

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 09-4067
CHIEF OPERATING OFFICER TO ENTER INTO)
AN INTERGOVERNMENTAL AGREEMENT) Introduced by Michael Jordan,
WITH THE CITY OF DURHAM RELATED TO) Chief Operating Officer, with the concurrence
ENFORCEMENT OF THE BUSINESS) of David Bragdon, Council President
RECYCLING REQUIREMENT)

WHEREAS, on September 18, 2008, the Metro Council adopted Ordinance No. 08-1200 (For The Purpose of Amending Metro Code Chapter 5.10, Regional Solid Waste Management Plan, by Adding Provisions to Implement the Business Recycling Requirement); and

WHEREAS, Metro Code Section 5.10.320 requires local governments to implement the Business Recycling Requirement; and

WHEREAS, Metro Code Section 5.10.320 provides that a local government may implement the compliance portion of the Business Recycling Requirement by entering into an intergovernmental agreement with Metro that provides for Metro to establish business compliance with the Business Recycling Requirement for the local government; and

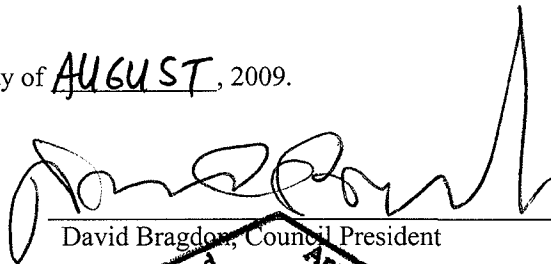
WHEREAS, the City of Durham has asked Metro to perform the compliance function for the Business Recycling Requirement; and

WHEREAS, Metro and the City of Durham have agreed on a form of intergovernmental agreement; and

WHEREAS, Metro Code Section 2.04.026 requires the Chief Operating Officer to seek approval from the Metro Council before executing an intergovernmental agreement by which Metro assumes any function or duty of another governmental body; now therefore

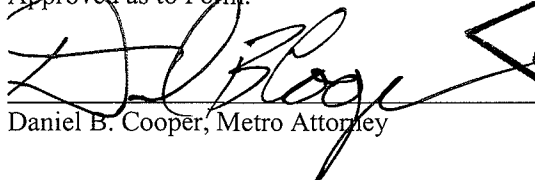
BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to execute an intergovernmental agreement between Metro and the City of Durham substantially similar to the one attached as Exhibit A

ADOPTED by the Metro Council this 6 day of AUGUST, 2009.



David Bragdon, Council President

Approved as to Form:



Daniel B. Cooper, Metro Attorney



THIS INTERGOVERNMENTAL AGREEMENT ("Agreement"), under the provisions of ORS Chapter 190, is entered into between METRO, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and the City of Durham, hereinafter referred to as the "City," located at 17160 SW Upper Boones Ferry Road, Durham, Oregon 97224.

RECITALS

WHEREAS, the City is a political subdivision of the state of Oregon and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq.; and

WHEREAS, METRO is an Oregon municipal corporation formed and operating under state law and the Metro Charter, and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq.; and

WHEREAS, pursuant to Metro Code Chapter 5.10 (Regional Solid Waste Management Plan), Metro Code Section 5.10.340 (Metro Enforcement of Business Recycling Requirement), the City desires to contract with METRO for the performance of the City's function to ensure compliance with the Business Recycling Requirement; and

WHEREAS, METRO is able and prepared to provide the services to the City under the terms and conditions set forth in this Agreement; now therefore,

IN CONSIDERATION of those mutual promises and the terms and conditions set forth hereafter and pursuant to the provisions of ORS Chapter 190, the Parties agree to be bound as follows:

1. Purpose. The purpose of this Agreement is for the City to transfer the City's authority under Ordinance 247-09 to METRO, specifically to METRO's Deputy Chief Operating Officer or the Deputy Chief Operating Officer's designee, as provided under Metro Code Section 5.10.340.
2. Term. This Agreement shall be effective July 1, 2009 and shall remain in effect through July 1, 2011 unless earlier terminated in conformance with this Agreement.
3. Responsibilities of the City. The City shall, through its own forces or through partnership with Community Environmental Services, shall:
 - (a) Adopt Metro's Business Recycling Requirement Model Ordinance and legislation substantially similar to Metro Code Sections 5.09.050, 5.09.090, 5.09.130, 5.09.150, 5.09.160, and 5.10.340;

