007, under Resolution No. 07-3765A, concludes in January, 2009. As a result, the term of the Brownfields Task Force needs to be extended in response to the 2009-2011 grant received from the EPA. Several members of the Brownfields Task Force have offered to extend their term of service and continue to serve on the task force under the new grant. In conjunction with the Metro Council President, staff carefully recruited and recommended appointments to fill the vacant positions to maintain the range and balance of public and private expertise in the various organizational interests listed above. Exhibit A to Resolution No. 08-4004 is a complete list of recommended appointments for the 2009-2011 Brownfields Task Force, which denotes the new members appointed from those individuals continuing their service. The initial membership of Metro's Brownfields Task Force for the service period of 2006 through 2008 is also provided as an attachment to the staff report.

## **ANALYSIS/INFORMATION**

### **1. Known Opposition**

There is no known opposition to the appointment of these members.

### **2. Legal Antecedents**

The extension of the term and amendment of the membership of the Brownfields Task Force is consistent with Metro Council Resolution No. 05-3644, For the Purpose of Establishing a Brownfields Program and a Brownfields Task Force, as well as Resolution No. 07-3765A, reference above, For the Purpose of Establishing the Duties and Responsibilities of the Brownfields Task Force and Confirming Appointment of Its Members.

### **3. Anticipated Effects**

The Brownfields Task Force will continue to contribute valuable expertise to help shape the work of Metro's Brownfields Recycling Program. Identifying brownfield sites throughout the Metro region and assessing the level of contamination of select sites will lay the groundwork for possible future redevelopment of such sites, and thus support Metro's efforts to focus development and investment in existing centers and corridors.

### **4. Budget Impacts**

Staff resources for this program will be provided from staff assignments that are included in the 2008-2009 budget for economic development with similar staff assignments in following budget cycles through 2011. Grant funds will cover costs of interns and consultants to conduct outreach and communication efforts as well as technical and financial assistance related to environmental site assessment work.

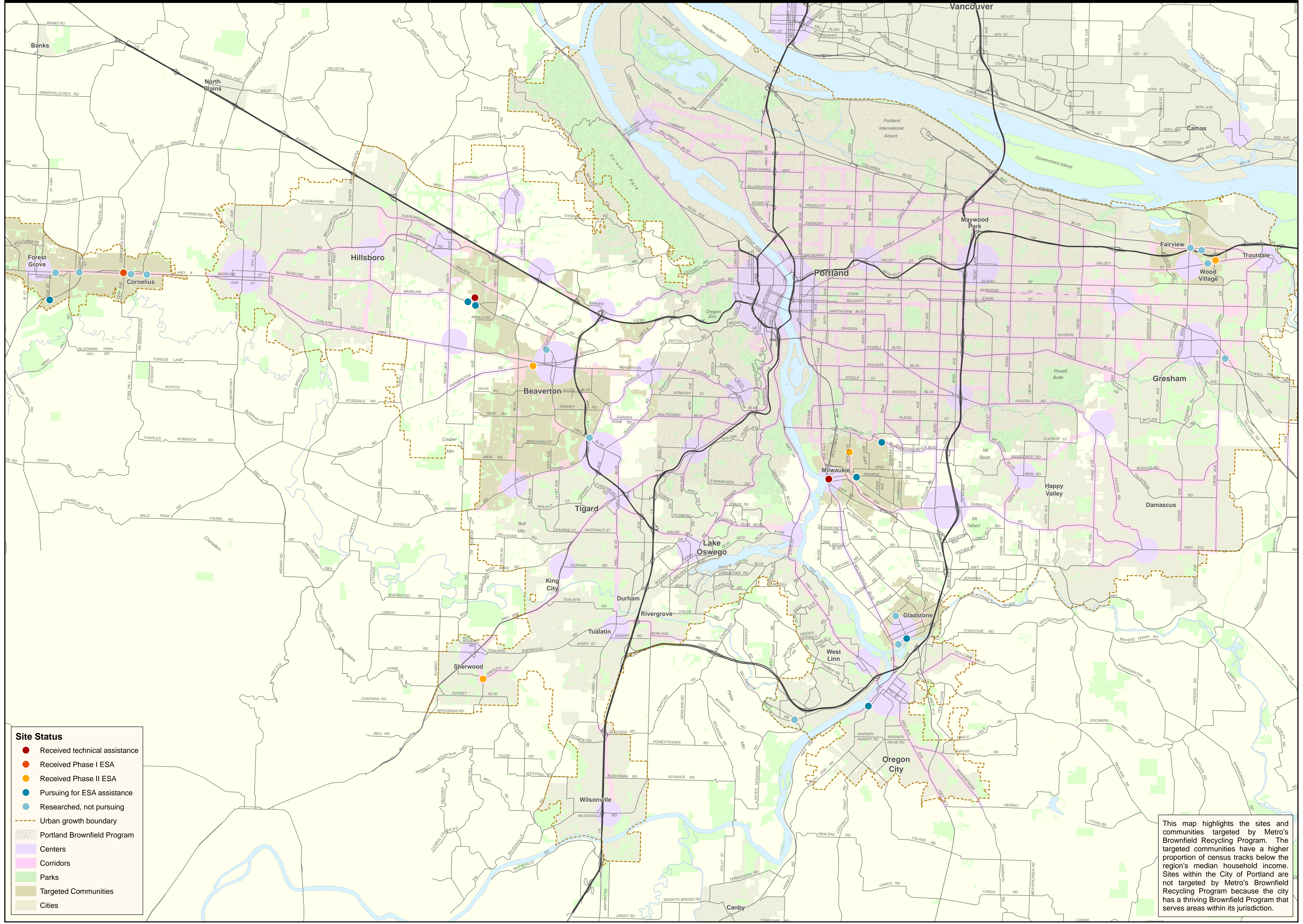
## **RECOMMENDED ACTION**

Staff recommends the adoption of Resolution No. 08-4004.



# Metro's Brownfields Recycling Program Sites

## Portland Metropolitan Region December 2008



**Site Status**

- Received technical assistance
- Received Phase I ESA
- Received Phase II ESA
- Pursuing for ESA assistance
- Researched, not pursuing
- - - Urban growth boundary
- ▨ Portland Brownfield Program
- ▨ Centers
- ▨ Corridors
- ▨ Parks
- ▨ Targeted Communities
- ▨ Cities

This map highlights the sites and communities targeted by Metro's Brownfield Recycling Program. The targeted communities have a higher proportion of census tracts below the region's median household income. Sites within the City of Portland are not targeted by Metro's Brownfield Recycling Program because the city has a thriving Brownfield Program that serves areas within its jurisdiction.

**Members of Metro's Brownfields Task Force  
2006-2008**

Ms. Michele Reeves, Chair  
Real Estate Broker, Windermere Commercial

The Honorable Catherine Arnold  
Councilor, City of Beaverton

The Honorable Hal Busch  
Councilor, City of Gladstone

Mr. Craig Kelley  
Project Manager, Housing Development Center

Mr. John Haines  
Executive Director, MercyCorps Northwest

Mr. Chuck Harman  
Site Assessment Specialist/NWR Brownfields Coordinator, Oregon Department of Environmental  
Quality

Mr. Clark Henry  
Portland Brownfield Program Manager, Bureau of Environmental Services, City of Portland

Ms. Gisel Hillner  
Manager, Lake Oswego Key Bank

Ms. Karen Homolac  
Brownfields Program and Policy Coordinator, Oregon Economic and Community Development  
Department

Mr. Dick Loffelmacher  
PactTrust

Ms. Renate Mengelberg  
Business and Economic Development Coordinator, Clackamas County

Ms. Cara Nolan  
Broker, Capacity Commercial Group



Mr. David Pollock  
Former President and CEO, Stormwater Management, Inc.

Mr. Ramsay Weit  
Executive Director, Community Housing Fund

Agenda Item Number 4.1

**Ordinance No. 08-1206**, Amending the FY 2008-09 Budget and Appropriations Schedule Creating the Strategy Center, Recognizing Intergovernmental Revenue, and Providing Appropriations for the Council Office, and Declaring an Emergency.

***First Reading***

Metro Council Meeting  
Thursday, December 11, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AMENDING THE FY 2008-09 BUDGET AND ) ORDINANCE NO. 08-1206  
APPROPRIATIONS SCHEDULE CREATING THE )  
STRATEGY CENTER, RECOGNIZING ) Introduced by Michael Jordan, Chief  
INTERGOVERNMENTAL REVENUE, AND ) Operating Officer, with the concurrence of  
PROVIDING APPROPRIATION FOR THE ) Council President David Bragdon  
COUCIL OFFICE, 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, Oregon Budget Law ORS 294.326 allows for the expenditure in the year of receipt of grants, gifts, bequests, and other devices received by a municipal corporation in trust for a specific purpose; 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 creating the Strategy Center, recognizing intergovernmental revenue and providing appropriation in the Council Office for implementation of the non-represented salary study.
- 2. 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. 08-1206**

ACCT	DESCRIPTION	Current Budget		Strategy Center Revision		Non-Rep Study Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>									
<b>Resources</b>									
<i>Resources</i>									
<i>BEGBAL</i>	<i>Beginning Fund Balance</i>								
3500	Beginning Fund Balance								
	* Undesignated		4,094,902		0		0		4,094,902
	* Prior period audit adjustment: TOD		5,865,983		0		0		5,865,983
	* Reserved for Underspending		334,000		0		0		334,000
	* Project Carryover		1,481,337		0		0		1,481,337
	* Tourism Opportunity & Comp. Account		96,655		0		0		96,655
	* Recovery Rate Stabilization Reserve		1,012,884		0		0		1,012,884
	* Reserved for Local Gov't Grants (CET)		602,046		0		0		602,046
	* Reserve for Future Debt Service		2,397,852		0		0		2,397,852
	* Tibbets Flower Account		352		0		0		352
	* Reserved for Future Planning Needs		1,604,140		0		0		1,604,140
	* Reserved for Future Election Costs		290,000		0		0		290,000
	* Reserved for Nature in Neighborhood Grants		1,050,000		0		0		1,050,000
	* Reserved for Reg. Afford. Housing Revolving Fi		1,000,000		0		0		1,000,000
	* Reserved for Metro Regional Center Remodel		413,000		0		0		413,000
	* Reserve for Future Natural Areas Operations		764,453		0		0		764,453
	* Prior year PERS Reserve		2,782,174		0		0		2,782,174
<i>EXCISE</i>	<i>Excise Tax</i>								
4050	Excise Taxes		15,106,909		0		0		15,106,909
4055	Construction Excise Tax		1,497,954		0		0		1,497,954
<i>RPTAX</i>	<i>Real Property Taxes</i>								
4010	Real Property Taxes-Current Yr		10,618,031		0		0		10,618,031
4015	Real Property Taxes-Prior Yrs		318,541		0		0		318,541
<i>GRANTS</i>	<i>Grants</i>								
4100	Federal Grants - Direct		3,999,452		0		0		3,999,452
4105	Federal Grants - Indirect		5,578,045		0		0		5,578,045
4110	State Grants - Direct		1,351,000		0		0		1,351,000
4120	Local Grants - Direct		5,475,093		0		0		5,475,093
<i>LGSHRE</i>	<i>Local Gov't Share Revenues</i>								
4135	Marine Board Fuel Tax		114,000		0		0		114,000
4139	Other Local Govt Shared Rev.		447,967		0		0		447,967
<i>GVCNTB</i>	<i>Contributions from Governments</i>								
4145	Government Contributions		250,314		160,319		0		410,633
<i>LICPER</i>	<i>Licenses and Permits</i>								
4150	Contractor's Business License		412,000		0		0		412,000
<i>CHGSVC</i>	<i>Charges for Service</i>								
4160	Boat Ramp Use Permits		508		0		0		508
4165	Boat Launch Fees		150,000		0		0		150,000
4180	Contract & Professional Service		563,178		0		0		563,178
4200	UGB Fees		50,000		0		0		50,000
4230	Product Sales		387,519		0		0		387,519
4280	Grave Openings		179,325		0		0		179,325
4285	Grave Sales		144,675		0		0		144,675
4500	Admission Fees		7,759,908		0		0		7,759,908
4501	Conservation Surcharge		150,000		0		0		150,000
4510	Rentals		807,341		0		0		807,341
4550	Food Service Revenue		5,155,669		0		0		5,155,669
4560	Retail Sales		2,216,110		0		0		2,216,110
4580	Utility Services		2,000		0		0		2,000

**Exhibit A  
Ordinance No. 08-1206**

ACCT	DESCRIPTION	Current Budget		Strategy Center Revision		Non-Rep Study Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>									
<b>Resources</b>									
4610	Contract Revenue		883,315		0		0		883,315
4620	Parking Fees		930,000		0		0		930,000
4630	Tuition and Lectures		1,239,645		0		0		1,239,645
4635	Exhibit Shows		1,049,986		0		0		1,049,986
4640	Railroad Rides		805,462		0		0		805,462
4645	Reimbursed Services		270,000		0		0		270,000
4650	Miscellaneous Charges for Service		13,831		0		0		13,831
4760	Sponsorships		57,000		0		0		57,000
<i>INTRST</i>	<i>Interest Earnings</i>								
4700	Interest on Investments		994,972		0		0		994,972
<i>DONAT</i>	<i>Contributions from Private Sources</i>								
4750	Donations and Bequests		1,310,895		0		0		1,310,895
<i>INCGRV</i>	<i>Internal Charges for Service</i>								
4670	Charges for Service		48,124		0		0		48,124
<i>MISCRV</i>	<i>Miscellaneous Revenue</i>								
4170	Fines and Forfeits		20,000		0		0		20,000
4890	Miscellaneous Revenue		151,000		0		0		151,000
4891	Reimbursements		1,411,973		0		0		1,411,973
<i>EQTREV</i>	<i>Fund Equity Transfers</i>								
4970	Transfer of Resources								
	* from MERC Pooled Capital Fund		97,174		0		0		97,174
<i>INDTRV</i>	<i>Interfund Reimbursements</i>								
4975	Transfer for Indirect Costs								
	* from MERC Operating Fund		1,842,802		0		0		1,842,802
	* from Natural Areas Fund		1,028,311		0		0		1,028,311
	* from Solid Waste Revenue Fund		3,681,110		0		0		3,681,110
<i>INTSRV</i>	<i>Internal Service Transfers</i>								
4980	Transfer for Direct Costs								
	* from Natural Areas Fund		128,513		0		0		128,513
	* from Smith & Bybee Lakes Fund		119,980		0		0		119,980
	* from Solid Waste Revenue Fund		738,056		0		0		738,056
<b>TOTAL RESOURCES</b>			<b>\$103,347,466</b>		<b>\$160,319</b>		<b>\$0</b>		<b>\$103,507,785</b>

**Exhibit A  
Ordinance No. 08-1206**

ACCT	DESCRIPTION	Current Budget		Strategy Center Revision		Non-Rep Study Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>									
<b>Council Office</b>									
<i>Personal Services</i>									
<i>SALWGE Salaries &amp; Wages</i>									
5000	Elected Official Salaries								
	Council President	1.00	111,132	-	0	-	0	1.00	111,132
	Councilor	6.00	222,264	-	0	-	0	6.00	222,264
5010	Reg Employees-Full Time-Exempt								
	Assistant to the Council President	1.00	81,504	-	0	-	0	1.00	81,504
	Chief Operating Officer	1.00	174,239	-	0	-	0	1.00	174,239
	Confidential Secretary	1.00	48,111	-	0	(1.00)	(48,111)	-	0
	Council Clerk	-	0	-	0	-	0	-	0
	Council Operations Officer	-	0	-	0	1.00	76,860	1.00	76,860
	Council President Policy Coordinator	1.00	48,747	-	0	-	0	1.00	48,747
	Council Policy Coordinators	-	0	-	0	3.00	153,667	3.00	153,667
	CRC Project Director	-	0	0.75	146,250	-	0	0.75	146,250
	Deputy Chief Operating Officer	1.00	148,240	-	0	-	5,559	1.00	153,799
	Manager II	1.00	78,251	-	0	(1.00)	(78,251)	-	0
	Policy Advisor II	-	0	1.50	198,202	-	0	1.50	198,202
	Program Analyst I	-	0	0.75	36,350	-	0	0.75	36,350
	Program Analyst II	4.00	200,615	-	0	(3.00)	(148,457)	1.00	52,158
	Program Analyst III	2.41	141,220	-	0	(1.00)	(55,483)	1.41	85,737
	Program Analyst IV	-	0	-	0	1.00	64,462	1.00	64,462
	Program Director I	-	0	-	0	1.00	97,436	1.00	97,436
	Program Supervisor II	1.00	76,494	-	0	-	(11,997)	1.00	64,497
5015	Reg Empl-Full Time-Non-Exempt								
	Administrative Assistant II	1.00	41,424	-	0	-	(1,646)	1.00	39,778
	Administrative Assistant III	1.00	42,829	-	0	-	1,903	1.00	44,732
5030	Temporary Employees		62,000		0		0		62,000
5080	Overtime		1,750		0		0		1,750
5089	Salary Adjustments								
	Elected Officials Adjustment		10,002		0		0		10,002
	Merit Adjustment Pool (non-represented)		15,578		5,712		839		22,129
	Other Adjustments (non-represented)		14,939		0		(14,939)		0
	Other Adjustments (Class & Comp Study)		14,939		0		(14,939)		0
<i>FRINGE Fringe Benefits</i>									
5100	Fringe Benefits								
	Base Fringe (variable & fixed)		545,278		133,347		11,867		690,492
5190	PERS Bond Recovery		47,120		12,369		1,817		61,306
<b>Total Personal Services</b>		<b>22.41</b>	<b>\$2,126,676</b>	<b>3.00</b>	<b>\$532,230</b>	<b>0.00</b>	<b>\$40,587</b>	<b>25.41</b>	<b>\$2,699,493</b>
<b>Total Materials &amp; Services</b>			<b>\$381,553</b>		<b>\$0</b>		<b>\$0</b>		<b>\$381,553</b>
<b>TOTAL REQUIREMENTS</b>		<b>22.41</b>	<b>\$2,508,229</b>	<b>3.00</b>	<b>\$532,230</b>	<b>0.00</b>	<b>\$40,587</b>	<b>25.41</b>	<b>\$3,081,046</b>

**Exhibit A**  
**Ordinance No. 08-1206**

ACCT	DESCRIPTION	Current Budget		Strategy Center Revision		Non-Rep Study Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>									
<b>Planning</b>									
<i>Personal Services</i>									
SALWGE	Salaries & Wages								
5010	Reg Employees-Full Time-Exempt								
	Administrative Specialist IV	2.00	86,841	(0.75)	(31,475)	-	0	1.25	55,366
	Assistant Regional Planner	1.00	54,465	-	0	-	0	1.00	54,465
	Assistant Transportation Planner	1.00	48,991	-	0	-	0	1.00	48,991
	Associate GIS Specialist	4.00	258,009	-	0	-	0	4.00	258,009
	Associate Transportation Modeler	5.00	274,708	-	0	-	0	5.00	274,708
	Associate Trans. Planner	3.00	170,219	-	0	-	0	3.00	170,219
	Director II	1.00	141,310	(0.75)	(106,185)	-	0	0.25	35,125
	Manager I	4.00	369,024	-	0	-	0	4.00	369,024
	Manager II	6.00	567,920	-	0	-	0	6.00	567,920
	Principal GIS Specialist	3.00	250,858	-	0	-	0	3.00	250,858
	Principal Regional Planner	6.00	486,422	-	0	-	0	6.00	486,422
	Principal Transportation Engineer	1.00	83,619	-	0	-	0	1.00	83,619
	Principal Transportation Modeler	3.00	250,858	-	0	-	0	3.00	250,858
	Principal Transportation Planner	5.00	388,030	-	0	-	0	5.00	388,030
	Program Director II	2.00	227,168	-	0	-	0	2.00	227,168
	Program Supervisor I	2.00	120,707	-	0	-	0	2.00	120,707
	Program Supervisor II	3.00	220,148	-	0	-	0	3.00	220,148
	Senior GIS Specialist	2.00	125,532	-	0	-	0	2.00	125,532
	Senior Management Analyst	4.00	245,121	-	0	-	0	4.00	245,121
	Senior Public Affairs Specialist	3.25	202,683	-	0	-	0	3.25	202,683
	Senior Regional Planner	2.00	125,367	-	0	-	0	2.00	125,367
	Senior Transportation Modeler	2.00	155,521	-	0	-	0	2.00	155,521
	Senior Transportation Planner	8.00	550,073	-	0	-	0	8.00	550,073
	Transit Program Director I	1.00	115,595	-	0	-	0	1.00	115,595
	Transit Program Director II	1.00	152,241	(0.75)	(113,634)	-	0	0.25	38,607
	Transit Project Manager I	1.00	99,129	-	0	-	0	1.00	99,129
	Transit Project Manager II	1.00	98,585	-	0	-	0	1.00	98,585
5015	Reg Empl-Full Time-Non-Exempt								
	Administrative Specialist I	1.00	33,249	-	0	-	0	1.00	33,249
	Administrative Specialist II	3.00	105,487	-	0	-	0	3.00	105,487
	Administrative Specialist III	1.00	36,603	-	0	-	0	1.00	36,603
	GIS Technician	1.00	38,419	-	0	-	0	1.00	38,419
	Program Assistant 3	2.00	88,970	-	0	-	0	2.00	88,970
5020	Reg Emp-Part Time-Exempt								
	Associate GIS Specialist	0.50	31,236	-	0	-	0	0.50	31,236
	Associate Regional Planner	0.60	35,014	-	0	-	0	0.60	35,014
	Principal Regional Planner	0.80	60,694	-	0	-	0	0.80	60,694
5030	Temporary Employees		198,981		0		0		198,981
5080	Overtime		5,000		0		0		5,000
5089	Salary Adjustments								
	Merit Adjustment Pool (non-represented)		31,677		(5,040)		0		26,637
	Step Increases (AFSCME)		76,292		0		0		76,292
	COLA (represented employees)		132,388		0		0		132,388
	Other Adjustments (non-represented)		31,677		0		0		31,677
	Other Adjustments (AFSCME)		3,081		0		0		3,081
	Other Adjustments (Class & Comp Study)		31,677		0		0		31,677

**Exhibit A  
Ordinance No. 08-1206**

ACCT	DESCRIPTION	Current Budget		Strategy Center Revision		Non-Rep Study Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>									
<b>Planning</b>									
<i>FRINGE Fringe Benefits</i>									
5100	Fringe Benefits								
	Base Fringe (variable & fixed)		2,417,310		(98,409)		0		2,318,901
5190	PERS Bond Recovery		223,348		(4,493)		0		218,855
<b>Total Personal Services</b>		<b>90.15</b>	<b>\$9,618,600</b>	<b>(2.25)</b>	<b>(\$359,236)</b>	<b>0.00</b>	<b>\$0</b>	<b>87.90</b>	<b>\$9,259,364</b>
<b>Total Materials &amp; Services</b>			<b>\$15,149,435</b>		<b>\$0</b>		<b>\$0</b>		<b>\$15,149,435</b>
<b>Total Debt Service</b>			<b>\$38,513</b>		<b>\$0</b>		<b>\$0</b>		<b>\$38,513</b>
<b>TOTAL REQUIREMENTS</b>		<b>90.15</b>	<b>\$24,806,548</b>	<b>(2.25)</b>	<b>(\$359,236)</b>	<b>0.00</b>	<b>\$0</b>	<b>87.90</b>	<b>\$24,447,312</b>



