

Council
10/10/91
3.1

Draft script for Recycling Recognition Awards presentation

It is very gratifying to see this room filled with dedicated individuals and representative organizations and businesses who have made significant contributions to waste reduction and recycling in the region. This is the sixth year that the Metropolitan Service District has presented recycling recognition awards to honor and thank you for your efforts.

This year the recycling recognition awards selection committee was faced with the wonderful - and difficult - task of reviewing 39 nominations.

What we saw was commitment, innovation, risk-taking and caring.

While we were only able to select 6 for awards, it was apparent that you are all winners. And that the biggest winner of all is our community, thanks to your efforts.

We applaud you all! (Initiate applause for all nominees)

The first award is newly created this year and is called the **Model Citizen Award**. It is awarded to **Florence Fleskes**, a King neighborhood resident and life-long recycler.

The positive results of neighborhood cleanups sometime obscure the fact that much of the material collected is recyclable. Florence never lost sight of the

fact and was the catalyst in the Northeast Portland neighborhood who saw to it that recycling was the focus of her neighborhood cleanup this year.

In addition to collecting all the primary recyclables, reusable household items were collected, along with a large volume of yard debris that was chipped and made available to neighborhood residents. Through Florence's efforts, the number of drop boxes needed for the cleanup was greatly reduced and the benefits of recycling made readily apparent.

Earlier last year, Florence served as her neighborhood's liaison on the city of Portland's Bureau of Environmental Service's recycling survey project. She spent six months canvassing residents about recycling while explaining and answering questions about curbside pick-up of recyclables.

Metro awards Florence Fleskes the Model Citizen Award in recognition of her tradition of community activism and for her shining example that one person working in the community - for the community - can make a very big difference.

Florence, will you please step forward and accept this award.

(Initiate applause)

The **Individual Recycling Recognition Award** is awarded to an individual who has personally helped boost the metropolitan area's recycling rate to 32 percent. Jeff Murray is the recycling coordinator for Metropolitan Disposal Corporation. He has been the driving force behind the

company's significant expansion of high-grade paper recycling for the Portland Public Schools and downtown high-rise buildings.

In addition to providing bags, racks and recycling dumpsters to the 95 buildings in the Portland Public School system, Jeff handles hundreds of calls from teachers, principals and custodians about the details of making the program work. It is often his persistence and creativity in dealing with all the variables that make the programs succeed.

Many hospitals and downtown office buildings have also taken their business to Metropolitan Disposal thanks to Jeff's efforts. The education and support he provides to businesses, his willingness to recycle many different materials and his simplification of the process have won over many commercial accounts.

Jeff is also dedicated to recycling education and has contributed many volunteer hours to making presentations to faculties, conducting workshops, and sharing his knowledge with novice recyclers.

Metro recognizes Jeff Murray for his enthusiasm, dedication and service above and beyond the call of duty. Jeff, will you come forward.

(Applause)

The Organization/School Award is presented this year to Lewis and Clark College.

Students, faculty, staff and administration have made a commitment to recycling at Lewis and Clark and have taken giant steps towards making this commitment a reality.

Recycling is campus-wide, including offices, classrooms and dormitories. Education and information contributes to the success of the program, including "hands-on" sorting demonstrations, educational brochures distributed to the campus community, and weekly recycling tips in the campus publication.

In addition to recycling an average of 5 1/2 tons of material per month, the college has displayed a definite awareness of the need to purchase and use recycled products. College offices, the print shop, publications and bookstores are increasing their purchase of recycled products.

Metro recognizes Lewis and Clark for "completing the recycling loop" and for the enthusiastic contributions and participation of all elements of the campus community - students, faculty, administration and staff. Will Joe Simmons, Maren Souders and Dipendra Rana please come forward.

(Applause)

The winner of this year's **Business Award - Recycling-Related** is **Edwin O. Ege Sanitary Service**. Ege Sanitary Service is a franchised hauler that has been operating in East Multnomah County since 1954. As the issue of solid waste management becomes increasingly complex, conscientious garbage haulers are finding themselves being transformed into solid waste haulers and recycling specialists. The seemingly overwhelming

cascade of new programs and changes have not been welcomed by all solid waste haulers. Edwin O. Ege Sanitary Service is not only keeping up, but leading the way.

The company's policy of "customers come first" and "service is our only product" have resulted in weekly curbside collection of recyclables, with containers picked up the same day as garbage; office paper, cardboard, tin and glass recycling for commercial accounts; and a recycling depot opened in Springdale to respond to rural customers' desire to recycle.

Ege also took the initiative to implement a yard debris recycling pilot project to determine the most effective way to collect yard debris. Using a representative neighborhood in Troutdale, residents were provided with a 60-gallon roller cart, an informational pamphlet with instructions on how to prepare material and free collection of yard debris for 3 months. The project provided valuable information for use in development of collection plans for Troutdale and Gresham.

This family owned business was selected for the Business Award, Recycling-Related, for its willingness to take chances, development of creative solutions and commitment to service. Will David and Kenneth Ege please step forward.

The Business Award, Non-Recycling-Related is presented to Gage Industries, Inc. Gage Industries is a Lake Oswego manufacturer that has become a valuable market for post-consumer plastics. Since 1989 the

company has used 50 percent post-consumer plastics for the production of their line of Dura-Pots - plastic containers for the horticultural industry.

Last year, Gage purchased more than 350,000 pounds of post-consumer plastic, milk jugs, detergent bottles and dairy containers made of high-density polyethelene (HDPE.)

The post-consumer plastic is mixed with both virgin materials and industrial scrap plastic, is extruded into sheet form and then thermoformed into Dura-Pots. The pots are sold to large growers of bedding plants, primarily in the Northwest and California, but also nationwide.

Gage Industries believes recycling is smart for business and smart for the earth. Metro believe Gage Industries is smart for the region.

Metro recognizes Gage Industries' important role as a local market for post-consumer plastics, and for producing a recycled product for local use in the agricultural industry.

Our final award is the **Special Projects Recognition Award**. This year's award goes to **Nor-Mon Distributing**. Nor-Mon Distributing is a wholesale distributor of hardware and appliance parts that has turned waste reduction into a fine art. This 10-year-old company, with four full-time and two part-time employees, has woven reuse, source reduction and recycling into every aspect of its operation.

Nothing is viewed as garbage. Cardboard shipping containers are reused for outgoing shipments to such a degree that the company has not needed to purchase any shipping cartons since 1981. Using approximately 30 cartons a day for outgoing shipments, this amounts to 7,800 cardboard containers that did not have to be purchased.

All plastic pallet wrap and styrofoam pellets are also re-used as going packing material. Newspapers are also used for packing material and are brought in from home by employees, and collected from businesses on their block.

Other materials are also used to their fullest extent. Envelopes are first reused for in-store notes, before recycling. Pallets are used for shelving or taken home by employees for firewood. Whenever possible, items are purchased in bulk and customers are asked if they will accept bulk instead of "display carded."

What little remains following these source reduction and reuse techniques is recycled, including paper, ferrous and non-ferrous scrap and plastics. By the end of the week, the garbage from this business (and including the garbage from Norman's father's hardware store on the corner) is contained in a 20-gallon garbage can.

Metro awarded Nor-Mon Distributing Inc. the Special Projects Award as an outstanding example of source reduction and reuse, as well as recycling. The company and employees illustrate creative reuse, a lifestyle commitment and

that a small company can reuse, reduce and recycle in a big way. Will
Norman Chusid please come forward.

(Applause)

That concludes our award presentations. Thank you all for coming tonight
and thank you for your contributions to recycling and waste reduction in our
region.

Council
10/10/91
3.2

End of the Oregon Trail

Project Summary

The End of the Oregon Trail Interpretive Center will bring to life the dramatic experience of the Oregon Trail.

Attendance estimated at 350,000 to 400,000 resident and out of state visitors.

Between 1841 and the turn of the century over 300,000 Americans of all ages loaded their belongings in wagons to begin the five to six month epic journey over the Oregon Trail. In 1978, Congress designated the Oregon Trail as a National Historic Trail with its beginning in Independence, Missouri, and its terminus at Oregon City, Oregon. Ten years later, the Governor's Oregon Trail Advisory Council prepared a report which recommended the End of the Oregon Trail at Oregon City in Clackamas County as a national historic site and the anchor of a four-center interpretive system across Oregon.

The End of the Oregon Trail Interpretive Center will bring to life the dramatic experience of the Oregon Trail emigrants, the vivid stories of the resident native indian culture, and the key role played by Oregon City in early Oregon government and settlement of the Willamette Valley.

The authentic site of the End of the Oregon Trail is located in the north end of Oregon City. The site's historic significance lies with its association as the western terminus of the Oregon Trail, the main arrival area for the mid 1800 emigrants and the homestead of Oregon's first provisional governor, George Abernethy. The Lyon Group, Recreation Economists, indicate that the existing resident and tourist market potential is strong at this site for a well done historic attraction. The steady attendance for the End of the Oregon Trail is estimated at 350,000 to 400,000 visitors.

In the interest of meeting visitor expectations and producing a self-sufficient complex with a national identity, the Master Plan for the End of the Oregon Trail recommends there be multiple elements or components to the program: (1) the "flagship" interpretive center, housing both indoor and outdoor living history exhibits; (2) a commemorative emigrant memorial park, ungated for the public; (3) festival marketplace and group sales area to offset public operational expenses; and (4) a privately developed, complementary visitors services sector (hotels, etc.). Research on comparable attractions suggest that facilities which have a good mix of these components, the commitment of the community, and which operate

80% of operating revenue projected to be provided by visitor spending.

Community economic impact: \$9 million annually.

Museum facilities of national historic significance.

in a business-like manner can perform very well financially and not have a great dependence, if any, on public subsidy. It is likely that 80% of the revenue structure could be provided by visitor spending, 15% by non-governmental support, and the remaining 5% from endowments and other sources.