- (b) Provide a fine schedule for METRO to use when assessing a fine under Section 4d. (Attachment A) that is consistent with fine schedules for like offenses under the City's code;
- (c) Identify and offer assistance to any non-compliant businesses to assist the business in complying with the Business Recycling Requirement;
- (d) Using a non-compliance verification form ("verification form") provided by METRO, refer businesses that remain non-compliant to Metro for enforcement action;
- (e) Within 60 days of receiving an electronic copy of a written notice of noncompliance under Metro Code Section 5.10.340(a): (1) provide compliance assistance to the business; and (2) inform METRO whether the business achieved compliance with the Business Recycling Requirement or request in writing that METRO issue a citation to the noncompliant business;
- (f) Within 60 days of receiving an electronic copy of a citation under Metro Code Section 5.10.340(b): (1) provide compliance assistance to the business; and (2) inform METRO whether the business achieved compliance with the Business Recycling Requirement or request in writing that METRO assess a fine on the noncompliant business; and
- (g) Provide a witness who is an employee or agent of the City and who has personal knowledge of the compliance history of a business and the fine imposed to testify at any contested case matter.

4. Responsibilities of METRO. METRO shall:

- (a) Provide the City with a standard verification form;
- (b) If Metro determines evidence is insufficient, Metro will notify the City;
- (c) If the City provides sufficient evidence in a completed verification form, send written notice of noncompliance pursuant to Metro Code Section 5.10.340(a) to a noncompliant business that provides 30 days for business to cure violation, with an electronic copy to the City;
- (d) Upon written request and a showing of sufficient evidence from the City, issue a citation pursuant to Metro Code Section 5.10.340(b) to a noncompliant business that provides 30 days for business to cure violation, with an electronic copy to the City;
- (e) Upon written request and a showing of sufficient evidence from the City, assess a fine on a noncompliant business consistent with a fine schedule provided by the City (see Attachment A), with an electronic copy to the City;
- (f) Assist the City if a business contests the assessment of a fine, including without limitation providing a location and a hearings officer for the matter at no cost to the City; and
- (g) Retain any fine collected under this Agreement.
- (h) Engage and coordinate with Community Environmental Services with respect to the responsibilities detailed in (a) – (e) above.

5. Contract Costs. METRO shall be responsible for the costs it incurs in the performance of its responsibilities described in this Agreement and for all other costs related to this Agreement that METRO directly incurs. The City shall be responsible for all costs it incurs in the performance of its responsibilities described in this Agreement and for all other costs related to this Agreement that the City directly incurs.

6. Insurance. The City agrees to maintain insurance levels, or self-insurance in accordance

with ORS 30.282, for the duration of this Agreement to levels necessary to protect against public body liability as specified in ORS 30.270. The City also agrees to maintain for the duration of this Agreement, Workers' Compensation Insurance coverage for all its employees as a self-insured employer, as provided by ORS Chapter 656, or disability coverage under its Disability, Retirement and Death Benefits Plan.

7. Indemnification. Subject to the limits of the Oregon Constitution and Oregon Tort Claims Act, the City shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney fees, arising out of or in any way connected with this Agreement.

8. Termination. This Agreement may be terminated by either Party without cause upon giving 90 days' written notice of intent to terminate. This Agreement may be terminated with less than 60 days' notice if either Party is in default of the terms of this Agreement. In the case of a default, the Party alleging the default shall give the other Party at least 30 days' written notice of the alleged default, with opportunity to cure within the 30-day period.

9. State Law Constraints. Both Parties shall comply with the public contracting provisions of ORS Chapter 279 A, B, and C, and to the extent those provisions apply, they are incorporated into this Agreement by reference. Specifically, it is a condition of this Contract that all employers working under this Agreement are subject employers that will comply with ORS 656.017.