**Exhibit A  
Ordinance No. 08-1206**

ACCT	DESCRIPTION	Current Budget		Strategy Center Revision		Non-Rep Study Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>									
<b>Public Affairs &amp; Government Relations</b>									
<i>Personal Services</i>									
<i>SALWGE Salaries &amp; Wages</i>									
5010	Reg Employees-Full Time-Exempt								
	Administrative Specialist IV	1.00	53,967	-	0	-	0	1.00	53,967
	Associate Public Affairs Specialist	2.00	106,493	-	0	-	0	2.00	106,493
	Associate Visual Communications Design	1.00	56,684	-	0	-	0	1.00	56,684
	Policy Advisor I	-	0	-	0	1.00	96,813	1.00	96,813
	Manager I	1.00	79,002	-	0	-	0	1.00	79,002
	Manager II	2.00	181,204	-	0	(1.00)	(92,816)	1.00	88,388
	Program Director II	1.00	117,694	-	0	-	0	1.00	117,694
	Senior Public Affairs Specialist	8.00	512,286	-	0	-	0	8.00	512,286
	Senior Visual Communications Designer	1.00	62,471	-	0	-	0	1.00	62,471
	Program Assistant 2	1.00	36,310	-	0	-	0	1.00	36,310
5030	Temporary Employees		15,000		0		0		15,000
5089	Salary Adjustments								
	Merit Adjustment Pool (non-represented)		5,669		0		60		5,729
	Step Increases (AFSCME)		14,079		0		0		14,079
	COLA (represented employees)		24,432		0		0		24,432
	Other Adjustments (non-represented)		5,669		0		0		5,669
	Other Adjustments (AFSCME)		4,141		0		0		4,141
	Other Adjustments (Class & Comp Study)		5,669		0		0		5,669
<i>FRINGE Fringe Benefits</i>									
5100	Fringe Benefits								
	Base Fringe (variable & fixed)		453,728		0		848		454,576
5190	PERS Bond Recovery		40,505		0		130		40,635
<b>Total Personal Services</b>		<b>18.00</b>	<b>\$1,775,003</b>	<b>0.00</b>	<b>\$0</b>	<b>0.00</b>	<b>\$5,035</b>	<b>18.00</b>	<b>\$1,780,038</b>
<b>Total Materials &amp; Services</b>			<b>\$213,579</b>		<b>\$0</b>		<b>\$0</b>		<b>\$213,579</b>
<b>TOTAL REQUIREMENTS</b>		<b>18.00</b>	<b>\$1,988,582</b>	<b>0.00</b>	<b>\$0</b>	<b>0.00</b>	<b>\$5,035</b>	<b>18.00</b>	<b>\$1,993,617</b>

**Exhibit A**  
**Ordinance No. 08-1206**

ACCT	DESCRIPTION	Current Budget		Strategy Center Revision		Non-Rep Study Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>									
<b>Regional Parks</b>									
<i>Personal Services</i>									
<i>SALWGE Salaries &amp; Wages</i>									
5010	Reg Employees-Full Time-Exempt								
	Assistant Management Analyst	2.20	89,439	-	0	-	0	2.20	89,439
	Associate Regional Planner	1.50	77,198	-	0	-	0	1.50	77,198
	Director II	0.70	98,678	-	0	-	0	0.70	98,678
	Education Coordinator II	1.00	53,997	-	0	-	0	1.00	53,997
	Manager I	3.00	282,053	(0.75)	(67,839)	-	0	2.25	214,214
	Manager II	1.70	155,417	-	0	-	0	1.70	155,417
	Principal Regional Planner	1.20	96,377	-	0	-	0	1.20	96,377
	Program Director I	1.00	112,308	-	0	-	0	1.00	112,308
	Program Supervisor I	0.67	46,144	-	0	-	0	0.67	46,144
	Program Supervisor II	1.00	64,263	-	0	-	0	1.00	64,263
	Property Management Specialist	0.80	52,474	-	0	-	0	0.80	52,474
	Senior Natural Resource Scientist	4.00	283,564	-	0	-	0	4.00	283,564
	Senior Public Affairs Specialist	0.20	18,034	-	0	-	0	0.20	18,034
	Senior Regional Planner	2.00	131,319	-	0	-	0	2.00	131,319
	Service Supervisor II	1.50	74,235	-	0	-	0	1.50	74,235
	Service Supervisor III	1.00	64,261	-	0	-	0	1.00	64,261
	Volunteer Coordinator II	1.00	53,997	-	0	-	0	1.00	53,997
5015	Reg Empl-Full Time-Non-Exempt								
	Administrative Specialist II	2.00	73,029	-	0	-	0	2.00	73,029
	Arborist	1.00	52,208	-	0	-	0	1.00	52,208
	Maintenance Worker 2	1.00	46,228	-	0	-	0	1.00	46,228
	Natural Resource Scientist	4.00	183,280	-	0	-	0	4.00	183,280
	Park Ranger	8.00	366,567	-	0	-	0	8.00	366,567
	Park Ranger Lead	1.00	45,820	-	0	-	0	1.00	45,820
	Program Assistant 2	1.00	36,462	-	0	-	0	1.00	36,462
	Program Assistant 3	1.00	40,227	-	0	-	0	1.00	40,227
	Volunteer Coordinator I	0.80	35,460	-	0	-	0	0.80	35,460
5020	Reg Emp-Part Time-Exempt								
	Education Coordinator II	0.50	26,998	-	0	-	0	0.50	26,998
	Principal Regional Planner	0.80	55,078	-	0	-	0	0.80	55,078
	Senior Regional Planner	1.80	125,647	-	0	-	0	1.80	125,647
5025	Reg Employees-Part Time-Non-Exempt								
	Program Assistant 3	0.50	21,160	-	0	-	0	0.50	21,160
	Volunteer Coordinor I	1.00	46,550	-	0	-	0	1.00	46,550
5030	Temporary Employees		357,647		0		0		357,647
5080	Overtime		19,649		0		0		19,649
5089	Salary Adjustments								
	Merit Adjustment Pool (non-represented)		14,159		(1,350)		0		12,809
	Step Increases (AFSCME)		26,748		0		0		26,748
	COLA (represented employees)		60,717		0		0		60,717
	Other Adjustments (non-represented)		14,161		0		0		14,161
	Other Adjustments (AFSCME)		6,236		0		0		6,236
	Other Adjustments (Class & Comp Study)		14,160		0		0		14,160
<i>FRINGE Fringe Benefits</i>									
5100	Fringe Benefits								
	Base Fringe (variable & fixed)		1,139,776		(24,057)		0		1,115,719
5190	PERS Bond Recovery		99,053		(2,214)		0		96,839
<b>Total Personal Services</b>		<b>49.87</b>	<b>\$4,707,430</b>	<b>(0.75)</b>	<b>(\$95,460)</b>	<b>0.00</b>	<b>\$0</b>	<b>49.12</b>	<b>\$4,611,970</b>

**Exhibit A  
Ordinance No. 08-1206**

ACCT	DESCRIPTION	Current Budget		Strategy Center Revision		Non-Rep Study Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>									
<b>Regional Parks</b>									
	Total Materials & Services		\$3,752,932		\$0		\$0		\$3,752,932
	Total Capital Outlay		\$61,000		\$0		\$0		\$61,000
	<b>TOTAL REQUIREMENTS</b>	<b>49.87</b>	<b>\$8,521,362</b>	<b>(0.75)</b>	<b>(\$95,460)</b>	<b>0.00</b>	<b>\$0</b>	<b>49.12</b>	<b>\$8,425,902</b>

**Exhibit A  
Ordinance No. 08-1206**

ACCT	DESCRIPTION	Current Budget		Strategy Center Revision		Non-Rep Study Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>									
<b>General Expenditures</b>									
<b>Total Interfund Transfers</b>			<b>\$5,165,928</b>		<b>\$0</b>		<b>\$0</b>		<b>\$5,165,928</b>
<b><i>Contingency &amp; Unappropriated Balance</i></b>									
CONT	<i>Contingency</i>								
5999	Contingency								
	* Contingency		2,783,134		82,785		(45,622)		2,820,297
	* Opportunity Account		100,000		0		0		100,000
	* Reserved for Future Planning Needs		351,000		0		0		351,000
	* Reserved for Future Election Costs		290,000		0		0		290,000
	* Reserved for Nature in Neighborhood Grants		250,000		0		0		250,000
	* Reserved for Reg. Afford. Housing Revolving Func		1,000,000		0		0		1,000,000
	* Reserved for Metro Regional Center Remodel		378,000		0		0		378,000
	* Reserved for Diesel Retrofit matching grants		400,000		0		0		400,000
	* Recovery Rate Stabilization reserve		1,771,867		0		0		1,771,867
UNAPP	<i>Unappropriated Fund Balance</i>								
5990	Unappropriated Fund Balance								
	* Stabilization Reserve		2,320,000		0		0		2,320,000
	* Reserve for Future Natural Areas Operations		1,023,070		0		0		1,023,070
	* PERS Reserve		2,782,174		0		0		2,782,174
	* Computer Replacement Reserve (Planning)		90,000		0		0		90,000
	* Tibbets Flower Account		201		0		0		201
	* Reserve for Future Debt Service		2,521,852		0		0		2,521,852
<b>Total Contingency &amp; Unappropriated Balance</b>			<b>\$16,061,298</b>		<b>\$82,785</b>		<b>(\$45,622)</b>		<b>\$16,098,461</b>
<b>TOTAL REQUIREMENTS</b>		<b>433.81</b>	<b>\$103,347,466</b>	<b>0.00</b>	<b>\$160,319</b>	<b>0.00</b>	<b>\$0</b>	<b>433.81</b>	<b>\$103,507,785</b>

**Exhibit B**  
**Ordinance 08-1206**  
**Schedule of Appropriations**

	<u>Current Appropriation</u>	<u>Strategy Center Revision</u>	<u>Non-Rep Study Revision</u>	<u>Revised Appropriation</u>
<b>GENERAL FUND</b>				
Council Office	2,508,229	532,230	40,587	3,081,046
Finance & Administrative Services	5,489,506	0	0	5,489,506
Human Resources	1,737,211	0	0	1,737,211
Information Technology	2,808,244	0	0	2,808,244
Metro Auditor	651,286	0	0	651,286
Office of Metro Attorney	1,981,157	0	0	1,981,157
Oregon Zoo	26,677,562	0	0	26,677,562
Planning	24,768,035	(359,236)	0	24,408,799
Public Affairs & Government Relations	1,988,582	0	5,035	1,993,617
Regional Parks & Greenspaces	8,521,362	(95,460)	0	8,425,902
Special Appropriations	3,538,480	0	0	3,538,480
Former ORS 197.352 Claims & Judgments	100	0	0	100
Non-Departmental				
Debt Service	1,450,486	0	0	1,450,486
Interfund Transfers	5,165,928	0	0	5,165,928
Contingency	7,324,001	82,785	(45,622)	7,361,164
Unappropriated Balance	8,737,297	0	0	8,737,297
<b>Total Fund Requirements</b>	<b>\$103,347,466</b>	<b>\$160,319</b>	<b>\$0</b>	<b>\$103,507,785</b>

*All other appropriations remain as previously adopted*

*NOTE: Current appropriation column assumes adoption of ordinance 08-1202 scheduled for Council consideration on 11/20/08*

## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1206 AMENDING THE FY 2008-09 BUDGET AND APPROPRIATIONS SCHEDULE CREATING THE STRATEGY CENTER, RECOGNIZING INTERGOVERNMENTAL REVENUE, AND PROVIDING APPROPRIATION FOR THE COUCIL OFFICE, AND DECLARING AN EMERGENCY

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Date: November 25, 2008

Prepared by: Margo Norton  
Kathy Rutkowski

### BACKGROUND

This budget amendment proposes three distinct actions:

1. It recognizes shifts in appropriations related to the creation of the Strategy Center under the recent reorganization.
2. It adjusts appropriations where needed to implement the classification/compensation study for non-represented employees.
3. It recognizes new funding from the Oregon Department of Transportation to implement the intergovernmental agreement for staffing assistance to the Columbia River Crossing project.

#### Strategy Center

On October 1, 2008, Metro launched a major reorganization, the outcome of intensive planning occurring within the Sustainable Metro Initiative project. In the past Metro has introduced reporting changes during one budget year without changing appropriations units until a subsequent budget year. We will be following this for most of the SMI changes, particularly in the Sustainability Center and Parks and Environmental Services units where sufficient appropriations exist within the affected funds without making budgetary changes.

However, there is a need to recognize some elements of the Strategy Center creation at an appropriations level to accommodate changes in positions and funding mix. The proposed amendment moves staffing authorization and personal services appropriations from Planning (2.25 FTE) and Regional Parks (.75 FTE) to the Council Office, creates new positions and establishes appropriations. Elements of the strategy center which did not change funding mix or classifications will remain as presently appropriated until July 1.

#### Classification and Compensation Study

On October 1, 2008 Metro also implemented changes arising from the classification and compensation study of its non-represented employees. Metro employed a “least cost implementation” strategy, meaning that employees whose classification changed but whose salary remained within the range of the new classification did not receive an increase from the study. Employees whose current salary fell below the beginning salary of a newly assigned classification did receive an increase to the beginning of the range, referred to a “bringing to minimum.” The FY 2008-09 budget allocated 1.5 percent across all departments and funds to implement this study. At the Metro-wide level this “average” provides sufficient resource and appropriations to implement the study. However, in smaller departments which have a predominance of non-represented employees, notably the Council Office, the “average” 1.5% is insufficient. Exhibits A (detail) and B (summary) include a “Non-Rep Study Revision” column

identifying changes for which an adjustment is needed. For example the general classification of Program Analyst II has been replaced by a unique Council Policy Coordinator classification, based on the comparative study, and employees have been brought to the new minimum. A small adjustment (\$5,000) is needed in Public Affairs. Other larger departments have a mix of represented and non-represented employees and have been able to implement the study within the average 1.5 percent.

#### New Columbia River Crossing Funding

Metro has entered into an intergovernmental agreement with the Oregon Department of Transportation (ODOT) to lend expert staff assistance to the Columbia River Crossing. ODOT will reimburse Metro for staff expense (salary and benefits) and directly fund other project-related expense. Oregon Budget law allows Metro to recognize this additional revenue during the year in which it is received.

#### **ANALYSIS/INFORMATION**

- 1. Known Opposition:** None known.
- 2. Legal Antecedents:** ORS 294.326(3) provides an exemption to Oregon Budget Law allowing for the expenditure in the year of receipt of grants, gifts and bequests received by a municipal corporation in trust for a specific purpose.
- 3. Anticipated Effects:** The proposed budget amendment authorizes no additional positions (FTE neutral) and, at a summary level, increases the General Fund only by the recognition of grant revenue. The portion of contingency required by the implementation of the classification and compensation study (\$46,000) is mitigated by the addition to contingency from the SMI changes (\$83,000). This fulfills the agreement that the SMI changes would be cost neutral in the General Fund. We have implemented only those elements of the reorganization necessary for the operational requirements of FY 2008-09, using the existing organizational structure (departments). The full SMI reorganization (centers and services) will roll out in the FY 2009-10 budget.
- 4. Budget Impacts:** This action recognizes approximately \$160,000 in intergovernmental revenue from ODOT related to the Columbia River Crossing project, transfers appropriation from the Planning and Regional Parks Departments to create the Strategy Center implemented during the Sustainable Metro Initiative reorganization, and provides appropriation for the Council Office for implementation of the non-represented salary study.

#### **RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of this Ordinance.

Agenda Item Number 4.2

**Ordinance No. 08-1207**, For the Purpose of Annexing Lands on the North Edge of Wilsonville Road at its intersection with Willamette Way West to the Metro Jurisdictional Boundary.

*First Reading*

Metro Council Meeting  
Thursday, December 11, 2008  
Metro Council Chamber



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ANNEXING	)	ORDINANCE NO. 08-1207
LANDS ON THE NORTH EDGE OF	)	
WILSONVILLE RD. AT ITS INTER-	)	
SECTION WITH WILLAMETTE WAY	)	Introduced by Michael Jordan,
WEST TO THE METRO	)	Chief Operating Officer with the
JURISDICTIONAL BOUNDARY	)	Concurrence of Council President
	)	David Bragdon
	)	
	)	

WHEREAS, the duty and authority to review and approve annexations to the Metro jurisdictional boundary is granted to Metro pursuant to Oregon Revised Statute 268.354 (3) (c); and

WHEREAS, Metro received a complete petition from the property owners and registered voters of a certain tract of land depicted on the attached map and described in Exhibit A to this ordinance, requesting that their property be annexed to Metro; and

WHEREAS, Metro received written consent from a majority of the electors in the territory to be annexed and owners of more than half the land in the territory proposed to be annexed, as required by ORS 198.855 (3); and

WHEREAS, a report was prepared as required by law and Metro having considered the report and the testimony at the public hearing, does hereby favor annexation of the subject property based on the findings and reasons for decision attached hereto as Exhibit B; now therefore

THE METRO COUNCIL ORDAINS;

The territory described in Exhibit A and depicted on the attached map is hereby annexed to the Metro jurisdictional boundary.

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

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

ATTEST:

Approved as to Form

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

\_\_\_\_\_  
Daniel Cooper, Metro Attorney

**EXHIBIT 'A'**

**Legal Description**

**Urban Growth Boundary Expansion  
Graham Oaks Nature Park**

A tract of land situate in the northwest quarter of Section 22, Township 3 South, range 1 West, Willamette Meridian, being a portion of that certain tract of land described in Bargain and Sale Deed to Metropolitan Service District (Metro), recorded May 8, 2001 as Fee No. 2001-033484, Clackamas County Deed Records, more particularly described as follows:

**Beginning** at a point on the easterly line of said Metro property bearing South 33°05'31" East 706.64 feet from the northwest corner of that certain tract of land described in Statutory Warranty Deed to West Linn-Wilsonville School District, recorded November 29, 1999 as Fee No. 99-110481, Clackamas County Deed Records, thence continuing along said easterly line South 33°05'31" East 523.99 feet to a point on the centerline of re-aligned Wilsonville Road (County No. 1244) as shown on Survey No. SN2006-435, Clackamas County Survey Records; thence along said re-aligned centerline South 64°19'31" West 969.33 feet; thence leaving said centerline North 25°48'14" West 520.56 feet; thence North 64°23'08" East 902.86 feet to the **Point of Beginning**.

Containing 486,826 square feet (11.176 acres), more or less.

All as shown on Exhibit "B", attached hereto and by this reference made a part hereof.

Subject to covenants, conditions, reservations, restrictions, rights of way and easements of record, if any.

Prepared by me or under my direction on October 24, 2008.

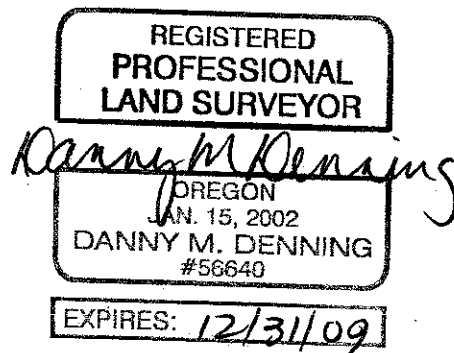
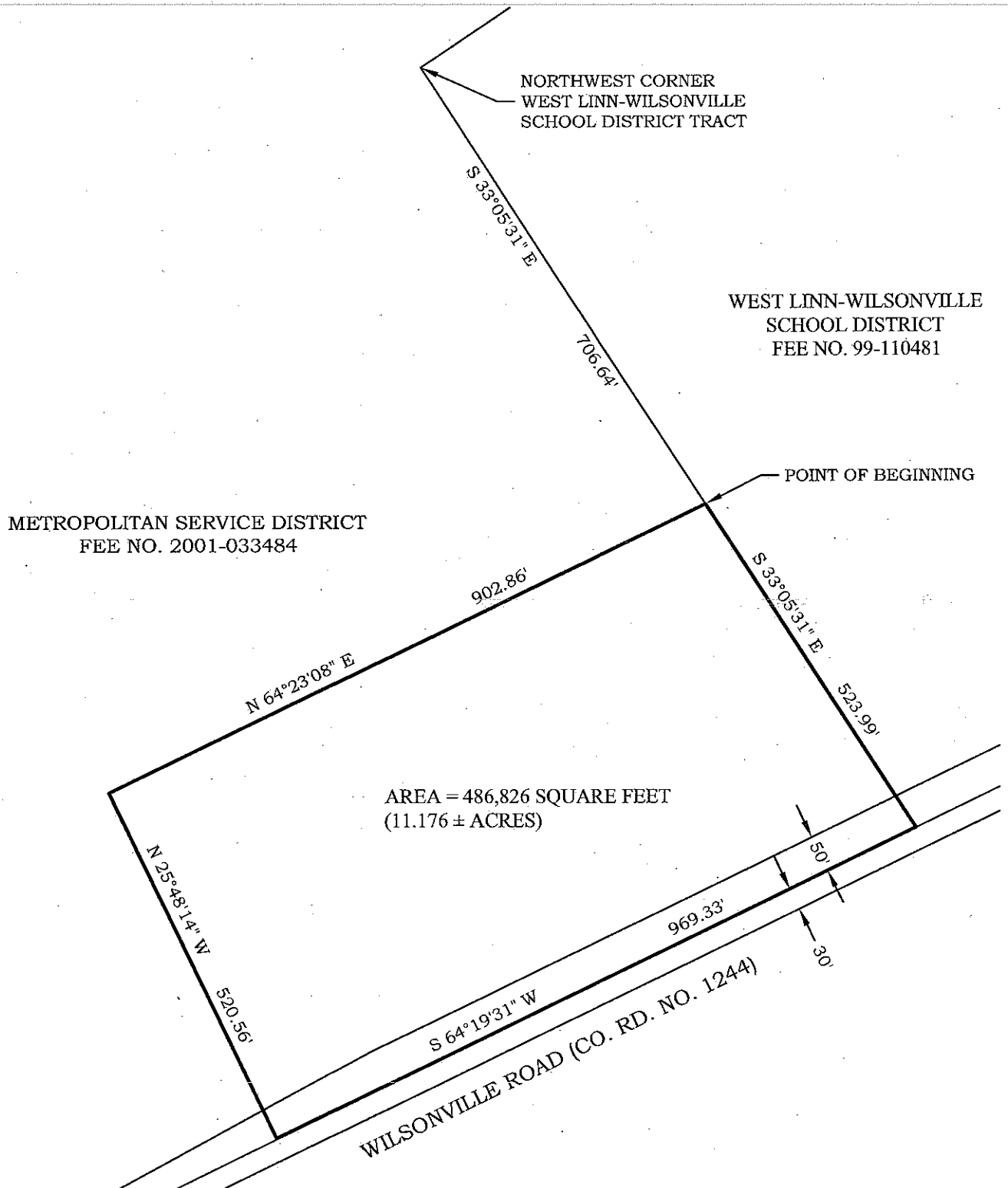


EXHIBIT 'B'  
SKETCH TO ACCOMPANY LEGAL DESCRIPTION



307272-UGB



Consulting Engineers  
111 S.W. Fifth Avenue  
Suite 2500  
Portland, Oregon 97204  
503-227-3251

URBAN GROWTH BOUNDARY EXPANSION  
METROPOLITAN SERVICE DISTRICT

NW QTR SECTION 22, T. 3S., R. 1W., W.M.  
CITY OF WILSONVILLE, CLACKAMAS COUNTY, OREGON

DATE: 10/24/08
SCALE: 1" = 200'
CONTOUR INTERVAL: NA
PROJECT NO. 307272
SHEET: 1 OF 1

Ordinance No. 08-1207  
Exhibit B

FINDINGS

1. The territory is located on the south edge of the District on the north edge Wilsonville Rd. at its intersection with Willamette Way West. The territory contains 11.117 acres and is vacant.
2. The applicant (Metro) proposes annexation in keeping with the District's earlier decision to include this area in the Urban Growth Boundary. The property is to be developed as part of a nature park with trails, a picnic shelter and restrooms. The balance of the proposed park's 250 acres is adjacent and outside the UGB. The subject site (the 11 acres) is also being annexed to the City of Wilsonville, making services available for the restrooms.
3. Oregon Revised Statute 198.850 (2) directs the Council to consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.