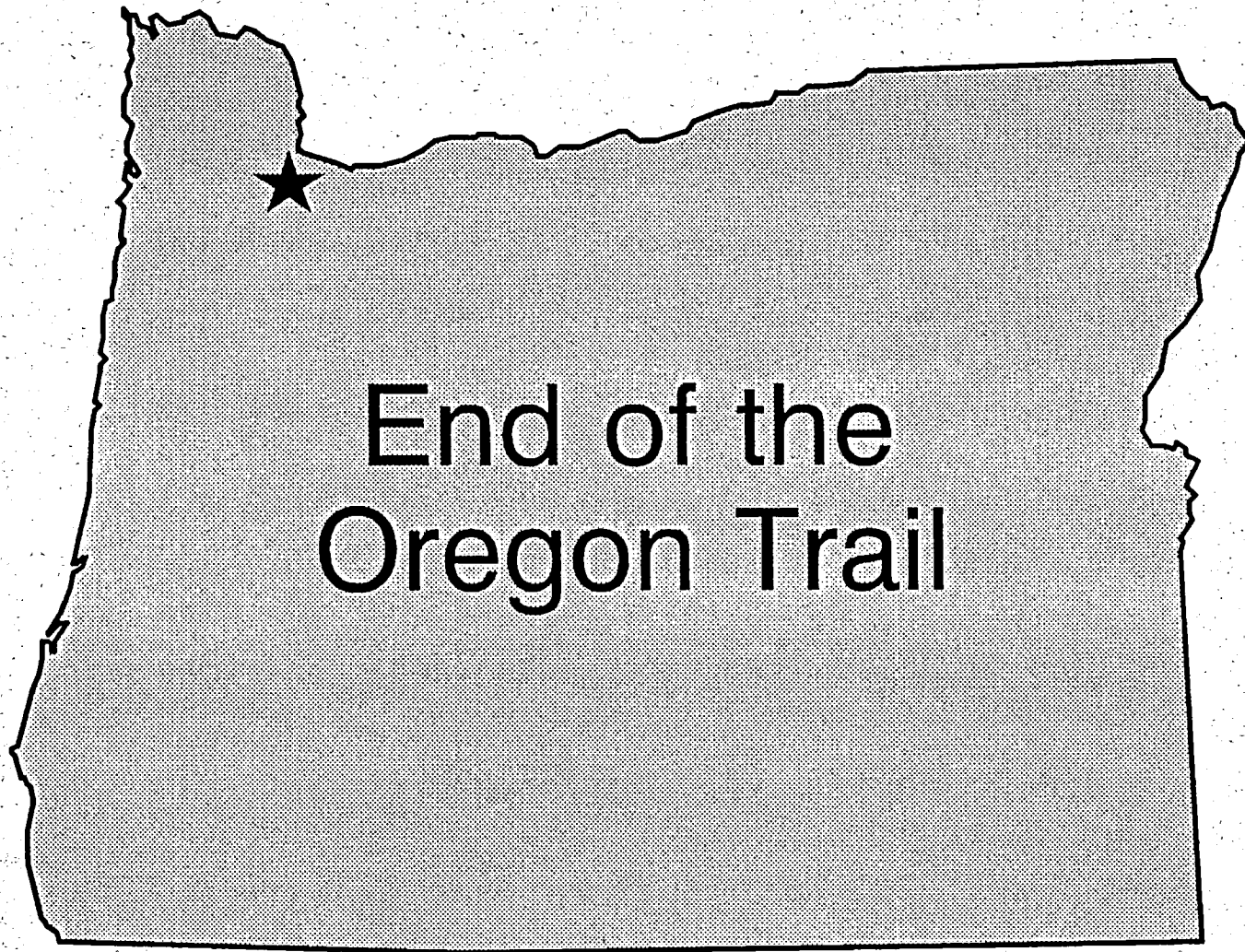
The End of the Oregon Trail is projected to have a capital cost of about \$45 million for its two principal phases of development. The initial phase, which would include project management/fund raising, site assembly, road and bridge work, 60,000 s.f. of the Interpretive Center, Emigrant Park, and pre-opening operations, is estimated to cost \$33 million and be completed by 1995. The second phase includes additional site assembly, significant landscaping, and several outdoor living history exhibits, and would cost approximately \$12 million and be in place by the year 2000. Subsequent phases would provide for further development of the Education Program.

The End of the Oregon Trail can and should be designed so that an operating surplus would be generated to allow for new exhibits and to create an investment fund. Revenues from the Festive Marketplace and Group Cookout components are expected to provide a very solid financial footing for the End of the Oregon Trail.

Community economic impact would include almost 190 one time construction related jobs and a statewide benefit of \$57 million. Over 80 jobs would be provided by the facility itself, with a payroll of \$1.5 million. The \$4 million anticipated in visitor spending, direct and indirect, would generate over \$9 million annually for the greater Oregon City economy.

Capital funding support is expected to come from a number of government sources including federal grants, federal sponsorship, state contributions, and local/regional government funding. Private sources will include corporate giving, foundations, and individual donations and services. Packaging and promoting the End of the Oregon Trail project will require a high level of coordination between the private and public sectors. Responsibility for operations and overall management will lie with this private non-profit Oregon Trail Foundation.

A rare opportunity exists in Oregon City to create a historical education center and museum facility of national significance that can rival Plymouth Rock, Independence Hall, and Gettysburg in the public consciousness. The End of the Oregon Trail has the potential to not only teach resident Oregonians and visitors alike, but with the mix of components, has the potential to be a self-sufficient entity that would provide substantial one-time and recurring economic benefits to the Oregon City greater community and the State of Oregon.



End of the
Oregon Trail

End of the Oregon Trail
Metro Council Presentation
Thursday, October 10, 1991

- I. Introduction
- II. Historical perspective of the Oregon Trail
- III. Scope of the project and financial planning
- IV. Work Program

End of the Oregon Trail Foundation Executive Committee

Darlene Hooley

Clackamas County Commissioner

Dan Fowler

Mayor, Oregon City

Alice Norris, Executive Director

Oregon Trail Pageant

Carl Halvorson, President

Halvorson Mason Construction

Gene Leo, Executive Director

Portland Rose Festival Association

Dr. Stephen Dow Beckham, Professor

Lewis and Clark College

Alan James, Chairman

Greenbrier Company

Dr. John Hakanson, President Emeritus

Clackamas Community College

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Barbara Roberts, Governor
State of Oregon

Les AuCoin, Representative
U.S. House of Representatives

Dean Bibles, State Director
Bureau of Land Management

Mark Hatfield, Senator
U.S. Senate

Jill Thorne, Director
Oregon Trail Coordinating Council

Mike Edrington, Forest Supervisor
U.S. Forest Service

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Steve Beckham, Professor
Lewis & Clark College

Bill Brod, President
Clayco, Inc.

Joyce Cohen, Senator
Oregon State Senate

Ed Cooley, Chairman
Precision Castparts

Grant Dean, Retired
Business Executive

Tom De Jardin, Councilor
Metro Council

Sho Dozono, President
Azumano Travel

Dan Fowler, Mayor
Oregon City

John Hakanson, Pres. Emeritus
Clackamas Community College

Carl Halvorson, President
Halvorson Mason

Darlene Hooley, Commissioner
Clackamas County

Alan James, Chairman
Greenbrier Company

Gordon Jones
Clackamas Sand & Gravel

Harriet Jorgensen, Exec. Director
Clackamas County Arts Council

Bill Kennemer, Senator
Oregon State Senate

Gene Leo, Exec. Director
Portland Rose Festival

Steve Meek, President
Impact Electronics

Alice Norris, Exec. Director
Oregon Trail Pageant

Ruth McBride Powers, Historian

Norma Paulus, Supt. of Public Instruction
State of Oregon

Bob Shiprack, Representative
Oregon State House of Representatives

Larry Sowa, Representative
Oregon State House of Representatives

Jim Tompkins, Historian

Project Elements

- Interpretive Center
 - Living history exhibits
 - Emigrant park and landscaping
 - Adjacent land fill as open space
-
- Surrounding commercial facilities

Project Costs

	\$ Millions
Project Development/Management	\$ 1.0
Site Assembly and Road Work	8.0
Emigrant Park and Landscaping	5.2
Interpretive Center/Living History	29.3
Pre-Opening Expenses	<u>3.0</u>
Total	\$46.5

The End of
the Oregon Trail Project
Will Not
Require Any On-Going Operating
Revenue from Metro

Funding Sources for Capital Costs

- Overall state context
- Federal role
- Private sector role
- Commercial element
- Regional support

Regional Support

- \$30 to \$40 million will be needed in regional support for capital construction
- No operational support will be required

Summary

- Funding strategy calls for support from public and private sources
- One-time regional support to finance capital costs
- No operational support from Metro required

Benefits

- National significance
- Unique on West Coast
- 40 percent of visitors from out of state
- \$10 million annual economic spin-off
- Educational/cultural resource for region

Work Plan

- City, county, foundation efforts
- Public outreach process
- Metro role

Council
10/10/91

MOTION TO AMEND ORDINANCE NO. 91-430 AS FOLLOWS: 5.2

- (1) Amend Section 1 of the Ordinance to read:

"New Sections 2.04.200 to 2.04.280 are added to the Metro Code, as set forth in the attached Exhibit A."

- (2) Delete pages 1-22 of Exhibit A as printed.

- (3) Amend page 23 of Exhibit A by adding the following subsection 2.04.200(c) to Section 2.04.200 as printed:

"(c) The provisions of Metro Code Sections 2.04.200 to 2.04.280 shall be applicable only to locally funded construction contracts in excess of \$1,000,000 (one million dollars). For locally funded construction contracts in excess of \$1,000,000 (one million dollars) the provisions of Metro Code Sections 2.04.100 to 2.04.180 shall not apply."