10. Notices. Legal notice provided under this Agreement shall be delivered personally or by certified mail to the following individuals for the City and METRO:

For City:

Roland Signett, City Administrator
17160 SW Upper Boones Ferry Rd.
Durham, Oregon 97224
503-639-6851
cityofdurham@comcast.net

For Metro

Matt Korot, Program Director
Metro
600 NE Grand Ave.
Portland, OR 97232
matt.korot@oregonmetro.gov

Informal coordination of this Agreement will be conducted by the following designated Project Managers:

For City:

Roland Signett, City Administrator
17160 SW Upper Boones Ferry Rd.
Durham, Oregon 97224
503-639-6851
cityofdurham@comcast.net

For Metro;

Matt Korot, Program Director
Metro
600 NE Grand Ave.
Portland, OR 97232
matt.korot@oregonmetro.gov

The City may change the above-designated Project Manager by written notice to Metro. Metro may change the above-designated Project Managers by written notice to the City.

The City shall submit all requests for Metro to conduct compliance actions in writing, preferably by e-mail, to:

Steven Kraten, Enforcement Coordinator
Metro
600 NE Grand Ave.
Portland, OR 97232
steve.kraten@oregonmetro.gov
503-797-1678

11. Assignment. This Agreement is binding on each Party, its successors, assigns, and legal representatives and may not, under any condition, be assigned or transferred by either Party without prior written approval by the other Party.

12. Integration. This writing contains the entire Agreement between the Parties, and may only be amended by written instrument, signed by both Parties.

13. Severability. If any portion of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken.

14. Third-Party Rights. This Agreement shall not be deemed to vest in any third party any rights, nor shall it be deemed to be enforceable by any third party in any legal, equitable, or administrative proceeding.

CITY OF DURHAM

METRO

By: _____

By: _____

Print name and title

Print name and title

Date

Date

Attachment A

City of Durham Ordinance 224-05 provides as follows:

6. Fines for Violations. A violation of a city ordinance shall be a Class A Violation and shall be punishable by a fine not exceeding \$720 for each violation in addition to any other penalties provided for in that ordinance.

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4067, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF DURHAM RELATED TO ENFORCEMENT OF THE BUSINESS RECYCLING REQUIREMENT

Date: July 28, 2009

Prepared by: Matt Korot, Resource Conservation
and Recycling Program Director
Ext. 1760

BACKGROUND

In September 2008, the Metro Council adopted the Business Recycling Requirement (BRR) program. The program directs all local governments in the region to establish recycling requirements for businesses and property managers and an associated compliance program. Under the program, a local government has an option of entering into an intergovernmental agreement (IGA) with Metro to perform certain compliance services on its behalf. The City of Durham (City) has elected to enter into an agreement with Metro to perform these functions. The IGA covers services to be delivered beginning July 1, 2009 through July 1, 2011 and will transfer authority to Metro to implement compliance functions of the Business Recycling Requirement as provided under Metro Code Section 5.10.340.

Under the terms of the IGA, compliance responsibilities will be split between the City and Metro. The City will be responsible for identifying and offering assistance to any non-compliant businesses and for reporting the ongoing compliance status of those businesses to Metro. Durham may refer businesses that remain out of compliance to Metro with a request for enforcement action. Metro will ensure that the City has provided sufficient evidence and will send notification to businesses with a requirement to cure the violation or be subject to fines established by the City. Metro will provide assistance to the City should a business contest the fine. Metro will retain any fines collected under this agreement.

ANALYSIS/INFORMATION

1. **Known Opposition:** None.
2. **Legal Antecedents:** Metro Code Section 5.10.320 and 5.10.340
3. **Anticipated Effects:** The IGAs will transfer authority to Metro to implement and enforce compliance with the Business Recycling Requirement as provided under provided under Metro Code Section 5.10.340.
4. **Budget Impacts:** Metro is dedicating staff time to perform the compliance activities and Metro has agreed to provide hearings officer services as needed. The IGA allows Metro to retain any fees collected.

RECOMMENDED ACTION

Metro Council adoption of Resolution No. 09-4067.