A second set of criteria can be found in Chapter 3.09 of the Metro Code. That Code states:

(e) The following criteria shall apply in lieu of the criteria set forth in subsection (d) of section 3.09.050. The Metro Council's final decision on a boundary change shall include findings and conclusions that demonstrate:

1. The affected territory lies within the UGB;
2. The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and
3. The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS chapter 195.

Additionally Metro Code 3.09.050 (b) requires issuance of a report that addresses:

- (1) The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
  - (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
  - (3) The proposed effective date of the boundary change.
4. The area is currently being restored as a natural area with open savannah, scrub/shrub, wetland and forest area.
  5. This territory abuts the Metro jurisdictional boundary on the south and east.

6. The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Plan and the Regional Transportation Plan.

The Urban Growth Management Functional Plan contains only one provision in its Title 11 component which speaks to annexations and prescribes a directly applicable standard or criterion for an annexation boundary change. Title 11, Section 3.07.1110.A, Interim Protection of Areas Brought into the Urban Growth Boundary, concerns “annexations” of land added to the UGB. It requires local comprehensive plan amendments for land added to the UGB to include “provisions for annexation to the (Metro) district and to a city or any necessary service district prior to urbanization of the territory . . . to provide all required urban services”. By its terms, this Title 11 provision requires local comprehensive plans to assure the provision of adequate public facilities and services to land added to the UGB. This is to be accomplished through annexation of such lands to the Metro District, the affected city and/or any special service district responsible for providing such facilities and services to the land prior to its urban development. The land is being annexed to a City which can provide adequate urban services.

The Regional Transportation Plan was examined and found not to contain any directly applicable standards and criteria for boundary changes.

7. This area was added to the UGB by the Metro Council in October 2008.
8. The territory is in the process of being annexed to the City of Wilsonville. Because this area was only recently added to the Regional Urban Growth Boundary it was not included Urban Service Agreement adopted pursuant to ORS 195.
9. The territory is currently zoned EFU, Exclusive Farm Use by Clackamas County. This effectively prevents premature development prior to annexation to a city which can provide urban services in keeping with the requirements of Title 11, Section 307.1110.A of the Metro Code. The County Plan does not contain specific criteria for consideration of boundary changes.
10. The City of Wilsonville has an 8 inch water line in Wilsonville Road which can serve the site subsequent to City annexation. Following City annexation sewer service will be available through the School District property to the east. Storm drainage will be retained on site. Police, planning and other services will be available from the City upon annexation.
11. Metro provides a number of services on the regional level. Primary among these is regional land

use planning and maintenance of the regional Urban Growth Boundary. Metro has provided this service to this site through the process of reviewing and approving the inclusion of this area in the UGB.

Metro provides some direct park service at what are basically regional park facilities and has an extensive green spaces acquisition program funded by the region's voters. Metro is responsible for solid waste disposal including the regional transfer stations and contracting for the ultimate disposal at Arlington. The District runs the Oregon Zoo and other regional facilities such as the Convention Center and the Performing Arts Center. These are all basically regional services provided for the benefit of and paid for by the residents within the region. These facilities are funded through service charges, excise taxes and other revenues including a small tax base for operating expenses at the Zoo and tax levies for bonded debt.

Metro has no service agreements with local governments that would be relative to district annexation in general or to this particular site. Annexation to Metro does not effect withdrawal from any governmental entities.

## **CONCLUSIONS AND REASONS FOR DECISION**

Based on the Findings, the Council concluded:

1. Oregon Revised Statutes 198 requires the Council to consider the local comprehensive plan when deciding a boundary change. The Council has reviewed the applicable comprehensive plan which is the Clackamas County Comprehensive Plan and finds that it contains no directly applicable criteria for making district boundary change decisions.
2. Oregon Revised Statutes 198 also requires consideration of "any service agreement executed between a local government and the affected district." As noted in Finding No. 8 there is no Urban Service Agreement in effect for this area.
3. Metro Code 3.09.070 (e) (1) establishes inclusion of the territory within the Urban Growth Boundary as one criterion for any annexation subject to the Metro rules. The Council has made such a determination as noted in Finding No. 7. Therefore the Council finds this proposed annexation to be consistent with that criterion.
4. The final criterion to be considered under the Metro Code 3.09.120 (e) (2) is "The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services." As noted in Finding 9 the territory is zoned EFU in the County which effectively prevents premature development. Additionally the property is in the process of being annexed to Wilsonville and as stated in Finding 10 the City has necessary urban services available. The Council concludes this criterion is met.

**STAFF REPORT**

IN CONSIDERATION OF ORDINANCE NO. 08-1207 FOR THE PURPOSE OF ANNEXING LANDS ON THE NORTH EDGE OF WILSONVILLE RD. AT ITS INTERSECTION WITH WILLAMETTE WAY WEST TO THE METRO JURISDICTIONAL BOUNDARY

---

Date: November 28, 2008

Prepared by: Ken Martin, Annexation Staff

**SECTION I: APPLICATION SUMMARY**

CASE: AN-0308, Annexation To Metro Jurisdictional Boundary

APPLICANT: Owners of 100% Land Area of One Property

PROPOSAL: Annexation to the Metro boundary is being sought following the Metro Council's addition of the property to the Urban Growth Boundary in October, 2008.

LOCATION: The territory is located on the south edge of the District on the north edge Wilsonville Rd. at its intersection with Willamette Way West (See Figure 1).

PLAN/ZONING Clackamas County EFU – Exclusive Farm Use.

APPLICABLE REVIEW CRITERIA: ORS Chapter 198, Metro Code 3.09

**SECTION II: STAFF RECOMMENDATION**

Staff recommends adoption of Ordinance No. 08-1207 approving Boundary Change Proposal No. AN-0308, annexation to Metro.

**SECTION III: BACKGROUND INFORMATION**

Initiation: Proposal No. AN-0308 was initiated by a consent petition of the property owners and registered voters. The petition meets the requirement for initiation set forth in ORS 198.855 (3) (double majority annexation law), ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040 (a) (which lists minimum requirements for petition).

Site Information: The territory is located on the south edge of the District on the north edge Wilsonville Rd. at its intersection with Willamette Way West. The territory contains 11.176 acres and is vacant.

## **REASON FOR ANNEXATION**

The applicant (Metro) proposes annexation in keeping with the District's earlier decision to include this area in the Urban Growth Boundary. The property is to be developed as part of a nature park with trails, a picnic shelter and restrooms. The balance of the proposed park's 250 acres is adjacent and outside the UGB. The subject site (the 11 acres) is also being annexed to the City of Wilsonville, making services available for the restrooms.

## **CRITERIA**

Oregon Revised Statute 198.850 (2) directs the Council to consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.

A second set of criteria can be found in Chapter 3.09 of the Metro Code. That Code states:

(e) The following criteria shall apply in lieu of the criteria set forth in subsection (d) of section 3.09.050. The Metro Council's final decision on a boundary change shall include findings and conclusions that demonstrate:

1. The affected territory lies within the UGB;
2. The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and
3. The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS chapter 195.

Additionally Metro Code 3.09.050 (b) requires issuance of a report that addresses:

- (1) The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
- (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
- (3) The proposed effective date of the boundary change."

## **LAND USE PLANNING**

### *SITE CHARACTERISTICS*

The area is currently being restored as a natural area with open savannah, scrub/shrub, wetland and forest area.

### *REGIONAL PLANNING*

This territory abuts the Metro jurisdictional boundary on the south and east.

#### Regional Framework Plan

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall "... ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and



*cooperative agreements and urban service agreements adopted pursuant to ORS 195.*” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Plan and the Regional Transportation Plan.

The Urban Growth Management Functional Plan contains only one provision in its Title 11 component which speaks to annexations and prescribes a directly applicable standard or criterion for an annexation boundary change. Title 11, Section 3.07.1110.A, Interim Protection of Areas Brought into the Urban Growth Boundary, concerns “annexations” of land added to the UGB. It requires local comprehensive plan amendments for land added to the UGB to include “provisions for annexation to the (Metro) district and to a city or any necessary service district prior to urbanization of the territory . . . to provide all required urban services”. By its terms, this Title 11 provision requires local comprehensive plans to assure the provision of adequate public facilities and services to land added to the UGB. This is to be accomplished through annexation of such lands to the Metro District, the affected city and/or any special service district responsible for providing such facilities and services to the land prior to its urban development. The land is being annexed to a City which can provide adequate urban services.

The Regional Transportation Plan was examined and found not to contain any directly applicable standards and criteria for boundary changes.

#### Urban Growth Boundary Change

This area was added to the UGB by the Metro Council in October 2008.

#### *CITY PLANNING*

The territory is in the process of being annexed to the City of Wilsonville. Because this area was only recently added to the Regional Urban Growth Boundary it was not included Urban Service Agreement adopted pursuant to ORS 195.

#### *COUNTY PLANNING*

The territory is currently zoned EFU, Exclusive Farm Use by Clackamas County. This effectively prevents premature development prior to annexation to a city which can provide urban services in keeping with the requirements of Title 11, Section 307.1110.A of the Metro Code. The County Plan does not contain any specific criteria for consideration of boundary changes.

#### **FACILITIES AND SERVICES**

Public Services. The City of Wilsonville has an 8 inch water line in Wilsonville Road which can serve the site subsequent to City annexation. Following City annexation sewer service will be available through the School District property to the east. Storm drainage will be retained on site. Police, planning and other services will be available from the City upon annexation.

Metro Services. Metro provides a number of services on the regional level. Primary among these is regional land

use planning and maintenance of the regional Urban Growth Boundary. Metro has provided this service to this site through the process of reviewing and approving the inclusion of this area in the UGB.

Metro provides some direct park service at what are basically regional park facilities and has an extensive green spaces acquisition program funded by the region's voters. Metro is responsible for solid waste disposal including the regional transfer stations and contracting for the ultimate disposal at Arlington. The District runs the Oregon Zoo and other regional facilities such as the Convention Center and the Performing Arts Center. These are all basically regional services provided for the benefit of and paid for by the residents within the region. These facilities are funded through service charges, excise taxes and other revenues including a small tax base for operating expenses at the Zoo and tax levies for bonded debt.

Metro has no service agreements with local governments that would be relative to district annexation in general or to this particular site. Annexation to Metro does not effect withdrawal from any governmental entities.

**SECTION IV: ANALYSIS/INFORMATION**

1. **Known Opposition** - There is no known opposition to this annexation. No one has contacted staff on this matter despite extensive notification which included posting and publishing of notices and notices to surrounding property owners.
2. **Legal Antecedents** - This annexation is a follow-up to the UGB change passed by the Council in October of this year. The annexation is being processed under provisions of ORS 198 and Metro Code 3.09.
3. **Anticipated Effects** - No significant effect is anticipated. The property will be developed as a nature park in conjunction with adjacent property outside the Urban Growth Boundary.
4. **Budget Impacts** - None

**SECTION V: SUMMARY AND RECOMMENDATION**

This petition seeks to annex approximately 11.176 acres of land into the Metro Jurisdictional boundary as part of the development of a large nature park. Based on the study above and the proposed Findings and Reasons For Decision found in Attachment 1, the staff recommends that Proposed Annexation No. AN-0308 be **approved**. This approval should be implemented by adoption of Ordinance No. 08-1207 (attached).

# Proposal No. CL2108

Ordinance No. 08-1207  
Figure 1

3S1W22

Annexation to Metro Boundary

Clackamas Co.



Data Resource Center  
600 NE Grand Ave  
Portland, OR 97232-2736  
(503) 797-1742  
<http://www.metro-region.org/drc>



 Area to be Annexed  
 Metro boundary

Figure 1  
1:8,000

Ken Martin Consulting  
P.O. Box 29079  
Portland, OR 97296-9079  
(503) 222-0955



## FINDINGS

Based on the study and the public hearing, the Council found:

1. The territory is located on the south edge of the District on the north edge Wilsonville Rd. at its intersection with Willamette Way West. The territory contains 11.176 acres and is vacant.
2. The applicant (Metro) proposes annexation in keeping with the District's earlier decision to include this area in the Urban Growth Boundary. The property is to be developed as part of a nature park with trails, a picnic shelter and restrooms. The balance of the proposed park's 250 acres is adjacent and outside the UGB. The subject site (the 11 acres) is also being annexed to the City of Wilsonville, making services available for the restrooms.
3. Oregon Revised Statute 198.850 (2) directs the Council to consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.

A second set of criteria can be found in Chapter 3.09 of the Metro Code. That Code states:

(e) The following criteria shall apply in lieu of the criteria set forth in subsection (d) of section 3.09.050. The Metro Council's final decision on a boundary change shall include findings and conclusions that demonstrate:

1. The affected territory lies within the UGB;
2. The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and
3. The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS chapter 195.

Additionally Metro Code 3.09.050 (b) requires issuance of a report that addresses:

- (1) The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
  - (2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
  - (3) The proposed effective date of the boundary change.
4. The area is currently being restored as a natural area with open savannah, scrub/shrub, wetland and forest area.
  5. This territory abuts the Metro jurisdictional boundary on the south and east.
  6. The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework

*plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS 195.*” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Plan and the Regional Transportation Plan.

The Urban Growth Management Functional Plan contains only one provision in its Title 11 component which speaks to annexations and prescribes a directly applicable standard or criterion for an annexation boundary change. Title 11, Section 3.07.1110.A, Interim Protection of Areas Brought into the Urban Growth Boundary, concerns “annexations” of land added to the UGB. It requires local comprehensive plan amendments for land added to the UGB to include “provisions for annexation to the (Metro) district and to a city or any necessary service district prior to urbanization of the territory . . . to provide all required urban services”. By its terms, this Title 11 provision requires local comprehensive plans to assure the provision of adequate public facilities and services to land added to the UGB. This is to be accomplished through annexation of such lands to the Metro District, the affected city and/or any special service district responsible for providing such facilities and services to the land prior to its urban development. The land is being annexed to a City which can provide adequate urban services.

The Regional Transportation Plan was examined and found not to contain any directly applicable standards and criteria for boundary changes.

7. This area was added to the UGB by the Metro Council in October 2008.
8. The territory is in the process of being annexed to the City of Wilsonville. Because this area was only recently added to the Regional Urban Growth Boundary it was not included Urban Service Agreement adopted pursuant to ORS 195.
9. The territory is currently zoned EFU, Exclusive Farm Use by Clackamas County. This effectively prevents premature development prior to annexation to a city which can provide urban services in keeping with the requirements of Title 11, Section 307.1110.A of the Metro Code. The County Plan does not contain specific criteria for consideration of boundary changes.
10. The City of Wilsonville has an 8 inch water line in Wilsonville Road which can serve the site subsequent to City annexation. Following City annexation sewer service will be available through the School District property to the east. Storm drainage will be retained on site. Police, planning and other services will be available from the City upon annexation.
11. Metro provides a number of services on the regional level. Primary among these is regional land use planning and maintenance of the regional Urban Growth Boundary. Metro has provided this service to this site through the process of reviewing and approving the inclusion of this area in the UGB.

Metro provides some direct park service at what are basically regional park facilities and has an extensive green spaces acquisition program funded by the region's voters. Metro is responsible for solid waste disposal including the regional transfer stations and contracting for the ultimate disposal at Arlington. The District runs the Oregon Zoo and other regional facilities such as the Convention Center and the Performing Arts Center. These are all basically regional services provided for the benefit of and paid for by the residents within the region. These facilities are funded through service charges, excise taxes and other revenues including a small tax base for operating expenses at the Zoo and tax levies for bonded debt.

Metro has no service agreements with local governments that would be relative to district annexation in general or to this particular site. Annexation to Metro does not effect withdrawal from any governmental entities.

### **CONCLUSIONS AND REASONS FOR DECISION**

Based on the Findings, the Council concluded:

1. Oregon Revised Statutes 198 requires the Council to consider the local comprehensive plan when deciding a boundary change. The Council has reviewed the applicable comprehensive plan which is the Clackamas County Comprehensive Plan and finds that it contains no directly applicable criteria for making district boundary change decisions.
2. Oregon Revised Statutes 198 also requires consideration of "any service agreement executed between a local government and the affected district." As noted in Finding No. 8 there is no Urban Service Agreement in effect for this area.
3. Metro Code 3.09.070 (e) (1) establishes inclusion of the territory within the Urban Growth Boundary as one criterion for any annexation subject to the Metro rules. The Council has made such a determination as noted in Finding No. 7. Therefore the Council finds this proposed annexation to be consistent with that criterion.
4. The final criterion to be considered under the Metro Code 3.09.120 (e) (2) is "The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services." As noted in Finding 9 the territory is zoned EFU in the County which effectively prevents premature development. Additionally the property is in the process of being annexed to Wilsonville and as stated in Finding 10 the City has necessary urban services available. The Council concludes this criterion is met.

Agenda Item Number 4.3

**Ordinance No. 08-1208**, Amending the FY 2008-09 Budget and Appropriations Schedule by Transferring Appropriations from Contingency to the Office of the Metro Attorney, adding 0.5 FTE Legal Secretary and Declaring an Emergency.

*First Reading*

Metro Council Meeting  
Thursday, December 11, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AMENDING THE FY 2008-09 BUDGET AND ) ORDINANCE NO. 08-1208  
APPROPRIATIONS SCHEDULE BY )  
TRANSFERRING APPROPRIATIONS FROM ) Introduced by Michael Jordan, Chief  
CONTINGENCY TO THE OFFICE OF METRO ) Operating Officer, with the concurrence of  
ATTORNEY, ADDING 0.5 FTE LEGAL ) Council President David Bragdon  
SECRETARY 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.
- 2. 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. 08-1208**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>Office of Metro Attorney</b>							
<i>Personal Services</i>							
SALWGE	Salaries & Wages						
5010	Reg Employees-Full Time-Exempt						
	Deputy Metro Attorney	1.00	116,846	-	0	1.00	116,846
	Legal Counsel II	7.00	740,004	-	0	7.00	740,004
	Metro Attorney	1.00	155,396	-	0	1.00	155,396
5015	Reg Empl-Full Time-Non-Exempt						
	Administrative Assistant III	1.00	40,997	-	0	1.00	40,997
	Legal Secretary	2.00	104,250	1.00	34,882	3.00	139,132
	Paralegal II	2.00	115,960	-	0	2.00	115,960
5020	Reg Emp-Part Time-Exempt						
	Legal Counsel II	0.50	56,703	-	0	0.50	56,703
5025	Reg Employees-Part Time-Non-Exempt						
	Legal Secretary	0.50	23,722	(0.50)	(23,722)	-	0
5080	Overtime		7,500		0		7,500
5089	Salary Adjustments						
	Merit Adjustment Pool (non-represented)		20,308		0		20,308
	Other Adjustments (non-represented)		20,308		0		20,308
	Other Adjustments (Class & Comp Study)		20,308		0		20,308
FRINGE	Fringe Benefits						
5100	Fringe Benefits						
	Base Fringe (variable & fixed)		453,877		4,942		458,819
5190	PERS Bond Recovery		45,514		357		45,871
<b>Total Personal Services</b>		<b>15.00</b>	<b>\$1,921,693</b>	<b>0.50</b>	<b>\$16,459</b>	<b>15.50</b>	<b>\$1,938,152</b>
<b>Total Materials &amp; Services</b>			<b>\$59,464</b>		<b>\$0</b>		<b>\$59,464</b>
<b>TOTAL REQUIREMENTS</b>		<b>15.00</b>	<b>\$1,981,157</b>	<b>0.50</b>	<b>\$16,459</b>	<b>15.50</b>	<b>\$1,997,616</b>

The current budget column is the FY 2008-09 adopted budget and does not include amendments made after 7/1/08

**Exhibit A**  
**Ordinance No. 08-1208**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>General Expenditures</b>							
<b>Total Interfund Transfers</b>			<b>\$5,050,928</b>		<b>\$0</b>		<b>\$5,050,928</b>
<b><i>Contingency &amp; Unappropriated Balance</i></b>							
CONT	Contingency						
5999	Contingency						
	* Contingency		3,152,085		(16,459)		3,135,626
	* 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 Fun		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	Unappropriated Fund Balance						
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>(\$16,459)</b>		<b>\$16,413,790</b>
<b>TOTAL REQUIREMENTS</b>		<b>433.15</b>	<b>\$103,347,466</b>	<b>0.50</b>	<b>\$0</b>	<b>433.65</b>	<b>\$103,347,466</b>

The current budget column is the FY 2008-09 adopted budget and does not include amendments made after 7/1/08

**Exhibit B**  
**Ordinance 08-1208**  
**Schedule of Appropriations**

<b>GENERAL FUND</b>	<b><u>Current</u> <u>Appropriation</u></b>	<b><u>Revision</u></b>	<b><u>Revised</u> <u>Appropriation</u></b>
Council Office	2,254,278	0	2,254,278
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	16,459	1,997,616
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	0	5,050,928
Contingency	7,692,952	(16,459)	7,676,493
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>

**The current appropriation column reflects the FY 2008-09 adopted budget and does not include amendments made after 7/1/08**  
*All other appropriations remain as previously adopted.*

## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 08-1208, AMENDING THE FY 2008-09 BUDGET AND APPROPRIATIONS SCHEDULE BY TRANSFERRING APPROPRIATIONS FROM CONTINGENCY TO THE OFFICE OF METRO ATTORNEY, ADDING 0.5 FTE LEGAL SECRETARY AND DECLARING AN EMERGENCY

---

Date: November 24, 2008

Prepared by: Ann Wawrukiewicz,  
Alison Kean Campbell

## BACKGROUND

This action requests amended appropriation authority in the Office of Metro Attorney (OMA) for the addition of a 0.5 FTE Legal Secretary.

Over the last several years, the legal work requested by Metro staff and Metro Council of the Office of Metro Attorney has increased in response to various bond measures, increased solid waste enforcement and new planning staff. Several attorneys have been added, but OMA has not similarly increased administrative FTE in response to this increased workload. In 2006 a 0.5 FTE Legal Secretary left Metro and the position was never filled, and in fall 2008 another 0.5 FTE Legal Secretary left Metro, which position has not yet been refilled in hopes that the position could be filled at a full 1.0 FTE. Currently attorneys without support of a legal secretary are performing this work themselves, at a much higher cost per hour to Metro. An outside consultant has recommended that this position be filled as a full-time legal secretary rather than at a half-time position.