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING METRO)
CODE CHAPTER 2.04 RELATING TO)
DISADVANTAGED BUSINESS ENTERPRISES,))
WOMEN-OWNED BUSINESS ENTERPRISES,)
AND EMERGING SMALL BUSINESS ENTER-))
PRISES, ESTABLISHING AN EFFECTIVE)
DATE AND DECLARING AN EMERGENCY)

ORDINANCE NO. 91-430-A

Introduced by Council
Regional Facilities
Committee

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Code Amendments. New Sections 2.04.200 to 2.04.280 are added to the Metro Code, as set forth in the attached Exhibit A.

Section 2. Annual Goals. Until further revised by the Council, the goals for Emerging Small Business participation for locally funded contracts shall be:

Construction Contracts	13 percent
Labor & Materials Contracts	10 percent
Personal Services Contracts	3.75 percent
Procurement Contracts	12 percent

Section 3. Further Action. The Council directs that the Executive Officer consult with affected members of the business community, as well as others, and return recommended changes in the Metro Code regarding participation in Metro contracts by Emerging Small Businesses to the Council before January 1, 1992.

Section 4. Emergency Clause. The Council finds that pursuant to ORS 198.550(3) this Ordinance should be introduced, read once, and put to a final vote all in one meeting without being described in a published agenda because an emergency exists. In order to realize considerable public savings by the utilization of an Request for Proposals process for securing a design/build team contract to remodel the Sears Building facility in time to meet the Council's need to close the purchase of the Sears Building by December 16, 1991, the Council must approve issuance of an RFP by October 10, 1991. The Council has been advised on October 2, 1991, that the present provisions of Metro Code Chapter 2.04 that will be amended by this Ordinance are unconstitutional based on a recent decision of the United States Court of Appeals for the 9th Circuit. Failure to immediately amend the Metro Code to resolve the constitutional defect will jeopardize the contracting process to be utilized to remodel the Sears Building as well as jeopardize the validity of all contracts Metro currently is in the process of procuring. Therefore, an emergency is found to exist and this Ordinance

may be adopted by the Council by the unanimous approval of all members of the Council present at the meeting at which it is considered, a quorum being required.

Section 5. Effective Date. This Ordinance being necessary for the immediate preservation of the public health, safety, and welfare, an emergency is declared to exist, and this Ordinance takes effect upon passage.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

DBC/gl
1059



BUSINESS CONSULTANTS

8959 SW Bond St., Suite 102
Portland, Oregon 97219
503 255 0123 ext.
503 255 0253

Council
10/10/91
5.2

To: Tanya Collier, Metro Presiding Officer

From: Margaret R. Garza, Project Director
Impact Business Consultants, Inc.

Date: October 10, 1991

Subj.: Metro MBE/DBE/WBE Program

Your Honorable Tanya Collier and Metro Commissioners this correspondence is written on behalf of our clients. Impact Business Consultants, Inc., as you may be aware, is on contract with the US Department of Commerce, Minority Business Development Agency to provide business services to minority owned businesses located throughout the states of Oregon, Washington, Utah and Arizona.

The stimulation of opportunities for minority businesses in the Portland Metropolitan area is supported and encouraged by MBE/DBE/WBE programs such as the one the Metro Services District has been a proponent of in the past. Our clients (MBE/DBE/WBE in nature) are very much in support of a strong MBE/DBE/WBE program to be administered by Metro to encourage the utilization of such businesses by creating the maximum possible opportunity to compete for and participate in Metro contracting activities.

The commitment of a strong program must come from the people responsible for the contracting dollars, in this case it is Metro Council and Metro Management. The program must then be recognized as a plan to be followed throughout the agency. The decision to have a different set of rules for locally versus federally funded projects within the same agency creates much concern from the following perspectives:

1. The confusion inflicted on the taxpayers,
2. The confusion inflicted also on the DBE/WBE/MBE clientele,
3. Agency's actual commitment to the DBE/WBE/MBE clientele (What is the council really telling the community?), and
4. What determining factors (dollars) will alter the decision as to whether a project should carry the requirements of MBE/DBE/WBE utilization when both local and federal funds are used in the projects.

It is our belief that when the Council feels that they have satisfactorily responded to the above concerns, the Council should then move forward to make the necessary ordinance modifications.

As a closing, we are in support of a MBE/DBE/WBE Program. We also strongly believe that Metro should have one (1) program for the whole agency - the same statement should be echoed throughout the agency as its practices and standards.

Should you have any questions or concerns regarding this correspondence, please do not hesitate to call or write at the aforementioned number and address.

Respectfully submitted.

FINANCE COMMITTEE REPORT

ORDINANCE NO. 91-427 REVISING THE FY 1991-92 BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF FUNDING SPECIAL DISTRICT ASSOCIATION DUES FOR FY 1991-92

Date: October 7, 1991

Presented By: Councilor Devlin

COMMITTEE RECOMMENDATION: At its October 3, 1991 meeting the Committee voted unanimously to recommend Council approval of Ordinance No. 91-427. All Committee members were present and voting.

COMMITTEE DISCUSSION/ISSUES: Ms. Kathy Rutkowski, Senior Management Analyst, presented the Staff Report. She indicated that Metro's dues for the Special District's Association (SDAO) in the past have been budgeted in the Support Services Fund because membership in the Association enabled the District to purchase liability insurance. Since the District is moving toward a self insurance program insurance no longer is being purchased through the SDAO. During the past budget process SDAO dues were inadvertently left out of the adopted Budget. This ordinance amends the General Fund budget and appropriations schedule to transfer \$1,600 from the Contingency category to the Materials and Services category in the Office of Governmental Relations. The Office of Governmental Relations is the appropriate place to budget the dues since the District has an intergovernmental agreement with the SDAO for governmental relations services.

FINANCE COMMITTEE REPORT

ORDINANCE NO. 91-428, REVISING THE FY 1991-92 BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF FUNDING ENTRY INTO PERS

Date: October 7, 1991

Presented By: Councilor Wyers

COMMITTEE RECOMMENDATION: At its October 3, 1991 meeting the Committee voted unanimously to recommend Council approval of Ordinance No. 91- 428. All Committee members were present and voting.

COMMITTEE DISCUSSION/ISSUES: Ms. Jennifer Sims, Finance Director, presented the Staff Report. She indicated the purpose of the ordinance is to appropriate sufficient money to implement the agency decision to join the Public Employees Retirement System. This decision has been made by the Council through ratification of the bargaining agreements with AFSCME and LIU Local 483 in addition to the recent approval of the non-represented employees compensation package. The ordinance amends the budget and appropriation schedule for nine separate funds to transfer sufficient money from the respective Contingency category to the Fringe line-item in the Personal Service category for each Fund.

In response to Committee questions Ms. Sims pointed out that 1) sufficient money was placed in the Contingency for each fund for this purpose; 2) the amount of money transferred is based on 3% of the salaries of regular employees in each affected fund; and 3) the three MERC funds are not included in this ordinance because District employees in that part of the agency are already in PERS.




METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Council
10/10/91

6.4

DATE: October 10, 1991
TO: Metro Councilors
FROM:  Rena Cusma, Executive Officer
RE: Ordinance No. 91-422

At the Council Solid Waste Committee meeting of October 1, 1991, the Committee voted 3-0 to recommend an amended version of 91-422 to the full Council. I continue to recommend to Council the original Ordinance.

This Ordinance as originally drafted attempted to set a policy and an administrative procedure for authorizing the processing of petroleum contaminated soil. As it presently stands Metro policies and procedures relating to this activity are unclear and ambiguous. Ordinance 91-422 removes this ambiguity by establishing a clear policy which has not received any adverse testimony in the two CSWC meetings it has been reviewed, and creates a direct procedure for administering this policy, subject to Council review and appeal.

The amended version proposes to place the administration of this activity into the structure of the current franchise code where individual processors would receive franchises, subject to any conditions Council may decide to require on a case-by-case basis. In my opinion, this is poor public policy:

1. The existing franchise code contains unclear and ambiguous language which has long been in need of an overhaul, currently scheduled in this fiscal year.
2. Petroleum contaminated soil processors must have permits from DEQ, and evidence of satisfactory land use authorization before coming to Metro for authorization, so there is very little additional substantive requirements Metro needs to impose. To review land use and environmental issues before Metro would subject applicants to "Double Jeopardy."
3. This has been portrayed as an encroachment on Council authority. This is not the case. Currently Metro is exercising no authority at all. The original Ordinance proposes a policy to be set by Council and an administrative procedure to be exercised by the Executive. The revised Ordinance makes the issuance of each permit a policy determination.

For these reasons I urge Council to adopt Ordinance No. 91-422 as originally drafted (attached).

RC:BM:jc

cc: Dan Cooper, General Counsel
Bob Martin, Solid Waste Director

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE)	ORDINANCE NO. 91-422
METRO CODE TO CLARIFY AND SUPPLE-)	
MENT EXISTING PROVISIONS RELATED)	Introduced by Rena Cusma,
TO THE MANAGEMENT OF PETROLEUM)	Executive Officer
CONTAMINATED SOILS, AND DECLARING)	
AN EMERGENCY)	

WHEREAS, Petroleum contaminated soil removed from its site of origin is a solid waste subject to Metropolitan Service District regulatory authority under ORS 268.317; and

WHEREAS, The Regional Solid Waste Management Plan classifies contaminated soil as a "special waste," and states, in part, that "Solutions to special waste management shall be developed as a component of the Solid Waste Management Plan"; and

WHEREAS, It is necessary to amend the Metro Code to more clearly describe Metro's role in regulating disposal and processing of petroleum contaminated soils; and

WHEREAS, The Metro Code amendments described in this Ordinance are necessary to further the health, safety and welfare of District residents; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.01.010 is amended to read:

"5.01.010 Definitions: As used in this chapter, unless the context requires otherwise:

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the Code of the Metropolitan Service District.