A three year fiscal impact analysis is included below.

**Request** **General Fund Contingency** **\$16,459**

<b>Three Year Fiscal Impact</b>				
<b>Budget Category</b>	<b>2008/09</b>	<b>2009/10</b>	<b>2010/11</b>	<b>Total</b>
Wages	11,160	23,436	24,608	59,204
Variable Fringe	2,332	4,898	5,143	12,373
Fixed Fringe	2,610	5,741	5,741	14,091
PERS Bond	357	750	787	1,894
<b>Total</b>	<b>16,459</b>	<b>34,825</b>	<b>36,279</b>	<b>87,563</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 provide legal secretary support reflecting the increased attorney staffing and workload in OMA.

4. **Budget Impacts:** This action increases the personal services appropriations in OMA and decreases contingency in the General Fund by \$16,459. Total additional expenditures in years two and three of this project, are anticipated to be \$71,104.

**RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of this Ordinance.

Agenda Item Number 5.1

**Ordinance No. 08-1203**, Amending the FY 2008-09 Budget and Appropriations Schedule Recognizing a Grant from the Oregon Community Foundation for the Connecting Green Blue Ribbon Committee for Trails, and Declaring an Emergency.

*Second Reading*

Metro Council Meeting  
Thursday, December 11, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AMENDING THE FY 2008-09 BUDGET AND ) ORDINANCE NO. 08-1203  
APPROPRIATIONS SCHEDULE RECOGNIZING )  
A GRANT FROM THE OREGON COMMUNITY ) Introduced by Michael Jordan, Chief  
FOUNDATION FOR THE CONNECTING GREEN ) Operating Officer, with the concurrence of  
BLUE RIBBON COMMITTEE FOR TRAILS, ) Council President David Bragdon  
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 Oregon Community Foundation awarded a grant to the Metro Council for work on “connecting green” and trails; and

WHEREAS, Oregon Budget Law ORS 294.326 allows for the expenditure in the year of receipt of grants, gifts, bequests, and other devices received by a municipal corporation in trust for a specific purpose; 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 recognizing a grant from the Oregon Community Foundation for travel related to the Blue Ribbon Committee for Trails.
- 2. 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. 08-1203**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>Resources</b>							
<i>Resources</i>							
<i>BEGBAL</i>	<i>Beginning Fund Balance</i>						
3500	Beginning Fund Balance						
	* Undesignated		4,094,902		0		4,094,902
	* Prior period audit adjustment: TOD		5,865,983		0		5,865,983
	* Reserved for Underspending		334,000		0		334,000
	* Project Carryover		1,481,337		0		1,481,337
	* Tourism Opportunity & Comp. Account		96,655		0		96,655
	* Recovery Rate Stabilization Reserve		1,012,884		0		1,012,884
	* Reserved for Local Gov't Grants (CET)		602,046		0		602,046
	* Reserve for Future Debt Service		2,397,852		0		2,397,852
	* Tibbets Flower Account		352		0		352
	* Reserved for Future Planning Needs		1,604,140		0		1,604,140
	* Reserved for Future Election Costs		290,000		0		290,000
	* Reserved for Nature in Neighborhood Grants		1,050,000		0		1,050,000
	* Reserved for Reg. Afford. Housing Revolving F		1,000,000		0		1,000,000
	* Reserved for Metro Regional Center Remodel		413,000		0		413,000
	* Reserve for Future Natural Areas Operations		764,453		0		764,453
	* Prior year PERS Reserve		2,782,174		0		2,782,174
<i>EXCISE</i>	<i>Excise Tax</i>						
4050	Excise Taxes		15,106,909		0		15,106,909
4055	Construction Excise Tax		1,497,954		0		1,497,954
<i>RPTAX</i>	<i>Real Property Taxes</i>						
4010	Real Property Taxes-Current Yr		10,618,031		0		10,618,031
4015	Real Property Taxes-Prior Yrs		318,541		0		318,541
<i>GRANTS</i>	<i>Grants</i>						
4100	Federal Grants - Direct		3,999,452		0		3,999,452
4105	Federal Grants - Indirect		5,578,045		0		5,578,045
4110	State Grants - Direct		1,351,000		0		1,351,000
4120	Local Grants - Direct		5,475,093		28,000		5,503,093
<i>LGSHRE</i>	<i>Local Gov't Share Revenues</i>						
4135	Marine Board Fuel Tax		114,000		0		114,000
4139	Other Local Govt Shared Rev.		447,967		0		447,967
<i>GVCNTB</i>	<i>Contributions from Governments</i>						
4145	Government Contributions		250,314		0		250,314
<i>LICPER</i>	<i>Licenses and Permits</i>						
4150	Contractor's Business License		412,000		0		412,000
<i>CHGSVC</i>	<i>Charges for Service</i>						
4160	Boat Ramp Use Permits		508		0		508
4165	Boat Launch Fees		150,000		0		150,000
4180	Contract & Professional Service		563,178		0		563,178
4200	UGB Fees		50,000		0		50,000
4230	Product Sales		387,519		0		387,519
4280	Grave Openings		179,325		0		179,325
4285	Grave Sales		144,675		0		144,675
4500	Admission Fees		7,759,908		0		7,759,908
4501	Conservation Surcharge		150,000		0		150,000
4510	Rentals		807,341		0		807,341
4550	Food Service Revenue		5,155,669		0		5,155,669
4560	Retail Sales		2,216,110		0		2,216,110



**Exhibit A  
Ordinance No. 08-1203**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>Resources</b>							
4580	Utility Services		2,000		0		2,000
4610	Contract Revenue		883,315		0		883,315
4620	Parking Fees		930,000		0		930,000
4630	Tuition and Lectures		1,239,645		0		1,239,645
4635	Exhibit Shows		1,049,986		0		1,049,986
4640	Railroad Rides		805,462		0		805,462
4645	Reimbursed Services		270,000		0		270,000
4650	Miscellaneous Charges for Service		13,831		0		13,831
4760	Sponsorships		57,000		0		57,000
<i>INTRST</i>	<i>Interest Earnings</i>						
4700	Interest on Investments		994,972		0		994,972
<i>DONAT</i>	<i>Contributions from Private Sources</i>						
4750	Donations and Bequests		1,310,895		0		1,310,895
<i>INCGRV</i>	<i>Internal Charges for Service</i>						
4670	Charges for Service		48,124		0		48,124
<i>MISCRV</i>	<i>Miscellaneous Revenue</i>						
4170	Fines and Forfeits		20,000		0		20,000
4890	Miscellaneous Revenue		151,000		0		151,000
4891	Reimbursements		1,411,973		0		1,411,973
<i>EQTRV</i>	<i>Fund Equity Transfers</i>						
4970	Transfer of Resources						
	* from MERC Pooled Capital Fund		97,174		0		97,174
<i>INDTRV</i>	<i>Interfund Reimbursements</i>						
4975	Transfer for Indirect Costs						
	* from MERC Operating Fund		1,842,802		0		1,842,802
	* from Natural Areas Fund		1,028,311		0		1,028,311
	* from Solid Waste Revenue Fund		3,681,110		0		3,681,110
<i>INTSRV</i>	<i>Internal Service Transfers</i>						
4980	Transfer for Direct Costs						
	* from Natural Areas Fund		128,513		0		128,513
	* from Smith & Bybee Lakes Fund		119,980		0		119,980
	* from Solid Waste Revenue Fund		738,056		0		738,056
<b>TOTAL RESOURCES</b>			<b>\$103,347,466</b>		<b>\$28,000</b>		<b>\$103,375,466</b>

**Exhibit A  
Ordinance No. 08-1203**

ACCT	DESCRIPTION	<u>Current Budget</u>		<u>Revision</u>		<u>Amended Budget</u>	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>General Fund</b>							
<b>Council Office</b>							
<b>Total Personal Services</b>		<b>22.41</b>	<b>\$2,126,676</b>	<b>0.00</b>	<b>\$0</b>	<b>22.41</b>	<b>\$2,126,676</b>
<b>Materials &amp; Services</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		185,243		0		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		28,000		35,619
	5455 Staff Development		77,582		0		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>\$381,553</b>		<b>\$28,000</b>		<b>\$409,553</b>
<b>TOTAL REQUIREMENTS</b>		<b>22.41</b>	<b>\$2,508,229</b>	<b>0.00</b>	<b>\$28,000</b>	<b>22.41</b>	<b>\$2,536,229</b>

**Exhibit B**  
**Ordinance 08-1203**  
**Schedule of Appropriations**

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Revised</u> <u>Appropriation</u>
<b>GENERAL FUND</b>			
Council Office	2,508,229	28,000	2,536,229
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	5,165,928	0	5,165,928
Contingency	7,324,001	0	7,324,001
Unappropriated Balance	8,737,297	0	8,737,297
<b>Total Fund Requirements</b>	<b>\$103,347,466</b>	<b>\$28,000</b>	<b>\$103,375,466</b>

*All other appropriations remain as previously adopted*

*NOTE: Current appropriation column assumes adoption of ordinance 08-1202*

## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 08-1203 AMENDING THE FY 2008-09 BUDGET AND APPROPRIATIONS SCHEDULE RECOGNIZING A GRANT FROM THE OREGON COMMUNITY FOUNDATION FOR THE CONNECTING GREEN BLUE RIBBON COMMITTEE FOR TRAILS, AND DECLARING AN EMERGENCY

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Date: November 12, 2008

Prepared by: Kathy Rutkowski

## BACKGROUND

In April 2008 the Metro Council convened a Blue Ribbon Committee of civic, elected, and business leaders in the Portland metropolitan region to:

- Evaluate the regional trails system and its benefits;
- Determine if the current pace of development is adequate;
- Identify important regional values in developing the system; and
- Help develop a strategy for implementation including agendas for federal, state, local and private investment.

For committee members to be effective leaders on the issues listed above, they must understand fully the complex array of infrastructure investments, education, incentives programs, and urban development that will be required to succeed. Currently, the only systems of this nature are in Europe.

The Blue Ribbon Committee for Trails sent a delegation of committee members on a study tour to Amsterdam and Copenhagen to study the world renowned bicycle and walking infrastructure of these two cities. The study tour took place from October 4 through October 15, 2008. The delegation was supported by the German Marshall Fund, a grant from the Oregon Community Foundation and contributions from committee members. While in Europe the delegation explored several questions and will report back to the full Committee on November 10, 2008.

This action recognizes the grant from the Oregon Community Foundation for Metro costs related to travel expenses.

## ANALYSIS/INFORMATION

1. **Known Opposition:** None known.
2. **Legal Antecedents:** ORS 294.326(3) provides an exemption to Oregon Budget Law allowing for the expenditure in the year of receipt of grants, gifts and bequests received by a municipal corporation in trust for a specific purpose.
3. **Anticipated Effects:** This action recognizes the grant received from the Oregon Community Foundation and provides the resources and appropriation to pay for Metro travel expenses related to the Blue Ribbon Committee for Trails.
4. **Budget Impacts:** This action increases General Fund grant revenues by \$28,000 and increases the materials and services operating appropriations in the Council Office by a similar amount.

**RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of this Ordinance.

Agenda Item Number 5.2

**Ordinance No. 08-1205**, Amending the FY 2008-09 Budget and Appropriations Schedule Transferring Appropriation from Contingency to Debt Service, Authorizing Defeasance of Certain Solid Waste Revenue Bonds, and Declaring an Emergency.

*Second Reading*

Metro Council Meeting  
Thursday, December 11, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AMENDING THE FY 2008-09 BUDGET AND	)	ORDINANCE NO. 08-1205
APPROPRIATIONS SCHEDULE	)	
TRANSFERRING APPROPRIATION FROM	)	Introduced by Michael Jordan, Chief
CONTINGENCY TO DEBT SERVICE,	)	Operating Officer, with the concurrence of
AUTHORIZING DEFEASANCE OF CERTAIN	)	Council President David Bragdon
SOLID WASTE REVENUE BONDS, 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, Oregon Budget Law ORS 294.326 allows for the expenditure in the year of receipt of grants, gifts, bequests, and other devices received by a municipal corporation in trust for a specific purpose; 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 transferring appropriation from contingency to the debt service account in the Solid Waste Revenue Fund.
2. That the Chief Operating Officer is authorized to use the amended appropriation to defease the outstanding balance due on the Metro Central Transfer Station Project, 2003 Series solid waste revenue bonds.
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. 08-1205**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Solid Waste Revenue Fund</b>							
<b>Operating Account</b>							
<b>TOTAL REQUIREMENTS</b>		<b>109.00</b>	<b>\$54,197,947</b>	<b>0.00</b>	<b>\$0</b>	<b>109.00</b>	<b>\$54,197,947</b>

**Debt Service Account**

<i>Debt Service</i>							
<i>Metro Central Financing</i>							
<i>REVBND Revenue Bond Payments</i>							
5630	Revenue Bond Prmts-Principal		2,265,000		0		2,265,000
5635	Revenue Bond Payments-Interest		83,482		0		83,482
<i>OTHDBT Other Debt Payments</i>							
5650	Defeasance Payments to Escrow		0		2,349,000		2,349,000
<b>Total Debt Service</b>			<b>\$2,348,482</b>		<b>\$2,349,000</b>		<b>\$4,697,482</b>
<b>TOTAL REQUIREMENTS</b>			<b>\$2,348,482</b>		<b>\$2,349,000</b>		<b>\$4,697,482</b>

**Landfill Closure Account**

<b>TOTAL REQUIREMENTS</b>			<b>\$862,800</b>		<b>\$0</b>		<b>\$862,800</b>
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**Renewal & Replacement Account**

<b>TOTAL REQUIREMENTS</b>			<b>\$1,398,000</b>		<b>\$0</b>		<b>\$1,398,000</b>
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**General Account**

<b>TOTAL REQUIREMENTS</b>			<b>\$570,000</b>		<b>\$0</b>		<b>\$570,000</b>
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**General Expenses**

<b>Total Interfund Transfers</b>			<b>\$5,061,936</b>		<b>\$0</b>		<b>\$5,061,936</b>
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<i>Contingency and Ending Balance</i>							
<i>CONT Contingency</i>							
5999	Contingency						
	* Operating Account (Operating Contingency)		2,000,000		0		2,000,000
	* Landfill Closure Account		6,650,842		0		6,650,842
	* Renewal & Replacement Account		7,282,939		(2,349,000)		4,933,939
<i>UNAPP Unappropriated Fund Balance</i>							
5990	Unappropriated Fund Balance				0		
	* Debt Service Account (Metro Central)		2,349,000		(2,349,000)		0
	* Renewal & Replacement Account		0		2,349,000		2,349,000
	* General Account (Working Capital)		5,759,668		0		5,759,668
	* General Account (Rate Stabilization)		6,904,588		0		6,904,588
	* General Account (Debt Service Accumulation)		2,338,936		0		2,338,936
	* Prior year PERS Reserve		755,925		0		755,925
<b>Total Contingency and Ending Balance</b>			<b>\$39,501,898</b>		<b>(\$2,349,000)</b>		<b>\$37,152,898</b>
<b>TOTAL REQUIREMENTS</b>		<b>109.00</b>	<b>\$103,941,063</b>	<b>0.00</b>	<b>\$0</b>	<b>109.00</b>	<b>\$103,941,063</b>



**Exhibit B**  
**Ordinance 08-1205**  
**Schedule of Appropriations**

	<u>Current Appropriation</u>	<u>Revision</u>	<u>Revised Appropriation</u>
<b>SOLID WASTE REVENUE FUND</b>			
Operating Account			
Solid Waste & Recycling Department	54,197,947	0	54,197,947
Subtotal	54,197,947	0	54,197,947
Debt Service Account			
Debt Service	2,348,482	2,349,000	4,697,482
Subtotal	2,348,482	2,349,000	4,697,482
Landfill Closure Account			
Solid Waste & Recycling Department	862,800	0	862,800
Subtotal	862,800	0	862,800
Renewal and Replacement Account			
Solid Waste & Recycling Department	1,398,000	0	1,398,000
Subtotal	1,398,000	0	1,398,000
General Account			
Solid Waste & Recycling Department	570,000	0	570,000
Subtotal	570,000	0	570,000
General Expenses			
Interfund Transfers	5,061,936	0	5,061,936
Contingency	15,933,781	(2,349,000)	13,584,781
Subtotal	20,995,717	(2,349,000)	18,646,717
Unappropriated Balance	23,568,117	0	23,568,117
<b>Total Fund Requirements</b>	<b>\$103,941,063</b>	<b>\$0</b>	<b>\$103,941,063</b>

*All other appropriations remain as previously adopted*

## STAFF REPORT

### IN CONSIDERATION OF ORDINANCE NO. 08-1205 AMENDING THE FY 2008-09 BUDGET AND APPROPRIATIONS SCHEDULE TRANSFERRING APPROPRIATION FROM CONTINGENCY TO DEBT SERVICE, AUTHORIZING DEFEASANCE OF CERTAIN SOLID WASTE REVENUE BONDS, AND DECLARING AN EMERGENCY

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Date: December 4, 2008

Prepared by: Kathy Rutkowski  
Doug Anderson

## BACKGROUND

The “Rate Covenant” of Metro’s solid waste bonds requires that Metro set solid waste rates high enough to realize a 110 percent “coverage ratio” over the debt service on the bonds each year. This simply means that Metro must raise enough revenue to pay all operating expenditures and have enough left over to pay 110 percent of the annual debt service. A coverage ratio greater than 100 percent is a standard requirement for revenue bonds, and is designed to protect bond holders by instilling a “pay as you go” discipline on the bond issuer. Historically, Metro has built a planning margin into its solid waste budgets; the FY 2008-09 adopted rates provide for a 146 percent coverage ratio.

The rapid and significant decline in tonnage since the beginning of the fiscal year due to the global economic slowdown has reduced solid waste operating revenue to the point where Metro will struggle to meet the coverage requirement this fiscal year. In normal circumstances, Metro would be faced with the need to enhance revenue or reduce expenditures—or a combination of the two—to meet the coverage requirement.

However, on January 1, 2009, Metro was already scheduled to escrow the final payment on the bonds, which is due July 1, 2009. In this circumstance, Metro has the option to make this deposit in a manner that satisfies the financial *and legal* obligations of the bonds earlier than July 1, 2009. This action, called an “early defeasance,” would be authorized by this Ordinance. With an early defeasance, Metro ensures that all bondholders are fully protected, while meeting the legal requirement of the bonds without raising rates or cutting programs.

## ANALYSIS/INFORMATION

- 1. Known Opposition:** None known.
- 2. Legal Antecedents:** An action of the Council is required to (a) authorize defeasance of bonds and (b) approve a budget amendment. 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:** With this action, Metro will not need to report the coverage ratio on the bonds as would otherwise be required for the fiscal year. This means, in turn, that Metro will not need to “manage” the Rate Covenant through a mid-year rate increase and/or by cutting program expenditures.
- 4. Budget Impacts:** This ordinance authorizes the use of \$2,349,000 from contingency/reserves to defease the final payment due on the 2003 Series Metro Central Transfer Station Solid Waste revenue bonds. This amount was scheduled to be paid on July 1, 2009 and was planned in the FY 2008-09

rate setting to be deposited in escrow on January 1, 2009. The fiscal impact on the Solid Waste Revenue Fund is neutral.

**RECOMMENDED ACTION**

The Chief Operating Officer recommends adoption of this Ordinance.

Agenda Item Number 6.1

**Resolution No. 08-3985**, Authorizing the Chief Operating Office to Issue a Renewed Non-System License to American Sanitary Services, Inc for Delivery of Putrescible Waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center.

Metro Council Meeting  
Thursday, December 11, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER ) RESOLUTION NO. 08-3985  
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO )  
AMERICAN SANITARY SERVICE, INC. FOR ) Introduced by Michael Jordan,  
DELIVERY OF PUTRESCIBLE WASTE TO THE ) Chief Operating Officer, with the  
WEST VAN MATERIALS RECOVERY CENTER ) concurrence of David Bragdon,  
AND THE CENTRAL TRANSFER AND RECYCLING ) Council President  
CENTER )

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, American Sanitary Service, Inc. ("American") holds Metro Solid Waste Facility Non-System License No. N-020-05, which expires on December 31, 2008; and

WHEREAS, American has filed a completed application seeking renewal of the non-system license to deliver putrescible waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and

WHEREAS, the Metro Code Chapter 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 Resolution; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The non-system license renewal application of American is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to American 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. 08-3985

WJ:bjl

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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-020-09**

<b>LICENSEE:</b>	
American Sanitary Service, Inc. 12820 NE Marx Street Portland, OR 97230	
<b>CONTACT PERSON:</b>	
Phone:	Dean Large (360) 695-4858      Jason Hudson (360) 695-4858
Fax:	(360) 695-5091      (360) 695-5091
E-Mail:	<a href="mailto:deanl@wcnx.org">deanl@wcnx.org</a> <a href="mailto:jasonh@wcnx.org">jasonh@wcnx.org</a>
<b>MAILING ADDRESS:</b>	
American Sanitary Service, Inc. PO Box 61726 Vancouver, WA 98666	

**ISSUED BY METRO:**

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

\_\_\_\_\_  
Date



<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by American Sanitary Service, Inc.

<b>2</b>	<b>CALENDAR YEAR AND QUARTERLY TONNAGE LIMITATIONS</b>
	<p>Licensee is authorized to deliver to the non-system facilities described in Section 3 of this license up to 4,842 tons per calendar year of the waste described in Section 1 of this license as follows:</p> <ul style="list-style-type: none"><li>(a) For the first and second quarters, beginning January 1, 2009, through June 30, 2009, not more than 2,421 tons;</li><li>(b) For the third quarter, beginning July 1, 2009, through September 30, 2009, as determined by Metro's Chief Operating Officer ("COO") and included in an amendment to this non-system license issued by the COO no later than June 15, 2009; and</li><li>(c) For the fourth quarter, beginning October 1, 2009, through December 31, 2009, as determined by the COO and included in an amendment to this non-system license issued by the COO no later than September 15, 2009.</li></ul>

<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 facilities:</p> <p style="padding-left: 40px;">West Van Materials Recovery Center 6601 NW Old Lower River Road Vancouver, WA 98660</p> <p style="padding-left: 40px;">Central Transfer and Recycling Center 11034 NE 117<sup>th</sup> Avenue Vancouver, WA 98661</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 Clark County or other appropriate regulatory authority 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, 2009, 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</p>





	<p>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> <p>(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.</p>
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<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 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>(b) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by 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 Waste Management Disposal Services of Oregon, Inc., dba 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>(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 designated facility agreements with the facilities listed in Section 3 that authorizes the facilities to accept the waste described in Section 1 of this license.</li> <li>(f) 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 that specified in this license is prohibited unless authorized in writing by Metro.</li> <li>(g) The COO may direct the Licensee’s waste flow under this non-system</li> </ul>



	<p>license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours' written notice. Any redirection of the waste flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year or quarterly tonnage limitations set forth in Section 2 of this license, each ton by which the Licensee exceeds the limitations constitutes a separate violation subject to a penalty of up to \$500.</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. 08-3985 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO AMERICAN SANITARY SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE WEST VAN MATERIALS RECOVERY CENTER AND THE CENTRAL TRANSFER AND RECYCLING CENTER

November 25, 2008

Prepared by: Warren Johnson

Approval of Resolution No. 08-3985 will authorize the Chief Operating Officer (COO) to issue a one-year non-system license (NSL), substantially similar to the proposed NSL attached to this resolution as Exhibit A, to American Sanitary Service, Inc. (American) authorizing the delivery of up to 4,842 tons of putrescible waste to the West Van Materials Recovery Center (WVAN) and the Central Transfer and Recycling Center (CTRC) during calendar year 2009. The applicant (American), the destination facilities (WVAN and CTRC), as well as the ultimate disposal site (Finley Buttes Landfill) are all owned by Waste Connections, Inc.