(c) "Council" has the same meaning as in Code Section 1.01.040.

(d) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(e) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(f) "District" has the same meaning as in Code Section 1.01.040.

(g) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.

(h) "Executive Officer" ~~has the same meaning as in Code Section 1.01.040~~ means the Executive Officer of the Metropolitan Service District or the Executive Officer's designee.

(i) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

(j) "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

(k) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

(l) "License" means permission granted by Metro to operate a processing facility, resource recovery facility, or other solid waste facility as specified in this Code.

~~(l)~~ (m) "Person" has the same meaning as in Code Section 1.01.040.

(n) "Petroleum Contaminated Soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300 is not included in the term.

~~(m)~~ (o) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composting, shredding, milling, or pulverizing, but excluding compaction.

~~(n)~~ (p) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

~~(o)~~ (q) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

~~(p)~~ (r) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap

paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.

~~(g)~~ (s) "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.

~~(x)~~ (t) "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.

~~(e)~~ (u) "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cess-pool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.387, petroleum contaminated soils and other wastes; ~~provided that this definition~~ but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005 ~~466.005~~; and
- (2) Radioactive wastes as defined in ORS 469.300; and
- (3) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals; and ~~or~~
- (4) Explosives.

~~(t)~~ (v) "Solid Waste Management Plan" means the ~~Metre~~ ~~Regional~~ Solid Waste Management Plan.

~~(u)~~ (w) "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

~~(v)~~ (x) "User Fee" means a user fee established by the District under ORS 268.515.

(w) (y) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose."

Section 2. Metro Code Section 5.01.020 is amended to read:

"5.01.020 Findings and Purposes:

(a) The Council finds that the District has limited land and resources for the disposal of solid waste. It is the responsibility of the Council to provide and protect such resources and to do so requires that the Council franchise disposal sites, transfer stations, processing facilities and resource recovery facilities, or license certain facilities.

(b) To protect the health, safety and welfare of the District's residents, the Council declares it to be the public policy of the District and the purpose of this chapter to establish an exclusive a franchise and licensing system for the disposal of solid waste in the District under the authority granted to the Council by ORS Chapter 268 in order to:

- (1) Provide a coordinated regional disposal program and Solid Waste Management Plan in cooperation with federal, state and local agencies to benefit all citizens of the District.
- (2) Provide standards for the location, geographical zones and total number of disposal sites, processing facilities, transfer stations and resource recovery facilities to best serve the citizens of the District.
- (3) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.
- (4) Prohibit rate preferences and other discriminatory practices.
- (5) Ensure sufficient flow of solid waste to District's resource recovery facilities.
- (6) Maximize the efficiency of the District's Solid Waste Management Plan.
- (7) Provide for cooperation between cities and counties in the District with respect to regional franchising of solid waste disposal sites, processing facilities, transfer stations and resource recovery facilities.

- (8) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery."

Section 3. Metro Code Section 5.01.030 is amended to read:

"5.01.030 Prohibited Activities: Except as provided in this chapter, it shall be unlawful:

(a) For any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility unless such person is a franchisee, has obtained a license as specified in Section 5.01.230 or is exempted by Section 5.01.040 of this chapter.

(b) For a franchisee or licensee to receive, process or dispose of any solid waste not specified in the franchise agreement or license.

(c) For any person to take, transport or dispose of solid waste at any place other than a disposal site, processing facility, transfer station or resource recovery facility operated by a franchisee, licensed under Section 5.01.230 or exempted by Section 5.01.040 of this chapter except by written authority of the Council.

(d) For a franchisee to charge any rate not established by the Council or Executive Officer under this chapter."

Section 4. Metro Code Section 5.01.040 is amended to read:

"5.01.040 Exemptions:

(a) The following are exempt from the provisions of this chapter governing franchisees:

- (1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.
- (3) Recycling drop centers.
- (4) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are

such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivations at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.

(5) Persons who process, transfer or dispose of solid wastes which:

(A) Are not putrescible, which, for the purpose of this section includes wood, dry cardboard and paper uncontaminated by food waste or petroleum products;

(B) Have been source separated;

(C) Are not and will not be mixed by type with other solid wastes; and

(D) Are reused or recycled.

~~For the purpose of this section, putrescible does not include wood, dry cardboard or paper uncontaminated by food wastes or petroleum products.~~

(6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.

(7) Temporary transfer stations or processing centers established and operated by local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150 (User Fees), Section 5.01.180, (Determination of Rates) subsection 5.01.070(f), and Section 5.01.130, (Administrative Procedures of Franchisees) and shall require contract operators of District-owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1)."

Section 5. Metro Code Section 5.01.060 is amended to read:

"5.01.060 Applications:

(a) Applications for a franchise ~~or license~~, or for transfer of any interest in, modification, expansion, or renewal of an existing franchise ~~or license~~, shall be filed on forms provided by the Executive Officer.

(b) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

- (1) Proof that the applicant can obtain and will be covered during the term of the ~~a~~ franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise.
- (2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee.
- (3) Proof that the applicant ~~for a franchise or license~~ can obtain public liability insurance, including automotive coverage, in the amounts of not less than ~~\$300,000~~ \$500,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law ~~for public contracts.~~
- (4) If the applicant ~~for a franchise or license~~ is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer.
- (5) ~~For an applicant for a franchise or license, a duplicate copy of the DEQ disposal site permit~~

~~application all applications for necessary DEQ permits and any other information required by or submitted to DEQ pursuant to ORS Chapter 459.~~

- (6) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, or licensee and the duration of that interest, and A franchisee shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused.
- (7) Proof that the applicant for a franchise or license has received proper land use approval, and
- (8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

(c) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise or license application is granted or denied provided, however, if an abbreviated application form provided by the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.

(d) An incomplete or insufficient application shall not be accepted for filing."

Section 6. Metro Code Section 5.01.130 is amended to read:

"5.01.130 Administrative Procedures for Franchisees and Licensees:

(a) Unless otherwise specified by the Executive Officer, the following accounting procedure shall be used for charging, collecting and recording fees and charges:

- (1) Fees and charges shall be charged on the basis of tons of waste received where weighing is practicable or on the basis of estimated cubic yards of waste received where weighing is not practicable. Either a mechanical or automatic scale approved by the National Bureau of Standards

and State of Oregon may be used for weighing waste.

- (2) Fees and charges collected in cash shall be separately recorded on a multi-total cash register. The franchisee or licensee shall total the fees and charges separately at the end of each business day as recorded on the cash register and reconcile that total with the actual cash in the register drawer. Cash receipts shall be deposited daily in a bank account. The franchisee or licensee shall reconcile the bank account each month.
- (3) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.
- (4) Where a fee or charge is levied and collected on an accounts receivable basis, prenumbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or cancelled tickets shall be retained.

(b) Each month at the time of payment, the franchisee or licensee must file with the Executive Officer, a statement including without limitation the following information:

- (1) Name and address of the franchisee.
- (2) District registration number.
- (3) Month and year of each report.
- (4) Number of truckloads received daily.
- (5) Daily number of cars, pickups, trailers, and other small hauling vehicles.
- (6) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, noncompacted, minimum loads and special loads, or by other characteristics as specified in the conditions for approval.
- (7) Detailed explanation of any adjustments made to the amount of fees paid pursuant to Section 5.01.150(e).
- (8) Signature and title of the franchisee, licensee or its agent. Misrepresentation of any information required above shall be grounds for suspension, modification, revocation or refusal to renew a

franchise or penalties as provided in Section 5.01.210.

(c) Every franchisee or licensee shall keep such records, receipts or other pertinent papers and information in such form as the District may require. The Executive Officer, ~~or his authorized agent in writing,~~ may examine during reasonable business hours the books, papers, records and equipment of any operator and may make such investigations as may be necessary to verify the accuracy of any return made, or, if no return is made by the franchisee, to ascertain and determine the amount required to be paid.

(d) Fees and charges owing to the District from the franchisee or licensee which are not paid when due shall bear a late charge equal to one and one-half percent (1-1/2%) of the amount unpaid for each month or portion thereof such fees or charges remain unpaid."

Section 7. Metro Code Section 5.01.140 is amended to read:

"5.01.140 Franchise and License Fees:

(a) The Council shall establish an annual franchise fee which and license fees that it may revise at any time upon thirty (30) days written notice to each franchisee and/or licensee and an opportunity to be heard.

(b) The Franchise fee and license fees shall be in addition to any other fee, tax or charge imposed upon a franchisee or licensee.

(c) The A franchisee or licensee shall pay the franchise or license fee in the manner and at the time required by the District."

Section 8. Metro Code Section 5.01.150 is amended to read:

"5.01.150 User Fees:

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, the Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised or licensed by the District or which are liable for payment of User Fees pursuant to a special agreement with the District. User Fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation. User fees shall not apply to wastes received at licensed facilities that treat petroleum contaminated soil to applicable DEQ standards. Notwithstanding any other provision of this Code,

user fees shall apply to petroleum contaminated soils disposed of by landfilling.

(b) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.

(c) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.

(e) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectible provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account. If the fees have previously been paid a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account is thereafter collected, in whole or in part, ~~is collected~~, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(f) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan."

Section 9. Metro Code Section 5.01.190 is amended to read:

"5.01.190 Enforcement of Franchise or License Provisions; Appeal:

(a) The Executive Officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke, a franchise or license as provided in this section. If, in the opinion of the Executive Officer, there is sufficient evidence to suspend, modify, or to revoke a franchise or license, the Executive Officer shall notify the franchisee or licensee in writing of the alleged violation, and the steps necessary to be taken to cure the violation. Upon a finding that violation exists and that the franchisee or licensee is unable to or refuses to cure the violation within a reasonable time after receiving the written notice thereof, the Executive Officer may, in the case of a franchise, make a recommendation to the Council that the franchise be suspended, modified or revoked, and in the case of license, issue an order of suspension, modification or revocation.

(b) In the case of a franchise, the Council may direct the Executive Officer to give the franchisee notice that the franchise is, or on a specified date shall be, suspended, modified or revoked. In the case of a license, the Executive Officer may issue such notice without prior Council approval. The notice authorized by this subsection shall be based upon the Council's reviewing authority's finding that the franchisee or licensee has:

- (1) Violated this chapter, the Code, ORS Chapter 459 or the rules promulgated thereunder or any other applicable law or regulation; or
- (2) Misrepresented material facts or information in the franchise or license application, annual operating report, or other information required to be submitted to the District;
- (3) Refused to provide adequate service at the franchised or licensed site, facility or station, after written notification and reasonable opportunity to do so;
- (4) Misrepresented the gross receipts from the operation of the franchised or licensed site, facility or station;
- (5) Failed to pay when due the fees required to be paid under this chapter; or
- (6) Been found to be in violation of a city or county solid waste management ordinance if such ordinances require licensees or franchisees to comply with the Metro Disposal Franchise and license Ordinance.

(c) Except as provided in subsection (d) of this section, neither the Council's revocation, modification or suspension of a franchise, nor the Executive Officer's revocation, modification or suspension of a license, shall not become effective until the franchisee or licensee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(d) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a franchisee or licensee under this chapter, the Executive Officer may, in accordance with Code Chapter 2.05, immediately suspend the franchise or license and may take whatever steps may be necessary to abate the danger. In addition the case of a franchise, the Executive Officer may authorize another franchisee or another person to provide service or to use and operate the site,

station, facilities and equipment of the affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If a franchise or license is immediately suspended, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing in accordance with Code Chapter 2.05.

(e) Upon revocation or refusal to renew the franchise:

- (1) All rights of the franchisee in the franchise shall immediately be divested. If the franchise is awarded to a new franchisee, the District may require the owner or prior franchisee to sell to the new franchisee the owner's or prior franchisee's interest or a leasehold interest in the real property relating to the operation of the prior franchisee. In such a case the new franchisee shall pay an amount equal to the fair market value of the ownership or leasehold interest in the real property as soon as that amount can be determined. In any event, the prior franchisee immediately upon revocation or expiration of the franchise shall vacate the property, and the new franchisee shall have the right to occupy and use the real property so as to allow continuity of service. In addition, at the option of the new franchisee, the prior franchisee shall, upon sale or lease of the real property, convey any or all personal property relating to the operation for the fair market value of such property.
- (2) If the prior franchisee whose franchise is revoked or refused renewal under this section is not the owner of the property, the owner may only be required under this section to transfer the same property interest that the owner disclosed in the consent form submitted pursuant to Section 5.01.060(b)(6) of this chapter."

Section 10. The following Section 5.01.230 is added to and made a part of Metro Code Chapter 5.01:

"5.01.230 Issuance of License for Facility Processing Petroleum Contaminated Soil:

(a) The licensing requirements of this section shall apply as follows:

- (1) No person shall own or operate a facility for processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or any method or combination of methods that removes

petroleum contamination from the soil and either destroys or contains it, without first obtaining a license under this section. As used in this section, "bioremediation" means a process using specially cultured microorganisms to decontaminate soil under controlled conditions.

(2) An owner or operator of a mobile facility that processes petroleum contaminated soil at the site of origin and returns the treated soil to its location of origin shall not be required to obtain a license under this section, and shall not be required to remit user fees to the District for soil so treated.

(3) A person who treats or disposes of petroleum contaminated soil by ventilation or aeration shall not be required to obtain a license under this section. However, Code Section 5.05.038 imposes restrictions on treatment of petroleum contaminated soil by ventilation or aeration beginning January 1, 1992.

(b) The Executive Officer shall review a complete application for a license to process petroleum contaminated soil, and shall either deny the application, or approve it with appropriate conditions. The following shall be the basis for approval or denial of an application submitted under this section:

(1) Whether the proposed facility is consistent with the Regional Solid Waste Management Plan;

(2) Whether the type of facility is needed or preferred, given the processing capabilities and methods of existing facilities, and in consideration of a hierarchy of preferred processing methods established under state law or the Regional Solid Waste Management Plan;

(3) Whether the applicant has obtained land use authority and all necessary permits for operation of the facility. In appropriate circumstances, the Executive Officer may issue compatibility statements and otherwise participate in local, state or federal permitting, land use or other proceedings to facilitate coordination between approval authorities.

(4) Whether the applicant is capable of obtaining the minimum levels of insurance coverage required under this Code.

- (5) Whether the applicant is willing and able to comply with all required license conditions.

(c) A license issued under this section shall be subject to the following conditions. The licensee or its authorized representative shall sign a statement acknowledging that the licensee is bound by all conditions set forth in the license:

- (1) The licensee shall provide adequate and reliable service to persons utilizing the facility;
- (2) The licensee shall give immediate notice to the District if there is a change in ownership or management of the facility, if the facility is placed in receivership or conservatorship or listed as an asset in any bankruptcy proceeding, or if the facility has temporarily or permanently ceased operations;
- (3) The licensee shall establish and follow procedures for determining what materials will be accepted at the facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the facility;
- (4) In addition to the information required to be submitted under Metro Code Section 5.01.130, the licensee shall keep accurate records containing the following information, and shall provide such information to the District on at least a quarterly basis in a form or format specified by the District:
 - (A) Amount and type of material processed at the facility;
 - (B) Amount and type of material delivered to, but not accepted for processing at the facility, along with the name of the individual or company attempting to deliver the material, the reason the material was rejected and, if known, the destination of the material after leaving the facility;
 - (C) The destination of all materials accepted at the facility, upon leaving the facility, by county and tax lot number, or by other description that clearly identifies the destination, if no tax lot number is available.

- (5) The licensee shall maintain liability insurance for the term of the license at least to the level specified in Metro Code Section 5.01.060(3), and shall give immediate notice to the District of any pending or actual cancellation of insurance required under this section;
- (6) The licensee shall comply with all federal, state, regional and local law in operation of the facility, and with all regulations, conditions and orders of a governmental authority having jurisdiction over the facility;
- (7) The licensee shall indemnify the District, Council, Executive Officer, Director, and their employees and agents, and save them harmless from any and all loss, damage, claim, expense or liability related to or arising out of the licensee's performance of or failure to perform any of its obligations under the license issued;
- (8) The licensee shall remit to the District all fees and charges specified in the Metro Code, even as fee schedules may be amended during the term of the license; and
- (9) The licensee shall comply with other conditions specified in the license, deemed by the Executive Officer to be reasonable and necessary to protect the public health, safety or welfare.

(d) The term of a license issued under this section shall be five years. An application to renew a license shall be processed in the same manner as an application for a new license.

(e) The Executive Officer shall approve or deny an application submitted under this section within 120 days of the date it is deemed to be complete, unless the applicant consents to an extension of the review period. If the Executive Officer fails to take action within the time specified in this subsection, the application shall be deemed denied, and may be appealed to the Council. The Executive Officer shall file with the Council notice of all decisions made on license applications, at the time of the decision. A final decision of the Executive Officer under this section may be appealed to the Council in the manner specified in Code Chapter 2.05, or upon motion of the Council."

Section 11. Metro Code Section 5.03.010 is amended to read:

"5.03.010 Purpose and Authority: It is the purpose of this chapter to establish solid waste disposal franchise and license fees pursuant to Code Section 5.01.140."

Section 12. Metro Code Section 5.03.020 is amended to read:

"5.03.020 Franchise and License Application Fees: Each application for issuance of a solid waste disposal franchise or license shall include and be accompanied by a franchise or license application fee in the amount of Two Hundred (\$200.00) Dollars. Such fee shall defray the District's costs of processing each application and shall be nonrefundable. No application for issuance of a solid waste disposal franchise or license shall be considered without payment of said the application fee. Facilities operating pursuant to Code Section 5.01.060(c) are exempt from this section."

Section 13. Metro Code Section 5.03.030 is amended to read:

"5.03.030 Annual Franchise and License Fees:

(a) ~~Franchisees,~~ A person issued a solid waste disposal franchise or license, shall pay to the District an annual franchise or license fee. Such fee shall be paid on or before January 1 of each year for that calendar year.

(b) Annual solid waste disposal franchise and license fees shall be THREE HUNDRED AND NO/100THS (\$300) DOLLARS per site; provided, however, that said fee shall be ONE HUNDRED AND NO/100THS (\$100) DOLLARS per site for each franchised or licensed site that only receives waste from the franchisee or licensee or a company, partnership or corporation in which the franchisee or licensee has a financial interest.

(c) ~~Franchisees~~ A person who are ~~issued franchises~~ receives a franchise or license during a calendar year shall pay a fee computed on a pro-rated quarterly basis such that one quarter of the annual fee shall be charged for any quarter or portion of a quarter that the franchise or license is in effect. The franchisee or licensee shall thereafter pay the fee annually as required by subsection (a) of this section. Franchise and license fees shall not for any reason be refundable in whole or in part. Annual franchise and license fees shall be in addition to franchise and license application fees."

Section 14. Metro Code Section 5.03.040 is amended to read:

"5.03.040 Non-Payment of Franchise or License Fee:

(a) The issuance of any franchise or license shall not be effective unless and until the annual franchise or license fee has been paid for the calendar year for which the franchise or license is issued.

(b) Annual franchise and license fees are due and payable on January 1 of each year. ~~Failure to remit said fee by said~~

date shall constitute all required fees in a timely manner is a violation of the Metro Code and of the franchise or license, and shall subject the franchisee or licensee to enforcement pursuant to Code Section 5.01.190 in addition to any other civil or criminal remedies the District may have."