#### 1. INTRODUCTION

##### A. Background

###### (1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver 90 percent of the region's putrescible waste to landfills owned by Waste Management. NSLs allow Metro to monitor and guide waste flows by direct intervention with licensees. This provides for a high level of control and fast response to changes in conditions. Resolution No. 08-3985 would grant an NSL to American to deliver Metro-area putrescible waste to facilities owned by Waste Connections, Inc. (WCI). That is, this NSL controls a portion of the ten percent of uncommitted waste not guaranteed to Waste Management. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted ten percent. In addition to this action for American, Metro Council will consider resolutions for Arrow Sanitary Service, Inc. (Arrow), Crown Point Refuse, Inc., and Willamette Resources, Inc.

Two important conditions have changed since Metro last completed a comprehensive round of issuing putrescible waste NSLs in 2005:

- Supreme Court clarifies local authority. In April 2007, the United States Supreme Court clarified local flow control authority. The Court ruled that a local government *may direct waste to its own facilities* without running afoul of the Commerce Clause.<sup>1</sup>
- Tonnage is down. The shrinking amount of tonnage in the current economic environment means that — for the first time — Metro's projection of the uncommitted ten percent is less than the tonnage that the NSL applicants have requested, in total. Accordingly, waste must be allocated among the applicants; and Metro must pay even closer attention to flows under these NSLs in the event that tonnage shrinks further.

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<sup>1</sup>United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth., 127 S. Ct. 1786, 1790 (2007) (upholding flow control ordinances because regulations do not discriminate against interstate commerce and any incidental burden on interstate commerce does not outweigh the benefits conferred on the citizens)

To jointly manage these two changes, Metro staff recommends that the terms and conditions of the four proposed NSLs differ from historical practice in the following ways:

- To manage the flow guarantee: (a) grant one-year (not two-year) licenses; (b) release the tonnage in allotments over the year, beginning with the first six months, followed by quarterly allotments as warranted by conditions. Details of this process are described in subsection (2) below, and in Section 1C of this report.
- To plan for the future. If Metro Council concurs, staff will identify and evaluate Metro's options under the new legal environment during 2009. This would include a review of the public policies, costs and benefits of allocating the uncommitted ten percent to non-Waste Management landfills. If the current policy is affirmed, then Metro would develop clear and objective procedures for reserving tonnage, allocating tonnage, and determining need and priority of allocation. These recommendations are expanded in the next section of this staff report.

(2) Response to Changed Conditions: Design of the 2009 NSLs

In recognition of the issues described above, Metro staff has applied a more detailed and better documented approach for evaluating applications and determining tonnage authorizations for NSLs. These changes are designed to help Metro manage the flow guarantee while tonnage remains low and uncertain.

Initially, during the current NSL renewal period for 2009, staff recommends that the Metro Council grant each of these four applicants a one-year NSL authorizing a maximum tonnage limit for the year. The tonnage limit for each of these proposed NSLs will be a share of the tonnage that is projected to be available for allocation during calendar year 2009. A description of the methodology used for this tonnage allocation is provided below in Section 1A(3).

For 2009, Metro would grant up to 9.5 percent of the available projected tonnage to those applicants that have applied to renew NSLs. As proposed by staff, the new NSLs would authorize a maximum tonnage which, summed across all licenses, would not exceed 9.5 percent of the total projected tonnage subject to the flow guarantee.<sup>2</sup> The tonnage would be released in allotments for use by the licensee on a half-year and quarter-year basis. The half-year tonnage limit (which is 50 percent of the total tonnage authorized under the license), would be released to the licensee on January 1, 2009. The quarter-year tonnage limits would then be released by the COO for use during the third and fourth quarters of 2009. The COO would allocate tonnage based on the methodology described in Section 1A(3) of this report.

The NSLs also authorize the COO to immediately redirect the licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the flow guarantee.

In regard to the clarification of local flow control authority described in the "Overview" of this report, staff will identify and evaluate Metro's policy options around the uncommitted ten percent. If Metro Council decides the public interest is best served by continuing to allocate the uncommitted ten percent, then staff would proceed to develop clear and objective procedures for reserving tonnage, allocating tonnage, and determining need and priority of allocation.

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<sup>2</sup> If Metro Council allocates up to 9.5 percent of the available waste tonnage under these proposed NSLs, it would be unlikely that Metro would consider any requests for tonnage limit increases under these NSLs or consider any new NSL applications during 2009 based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs.

The question whether the public purpose is met by allocating any of the uncommitted tonnage at all is a large one. For example, CH2M HILL, in the *Metro Transfer System Ownership Study* (also known as “Disposal System Planning I” or “DSP I”), suggested that Metro should investigate whether a formal procurement of a second disposal contract for the uncommitted ten percent could result in cost reductions [and/or other public benefits, presumably]. As discussed in the “Budget Impact” of this staff report, the current policy of allocating the uncommitted tonnage has a rate impact of \$0.99 on Metro’s tip fee. That is, Metro’s transfer station customers will pay approximately \$538,000 more in FY 2009-10 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. And through the “rate matching” effect (as described in “Budget Impact”), customers of private solid waste facilities would pay an additional \$502,000 — a total regional impact of \$1.04 million for disposal as a result of allocating tonnage to non-Waste Management Landfills.

### (3) Tonnage Allocation Methodology

As described above in Section 1A(2), the proposed NSLs include a maximum tonnage limit that would be released in allotments on a half-year and quarter-year basis. The half-year limit represents the amount of tonnage that the licensee may use during the first six months of the license term. The half-year limit also represents 50 percent of the maximum tonnage amount authorized for the license. The quarter-year tonnage limits will be allocated and released by the COO for use during the third and fourth quarters of the year based on Metro’s monitoring of the tonnage situation. All of these NSL tonnage limits are based on actual tonnage usage and are calculated by using the same proportions as described below.<sup>3</sup>

The tonnage allocations are based on Metro’s forecast of waste that is subject to the flow guarantee under its disposal contract with Waste Management, and each licensee’s share of such waste that was delivered to all solid waste facilities in the most recent 12-month period (November 2007 through October 2008). The details of the allocation are as follows:

- *Total Tonnage.* Metro forecasts that 865,100 tons will be subject to the flow guarantee in calendar year 2009.<sup>4</sup>
- *Reservation Tonnage.* Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- *Allocatable Tonnage.* 82,200 tons comprise the 9.5 percent of the 865,100 tons that are not reserved and therefore subject to allocation among the applicants.
- *Licensee’s Portion.* Each licensee is allocated a share of the 82,200 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee actually delivered to all solid waste facilities during the most recent 12-month period (November 2007 through October 2008). For American, the share was 5.9 percent, leading to the recommended license authorization of no more than 4,842 tons in 2009.

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<sup>3</sup>Under the proposed management approach, the licensee will not be allowed to carry forward any unused tonnage into a subsequent allocation period.

<sup>4</sup>This number is derived from Metro’s econometric forecasting model of the solid waste system. This model is used for all of Metro’s major decisions involving solid waste tonnage including budgeting, rate setting and revenue projections. The allocation numbers are based on the most recent forecast, which was completed on October 31, 2008 and covers the period through December 2010. The Council has also based its FY 2009-10 solid waste budget assumptions on the same October 31 forecast.

As explained above, Metro forecasts that there will be 865,100 tons of waste subject to the flow guarantee and 82,200 tons available for allocation in calendar year 2009. The following table provides a comparison of the licensees' current authorizations, the tonnage requested in their renewal applications, and the proposed 2009 authorizations.

**Table 1**  
**Comparison of Solid Waste Subject to the Flow Guarantee by NSL Applicant**

Licensee	2008 Tonnage Authorization	Applicants' 2009 Requests	Solid Waste Delivered to All Facilities (Nov. 2007—Oct. 2008)		Proposed 2009 Allocations		
			Tons	Percent	Tons	Percent	First Six Months
<b>American</b> Res. No. 08-3985	6,613	9,401	6,183	5.9	4,842	5.9	2,421
<b>Arrow</b> Res. No. 08-3986	35,367	37,673	42,195	40.2	33,020	40.2	16,510
<b>Crown Point</b> Res. No. 08-3988	324	500	408	0.4	321	0.4	160
<b>WRI</b> Res. No. 08-3987	45,000	45,000	56,252	53.6	44,018	53.6	22,009
<b>TOTAL</b>	<b>87,304</b>	<b>92,574</b>	<b>105,038</b>	<b>100</b>	<b>82,201</b>	<b>100</b>	<b>41,100</b>

**B. The Applicant**

In December 2005, American, a hauler collecting solid waste within the Metro boundary and franchised by the City of Portland, was granted an NSL to deliver a maximum of 6,613 tons per calendar year of solid waste, including putrescible waste, from its collection routes located inside the Metro region to WVAN and CTRC, both of which are operated by Columbia Resource Company (CRC) and located within Clark County, Washington. CRC and American are owned by WCI, a waste company headquartered in Folsom, California.

The term of American's existing NSL No. N-020-05 commenced on January 1, 2006 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 extending the term of certain NSLs, including American's NSL, to expire on December 31, 2008. The purpose of the extension was to align its expiration date with that of all the other NSLs that authorize the delivery of putrescible solid waste to non-system facilities. During calendar year 2007, the applicant delivered 5,960 tons of solid waste to WVAN and CTRC.

On August 28, 2008, American submitted to Metro an application requesting that Metro renew this NSL with a tonnage authorization of 9,401 tons for calendar year 2009 and 9,871 tons for 2010. This request represents an increase to the applicant's existing tonnage authorization by 2,788 additional tons in calendar year 2009 and 3,258 additional tons in 2010.

**C. Description of the Resolution**

Approval of Resolution No. 08-3985 will authorize the COO to issue a renewed NSL, substantially similar to the proposed NSL attached to this resolution as Exhibit A, authorizing American to deliver up

to 4,842 tons of putrescible waste to WVAN and CTRC during calendar year 2009. The tonnage limit stipulated in the proposed NSL is 1,771 tons less than that currently authorized under the applicant's existing license. The 2009 tonnage authorization is based on the methodology described above in Section 1A of this report.

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Section 5.05.035(c) of the Metro Code stipulates that the Metro Council shall consider certain factors when determining whether to issue NSLs. A description of these factors and the corresponding analysis of the renewal application are provided below in Section 2B of this report.

Based on the information provided above and the analysis provided in Section 2B, the COO recommends that the Metro Council approve an NSL renewal for American subject to the requirements listed in Metro Code Chapter 5.05; and further subject to several special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A. These special conditions are intended to minimize Metro's risk of violating its disposal contract by providing Metro with more timely controls for monitoring the flow guarantee against the currently declining waste tonnage in the system. In addition, as discussed in Section 1A of this report, these conditions will also provide Metro with an opportunity to evaluate its current ten percent allocation policy and determine whether it should continue this same policy in the future.

The main special conditions that are included in the proposed NSL are described below.

(1) Calendar Year and Quarterly Tonnage Limitations

Section 2 of the proposed NSL authorizes American to deliver up to 4,842 tons of putrescible waste to WVAN and CTRC during calendar year 2009. The NSL further stipulates that the COO will allocate this tonnage to the licensee, up to the total amount authorized under the NSL, in allotments on a half-year and quarter-year basis. Under the provisions of the proposed NSL, the licensee is authorized to deliver up to 2,421 tons of putrescible waste during the first six months of the year, beginning January 1, 2009 through June 30, 2009. The COO may allocate additional waste tonnage to the licensee during the third and fourth quarter of 2009 provided that such waste is available for allocation and the allotment is within the authorized limit of the license.

The NSL also stipulates that prior to June 30, 2009, the COO will determine and allocate the licensee's quarterly tonnage allotment (for the third and fourth quarters of calendar year 2009) in an amount not to exceed the licensee's maximum tonnage authorization of 4,842 tons. The COO will base the quarterly tonnage limits using Metro's forward tonnage projection for the quarter, and the same proportion as was used to determine the licensee's annual allocation (see Table 1). This condition will enable Metro to adjust the NSL tonnage authorization, as necessary, toward the end of the year and avoid exceeding the ten percent contractual limitation.

By adopting this resolution, the Metro Council authorizes the COO to allocate and release tonnage as described above.

(2) Term of License

Section 4 of the proposed NSL includes a one-year term, commencing on January 1, 2009, and terminating on December 31, 2009. A one-year term is proposed because of the reduced amount of tonnage projected for the upcoming year. Accordingly, Metro must pay close attention to the waste flows under these NSLs in the event that tonnage shrinks further.

(3) Weekly and Daily Reporting Requirements

As required in previous NSLs, Section 6 of the proposed NSL stipulates that the licensee must maintain and report accurate records regarding the amount of waste that it delivers to the non-system facility under authority of the license. At a minimum the licensee shall transmit the required records to Metro on a monthly basis. However, the proposed NSL also stipulates that Metro may require the licensee to report such required information to Metro on a weekly or daily basis. The COO will determine when more frequent reporting is necessary.

By adopting this resolution, the Metro Council also authorizes the COO to immediately implement more frequent reporting requirements as needed.

(4) Redirection of Waste Flow

Section 7 of the proposed NSL grants the COO authority to direct the licensee to deliver its waste, as covered under the license, to either the Metro Central or South Transfer Stations. The COO may determine when such redirection of waste flow is necessary. In addition, the COO may redirect waste flow upon providing the licensee with a minimum of 24 hours' written notice and any such redirection becomes immediately effective thereafter.

By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to prevent a violation of the flow guarantee.

(5) Enforcement Clarification

Section 7 of the proposed NSL clarifies that an exceedence of the quarter-year, half-year, or full-year tonnage limitations constitutes a violation that is subject to an enforcement action as provided in the Metro Code. In addition, the proposed NSL also stipulates that each ton above the limitation constitutes a separate violation that is subject to a penalty of up to \$500.

## **2. ANALYSIS/INFORMATION**

### **A. Known Opposition**

In a letter to Metro dated August, 21, 2008, Anita Largent, Solid Waste Manager with the Clark County Public Works Department, raised concerns regarding traffic issues at CTRC and requested that Metro take these issues into account when considering the renewal of this NSL. In particular, Ms. Largent reported that CTRC is currently operating at its throughput capacity for vehicle traffic, which occasionally results in vehicles backing up onto 117<sup>th</sup> Avenue. She said that Clark County and the facility operator, WCI, is currently evaluating long-term options for expanding CTRC and improving traffic flow at the facility. In addition to the current physical constraints at CTRC, Ms. Largent reports that the Washington State Department of Transportation is planning to perform a roadway construction project along 117<sup>th</sup> Avenue in the year 2010. She said that the resulting project will likely exacerbate traffic congestion near CTRC because it will restrict all vehicle access to and egress from the facility to right-turn only. Ms. Largent has stated that the Clark County Solid Waste System is capable of managing the 42,000 tons of Metro area solid waste that is currently delivered to Clark County under authority of NSLs. However, due to Clark County's concern regarding current and future traffic issues the County has recommended that Metro restrict the number of loads that the applicant may deliver to CTRC under authority of its NSL beginning in 2010.



Ms. Largent also raised the issue of roofing debris stockpiled at WVAN that had originally emanated from the Metro region. A fuller discussion of this matter is provided in Section 2B(6) of this report. Metro will continue to work with Clark County and WCI to resolve this issue.

On November 25, 2008, Metro staff met with Clark County staff to further discuss traffic and other issues at WVAN and CTRC. At that time, County staff indicated that they were not opposed to Metro granting the proposed one-year NSL to the applicant. Since this proposed NSL will be granted for the year 2009 only, any circumstances that change in the County during the upcoming year can be taken into consideration if this NSL is renewed in 2010 or later. Metro staff will continue to work with the County to resolve any issues that may arise during the term of this license.

## **B. 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 sites are transfer stations that do not pose any known potential for environmental risk from wastes delivered from prior users. After processing at the transfer stations, the waste is transported via barge to Finley Buttes Landfill, located in Morrow County. Finley Buttes Landfill is already a Metro designated facility authorized to receive non-putrescible waste without the need for haulers to obtain an NSL. Other than that delivered via WVAN and CTRC, the Finley Buttes Landfill does not receive any other putrescible waste from the Metro region.

- (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;*

WCI reportedly has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

Notwithstanding WCI's good compliance record, Metro and Clark County have been dealing with an ongoing issue of roofing debris stockpiled at WVAN. Beginning in January 2000 and continuing through October 2002, CRC accepted at WVAN approximately 6,148 tons of asphalt roofing material from generators within the Metro region for the purpose of recycling (i.e., energy recovery at the Tacoma Steam Plant in Washington). Of that total, approximately 3,500 tons of roofing debris is presently stockpiled at the site. CRC has not paid Metro its Regional System Fee or Excise Tax for any of that roofing material because the material was initially accepted for recycling and not subject to fees and taxes. However, CRC has been unsuccessful in locating a viable market or use of the remaining material and has subsequently received notice from Clark County that the stockpile must be removed from the site by the end of 2008. CRC has since decided to deliver all of the remaining roofing debris to a landfill for disposal. CRC has recently requested that Metro waive the fees and taxes that are due on this material. Metro indicated that it would consider the applicant's request in the context of the roofing material it had originally accepted for valid recovery options; however, Metro has notified CRC that full fees and taxes would be due on the other portion of the material once it is delivered to a disposal site.

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

WVAN and CTRC use operational practices and management controls that are typical of transfer stations and that Metro considers adequate for the protection of health, safety, and the environment.

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

The proposed NSL covers only putrescible waste, which has little recovery or recycling potential. Thus, the waste authorized by the proposed license is not expected 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 waste that Metro delivers to general purpose landfills during the calendar year to landfills operated by Metro's waste disposal contract operator, Waste Management. This proposed NSL renewal is one of four similar licenses that expire at the end of 2008 and it allows Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

- (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*

American is currently in compliance with its Metro-issued NSL. Additionally, American has not had any significant compliance issues regarding other Metro requirements during the term of the existing NSL. However, Arrow, which is affiliated with American, has had a compliance issue with regard to its 2007 NSL tonnage cap which is detailed in the staff report associated with Resolution No. 08-3986.

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

This criterion was examined above in Sections 1A and 2(c) of this report.

### **C. Anticipated Effects**

Approval of Resolution No. 08-3985 will authorize the COO to issue a renewed NSL, substantially similar to the proposed NSL attached to this resolution as Exhibit A, to American for the delivery of up to 4,842 tons of putrescible waste to WVAN and CTRC.

### **D. Budget Impacts**

The Metro Regional System Fee and Excise Tax will continue to be collected on waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-020-05). Therefore, the financial impact has already been factored into the budget.

However, as discussed in the "Overview" of this report, the Metro Council may wish to re-evaluate its policy options around the uncommitted ten percent. To quantify the financial impact in part, the following is an analysis of the effects *on disposal costs only* during FY 2009-10.

- Disposal rate depends on volume. As is generally known, the price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. As shown in the next paragraph, if the 82,200 uncommitted tons went to Waste Management landfills, Metro’s disposal costs would be less, and the savings would be passed on to Metro’s customers through a lower tip fee.
- Impact on Metro Customers. Based on projected FY 2009-10 tonnage and contract prices, allocating the uncommitted 82,200 tons to non-Waste Management landfills increases the Metro tip fee by \$0.99. This means that Metro customers will pay \$538,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. These financial impacts are already factored into the budget. Put another way, if all four NSL resolutions are denied, the Metro tip fee would be lower by \$0.99 (all else equal) and Metro customers would thereby save about \$538,000 in disposal costs.
- Regional impact based on “rate matching.” As shown by Metro staff for the evaluation of the franchise application by Columbia Environmental Transfer Station in 2005, Metro’s tip fee is generally matched by private solid waste facilities in the region. Based on the tonnage projected to be accepted at such facilities, (and assuming full matching of the \$0.99 per ton as described above), customers of private facilities would pay an additional \$502,000 more for disposal in FY 2009-10. This increased cost to customers of private facilities, coupled with the additional \$538,000 paid by Metro’s transfer station customers, would result in a total regional impact of \$1.04 million more for disposal in FY 2009-10.

### **3. RECOMMENDED ACTION**

Based on the information provided in this report, the COO recommends approval of Resolution No. 08-3985, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and renewal of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

WJ:bjl  
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Agenda Item Number 6.2

**Resolution No. 08-3986**, Authorizing the Chief Operating Office to Issue a Renewed Non-System License to Arrow Sanitary Services, Inc for Delivery of Putrescible Waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center.

Metro Council Meeting  
Thursday, December 11, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER ) RESOLUTION NO. 08-3986  
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO )  
ARROW SANITARY SERVICE, INC. FOR ) Introduced by Michael Jordan,  
DELIVERY OF PUTRESCIBLE WASTE TO THE ) Chief Operating Officer, with the  
WEST VAN MATERIALS RECOVERY CENTER ) concurrence of David Bragdon,  
AND THE CENTRAL TRANSFER AND RECYCLING ) Council President  
CENTER )

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, Arrow Sanitary Service, Inc. ("Arrow") holds Metro Solid Waste Facility Non-System License No. N-029-05, which expires on December 31, 2008; and

WHEREAS, Arrow has filed a completed application seeking renewal of the non-system license to deliver putrescible waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and

WHEREAS, the Metro Code Chapter 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 Resolution; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The non-system license renewal application of Arrow is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to Arrow 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. 08-3986

WJ:bjl

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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-029-09**

<b>LICENSEE:</b>	
Arrow Sanitary Service, Inc. 12820 NE Marx Street Portland, OR 97230	
<b>CONTACT PERSON:</b>	
Phone:	Dean Large (360) 695-4858      Jason Hudson (360) 695-4858
Fax:	(360) 695-5091      (360) 695-5091
E-Mail:	<a href="mailto:deanl@wcnx.org">deanl@wcnx.org</a> <a href="mailto:jasonh@wcnx.org">jasonh@wcnx.org</a>
<b>MAILING ADDRESS:</b>	
Arrow Sanitary Service, Inc. PO Box 61726 Vancouver, WA 98666	

**ISSUED BY METRO:**

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

\_\_\_\_\_  
Date



<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by Arrow Sanitary Service, Inc.
<b>2</b>	<b>CALENDAR YEAR AND QUARTERLY TONNAGE LIMITATIONS</b>
	<p>Licensee is authorized to deliver to the non-system facilities described in Section 3 of this license up to 33,020 tons per calendar year of the waste described in Section 1 of this license as follows:</p> <ul style="list-style-type: none"><li>(a) For the first and second quarters, beginning January 1, 2009, through June 30, 2009, not more than 16,510 tons;</li><li>(b) For the third quarter, beginning July 1, 2009, through September 30, 2009, as determined by Metro's Chief Operating Officer ("COO") and included in an amendment to this non-system license issued by the COO no later than June 15, 2009; and</li><li>(c) For the fourth quarter, beginning October 1, 2009, through December 31, 2009, as determined by the COO and included in an amendment to this non-system license issued by the COO no later than September 15, 2009.</li></ul>
<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 facilities:</p> <p style="padding-left: 40px;">West Van Materials Recovery Center 6601 NW Old Lower River Road Vancouver, WA 98660</p> <p style="padding-left: 40px;">Central Transfer and Recycling Center 11034 NE 117<sup>th</sup> Avenue Vancouver, WA 98661</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 Clark County or other appropriate regulatory authority 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, 2009, 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)</p>





	<p>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> <p>(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.</p>
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<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 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>(b) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by 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 Waste Management Disposal Services of Oregon, Inc., dba 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>(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 designated facility agreements with the facilities listed in Section 3 that authorizes the facilities to accept the waste described in Section 1 of this license.</li> <li>(f) 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 that specified in this license is prohibited unless authorized in writing by Metro.</li> <li>(g) The COO may direct the Licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station</li> </ul>



	<p>with a minimum of 24 hours' written notice. Any redirection of the waste flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year or quarterly tonnage limitations set forth in Section 2 of this license, each ton by which the Licensee exceeds the limitations constitutes a separate violation subject to a penalty of up to \$500.</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. 08-3986 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO ARROW SANITARY SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE WEST VAN MATERIALS RECOVERY CENTER AND THE CENTRAL TRANSFER AND RECYCLING CENTER

November 25, 2008

Prepared by: Warren Johnson

Approval of Resolution No. 08-3986 will authorize the Chief Operating Officer (COO) to issue a one-year non-system license (NSL), substantially similar to the proposed NSL attached to this resolution as Exhibit A, to Arrow Sanitary Service, Inc. (Arrow) authorizing the delivery of up to 33,020 tons of putrescible waste to the West Van Materials Recovery Center (WVAN) and the Central Transfer and Recycling Center (CTRC) during calendar year 2009. The applicant (Arrow), the destination facilities (WVAN and CTRC), as well as the ultimate disposal site (Finley Buttes Landfill) are all owned by Waste Connections, Inc.