Section 15. Metro Code Section 5.03.050 is amended to read:

"5.03.050 Transfer and Renewal: For purposes of this chapter, issuance of a franchise or license shall include renewal and transfer of a franchise or license., provided, However, that no additional annual franchise or license fee shall be paid upon transfer or renewal when the annual franchise or license fee for the franchise or license being renewed or transferred has been paid for the calendar year in which the transfer or renewal becomes effective."

Section 16. The following Section 5.05.038 is added to and made a part of Metro Code Chapter 5.05:

"5.05.038 Limitations on Treatment or Disposal of Petroleum Contaminated Soil:

Effective January 1, 1992:

(a) No person shall treat, process or dispose of petroleum contaminated soil generated within the District at any location other than a facility licensed by Metro under Code Section 5.01.230 or a landfill that is constructed with a geomembrane liner and otherwise designed to contain petroleum products and by-products. Aeration, ventilation or other processing of petroleum contaminated soil at its site of origin shall continue to be allowed under permit from DEQ. A person wishing to dispose of petroleum contaminated soil at a landfill that meets the description of this section but is not a "designated facility" under Code Section 5.03.030, may only do so subject to a non-system license under Code Section 5.03.035.

(b) No person shall treat, process or dispose of petroleum contaminated soil generated outside of the District at any location within the District other than a facility licensed by Metro under Code Section 5.01.230."

Section 17. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an

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emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1991.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

TSS
1051



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: October 8, 1991

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council

RE: AGENDA ITEM NOS. 6.4 AND 7.8 *FA*

This supplemental packet contains the full Ordinance No. 91-422B file and Resolution No. 91-1513 Exhibit B, Request for Franchise Applications RFF for the Provision of Transfer and Material Recovery Facilities and Services for Western Washington County.

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 91-422B, FOR THE PURPOSE OF AMENDING THE METRO CODE TO CLARIFY AND SUPPLEMENT EXISTING PROVISIONS RELATED TO THE MANAGEMENT OF PETROLEUM CONTAMINATED SOILS, AND DECLARING AN EMERGENCY

Date: October 3, 1991

Presented by: Councilor Wyers

Committee Recommendation: At the October 1 meeting, the committee voted unanimously to recommend Council adoption of Ordinance No. 91-422B. Voting in favor: Councilors Gardner, McFarland, and Wyers.

Committee Issues/Discussion: Petroleum contaminated soils (PCS) are soils into which gasoline, diesel fuel, bunker oil or other petroleum products have been introduced. The most common source of PCS is found when leaking underground storage tanks are removed. New federal requirements for the inspection and removal of such tanks has significantly increased the number of sites and the amount of PCS that is generated. The number of sites in the Metro region increased from 131 in 1988 to 529 in 1990, with a similar or even higher number expected in 1991. It is anticipated that the amount of generated PCS will continue to increase through 1993, when initial inspections of all underground tanks must be completed.

Currently there are two commonly used methods for disposing of PCS, landfilling and ventilation or aeration. Landfilling occurs at the Hillsboro Landfill under permission of the state Department of Environmental Quality. In 1990, a total of 60,000 tons of PCS were disposed of at Hillsboro, and the amount is expected to double in 1991.

Ventilation or aeration involves spreading out the PCS and allowing the contaminants to evaporate. This process can take place either at the original site of the PCS or the PCS is removed to another site. Concern has been expressed that these activities may result in new soil contamination because Oregon's high rainfall levels may carry the contaminants into the soil before they can evaporate. In addition, others have noted that harmful substances contained in the petroleum products, such as benzene, may be released into the atmosphere.

New Disposal Technologies

New processing technologies that destroy or contain and reuse PCS contaminants are now being introduced in the Metro region. These technologies allow the contaminated soil to be reused and eliminate the potential of harmful air emissions. These processes generally use heat to burn off the contaminants.

Three companies, RMAC, Oregon Hydrocarbons and the Sonas Companies are in the process of obtaining sites and various regulatory permits to build processing facilities using these new technologies. It is anticipated that all of these facilities will be in operation by March 1992. RMAC will be located near Troutdale and Oregon Hydrocarbons and Sonas in North Portland. The facilities will have a total annual capacity of 200,000 tons of PCS.

The Regional Solid Waste Management Plan (RSWMP) identifies PCS as a special waste and calls upon Metro to provide adequate disposal capacity. In addition, Metro solid waste staff has been working with DEQ in the development of new state guidelines and procedures. It is anticipated that these procedures will establish processing the preferred method of PCS disposal, followed by ventilation and then landfilling.

The solid waste staff contends that the proposed ordinance will establish the processing of PCS as the preferred disposal method within the Metro region and provide for regulation of those developing facilities that will use new processing technologies. The department notes that the ordinance meets the RSWMP criteria, provides for environmentally sound disposal and preserves increasingly scarce landfill space.

Ordinance Provisions

The proposed ordinance addressing the following areas: 1) defining when PCS becomes solid waste and thus subject to Metro regulation, 2) timelines for the use of various disposal and processing alternatives, 3) a regulatory scheme for facilities using new processing technologies, 4) conforming and technical amendments to the franchise chapter of the Metro Code and 5) an exemption from Metro user fees for PCS processing facilities.

The ordinance provides that PCS will be considered solid waste and subject to Metro regulation when it leaves its site of origin. If PCS is processed or ventilated at the site of origin and returned to the same location it would not be regulated by Metro, but would be subject to various types of regulation by DEQ.

The ordinance would permit PCS to be ventilated at off-site locations until December 31, 1991. Beginning January 1, 1992, PCS removed from the site of origin would have to be disposed of at a landfill with a geomembrane liner (Hillsboro) or a Metro-licensed processing facility. In addition, the ordinance would provide that, effective on a date of adoption, PCS generated within Metro boundaries could not be disposed of in a non-designated facility without a non-system license from Metro.

The ordinance provides that off-site PCS processing facilities must obtain a Metro license. According to the staff report, the license would "subject the processor to minimal Metro regulation." A license application would be reviewed and approved or denied by the Executive Officer or their designee. The application must be

approved within 120 days, or it would be considered denied. License denials would be subject to appeal to the Metro Council.

Applicants would be subject to the following licensing criteria:

- 1) whether the proposed facility is consistent with RSWMP,
- 2) whether the proposed facility is needed, based on the types of existing facilities and considering the hierarchy of preferred processing methods established by state law and RSWMP,
- 3) whether the applicant has obtained necessary land use authority and permits for operation of the facility,
- 4) whether the applicant can obtain the required insurance coverages, and
- 5) whether the applicant is willing to comply with all license conditions.

Conditions to which a licensee would be subject include:

- 1) providing adequate and reliable service to persons using the facility,
- 2) providing immediate notice of any change in ownership; any receivership, conservatorship or bankruptcy proceeding affecting the facility; or the temporary or permanent cessation of operations,
- 3) establishing procedures to insure that hazardous or otherwise unacceptable material does not enter the facility,
- 4) regularly reporting certain information to Metro, including the amount and type of material entering the facility, amount and type of material rejected, and the destination of processed material leaving the facility,
- 5) maintaining required liability insurance coverage,
- 6) complying with applicable governmental laws and regulations relating to operation of the facility,
- 7) holding Metro harmless relating to the licensee's performance or failure to perform under the license issued,
- 8) paying all Metro fees and charges,
- 9) complying with other conditions specified in the license to protect the public health, safety and welfare.

The licensing requirements and conditions would be added to the franchise chapter of the Metro Code, necessitating a large number

of technical and conforming amendments. In addition, the general counsel's office proposed two changes to conform the franchise chapter with other Metro Code provisions. These include, on page 3, the definition of solid waste would be amended to include manure, vegetable or animal solid or semi-solid wastes, dead animals, and infectious waste as defined in ORS 459.387. On page 7 the minimum requirement for public liability coverage insurance for all franchisees and licensees would be increased to \$500,000.

The ordinance also provides that Metro would not assess user fees at the licensed PCS processing facilities, but would continue to assess such fees when PCS is disposed of at a landfill. The intent would be to provide an economic incentive to use a processing facility.

Alternative Ordinances

Ordinance No 91-422 provides a "licensing" regulatory scheme for petroleum contaminated soil (PCS) processing facilities under the Metro Franchise Code (Section 5.01). The Office of General Counsel prepared two alternative versions of Ordinance No. 91-422 for committee consideration. The first alternative (Ordinance No. 91-422A) would provide for Council approval of the licenses issued under the proposed ordinance. As originally proposed, the licenses would have been issued by the Executive Officer without Council review.

The following specific changes in the original ordinance were made to accomplish this purpose:

Page 11, Section 9 (a), the last sentence -- as amended, provides that the Executive Officer make recommendations to the Council concerning suspending, modifying, or revoking an existing license. The council would take action on the recommendation. This is the same process used for franchisees.

Page 12, Section 9 (b), --makes necessary changes to reflect that the Council would be responsible for taking action to suspend, modify or suspend a license.

Page 14, Section 10 (b), --amended to provide for initial Council approval of licenses.

Page 16, Section 10 (f), --amended to provide that Council action to approve a license must be completed within 120 days after a completed license application is received.

The second alternative (Ordinance No. 91-422B) requires that PCS facilities obtain a franchise under the franchise code. Applicants would be subject to all of the provisions of the franchise code and those specific conditions and requirements outlined in the original licensing proposal.

Committee Recommendation

The committee considered the proposed ordinance at two separate meetings. Extensive discussion centered on the two principal policy issues concerning the proposed ordinance: 1) the role of the Council in regulating these facilities, and 2) whether regulation should be through a franchise or through the licensing system proposed in the ordinance. The committee concluded that it was appropriate to regulate PCS facilities under the franchise code which would include Council approval of any franchise agreement. Therefore, the committee recommends that the Council adopt Resolution No. 91-422B.