#### 1. INTRODUCTION

##### A. Background

###### (1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver 90 percent of the region's putrescible waste to landfills owned by Waste Management. NSLs allow Metro to monitor and guide waste flows by direct intervention with licensees. This provides for a high level of control and fast response to changes in conditions. Resolution No. 08-3986 would grant an NSL to Arrow to deliver Metro-area putrescible waste to facilities owned by Waste Connections, Inc (WCI). That is, this NSL controls a portion of the ten percent of uncommitted waste not guaranteed to Waste Management. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted ten percent. In addition to this action for Arrow, Metro Council will consider resolutions for American Sanitary Service, Inc., Crown Point Refuse, Inc., and Willamette Resources, Inc.

Two important conditions have changed since Metro last completed a comprehensive round of issuing putrescible waste NSLs in 2005:

- Supreme Court clarifies local authority. In April 2007, the United States Supreme Court clarified local flow control authority. The Court ruled that a local government *may direct waste to its own facilities* without running afoul of the Commerce Clause.<sup>1</sup>
- Tonnage is down. The shrinking amount of tonnage in the current economic environment means that — for the first time — Metro's projection of the uncommitted ten percent is less than the tonnage that the NSL applicants have requested, in total. Accordingly, waste must be allocated among the applicants; and Metro must pay even closer attention to flows under these NSLs in the event that tonnage shrinks further.

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<sup>1</sup>United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth., 127 S. Ct. 1786, 1790 (2007) (upholding flow control ordinances because regulations do not discriminate against interstate commerce and any incidental burden on interstate commerce does not outweigh the benefits conferred on the citizens)

To jointly manage these two changes, Metro staff recommends that the terms and conditions of the four proposed NSLs differ from historical practice in the following ways:

- To manage the flow guarantee: (a) grant one-year (not two-year) licenses; (b) release the tonnage in allotments over the year, beginning with the first six months, followed by quarterly allotments as warranted by conditions. Details of this process are described in subsection (2) below, and in Section 1C of this staff report.
- To plan for the future. If Metro Council concurs, staff will identify and evaluate Metro's options under the new legal environment during 2009. This would include a review of the public policies, costs and benefits of allocating the uncommitted ten percent to non-Waste Management landfills. If the current policy is affirmed, then Metro would develop clear and objective procedures for reserving tonnage, allocating tonnage, and determining need and priority of allocation. These recommendations are expanded in the next section of this staff report.

(2) Response to Changed Conditions: Design of the 2009 NSLs

In recognition of the issues described above, Metro staff has applied a more detailed and better documented approach for evaluating applications and determining tonnage authorizations for NSLs. These changes are designed to help Metro manage the flow guarantee while tonnage remains low and uncertain.

Initially, during the current NSL renewal period for 2009, staff recommends that the Metro Council grant each of these four applicants a one-year NSL authorizing a maximum tonnage limit for the year. The tonnage limit for each of these proposed NSLs will be a share of the tonnage that is projected to be available for allocation during calendar year 2009. A description of the methodology used for this tonnage allocation is provided below in Section 1A(3).

For 2009, Metro would grant up to 9.5 percent of the available projected tonnage to those applicants that have applied to renew NSLs. As proposed by staff, the new NSLs would authorize a maximum tonnage which, summed across all licenses, would not exceed 9.5 percent of the total projected tonnage subject to the flow guarantee.<sup>2</sup> The tonnage would be released in allotments for use by the licensee on a half-year and quarter-year basis. The half-year tonnage limit (which is 50 percent of the total tonnage authorized under the license), would be released to the licensee on January 1, 2009. The quarter-year tonnage limits would then be released by the COO for use during the third and fourth quarters of 2009. The COO would allocate tonnage based on the methodology described in Section 1A(3) of this report.

The NSLs also authorize the COO to immediately redirect the licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the flow guarantee.

In regard to the clarification of local flow control authority described in the "Overview" of this report, staff will identify and evaluate Metro's policy options around the uncommitted ten percent. If Metro Council decides the public interest is best served by continuing to allocate the uncommitted ten percent, then staff would proceed to develop clear and objective procedures for reserving tonnage, allocating tonnage, and determining need and priority of allocation.

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<sup>2</sup> If Metro Council allocates up to 9.5 percent of the available waste tonnage under these proposed NSLs, it would be unlikely that Metro would consider any requests for tonnage limit increases under these NSLs or consider any new NSL applications during 2009 based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs.

The question whether the public purpose is met by allocating any of the uncommitted tonnage at all is a large one. For example, CH2M HILL, in the *Metro Transfer System Ownership Study* (also known as “Disposal System Planning I” or “DSP I”), suggested that Metro should investigate whether a formal procurement of a second disposal contract for the uncommitted ten percent could result in cost reductions [and/or other public benefits, presumably]. As discussed in the “Budget Impact” of this staff report, the current policy of allocating the uncommitted tonnage has a rate impact of \$0.99 on Metro’s tip fee. That is, Metro’s transfer station customers will pay approximately \$538,000 more in FY 2009-10 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. And through the “rate matching” effect (as described in “Budget Impact”), customers of private solid waste facilities would pay an additional \$502,000 — a total regional impact of \$1.04 million for disposal as a result of allocating tonnage to non-Waste Management Landfills.

### (3) Tonnage Allocation Methodology

As described above in Section 1A(2), the proposed NSLs include a maximum tonnage limit that would be released in allotments on a half-year and quarter-year basis. The half-year limit represents the amount of tonnage that the licensee may use during the first six months of the license term. The half-year limit also represents 50 percent of the maximum tonnage amount authorized for the license. The quarter-year tonnage limits will be allocated and released by the COO for use during the third and fourth quarters of the year based on Metro’s monitoring of the tonnage situation. All of these NSL tonnage limits are based on actual tonnage usage and are calculated by using the same proportions as described below.<sup>3</sup>

The tonnage allocations are based on Metro’s forecast of waste that is subject to the flow guarantee under its disposal contract with Waste Management, and each licensee’s share of such waste that was delivered to all solid waste facilities in the most recent 12-month period (November 2007 through October 2008). The details of the allocation are as follows:

- *Total Tonnage.* Metro forecasts that 865,100 tons will be subject to the flow guarantee in calendar year 2009.<sup>4</sup>
- *Reservation Tonnage.* Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- *Allocatable Tonnage.* 82,200 tons comprise the 9.5 percent of the 865,100 tons that are not reserved and therefore subject to allocation among the applicants.
- *Licensee’s Portion.* Each licensee is allocated a share of the 82,200 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee actually delivered to all solid waste facilities during the most recent 12-month period (November 2007 through October 2008). For Arrow, the share was 40.2 percent, leading to the recommended license authorization of no more than 33,020 tons in 2009.

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<sup>3</sup>Under the proposed management approach, the licensee will not be allowed to carry forward any unused tonnage into a subsequent allocation period.

<sup>4</sup>This number is derived from Metro’s econometric forecasting model of the solid waste system. This model is used for all of Metro’s major decisions involving solid waste tonnage including budgeting, rate setting and revenue projections. The allocation numbers are based on the most recent forecast, which was completed on October 31, 2008 and covers the period through December 2010. The Council has also based its FY 2009-10 solid waste budget assumptions on the same October 31 forecast.

As explained above, Metro forecasts that there will be 865,100 tons of waste subject to the flow guarantee and 82,200 tons available for allocation in calendar year 2009. The following table provides a comparison of the licensees' current authorizations, the tonnage requested in their renewal applications, and the proposed 2009 authorizations.

**Table 1**  
**Comparison of Solid Waste Subject to the Flow Guarantee by NSL Applicant**

Licensee	2008 Tonnage Authorization	Applicants' 2009 Requests	Solid Waste Delivered to All Facilities (Nov. 2007—Oct. 2008)		Proposed 2009 Allocations		
			Tons	Percent	Tons	Percent	First Six Months
<b>American</b> Res. No. 08-3985	6,613	9,401	6,183	5.9	4,842	5.9	2,421
<b>Arrow</b> Res. No. 08-3986	35,367	37,673	42,195	40.2	33,020	40.2	16,510
<b>Crown Point</b> Res. No. 08-3988	324	500	408	0.4	321	0.4	160
<b>WRI</b> Res. No. 08-3987	45,000	45,000	56,252	53.6	44,018	53.6	22,009
<b>TOTAL</b>	<b>87,304</b>	<b>92,574</b>	<b>105,038</b>	<b>100</b>	<b>82,201</b>	<b>100</b>	<b>41,100</b>

**B. The Applicant**

In December 2005, Arrow, a hauler collecting solid waste within the Metro boundary and franchised by the City of Portland, was granted an NSL to deliver a maximum of 35,367 tons per calendar year of solid waste, including putrescible waste, from its collection routes located inside the Metro region to the WVAN and the CTRC, both of which are operated by Columbia Resource Company (CRC) and located within Clark County, Washington. CRC and Arrow are owned by WCI, a waste company headquartered in Folsom, California.

The term of Arrow's existing NSL No. N-029-05 commenced on January 1, 2006 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 extending the term of certain NSLs, including Arrow's NSL, to expire on December 31, 2008. The purpose of the extension was to align its expiration date with that of all the other NSLs that authorize the delivery of putrescible solid waste to non-system facilities

During calendar year 2007, the applicant delivered 39,123 tons of solid waste to WVAN and CTRC. Arrow exceeded its NSL tonnage limit by 3,756 tons during that year which subsequently resulted in an enforcement action by Metro. A fuller discussion of this violation is provided in Section 2B(6) of this report.

On August 28, 2008, Arrow submitted to Metro an application requesting that Metro renew this NSL with a tonnage authorization of 37,673 tons for calendar year 2009 and 39,557 tons for 2010. This request represents an increase to the applicant's existing tonnage authorization by 2,306 additional tons in calendar year 2009 and 4,190 additional tons in 2010.

### **C. Description of the Resolution**

Approval of Resolution No. 08-3986 will authorize the COO to issue a renewed NSL, substantially similar to the proposed NSL attached to this resolution as Exhibit A, authorizing Arrow to deliver up to 33,020 tons of putrescible waste to WVAN and CTTC during calendar year 2009. The tonnage limit stipulated in the proposed NSL is 2,347 tons less than that currently authorized under the applicant's existing license. The 2009 tonnage authorization is based on the methodology described above in Section 1A of this report.

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Section 5.05.035(c) of the Metro Code stipulates that the Metro Council shall consider certain factors when determining whether to issue NSLs. A description of these factors and the corresponding analysis of the renewal application are provided below in Section 2B of this report.

Based on the information provided above and the analysis provided in Section 2B, the COO recommends that the Metro Council approve an NSL renewal for Arrow subject to the requirements listed in Metro Code Chapter 5.05; and further subject to several special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A. These special conditions are intended to minimize Metro's risk of violating its disposal contract by providing Metro with more timely controls for monitoring the flow guarantee against the currently declining waste tonnage in the system. In addition, as discussed in Section 1A of this report, these conditions will also provide Metro with an opportunity to evaluate its current ten percent allocation policy and determine whether it should continue this same policy in the future.

The main special conditions that are included in the proposed NSL are described below.

#### **(1) Calendar Year and Quarterly Tonnage Limitations**

Section 2 of the proposed NSL authorizes Arrow to deliver up to 33,020 tons of putrescible waste to WVAN and CTTC during calendar year 2009. The NSL further stipulates that the COO will allocate this tonnage to the licensee, up to the total amount authorized under the NSL, in allotments on a half-year and quarter-year basis. Under the provisions of the proposed NSL, the licensee is authorized to deliver up to 16,510 tons of putrescible waste during the first six months of the year, beginning January 1, 2009 through June 30, 2009. The COO may allocate additional waste tonnage to the licensee during the third and fourth quarter of 2009 provided that such waste is available for allocation and the allotment is within the authorized limit of the license.

The NSL also stipulates that prior to June 30, 2009, the COO will determine and allocate the licensee's quarterly tonnage allotment (for the third and fourth quarters of calendar year 2009) in an amount not to exceed the licensee's maximum tonnage authorization of 33,020 tons. The COO will base the quarterly tonnage limits using Metro's forward tonnage projection for the quarter, and the same proportion as was used to determine the licensee's annual allocation (see Table 1). This condition will enable Metro to adjust the NSL tonnage authorization, as necessary, toward the end of the year and avoid exceeding the ten percent contractual limitation.

By adopting this resolution, the Metro Council authorizes the COO to allocate and release tonnage as described above.

(2) Term of License

Section 4 of the proposed NSL includes a one-year term, commencing on January 1, 2009, and terminating on December 31, 2009. A one-year term is proposed because of the reduced amount of tonnage projected for the upcoming year. Accordingly, Metro must pay close attention to the waste flows under these NSLs in the event that tonnage shrinks further.

(3) Weekly and Daily Reporting Requirements

As required in previous NSLs, Section 6 of the proposed NSL stipulates that the licensee must maintain and report accurate records regarding the amount of waste that it delivers to the non-system facility under authority of the license. At a minimum the licensee shall transmit the required records to Metro on a monthly basis. However, the proposed NSL also stipulates that Metro may require the licensee to report such required information to Metro on a weekly or daily basis. The COO will determine when more frequent reporting is necessary.

By adopting this resolution, the Metro Council also authorizes the COO to immediately implement more frequent reporting requirements as needed.

(4) Redirection of Waste Flow

Section 7 of the proposed NSL grants the COO authority to direct the licensee to deliver its waste, as covered under the license, to either the Metro Central or South Transfer Stations. The COO may determine when such redirection of waste flow is necessary. In addition, the COO may redirect waste flow upon providing the licensee with a minimum of 24 hours' written notice and any such redirection becomes immediately effective thereafter.

By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to prevent a violation of the flow guarantee.

(5) Enforcement Clarification

Section 7 of the proposed NSL clarifies that an exceedence of the quarter-year, half-year, or full-year tonnage limitations constitutes a violation that is subject to an enforcement action as provided in the Metro Code. In addition, the proposed NSL also stipulates that each ton above the limitation constitutes a separate violation that is subject to a penalty of up to \$500.

**2. ANALYSIS/INFORMATION**

**A. Known Opposition**

In a letter to Metro dated August, 21, 2008, Anita Largent, Solid Waste Manager with the Clark County Public Works Department, raised concerns regarding traffic issues at CTRC and requested that Metro take these issues into account when considering the renewal of this NSL. In particular, Ms. Largent reported that CTRC is currently operating at its throughput capacity for vehicle traffic, which occasionally results in vehicles backing up onto 117<sup>th</sup> Avenue. She said that Clark County and the facility operator, WCI, is currently evaluating long-term options for expanding CTRC and improving traffic flow at the facility. In addition to the current physical constraints at CTRC, Ms. Largent reports that the Washington State Department of Transportation is planning to perform a roadway construction project along 117<sup>th</sup> Avenue in the year 2010. She said that the resulting project will likely exacerbate traffic congestion near CTRC



because it will restrict all vehicle access to and egress from the facility to right-turn only. Ms. Largent has stated that the Clark County Solid Waste System is capable of managing the 42,000 tons of Metro area solid waste that is currently delivered to Clark County under authority of NSLs. However, due to Clark County's concern regarding current and future traffic issues the County has recommended that Metro restrict the number of loads that the applicant may deliver to CTRC under authority of its NSL beginning in 2010.

Ms. Largent also raised the issue of roofing debris stockpiled at WVAN that had originally emanated from the Metro region. A fuller discussion of this matter is provided in Section 2B(2) of this report. Metro will continue to work with Clark County and WCI to resolve this issue.

On November 25, 2008, Metro staff met with Clark County staff to further discuss traffic and other issues at WVAN and CTRC. At that time, County staff indicated that they were not opposed to Metro granting the proposed one-year NSL to the applicant. Since this proposed NSL will be granted for the year 2009 only, any circumstances that change in the County during the upcoming year can be taken into consideration if this NSL is renewed in 2010 or later. Metro staff will continue to work with the County to resolve any issues that may arise during the term of this license.

## **B. 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 sites are transfer stations that do not pose any known potential for environmental risk from wastes delivered from prior users. After processing at the transfer stations, the waste is transported via barge to Finley Buttes Landfill, located in Morrow County, Oregon. Finley Buttes Landfill is already a Metro designated facility authorized to receive non-putrescible waste without the need for haulers to obtain an NSL. Other than that delivered via WVAN and CTRC, the Finley Buttes Landfill does not receive any other putrescible waste from the Metro region.

- (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;*

WCI reportedly has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

Notwithstanding WCI's good compliance record, Metro and Clark County have been dealing with an ongoing issue of roofing debris stockpiled at WVAN. Beginning in January 2000 and continuing through October 2002, CRC accepted at WVAN approximately 6,148 tons of asphalt roofing material from generators within the Metro region for the purpose of recycling (i.e., energy recovery at the Tacoma Steam Plant in Washington). Of that total, approximately 3,500 tons of roofing debris is presently stockpiled at the site. CRC has not paid Metro its Regional System Fee or Excise Tax for any of that roofing material because the material was initially accepted for recycling and not subject to fees and taxes. However, CRC has been unsuccessful in locating a viable market or use of the remaining material and has subsequently received notice from Clark County that the stockpile must be removed from the site by the end of 2008. CRC has

since decided to deliver all of the remaining roofing debris to a landfill for disposal. CRC has recently requested that Metro waive the fees and taxes that are due on this material. Metro indicated that it would consider the applicant's request in the context of the roofing material it had originally accepted for valid recovery options; however, Metro has notified CRC that full fees and taxes would be due on the other portion of the material once it is delivered to a disposal site.

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

WVAN and CTRC use operational practices and management controls that are typical of transfer stations and that Metro considers adequate for the protection of health, safety, and the environment.

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

The proposed NSL covers only putrescible waste, which has little recovery or recycling potential. Thus, the waste authorized by the proposed license is not expected 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 waste that Metro delivers to general purpose landfills during the calendar year to landfills operated by Metro's waste disposal contract operator, Waste Management. This proposed NSL renewal is one of four similar licenses that expire at the end of 2008 and it allows Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

- (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*

Arrow exceeded its NSL tonnage limitation in calendar year 2007. In a letter dated July 25, 2007, Metro warned Arrow that it was on track to exceed its NSL limit and should take measures to prevent the exceedence. Arrow subsequently applied to Metro for an increase in its tonnage authorization but was denied due to a moratorium on granting NSLs for the delivery of putrescible waste to non-system facilities in effect at the time. The denial letter, dated September 7, 2007, again warned Arrow that it must adhere to its existing NSL limit of 35,367 tons. Despite these warnings, Arrow reported delivering a total of 39,123 tons of solid waste to WVAN and CTRC in 2007; thus, Arrow exceeded its NSL limit by 3,756 tons.

Metro issued a Notice of Violation to Arrow for the above-mentioned tonnage limit violation, imposing a penalty of \$3,756 based on one dollar for each ton in excess of the limit. In a hearing held on October 1, 2008, Arrow contested the penalty based on its assertion that Metro should have reconsidered Arrow's application or given Arrow special notice when the language of the moratorium was changed so as to allow such NSL tonnage increases. Arrow also asserted that the excess tonnage constituted a single violation for which the Metro Code prescribes a maximum penalty of \$500. In a proposed Final Order issued October 21, 2008, the Hearings Officer found in favor of Metro. Arrow then sought to negotiate a settlement with Metro and expressed its intent to file a Writ of Review if a mutually agreeable settlement could not be reached. Metro and Arrow agreed to settle this matter for the sum of \$3,200.

Arrow is currently in compliance with its NSL. With the exception of the above referenced NSL violation, Arrow has had no violations related to public health, safety or environmental regulations. Additionally, Arrow has not had any significant compliance issues regarding other Metro requirements during the term of the existing NSL.

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

This criterion was examined above in Sections 1A and 2(c) of this report.

### **C. Anticipated Effects**

Approval of Resolution No. 08-3986 will authorize the COO to issue a renewed NSL, substantially similar to the proposed NSL attached to this resolution as Exhibit A, to Arrow for the delivery of up to 33,020 tons of putrescible waste to WVAN and CTCR.

### **D. Budget Impacts**

The Metro Regional System Fee and Excise Tax will continue to be collected on waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-029-05). Therefore, the financial impact has already been factored into the budget.

However, as discussed in the “Overview” of this report, the Metro Council may wish to re-evaluate its policy options around the uncommitted ten percent. To quantify the financial impact in part, the following is an analysis of the effects *on disposal costs only* during FY 2009-10.

- Disposal rate depends on volume. As is generally known, the price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. As shown in the next paragraph, if the 82,200 uncommitted tons went to Waste Management landfills, Metro’s disposal costs would be less, and the savings would be passed on to Metro’s customers through a lower tip fee.
- Impact on Metro Customers. Based on projected FY 2009-10 tonnage and contract prices, allocating the uncommitted 82,200 tons to non-Waste Management landfills increases the Metro tip fee by \$0.99. This means that Metro customers will pay \$538,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. These financial impacts are already factored into the budget. Put another way, if all four NSL resolutions are denied, the Metro tip fee would be lower by \$0.99 (all else equal) and Metro customers would thereby save about \$538,000 in disposal costs.
- Regional impact based on “rate matching.” As shown by Metro staff for the evaluation of the franchise application by Columbia Environmental Transfer Station in 2005, Metro’s tip fee is generally matched by private solid waste facilities in the region. Based on the tonnage projected to be accepted at such facilities, (and assuming full matching of the \$0.99 per ton as described above), customers of private facilities would pay an additional \$502,000 more for disposal in FY 2009-10. This increased cost to customers of private facilities, coupled with the additional \$538,000 paid by Metro’s transfer station customers, would result in a total regional impact of \$1.04 million more for disposal in FY 2009-10.

### **3. RECOMMENDED ACTION**

Based on the information provided in this report, the COO recommends approval of Resolution No. 08-3986, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and renewal of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

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Agenda Item Number 6.3

**Resolution No. 08-3987**, Authorizing the Chief Operating Office to Issue a Renewed Non-System License to Willamette Resources, Inc for Delivery of Putrescible Waste to Coffin Butte Landfill.

Metro Council Meeting  
Thursday, December 11, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER ) RESOLUTION NO. 08-3987  
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO )  
WILLAMETTE RESOURCES, INC. FOR DELIVERY ) Introduced by Michael Jordan,  
OF PUTRESCIBLE WASTE TO THE COFFIN BUTTE ) Chief Operating Officer, with the  
LANDFILL ) concurrence of David Bragdon,  
) 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") holds Metro Solid Waste Facility Non-System License No. N-005-005(3), which expires on December 31, 2008; and

WHEREAS, WRI has filed a completed application seeking renewal of the non-system license to deliver putrescible waste to the Coffin Butte Landfill for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and

WHEREAS, the Metro Code Chapter 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 Resolution; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The non-system license renewal application of WRI is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to WRI 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. 08-3987

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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-005-09(3)**

<b>LICENSEE:</b>	
Willamette Resources, Inc. 10295 SW Ridder Road Wilsonville, OR 97070	
<b>CONTACT PERSON:</b>	
Todd Irvine	Ray Phelps
Phone: (503) 570-0625	(503) 570-0625
Fax: (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>
<b>MAILING ADDRESS:</b>	
Willamette Resources, Inc. 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>
	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.

<b>2</b>	<b>CALENDAR YEAR AND QUARTERLY TONNAGE LIMITATIONS</b>
	<p>Licensee is authorized to deliver to the non-system facility described in Section 3 of this license up to 44,018 tons per calendar year of the waste described in Section 1 of this license as follows:</p> <ul style="list-style-type: none"><li>(a) For the first and second quarters, beginning January 1, 2009, through June 30, 2009, not more than 22,009 tons;</li><li>(b) For the third quarter, beginning July 1, 2009, through September 30, 2009, as determined by Metro's Chief Operating Officer ("COO") and included in an amendment to this non-system license issued by the COO no later than June 15, 2009; and</li><li>(c) For the fourth quarter, beginning October 1, 2009, through December 31, 2009, as determined by the COO and included in an amendment to this non-system license issued by the COO no later than September 15, 2009.</li></ul> <p>This license does not increase the total tonnage that the Licensee is authorized to accept under Metro Solid Waste Facility Franchise No. F-005-08.</p>

<b>3</b>	<b>NON-SYSTEM FACILITY</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="text-align: center;">Coffin Butte Landfill 28972 Coffin Butte Road Corvallis, OR 97330</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 or local regulatory authority 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, 2009, 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 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)</p>



	<p>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> <p>(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.</p>
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<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) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by 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 Waste Management Disposal Services of Oregon, Inc., dba 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><li>(g) The COO may direct the Licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours' written notice. Any redirection of the waste</li></ul>



	<p>flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year or quarterly tonnage limitations set forth in Section 2 of this license, each ton by which the Licensee exceeds the limitations constitutes a separate violation subject to a penalty of up to \$500.</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. 08-3987 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO WILLAMETTE RESOURCES, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE COFFIN BUTTE LANDFILL

November 25, 2008

Prepared by: Warren Johnson

Approval of Resolution No. 08-3987 will authorize the Chief Operating Officer (COO) to issue a one-year non-system license (NSL), substantially similar to the proposed NSL attached to this resolution as Exhibit A, to Willamette Resources, Inc. (WRI) authorizing the delivery of up to 44,018 tons of putrescible waste to the Coffin Butte Landfill (CBLF) during calendar year 2009. The applicant (WRI) and the disposal site (CBLF) are both owned by Allied Waste Industries, Inc. (Allied).

#### 1. INTRODUCTION

##### A. Background

###### (1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver 90 percent of the region's putrescible waste to landfills owned by Waste Management. NSLs allow Metro to monitor and guide waste flows by direct intervention with licensees. This provides for a high level of control and fast response to changes in conditions. Resolution No. 08-3987 would grant an NSL to WRI to deliver Metro-area putrescible waste to a disposal site owned by Allied. That is, this NSL controls a portion of the ten percent of uncommitted waste not guaranteed to Waste Management. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted ten percent. In addition to this action for WRI, Metro Council will consider resolutions for American Sanitary Service, Inc., Arrow Sanitary Service, Inc., and Crown Point Refuse, Inc.

Two important conditions have changed since Metro last completed a comprehensive round of issuing putrescible waste NSLs in 2005:

- Supreme Court clarifies local authority. In April 2007, the United States Supreme Court clarified local flow control authority. The Court ruled that a local government *may direct waste to its own facilities* without running afoul of the Commerce Clause.<sup>1</sup>
- Tonnage is down. The shrinking amount of tonnage in the current economic environment means that — for the first time — Metro's projection of the uncommitted ten percent is less than the tonnage that the NSL applicants have requested, in total. Accordingly, waste must be allocated among the applicants; and Metro must pay even closer attention to flows under these NSLs in the event that tonnage shrinks further.

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<sup>1</sup>United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth., 127 S. Ct. 1786, 1790 (2007) (upholding flow control ordinances because regulations do not discriminate against interstate commerce and any incidental burden on interstate commerce does not outweigh the benefits conferred on the citizens)

To jointly manage these two changes, Metro staff recommends that the terms and conditions of the four proposed NSLs differ from historical practice in the following ways:

- To manage the flow guarantee: (a) grant one-year (not two-year) licenses; (b) release the tonnage in allotments over the year, beginning with the first six months, followed by quarterly allotments as warranted by conditions. Details of this process are described in subsection (2) below, and in Section 1C of this report.
- To plan for the future. If Metro Council concurs, staff will identify and evaluate Metro's options under the new legal environment during 2009. This would include a review of the public policies, costs and benefits of allocating the uncommitted ten percent to non-Waste Management landfills. If the current policy is affirmed, then Metro would develop clear and objective procedures for reserving tonnage, allocating tonnage, and determining need and priority of allocation. These recommendations are expanded in the next section of this staff report.

(2) Response to Changed Conditions: Design of the 2009 NSLs

In recognition of the issues described above, Metro staff has applied a more detailed and better documented approach for evaluating applications and determining tonnage authorizations for NSLs. These changes are designed to help Metro manage the flow guarantee while tonnage remains low and uncertain.

Initially, during the current NSL renewal period for 2009, staff recommends that the Metro Council grant each of these four applicants a one-year NSL authorizing a maximum tonnage limit for the year. The tonnage limit for each of these proposed NSLs will be a share of the tonnage that is projected to be available for allocation during calendar year 2009. A description of the methodology used for this tonnage allocation is provided below in Section 1A(3).

For 2009, Metro would grant up to 9.5 percent of the available projected tonnage to those applicants that have applied to renew NSLs. As proposed by staff, the new NSLs would authorize a maximum tonnage which, summed across all licenses, would not exceed 9.5 percent of the total projected tonnage subject to the flow guarantee.<sup>2</sup> The tonnage would be released in allotments for use by the licensee on a half-year and quarter-year basis. The half-year tonnage limit (which is 50 percent of the total tonnage authorized under the license), would be released to the licensee on January 1, 2009. The quarter-year tonnage limits would then be released by the COO for use during the third and fourth quarters of 2009. The COO would allocate tonnage based on the methodology described in Section 1A(3) of this report.

The NSLs also authorize the COO to immediately redirect the licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the flow guarantee.

In regard to the clarification of local flow control authority described in the "Overview" of this report, staff will identify and evaluate Metro's policy options around the uncommitted ten percent. If Metro Council decides the public interest is best served by continuing to allocate the uncommitted ten percent, then staff would proceed to develop clear and objective procedures for reserving tonnage, allocating tonnage, and determining need and priority of allocation.

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<sup>2</sup> If Metro Council allocates up to 9.5 percent of the available waste tonnage under these proposed NSLs, it would be unlikely that Metro would consider any requests for tonnage limit increases under these NSLs or consider any new NSL applications during 2009 based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs.

The question whether the public purpose is met by allocating any of the uncommitted tonnage at all is a large one. For example, CH2M HILL, in the *Metro Transfer System Ownership Study* (also known as “Disposal System Planning I” or “DSP I”), suggested that Metro should investigate whether a formal procurement of a second disposal contract for the uncommitted ten percent could result in cost reductions [and/or other public benefits, presumably]. As discussed in the “Budget Impact” of this staff report, the current policy of allocating the uncommitted tonnage has a rate impact of \$0.99 on Metro’s tip fee. That is, Metro’s transfer station customers will pay approximately \$538,000 more in FY 2009-10 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. And through the “rate matching” effect (as described in “Budget Impact”), customers of private solid waste facilities would pay an additional \$502,000 — a total regional impact of \$1.04 million for disposal as a result of allocating tonnage to non-Waste Management Landfills.

### (3) Tonnage Allocation Methodology

As described above in Section 1A(2), the proposed NSLs include a maximum tonnage limit that would be released in allotments on a half-year and quarter-year basis. The half-year limit represents the amount of tonnage that the licensee may use during the first six months of the license term. The half-year limit also represents 50 percent of the maximum tonnage amount authorized for the license. The quarter-year tonnage limits will be allocated and released by the COO for use during the third and fourth quarters of the year based on Metro’s monitoring of the tonnage situation. All of these NSL tonnage limits are based on actual tonnage usage and are calculated by using the same proportions as described below.<sup>3</sup>

The tonnage allocations are based on Metro’s forecast of waste that is subject to the flow guarantee under its disposal contract with Waste Management, and each licensee’s share of such waste that was delivered to all solid waste facilities in the most recent 12-month period (November 2007 through October 2008). The details of the allocation are as follows:

- *Total Tonnage.* Metro forecasts that 865,100 tons will be subject to the flow guarantee in calendar year 2009.<sup>4</sup>
- *Reservation Tonnage.* Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- *Allocatable Tonnage.* 82,200 tons comprise the 9.5 percent of the 865,100 tons that are not reserved and therefore subject to allocation among the applicants.
- *Licensee’s Portion.* Each licensee is allocated a share of the 82,200 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee actually delivered to all solid waste facilities during the most recent 12-month period (November 2007 through October 2008). For

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<sup>3</sup>Under the proposed management approach, the licensee will not be allowed to carry forward any unused tonnage into a subsequent allocation period.

<sup>4</sup>This number is derived from Metro’s econometric forecasting model of the solid waste system. This model is used for all of Metro’s major decisions involving solid waste tonnage including budgeting, rate setting and revenue projections. The allocation numbers are based on the most recent forecast, which was completed on October 31, 2008 and covers the period through December 2010. The Council has also based its FY 2009-10 solid waste budget assumptions on the same October 31 forecast.

WRI, the share was 53.6 percent, leading to the recommended license authorization of no more than 44,018 tons in 2009.

As explained above, Metro forecasts that there will be 865,100 tons of waste subject to the flow guarantee and 82,200 tons available for allocation in calendar year 2009. The following table provides a comparison of the licensees' current authorizations, the tonnage requested in their renewal applications, and the proposed 2009 authorizations.

**Table 1**  
**Comparison of Solid Waste Subject to the Flow Guarantee by NSL Applicant**

Licensee	2008 Tonnage Authorization	Applicants' 2009 Requests	Solid Waste Delivered to All Facilities (Nov. 2007—Oct. 2008)		Proposed 2009 Allocations		
			Tons	Percent	Tons	Percent	First Six Months
<b>American</b> Res. No. 08-3985	6,613	9,401	6,183	5.9	4,842	5.9	2,421
<b>Arrow</b> Res. No. 08-3986	35,367	37,673	42,195	40.2	33,020	40.2	16,510
<b>Crown Point</b> Res. No. 08-3988	324	500	408	0.4	321	0.4	160
<b>WRI</b> Res. No. 08-3987	45,000	45,000	56,252	53.6	44,018	53.6	22,009
<b>TOTAL</b>	<b>87,304</b>	<b>92,574</b>	<b>105,038</b>	<b>100</b>	<b>82,201</b>	<b>100</b>	<b>41,100</b>

**B. The Applicant**

In December 2005, WRI was granted an NSL to deliver a maximum of 45,000 tons per calendar year of solid waste, including putrescible waste, to CBLF located near Corvallis, Oregon (Benton County).

The term of WRI's existing NSL No. N-005-005(3) commenced on January 1, 2006 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 extending the term of certain NSLs, including WRI's NSL, to expire on December 31, 2008. The purpose of the extension was to align its expiration date with that of all the other NSLs that authorize the delivery of putrescible solid waste to non-system facilities. During calendar year 2007, the applicant delivered 42,395 tons of solid waste to the CBLF.

On September 3, 2008, WRI submitted to Metro an application requesting that Metro renew this NSL with a tonnage authorization of 45,000 tons per calendar year. The applicant requested the same tonnage limit that is currently authorized under its existing NSL.

**C. Description of the Resolution**

Approval of Resolution No. 08-3987 will authorize the COO to issue a renewed NSL, substantially similar to the proposed NSL attached to this resolution as Exhibit A, authorizing WRI to deliver up to 44,018 tons of putrescible waste to CBLF during calendar year 2009. The tonnage limit stipulated in the proposed NSL is 982 tons less than that currently authorized under the applicant's existing license. The 2009 tonnage authorization is based on the methodology described above in Section 1A of this report.

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Section 5.05.035(c) of the Metro Code stipulates that the Metro Council shall consider certain factors when determining whether to issue NSLs. A description of these factors and the corresponding analysis of the renewal application are provided below in Section 2B of this report.

Based on the information provided above and the analysis provided in Section 2B, the COO recommends that the Metro Council approve an NSL renewal for WRI subject to the requirements listed in Metro Code Chapter 5.05; and further subject to several special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A. These special conditions are intended to minimize Metro's risk of violating its disposal contract by providing Metro with more timely controls for monitoring the flow guarantee against the currently declining waste tonnage in the system. In addition, as discussed in Section 1A of this report, these conditions will also provide Metro with an opportunity to evaluate its current ten-percent allocation policy and determine whether it should continue this same policy in the future.

The main special conditions that are included in the proposed NSL are described below.

(1) Calendar Year and Quarterly Tonnage Limitations

Section 2 of the proposed NSL authorizes WRI to deliver up to 44,018 tons of putrescible waste to CBLF during calendar year 2009. The NSL further stipulates that the COO will allocate this tonnage to the licensee, up to the total amount authorized under the NSL, in allotments on a half-year and quarter-year basis. Under the provisions of the proposed NSL, the licensee is authorized to deliver up to 22,009 tons of putrescible waste during the first six months of the year, beginning January 1, 2009 through June 30, 2009. The COO may allocate additional waste tonnage to the licensee during the third and fourth quarter of 2009 provided that such waste is available for allocation and the allotment is within the authorized limit of the license.

The NSL also stipulates that prior to June 30, 2009, the COO will determine and allocate the licensee's quarterly tonnage allotment (for the third and fourth quarters of calendar year 2009) in an amount not to exceed the licensee's maximum tonnage authorization of 44,018 tons. The COO will base the quarterly tonnage limits using Metro's forward tonnage projection for the quarter, and the same proportion as was used to determine the licensee's annual allocation (see Table 1). This condition will enable Metro to adjust the NSL tonnage authorization, as necessary, toward the end of the year and avoid exceeding the ten percent contractual limitation.

By adopting this resolution, the Metro Council authorizes the COO to allocate and release tonnage as described above.

(2) Term of License

Section 4 of the proposed NSL includes a one-year term, commencing on January 1, 2009, and terminating on December 31, 2009. A one-year term is proposed because of the reduced amount of tonnage projected for the upcoming year. Accordingly, Metro must pay close attention to the waste flows under these NSLs in the event that tonnage shrinks further.

(3) Weekly and Daily Reporting Requirements

As required in previous NSLs, Section 6 of the proposed NSL stipulates that the licensee must maintain and report accurate records regarding the amount of waste that it delivers to the non-system facility under authority of the license. At a minimum the licensee shall transmit the required records to Metro on a



monthly basis. However, the proposed NSL also stipulates that Metro may require the licensee to report such required information to Metro on a weekly or daily basis. The COO will determine when more frequent reporting is necessary.

By adopting this resolution, the Metro Council also authorizes the COO to immediately implement more frequent reporting requirements as needed.

(4) Redirection of Waste Flow

Section 7 of the proposed NSL grants the COO authority to direct the licensee to deliver its waste, as covered under the license, to either the Metro Central or South Transfer Stations. The COO may determine when such redirection of waste flow is necessary. In addition, the COO may redirect waste flow upon providing the licensee with a minimum of 24 hours' written notice and any such redirection becomes immediately effective thereafter.

By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to prevent a violation of the flow guarantee.

(5) Enforcement Clarification

Section 7 of the proposed NSL clarifies that an exceedence of the quarter-year, half-year, or full-year tonnage limitations constitutes a violation that is subject to an enforcement action as provided in the Metro Code. In addition, the proposed NSL also stipulates that each ton above the limitation constitutes a separate violation that is subject to a penalty of up to \$500.

## 2. ANALYSIS/INFORMATION

### A. Known Opposition

There is no known opposition to the proposed license.

### B. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the 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;*

CBLF, located in Benton County, first came into use during the 1940s or 1950s when it served as the landfill for the nearby Adair Village Military base. Later, the landfill accepted industrial wastes from the Wah Chang facility located in Albany, Oregon. When CBLF became a Subtitle D landfill in 1992, the original unlined cells were capped. However, there has been a problem of leachate contamination of groundwater that is being monitored by the Oregon Department of Environmental Quality (DEQ). Since 1992, the landfill has been filling only lined cells and operating with the required environmental controls required by the DEQ. CBLF is already a Metro designated facility authorized to receive non-putrescible solid waste without the need for haulers to obtain NSLs.

- (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;*

Allied owns and operates both WRI and CBLF. Allied reportedly has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

CBLF is permitted by the DEQ. In November 2008, Metro staff received verbal confirmation from Hu Gao, Project Manager with the DEQ's Western Region Office, and Gordon Brown, Benton County, that CBLF is in compliance with federal, state and local requirements and the facility has a good compliance record.

Notwithstanding CBLF's good compliance record, on November 15, 2007, Metro issued a Notice of Violation to CBLF for failing to properly classify Metro-area waste and failing to collect and remit to Metro the appropriate Region System Fee and Excise Taxes that were due on that waste from May 1, 2005 through March 31, 2007. During that time period, CBLF's customer Pacific Power Vac, Inc. (PPV) delivered 5,224 tons (184 loads) of processed sludge waste to the landfill for disposal. This sludge waste was accepted at the landfill under the terms of a designated facility agreement in place between CBLF and Metro. PPV's sludge waste was incorrectly classified as petroleum-contaminated soil (PCS) at the landfill and CBLF incorrectly reported it to Metro as PCS. In addition to incorrectly identifying and classifying this sludge waste, CBLF failed to collect and remit to Metro all of the fees and taxes that were due on the waste.

Metro subsequently imposed a penalty on CBLF in the amount of \$13,800. This total amount was calculated based upon a \$75-penalty for each of the 184 loads of sludge (equivalent to \$2.64 per ton) falsely entered into CBLF's transaction records during the above-mentioned 23-month period. CBLF did not contest this Notice of Violation and it subsequently paid the entire penalty amount to Metro in December 2007. This matter has since been resolved.<sup>5</sup>

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

CBLF uses operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of the health, safety, and the environment. The landfill's DEQ permit, along with the details of its waste screening, operations, closure, and special waste handling procedures have been reviewed and are on file with Metro.

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

The proposed license covers only putrescible waste, which has little recovery or recycling potential. Thus, the waste authorized by the proposed license is not expected 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 waste that Metro delivers to general purpose landfills during the calendar year to landfills operated by Metro's waste disposal contract operator, Waste Management. This proposed NSL renewal is one of four similar licenses that expire at

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<sup>5</sup> Metro also issued a Notice of Violation to PPV for failing to pay the proper amount of fees and taxes on the waste that was improperly classified at CBLF. Metro and PPV agreed to settle the matter for the sum of \$78,787.

the end of 2008 and it allows Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

- (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*

On August 31, 2007, Metro issued a Notice of Violation to WRI for violating the calendar year tonnage limitation stipulated in its existing NSL (No. N-005-005(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 NSL.

With the exception of the above referenced violation, WRI has not had any other significant compliance issues regarding other Metro requirements during the term of the existing NSL. In addition, WRI has not had any violations related to public health, safety or environmental regulations during that time.

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

This criterion was examined above in Sections 1A and 2(c) of this report.

### **C. Anticipated Effects**

Approval of Resolution No. 08-3987 will authorize the COO to issue a renewed NSL, substantially similar to the proposed NSL attached to this resolution as Exhibit A, to WRI for the delivery of up to 44,018 tons of putrescible waste to CBLF.

### **D. Budget Impacts**

The Metro Regional System Fee and Excise Tax will continue to be collected on waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-005-005(3)). Therefore, the financial impact has already been factored into the budget.

However, as discussed in the “Overview” of this report, the Metro Council may wish to re-evaluate its policy options around the uncommitted ten percent. To quantify the financial impact in part, the following is an analysis of the effects *on disposal costs only* during FY 2009-10.

- Disposal rate depends on volume. As is generally known, the price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. As shown in the next paragraph, if the 82,200 uncommitted tons went to Waste Management landfills, Metro’s disposal costs would be less, and the savings would be passed on to Metro’s customers through a lower tip fee.
- Impact on Metro Customers. Based on projected FY 2009-10 tonnage and contract prices, allocating the uncommitted 82,200 tons to non-Waste Management landfills increases the Metro tip fee by \$0.99. This means that Metro customers will pay \$538,000 more for disposal than if all

of the uncommitted waste were to flow to Waste Management landfills. These financial impacts are already factored into the budget. Put another way, if all four NSL resolutions are denied, the Metro tip fee would be lower by \$0.99 (all else equal) and Metro customers would thereby save about \$538,000 in disposal costs.

- Regional impact based on “rate matching.” As shown by Metro staff for the evaluation of the franchise application by Columbia Environmental Transfer Station in 2005, Metro’s tip fee is generally matched by private solid waste facilities in the region. Based on the tonnage projected to be accepted at such facilities, (and assuming full matching of the \$0.99 per ton as described above), customers of private facilities would pay an additional \$502,000 more for disposal in FY 2009-10. This increased cost to customers of private facilities, coupled with the additional \$538,000 paid by Metro’s transfer station customers, would result in a total regional impact of \$1.04 million more for disposal in FY 2009-10.