Council Approval

The committee concluded that Council approval of PCS facilities is appropriate for the following reasons:

- State law governing Metro and the Metro code clearly authorize the Council to regulate a broad spectrum of solid waste facilities, including processing facilities

- Both the current franchise code and the proposed licensing process provide for discretion in issuing the franchise or license. Because such discretion is involved, review by a governing body would appear warranted and appropriate

- Approval by a governing body would provide an additional safeguard that the all applicants have been fairly considered and that approved facilities have met all regulatory requirements, and

- Review by the Council would permit discussion of several issues relating to regulation of PCS facilities, including acceptance of out-of-region material, potential loss of user fees, and the relationship between PCS facility regulation and overall regulation of the solid waste disposal

Franchising/Licensing

The question of whether PCS facilities should be franchised or licensed is complex. The committee concluded that at this time PCS should be regulated under the existing franchise code based on the following reasons:

- The franchise code currently provides that the Council franchise a broad spectrum of solid waste facilities, including processing facilities

- Similar-sized facilities are currently franchised

- Franchise agreements could be structured to provide a reduced level of regulation as provided in the licensing ordinance

-- The licensing proposal provides no criteria or standards to justify why PCS facilities should be treated differently than other facilities that are franchised

-- The franchise code is scheduled to be rewritten during the current fiscal year. Procedures for licensing, contracting and other forms of regulation of solid waste facilities may be developed as part of the revision process. The committee believes that it would be unwise to institute a new form of regulation prior to this review which may result in the development of a more comprehensive approach to regulate all types of solid waste disposal facilities in the Metro region. The committee has directed staff to explore how it can expedite its review of the franchise code.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: September 16, 1991

Re: Ordinance No. 91-422, Relating to the Regulation of Petroleum Contaminated Soil Processing Facilities

SUMMARY

The attached analysis provides committee members with additional information concerning two policy issues related to proposed Ordinance No. 91-422, which proposes regulation of petroleum contaminated soil processing facilities. These issues are: 1) the role of the Council in regulating these facilities, and 2) whether regulation should be through a franchise or through the licensing system proposed in the ordinance. Councilor Wyers has drafted an amended ordinance that would provide for Council approval of PCS facility licenses. Staff analysis of this issue would indicate that Council approval for such regulation would be appropriate based on the following:

-- The franchise code clearly mandates that the Council franchise a broad spectrum of solid waste facilities, including processing facilities

-- Council approval would provide a check to insure that the facilities have met all regulatory requirements

-- Similar facilities are franchised with Council approval

-- Establishing a licensing program without Council license approval may set a precedent affecting future regulatory programs in areas such as construction demolition and yard debris processors

-- Several issues relating to regulation of PCS facilities, including acceptance of out-of-region material, potential loss of user fees, and the relationship between PCS facility regulation and overall regulation of the solid waste disposal system could be addressed through a license approval process

The principal distinction between the proposed licensing system and issuing a franchise would be that the licensing process would be purely administrative, without Council approval. If the committee were to determine that Council approval of PCS facility regulation is needed, then the need to establish a separate "licensing" scheme for such facilities should be questioned. The facilities could be franchised with amendments to the franchise code addressing any unique conditions that would apply only to PCS facilities.

ANALYSIS

Ordinance No 91-422 provides a "licensing" regulatory scheme for petroleum contaminated soil (PCS) processing facilities under the Metro Franchise Code (Section 5.01). At the request of Councilor Wyers, the Office of General Counsel has prepared an amended version of Ordinance 91-422. The purpose of the amendments is to provide for Council approval of the licenses issued under the proposed ordinance. As originally proposed, the licenses would have been issued by the Executive Officer without Council review.

The following specific changes in the original ordinance were made to accomplish this purpose:

Page 11, Section 9 (a), the last sentence -- as amended, provides that the Executive Officer make recommendations to the Council concerning suspending, modifying, or revoking an existing license. The council would take action on the recommendation. This is the same process used for franchisees.

Page 12, Section 9 (b), --makes necessary changes to reflect that the Council would be responsible for taking action to suspend, modify or suspend a license.

Page 14, Section 10 (b), --amended to provide for initial Council approval of licenses.

Page 16, Section 10 (f), --amended to provide that Council action to approve a license must be completed within 120 days after a completed license application is received.

In considering the need for a separate licensing program and the appropriate role of the Council, there are a number of issues to be examined. These include the nature of the current franchise code and the relationship between the "franchising" and proposed "licensing" process, the effect of establishing a "licensing" program as it may relate to future regulation of other types of solid waste facilities, and the nature of the processing facilities proposed for regulation.

FRANCHISE-LICENSING RELATIONSHIP

The current franchise code (Section 5.01.020) provides that "It is the responsibility of the Council to provide and protect such resources and to do so requires that the Council franchise disposal sites, transfer stations, processing facilities and resource recovery facilities." (emphasis added). This code section also sets standards for establishing an exclusive franchise system. The franchise code also prohibits certain activities except by franchisees, lists activities and facilities that are exempt from franchising, sets application and approval criteria, and franchise

lengths.

The code provides that all franchises must be approved by the Council.

In practice, Metro currently uses its franchise code to regulate the Forest Grove Transfer Station and eight privately-operated facilities engaged in various aspects of recycling activities. These include East County Recycling, K.B. Recycling and Marine Dropbox Service. The level of regulation is somewhat different than that included in a normal franchise agreement. For example, there are no geographic or rate-setting limitations on the franchisee. Metro has placed limitations on the amount of material that may be accepted, but these limits are generally high enough as to not interfere with the operation of the facility.

A comparison of the proposed ordinance and the existing franchise code would find that there are many similarities between the proposed licensing process and the existing franchising process. These would include:

- 1) the definition of "license" in the proposed ordinance provides that a license "means permission granted by Metro to operate a processing facility, resource recovery facility, or other solid waste facility as specified in this Code." By comparison, the definition of the term "franchise" in the existing code provides that franchise "means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility." Both definitions include "processing facilities" such as the petroleum contaminated soils facilities that would be regulated under the ordinance.

- 2) under the revised code both franchisees and licensees would be subject to the same code provisions relating to the purposes of the regulatory programs and the same application requirements.

- 3) the present code provides that the purpose is to establish an "exclusive" franchise system. An "exclusive franchise" is defined to mean "a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographic area or in some specified manner. The term "exclusive" is removed in the revised code. As a result the purpose of the revised code would be to establish a "franchise and licensing system" based on the definitions of franchise and license noted in #1 above.

It would appear that the principal difference between "licensing" and "franchising" as provided in the original proposed ordinance would be that the licensing process would be a totally administrative process. The license would be issued by the Executive Officer or their designee. The Council would be involved only if a license denial was appealed.

FUTURE REGULATORY EFFORTS

It appears that the Solid Waste Department will be proposing several new regulatory programs for various types of solid waste processing and resource recovery facilities. These include: 1) a facility for handling high-grade recyclable paper in Washington County, a high-grade construction demolition material processing facility or facilities, construction and land clearing material processors, and yard debris processors.

The proposed RSWMP chapter dealing with Washington County facilities calls for the franchising of the high-grade paper facility. At the same time, a memo relating to regulation of construction demolition and land clearing debris processors notes that "licensing" of such processors be examined. Such a "licensing" program could include rate incentives, waivers of user fees, and use of flow control.

PETROLEUM CONTAMINATED SOIL PROCESSING FACILITIES

The development of the three proposed petroleum contaminated soil processing facilities may have a significant effect on the region's solid waste disposal system. First, these facilities may have a combined capacity to handle up to 200,000 tons of soil annually. The soil processed at these facilities will be reusable. Currently, over 100,000 tons of contaminated soil is landfilled at Hillsboro each year.

It is unclear whether the processing facilities will be cost competitive with landfilling. The proposed ordinance would exempt the facilities from Metro's user fees, to provide an economic incentive to use the facilities. If a significant portion of the region's contaminated soils are diverted to these facilities, Metro could lose substantial user fee revenue.

The ordinance provides no restrictions on accepting material from outside the region. If the facilities provide a cheaper disposal alternative to landfilling, it could be anticipated that soil from other areas could be transported to the facilities for processing.

CONCLUSIONS

There are two principal policy considerations concerning proposed Ordinance 91-422. These are the level of Council involvement in the regulation of PCS processing facilities and whether it is necessary to create a separate "licensing" scheme in addition to the existing franchising process.

There are several factors that would support the need for Council approval of PCS facility regulation. These include:

1) The franchise code clearly mandates that the Council establish a process for franchising a broad spectrum of solid waste disposal facilities, including processing and resource recovery facilities. This process has historically included Council approval of such franchises. This requirement allows the Council to exercise oversight over the development of the entire network of solid waste disposal and processing facilities. In addition, it gives the Council the ability to influence the development of certain types of facilities to insure that the goals of the Regional Solid Waste Management Plan are met.

2) Council approval provides a check to insure that all relevant Code requirements relating to the regulation of a particular facility have been met and that the licensing process has been conducted in a fair and impartial manner.

3) The proposed ordinance offers no rationale that would justify the need for a new administrative licensing process for PCS processing facilities. In fact, the currently proposed PCS facilities are similar to other types of recycling facilities that are franchised by Metro. In addition, the potential effect of these facilities on the solid waste stream by reducing the amount of PCS that is landfilled may actually be greater than facilities that are currently franchised.

4) Establishing a licensing program for PCS facilities may set a precedent affecting future Council consideration of regulatory schemes for other types of similar facilities. The proposed ordinance offers no clear distinctions between a franchise and a licensing program, expect that the licensing program would be purely administrative function. As defined in the proposed ordinance, either type of regulation could apply to a broad spectrum of facilities.

As regulatory programs for high-grade recycling, construction demolition, land clearing and yard debris processors are developed there would be no clear policy as to whether such facilities should be licensed or franchised. The mere existence of separate licensing and franchising programs could actually create confusion with regard to future regulatory programs

5) There may be several policy issues related to the regulation of PCS facilities that should be considered by the Council. These include: a) acceptance of out-of-region material, b) potential loss of user fees if significant amounts of PCS are processed instead of landfilled, and c) the relationship between the regulation of PCS facilities and other similar types of facilities.