### **3. RECOMMENDED ACTION**

Based on the information provided in this staff report, the COO recommends approval of Resolution No. 08-3987, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and renewal of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

WJ:bjl  
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Agenda Item Number 6.4

**Resolution No. 08-3979**, Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Crown Point Refuse, Inc. or Delivery of Putrescible Waste to the Wasco County Landfill.

Metro Council Meeting  
Thursday, December 11, 2008  
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER ) RESOLUTION NO. 08-3988  
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO )  
CROWN POINT REFUSE, INC. FOR DELIVERY OF ) Introduced by Michael Jordan,  
PUTRESCIBLE WASTE TO THE WASCO COUNTY ) Chief Operating Officer, with the  
LANDFILL ) concurrence of David Bragdon,  
) 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, Crown Point Refuse, Inc. ("Crown Point") holds Metro Solid Waste Facility Non-System License No. N-108-05, which expires on December 31, 2008; and

WHEREAS, Crown Point has filed a completed application seeking renewal of the non-system license to deliver putrescible waste to the Wasco County Landfill for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and

WHEREAS, the Metro Code Chapter 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 Resolution; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The non-system license renewal application of Crown Point is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to Crown Point 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-108-09**

<b>LICENSEE:</b>
Crown Point Refuse, Inc. 2430 NW Marine Drive Troutdale, OR 97060
<b>CONTACT PERSON:</b>
Randall Burbach Phone: (503) 695-3239 Fax: (503) 661-7216 E-mail: <a href="mailto:crownpointrefuse@verizon.net">crownpointrefuse@verizon.net</a>
<b>MAILING ADDRESS:</b>
Crown Point Refuse, Inc. PO Box 360 Corbett, OR 97019

**ISSUED BY METRO:**

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

\_\_\_\_\_  
Date



<b>1</b>	<b>NATURE OF WASTE COVERED BY LICENSE</b>
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by Crown Point Refuse, Inc.
<b>2</b>	<b>CALENDAR YEAR AND QUARTERLY TONNAGE LIMITATIONS</b>
	<p>Licensee is authorized to deliver to the non-system facility described in Section 3 of this license up to 321 tons per calendar year of the waste described in Section 1 of this license as follows:</p> <ul style="list-style-type: none"><li>(a) For the first and second quarters, beginning January 1, 2009, through June 30, 2009, not more than 160 tons;</li><li>(b) For the third quarter, beginning July 1, 2009, through September 30, 2009, as determined by Metro's Chief Operating Officer ("COO") and included in an amendment to this non-system license issued by the COO no later than June 15, 2009; and</li><li>(c) For the fourth quarter, beginning October 1, 2009, through December 31, 2009, as determined by the COO and included in an amendment to this non-system license issued by the COO no later than September 15, 2009.</li></ul>
<b>3</b>	<b>NON-SYSTEM FACILITY</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="text-align: center;">Wasco County Landfill 2550 Steele Road The Dalles, OR 97058</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 or local regulatory authority 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, 2009, 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 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. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; and</li><li>ii. 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</p>



	<p>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> <p>(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.</p> <p>(e) At least once per calendar year, Licensee shall sample the weight of the waste it collects from within the Metro region for at least two consecutive weeks. The samples will be used as a basis for reporting the tonnage on the Licensee's Regional System Fee and Excise Tax Report.</p>
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<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) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by the COO in the event that the COO 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 Waste Management Disposal Services of Oregon, Inc., dba 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> <p>(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.</p> <p>(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.</p> <p>(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.</p> <p>(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.</p>



	<p>(g) The COO may direct the Licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours' written notice. Any redirection of the waste flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year or quarterly tonnage limitations set forth in Section 2 of this license, each ton by which the Licensee exceeds the limitations constitutes a separate violation subject to a penalty of up to \$500.</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. 08-3988 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO CROWN POINT REFUSE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE WASCO COUNTY LANDFILL

November 25, 2008

Prepared by: Warren Johnson

Approval of Resolution No. 08-3988 will authorize the Chief Operating Officer (COO) to issue a one-year non-system license (NSL), substantially similar to the proposed NSL attached to this resolution as Exhibit A, to Crown Point Refuse, Inc. (Crown Point) authorizing the delivery of up to 321 tons of putrescible waste to the Wasco County Landfill (WCL) during calendar year 2009.

#### 1. INTRODUCTION

##### A. Background

###### (1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver 90 percent of the region's putrescible waste to landfills owned by Waste Management. NSLs allow Metro to monitor and guide waste flows by direct intervention with licensees. This provides for a high level of control and fast response to changes in conditions. Resolution No. 08-3988 would grant an NSL to Crown Point to deliver Metro-area putrescible waste to a disposal site owned by Waste Connections, Inc. That is, this NSL controls a portion of the ten percent of uncommitted waste not guaranteed to Waste Management. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted ten percent. In addition to this action for Crown Point, Metro Council will consider resolutions for American Sanitary Service, Inc., Arrow Sanitary Service, Inc., and Willamette Resources, Inc.

Two important conditions have changed since Metro last completed a comprehensive round of issuing putrescible waste NSLs in 2005:

- Supreme Court clarifies local authority. In April 2007, the United States Supreme Court clarified local flow control authority. The Court ruled that a local government *may direct waste to its own facilities* without running afoul of the Commerce Clause.<sup>1</sup>
- Tonnage is down. The shrinking amount of tonnage in the current economic environment means that — for the first time — Metro's projection of the uncommitted ten percent is less than the tonnage that the NSL applicants have requested, in total. Accordingly, waste must be allocated among the applicants; and Metro must pay even closer attention to flows under these NSLs in the event that tonnage shrinks further.

To jointly manage these two changes, Metro staff recommends that the terms and conditions of the four proposed NSLs differ from historical practice in the following ways:

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<sup>1</sup>United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth., 127 S. Ct. 1786, 1790 (2007) (upholding flow control ordinances because regulations do not discriminate against interstate commerce and any incidental burden on interstate commerce does not outweigh the benefits conferred on the citizens)

- To manage the flow guarantee: (a) grant one-year (not two-year) licenses; (b) release the tonnage in allotments over the year, beginning with the first six months, followed by quarterly allotments as warranted by conditions. Details of this process are described in subsection (2) below, and in Section 1C of this report.
- To plan for the future. If Metro Council concurs, staff will identify and evaluate Metro's options under the new legal environment during 2009. This would include a review of the public policies, costs and benefits of allocating the uncommitted ten percent to non-Waste Management landfills. If the current policy is affirmed, then Metro would develop clear and objective procedures for reserving tonnage, allocating tonnage, and determining need and priority of allocation. These recommendations are expanded in the next section of this staff report.

(2) Response to Changed Conditions: Design of the 2009 NSLs

In recognition of the issues described above, Metro staff has applied a more detailed and better documented approach for evaluating applications and determining tonnage authorizations for NSLs. These changes are designed to help Metro manage the flow guarantee while tonnage remains low and uncertain.

Initially, during the current NSL renewal period for 2009, staff recommends that the Metro Council grant each of these four applicants a one-year NSL authorizing a maximum tonnage limit for the year. The tonnage limit for each of these proposed NSLs will be a share of the tonnage that is projected to be available for allocation during calendar year 2009. A description of the methodology used for this tonnage allocation is provided below in Section 1A(3).

For 2009, Metro would grant up to 9.5 percent of the available projected tonnage to those applicants that have applied to renew NSLs. As proposed by staff, the new NSLs would authorize a maximum tonnage which, summed across all licenses, would not exceed 9.5 percent of the total projected tonnage subject to the flow guarantee.<sup>2</sup> The tonnage would be released in allotments for use by the licensee on a half-year and quarter-year basis. The half-year tonnage limit (which is 50 percent of the total tonnage authorized under the license), would be released to the licensee on January 1, 2009. The quarter-year tonnage limits would then be released by the COO for use during the third and fourth quarters of 2009. The COO would allocate tonnage based on the methodology described in Section 1A(3) of this report.

The NSLs also authorize the COO to immediately redirect the licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the flow guarantee.

In regard to the clarification of local flow control authority described in the "Overview" of this report, staff will identify and evaluate Metro's policy options around the uncommitted ten percent. If Metro Council decides the public interest is best served by continuing to allocate the uncommitted ten percent, then staff would proceed to develop clear and objective procedures for reserving tonnage, allocating tonnage, and determining need and priority of allocation.

The question whether the public purpose is met by allocating any of the uncommitted tonnage at all is a large one. For example, CH2M HILL, in the *Metro Transfer System Ownership Study* (also known as "Disposal System Planning I" or "DSP I"), suggested that Metro should investigate whether a formal

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<sup>2</sup> If Metro Council allocates up to 9.5 percent of the available waste tonnage under these proposed NSLs, it would be unlikely that Metro would consider any requests for tonnage limit increases under these NSLs or consider any new NSL applications during 2009 based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs.

procurement of a second disposal contract for the uncommitted ten percent could result in cost reductions [and/or other public benefits, presumably]. As discussed in the “Budget Impact” of this staff report, the current policy of allocating the uncommitted tonnage has a rate impact of \$0.99 on Metro’s tip fee. That is, Metro’s transfer station customers will pay approximately \$538,000 more in FY 2009-10 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. And through the “rate matching” effect (as described in “Budget Impact”), customers of private solid waste facilities would pay an additional \$502,000 — a total regional impact of \$1.04 million for disposal as a result of allocating tonnage to non-Waste Management Landfills.

### (3) Tonnage Allocation Methodology

As described above in Section 1A(2), the proposed NSLs include a maximum tonnage limit that would be released in allotments on a half-year and quarter-year basis. The half-year limit represents the amount of tonnage that the licensee may use during the first six months of the license term. The half-year limit also represents 50 percent of the maximum tonnage amount authorized for the license. The quarter-year tonnage limits will be allocated and released by the COO for use during the third and fourth quarters of the year based on Metro’s monitoring of the tonnage situation. All of these NSL tonnage limits are based on actual tonnage usage and are calculated by using the same proportions as described below.<sup>3</sup>

The tonnage allocations are based on Metro’s forecast of waste that is subject to the flow guarantee under its disposal contract with Waste Management, and each licensee’s share of such waste that was delivered to all solid waste facilities in the most recent 12-month period (November 2007 through October 2008). The details of the allocation are as follows:

- *Total Tonnage.* Metro forecasts that 865,100 tons will be subject to the flow guarantee in calendar year 2009.<sup>4</sup>
- *Reservation Tonnage.* Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- *Allocatable Tonnage.* 82,200 tons comprise the 9.5 percent of the 865,100 tons that are not reserved and therefore subject to allocation among the applicants.
- *Licensee’s Portion.* Each licensee is allocated a share of the 82,200 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee actually delivered to all solid waste facilities during the most recent 12-month period (November 2007 through October 2008). For Crown Point, the share was 0.4 percent, leading to the recommended license authorization of no more than 321 tons in 2009.

As explained above, Metro forecasts that there will be 865,100 tons of waste subject to the flow guarantee and 82,200 tons available for allocation in calendar year 2009. The following table provides a

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<sup>3</sup>Under the proposed management approach, the licensee will not be allowed to carry forward any unused tonnage into a subsequent allocation period.

<sup>4</sup>This number is derived from Metro’s econometric forecasting model of the solid waste system. This model is used for all of Metro’s major decisions involving solid waste tonnage including budgeting, rate setting and revenue projections. The allocation numbers are based on the most recent forecast, which was completed on October 31, 2008 and covers the period through December 2010. The Council has also based its FY 2009-10 solid waste budget assumptions on the same October 31 forecast.

comparison of the licensees' current authorizations, the tonnage requested in their renewal applications, and the proposed 2009 authorizations.

**Table 1  
Comparison of Solid Waste Subject to the Flow Guarantee by NSL Applicant**

Licensee	2008 Tonnage Authorization	Applicants' 2009 Requests	Solid Waste Delivered to All Facilities (Nov. 2007—Oct. 2008)		Proposed 2009 Allocations		
			Tons	Percent	Tons	Percent	First Six Months
<b>American</b> Res. No. 08-3985	6,613	9,401	6,183	5.9	4,842	5.9	2,421
<b>Arrow</b> Res. No. 08-3986	35,367	37,673	42,195	40.2	33,020	40.2	16,510
<b>Crown Point</b> Res. No. 08-3988	324	500	408	0.4	321	0.4	160
<b>WRI</b> Res. No. 08-3987	45,000	45,000	56,252	53.6	44,018	53.6	22,009
<b>TOTAL</b>	<b>87,304</b>	<b>92,574</b>	<b>105,038</b>	<b>100</b>	<b>82,201</b>	<b>100</b>	<b>41,100</b>

**B. The Applicant**

In December 2005, Crown Point, a hauler collecting solid waste within the Metro boundary, was granted an NSL to deliver a maximum of 324 tons per calendar year of solid waste, including putrescible waste, from its collection routes located inside the Metro region to the WCL located near The Dalles, Oregon (Wasco County).

Crown Point collects waste at a residential area located east of Troutdale, Oregon (along the eastern boundary of the Metro region). The majority of the applicant's hauling accounts lie outside the Metro region. In order to route its trucks efficiently, Crown Point's trucks must cross the Metro jurisdictional boundary and co-mingle in-Metro waste with out-of-Metro waste.

The term of Crown Point's existing NSL No. N-108-05 commenced on January 1, 2006 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 extending the term of certain NSLs, including Crown Point's NSL, to expire on December 31, 2008. The purpose of the extension was to align its expiration date with that of all the other NSLs that authorize the delivery of putrescible solid waste to non-system facilities. During calendar year 2007, the applicant delivered 285 tons of solid waste to WCL.

On August 19, 2008, Crown Point submitted to Metro an application requesting that Metro renew this NSL with a tonnage authorization of 500 tons for calendar year 2009. This request represents an increase to the applicant's existing tonnage authorization by 176 additional tons, which exceeds its share of the waste subject to allocation (see Table 1). Although this proposed NSL authorizes the applicant to deliver waste to WCL, the applicant also has the option of using its own facility (Twelve Mile Disposal in Troutdale, Oregon) for reloading its waste to another facility that is authorized by Metro to accept putrescible waste (i.e., the Troutdale Transfer Station which is located in close proximity to Crown Point's site).

### **C. Description of the Resolution**

Approval of Resolution No. 08-3988 will authorize the COO to issue a renewed NSL, substantially similar to the proposed NSL attached to this resolution as Exhibit A, authorizing Crown Point to deliver up to 321 tons of putrescible waste to WCL during calendar year 2009. The tonnage limit stipulated in the proposed NSL is three tons less than that currently authorized under the applicant's existing license. The 2009 tonnage authorization is based on the methodology described above in Section 1A of this report.

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Section 5.05.035(c) of the Metro Code stipulates that the Metro Council shall consider certain factors when determining whether to issue NSLs. A description of these factors and the corresponding analysis of the renewal application are provided below in Section 2B of this report.

Based on the information provided above and the analysis provided in Section 2B, the COO recommends that the Metro Council approve an NSL renewal for Crown Point subject to the requirements listed in Metro Code Chapter 5.05; and further subject to several special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A. These special conditions are intended to minimize Metro's risk of violating its disposal contract by providing Metro with more timely controls for monitoring the flow guarantee against the currently declining waste tonnage in the system. In addition, as discussed in Section 1A of this report, these conditions will also provide Metro with an opportunity to evaluate its current ten-percent allocation policy and determine whether it should continue this same policy in the future.

The main special conditions that are included in the proposed NSL are described below.

#### **(1) Calendar Year and Quarterly Tonnage Limitations**

Section 2 of the proposed NSL authorizes Crown Point to deliver up to 321 tons of putrescible waste to WCL during calendar year 2009. The NSL further stipulates that the COO will allocate this tonnage to the licensee, up to the total amount authorized under the NSL, in allotments on a half-year and quarter-year basis. Under the provisions of the proposed NSL, the licensee is authorized to deliver up to 160 tons of putrescible waste during the first six months of the year, beginning January 1, 2009 through June 30, 2009. The COO may allocate additional waste tonnage to the licensee during the third and fourth quarter of 2009 provided that such waste is available for allocation and the allotment is within the authorized limit of the license.

The NSL also stipulates that prior to June 30, 2009, the COO will determine and allocate the licensee's quarterly tonnage allotment (for the third and fourth quarters of calendar year 2009) in an amount not to exceed the licensee's maximum tonnage authorization of 321 tons. The COO will base the quarterly tonnage limits using Metro's forward tonnage projection for the quarter, and the same proportion as was used to determine the licensee's annual allocation (see Table 1). This condition will enable Metro to adjust the NSL tonnage authorization, as necessary, toward the end of the year and avoid exceeding the ten percent contractual limitation.

By adopting this resolution, the Metro Council authorizes the COO to allocate and release tonnage as described above.



(2) Term of License

Section 4 of the proposed NSL includes a one-year term, commencing on January 1, 2009, and terminating on December 31, 2009. A one-year term is proposed because of the reduced amount of tonnage projected for the upcoming year. Accordingly, Metro must pay close attention to the waste flows under these NSLs in the event that tonnage shrinks further.

(3) Weekly and Daily Reporting Requirements

As required in previous NSLs, Section 6 of the proposed NSL stipulates that the licensee must maintain and report accurate records regarding the amount of waste that it delivers to the non-system facility under authority of the license. At a minimum the licensee shall transmit the required records to Metro on a monthly basis. However, the proposed NSL also stipulates that Metro may require the licensee to report such required information to Metro on a weekly or daily basis. The COO will determine when more frequent reporting is necessary.

By adopting this resolution, the Metro Council also authorizes the COO to immediately implement more frequent reporting requirements as needed.

(4) Redirection of Waste Flow

Section 7 of the proposed NSL grants the COO authority to direct the licensee to deliver its waste, as covered under the license, to either the Metro Central or South Transfer Stations. The COO may determine when such redirection of waste flow is necessary. In addition, the COO may redirect waste flow upon providing the licensee with a minimum of 24 hours' written notice and any such redirection becomes immediately effective thereafter.

By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to prevent a violation of the flow guarantee.

(5) Enforcement Clarification

Section 7 of the proposed NSL clarifies that an exceedence of the quarter-year, half-year, or full-year tonnage limitations constitutes a violation that is subject to an enforcement action as provided in the Metro Code. In addition, the proposed NSL also stipulates that each ton above the limitation constitutes a separate violation that is subject to a penalty of up to \$500.

(6) Sample Weights

The majority of the applicant's hauling accounts lie outside the Metro region. In order to route its trucks efficiently, Crown Point's trucks must cross the Metro jurisdictional boundary and co-mingle in-Metro waste with out-of-Metro waste. In order to determine the appropriate fees and taxes owed to Metro, Crown Point and Metro have mutually agreed to an estimation method whereby Crown Point reports an average monthly tonnage determined by weight studies it performs.

Section 6 of the proposed NSL stipulates that the licensee must sample the weight of the waste it collects from inside the Metro region for a period of two consecutive weeks in order to determine the monthly average used for reporting and the remittance of fees and taxes. Staff finds this to be a reasonable and verifiable procedure for the small amount of waste covered by this NSL.

## 2. ANALYSIS/INFORMATION

### A. Known Opposition

There is no known opposition to the proposed license renewal.

### B. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the 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;*

WCL, located in Wasco County, first came into use during the 1940s by area farmers. A tepee burner was added in the 1950s with the ash going into a canyon that was closed and capped in the early 1970s. The Oregon Department of Environmental Quality (DEQ) first permitted and began regulating the site in 1972. Presently, 213 acres are permitted of which 78 acres are dedicated to closed or active cells. The landfill is sited in a low rainfall area and has the environmental controls required by the DEQ for a Subtitle D landfill. Metro staff is not aware of any waste types accepted at the landfill that would pose an unusual risk of future environmental contamination. WCL is already a Metro designated facility authorized to receive non-putrescible solid waste without the need for haulers to obtain NSLs.

- (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;*

WCL has been owned and operated by Waste Connections, Inc. since 1999. The company also operates the Finley Buttes Landfill, two transfer stations located in Clark County, Washington, and several franchised hauling companies within the Metro region. Waste Connections, Inc. has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

WCL holds a DEQ-issued permit which is pending renewal at this time. On November 19, 2008, the DEQ issued a public notice requesting comments on the proposed renewal of the landfill's existing permit. Written comments regarding this proposed renewal must be submitted to the DEQ by December 19, 2008.

In November 2008, Metro staff received verbal confirmation from Joe Gingerich, DEQ, and Glen Pierce, Wasco County Health Department, that WCL 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;*

WCL uses operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of the health, safety, and the environment. The landfill's DEQ permit, along with the details of its waste screening, operations, closure, and special waste handling procedures have been reviewed and are on file with Metro.

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

The proposed license covers only putrescible waste, which has little recovery or recycling potential. Thus, the waste authorized by the proposed license is not expected 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 waste that Metro delivers to general purpose landfills during the calendar year to landfills operated by Metro's waste disposal contract operator, Waste Management. This proposed NSL renewal is one of four similar licenses that expire at the end of 2008 and it allows Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

- (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*

The applicant is a waste hauling company that operates under local requirements within eastern Multnomah County and has a good record of compliance with public health, safety and environmental rules and regulations.

Crown Point is currently in compliance with its NSL. Crown Point has not had any significant compliance issues regarding other Metro requirements during the term of the existing NSL.

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

This criterion was examined above in Sections 1A and 2(c) of this report.

### **C. Anticipated Effects**

Approval of Resolution No. 08-3988 will authorize the COO to issue a renewed NSL, substantially similar to the proposed NSL attached to this resolution as Exhibit A, to Crown Point for the delivery of up to 321 tons of putrescible waste to WCL.

### **D. Budget Impacts**

The Metro Regional System Fee and Excise Tax will continue to be collected on waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-108-05). Therefore, the financial impact has already been factored into the budget.

However, as discussed in the "Overview" of this report, the Metro Council may wish to re-evaluate its policy options around the uncommitted ten percent. To quantify the financial impact in part, the following is an analysis of the effects *on disposal costs only* during FY 2009-10.

- Disposal rate depends on volume. As is generally known, the price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. As shown in the next paragraph, if the 82,200 uncommitted tons went to Waste Management landfills, Metro’s disposal costs would be less, and the savings would be passed on to Metro’s customers through a lower tip fee.
- Impact on Metro Customers. Based on projected FY 2009-10 tonnage and contract prices, allocating the uncommitted 82,200 tons to non-Waste Management landfills increases the Metro tip fee by \$0.99. This means that Metro customers will pay \$538,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. These financial impacts are already factored into the budget. Put another way, if all four NSL resolutions are denied, the Metro tip fee would be lower by \$0.99 (all else equal) and Metro customers would thereby save about \$538,000 in disposal costs.
- Regional impact based on “rate matching.” As shown by Metro staff for the evaluation of the franchise application by Columbia Environmental Transfer Station in 2005, Metro’s tip fee is generally matched by private solid waste facilities in the region. Based on the tonnage projected to be accepted at such facilities, (and assuming full matching of the \$0.99 per ton as described above), customers of private facilities would pay an additional \$502,000 more for disposal in FY 2009-10. This increased cost to customers of private facilities, coupled with the additional \$538,000 paid by Metro’s transfer station customers, would result in a total regional impact of \$1.04 million more for disposal in FY 2009-10.

### **3. RECOMMENDED ACTION**

Based on the information provided in this staff report, the COO recommends approval of Resolution No. 08-3988, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and renewal of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

WJ:bjl  
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