LICENSING--FRANCHISING

If it is determined that the Council should approve the regulation of each PCS processing facility, it would appear that establishing a separate licensing program for such facilities would be unnecessary. As proposed in the ordinance, the definition of both a franchise and a license would include "processing facilities". In addition, many of the criteria and requirements that would apply to the licensing process would be the same as those set forth in the franchising code. Such duplication would not appear to be justified or needed.

If it is determined that certain criteria of the existing franchising code should not be applicable to PCS facilities, a specific exemption could be provided. And if additional requirements are needed for PCS facilities, then these could be made applicable to only such facilities.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: September 9, 1991

Re: Ordinance 91-422, For the Purpose of Amending the Metro Code to Clarify and Supplement Existing Provisions Related to the Management of Petroleum Contaminated Soils, and Declaring an Emergency

Ordinance No. 91-422 has been scheduled for consideration by the committee at the September 17, 1991 meeting.

Background

Petroleum contaminated soils (PCS) are soils into which gasoline, diesel fuel, bunker oil or other petroleum products have been introduced. The most common source of PCS is found when leaking underground storage tanks are removed. New federal requirements for the inspection and removal of such tanks has significantly increased the number of sites and the amount of PCS that is generated. The number of sites in the Metro region increased from 131 in 1988 to 529 in 1990, with a similar or even higher number expected in 1991. It is anticipated that the amount of generated PCS will continue to increase through 1993, when initial inspections of all underground tanks must be completed.

Currently there are two commonly used methods for disposing of PCS, landfilling and ventilation or aeration. Landfilling occurs at the Hillsboro Landfill under permission of the state Department of Environmental Quality. In 1990, a total of 60,000 tons of PCS were disposed of at Hillsboro, and the amount is expected to double in 1991.

Ventilation or aeration involves spreading out the PCS and allowing the contaminants to evaporate. This process can take place either at the original site of the PCS or the PCS is removed to another site. Concern has been expressed that these activities may result in new soil contamination because Oregon's high rainfall levels may carry the contaminants into the soil before they can evaporate. In addition, others have noted that harmful substances contained in the petroleum products, such as benzene, may be released into the atmosphere.

New Disposal Technologies

New processing technologies that destroy or contain and reuse PCS contaminants are now being introduced in the Metro region. These technologies allow the contaminated soil to be reused and eliminate the potential of harmful air emissions. These processes generally use heat to burn off the contaminants.

Three companies, RMAC, Oregon Hydrocarbons and the Sonas Companies are in the process of obtaining sites and various regulatory permits to build processing facilities using these new technologies. It is anticipated that all of these facilities will be in operation by March 1992. RMAC will be located near Troutdale and Oregon Hydrocarbons and Sonas in North Portland. The facilities will have a total annual capacity of 200,000 tons of PCS.

The Regional Solid Waste Management Plan (RSWMP) identifies PCS as a special waste and calls upon Metro to provide adequate disposal capacity. In addition, Metro solid waste staff has been working with DEQ in the development of new state guidelines and procedures. It is anticipated that these procedures will establish processing as the preferred method of PCS disposal, followed by ventilation and then landfilling.

The solid waste staff contends that the proposed ordinance will establish the processing of PCS as the preferred disposal method within the Metro region and provide for regulation of those developing facilities that will use new processing technologies. The department notes that the ordinance meets the RSWMP criteria, provides for environmentally sound disposal and preserves increasingly scarce landfill space.

Ordinance Provisions

The proposed ordinance addressing the following areas: 1) defining when PCS becomes solid waste and thus subject to Metro regulation, 2) timelines for the use of various disposal and processing alternatives, 3) a regulatory scheme for facilities using new processing technologies, 4) conforming and technical amendments to the franchise chapter of the Metro Code and 5) an exemption from Metro user fees for PCS processing facilities.

The ordinance provides that PCS will be considered solid waste and subject to Metro regulation when it leaves its site of origin. If PCS is processed or ventilated at the site of origin and returned to the same location it would not be regulated by Metro, but would be subject to various types of regulation by DEQ.

The ordinance would permit PCS to be ventilated at off-site locations until December 31, 1991. Beginning January 1, 1992, PCS removed from the site of origin would have to be disposed of at a landfill with a geomembrane liner (Hillsboro) or a Metro-licensed processing facility. In addition, the ordinance would provide that, effective on a date of adoption, PCS generated within Metro

boundaries could not be disposed of in a non-designated facility without a non-system license from Metro.

The ordinance provides that off-site PCS processing facilities must obtain a Metro license. According to the staff report, the license would "subject the processor to minimal Metro regulation." A license application would be reviewed and approved or denied by the Executive Officer or their designee. The application must be approved within 120 days, or it would be considered denied. License denials would be subject to appeal to the Metro Council.

Applicants would be subject to the following licensing criteria:

- 1) whether the proposed facility is consistent with RSWMP,
- 2) whether the proposed facility is needed, based on the types of existing facilities and considering the hierarchy of preferred processing methods established by state law and RSWMP,
- 3) whether the applicant has obtained necessary land use authority and permits for operation of the facility,
- 4) whether the applicant can obtain the required insurance coverages, and
- 5) whether the applicant is willing to comply with all license conditions.

Conditions to which a licensee would be subject include:

- 1) providing adequate and reliable service to persons using the facility,
- 2) providing immediate notice of any change in ownership; any receivership, conservatorship or bankruptcy proceeding affecting the facility; or the temporary or permanent cessation of operations,
- 3) establishing procedures to insure that hazardous or otherwise unacceptable material does not enter the facility,
- 4) regularly reporting certain information to Metro, including the amount and type of material entering the facility, amount and type of material rejected, and the destination of processed material leaving the facility,
- 5) maintaining required liability insurance coverage,
- 6) complying with applicable governmental laws and regulations relating to operation of the facility,
- 7) holding Metro harmless relating to the licensee's performance or failure to perform under the license issued,

8) paying all Metro fees and charges,

9) complying with other conditions specified in the license to protect the public health, safety and welfare.

The licensing requirements and conditions would be added to the franchise chapter of the Metro Code, necessitating a large number of technical and conforming amendments. In addition, the general counsel's office proposed two changes to conform the franchise chapter with other Metro Code provisions. These include, on page 3, the definition of solid waste would be amended to include manure, vegetable or animal solid or semi-solid wastes, dead animals, and infectious waste as defined in ORS 459.387. On page 7 the minimum requirement for public liability coverage insurance for all franchisees and licensees would be increased to \$500,000.

The ordinance also provides that Metro would not assess user fees at the licensed PCS processing facilities, but would continue to assess such fees when PCS is disposed of at a landfill. The intent would be to provide an economic incentive to use a processing facility.

Fiscal Impact

It is difficult to assess the fiscal impact of the licensing proposal. Most PCS is currently landfilled. Metro collects a \$13 per ton user fee for this material. The department is uncertain about how much material will continue to be landfilled after the new processing facilities begin operation. By not collecting a Metro user fee at the processing facility, the ordinance attempts to provide a financial incentive to use the processing facilities.

Assuming that the new processing facilities are operational in early 1992, during FY 1991-92 approximately 75-100,000 tons of material may be diverted to these facilities that would have otherwise been landfilled. The effect would be to reduce potential Metro revenue by \$975,000 to \$1,300,000. The amount of PCS generated on an annual basis will likely exceed 100,000 tons for several years. Thus, the potential annual revenue loss to Metro could exceed \$1.3 million based on the current user fee.

Issues and Questions

The committee may wish to address the following issues and questions:

1) The ordinance assumes that there would be no role for the Council in the licensing process, unless a license denial is appealed to the Council. The processing facilities that may be licensed under the proposed ordinance will be handling significant amounts of solid waste and will be using relatively new disposal technologies. It would appear that these facilities will be as important to the Metro solid waste system disposal system as other private facilities, such as East County Recycling, whose regulation

is subject to Council review. The committee may wish to establish a process for Council review of proposed licensees.

2) The effect of licensing PCS processing facilities will likely reduce Metro user fee revenue from PCS that is currently landfilled. Do current department revenue projections include this potential lost revenue?

3) The technologies that are intended to be used in the proposed processing facilities are in use elsewhere. Have any environmental or operational problems occurred at other facilities?

4) The licensing criteria provide that Metro determine whether the facility is needed. Is it the intent of the department to limit entry into this market based on the projected availability of PCS for processing?

5) The ordinance does not place any limitations on the acceptance of PCS from Oregon localities outside of the metropolitan area or from other states. Solid waste staff advises that it would be their intent to permit material from Washington to be accepted. They also acknowledge that Washington's standards relating to the ventilation of PCS currently are stricter than those in Oregon. The committee may wish to question staff, as to whether the Metro-licensed facilities will become a preferred disposal options for PCS sites located in Washington.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503 221-1646

Memorandum

Date: September 23, 1991

To: John Houser, Council Analyst

From: Todd Sadlo, Senior Assistant Counsel *TS*

Regarding: SECOND ALTERNATE VERSION OF PROPOSED
ORDINANCE NO. 91-422

Attached is a second alternate version of proposed Ordinance No. 91-422, labeled No. 91-422 B. Your memo of September 18, 1991, requested that I develop a revised draft "that would place PCS processing facilities directly under the franchise code." The attached draft provides that the owner or operator of a PCS processing facility must obtain a franchise, under the existing franchise Code.

You also requested that the revised draft apply the licensing provisions proposed for petroleum contaminated soils to "any franchised facility," and that the provisions of Section 10 be applied to "any franchise applicant." This was not done, because the majority of the provisions in question are variations of existing provisions in the franchise Code. To follow the approach suggested in your memo is to begin a major overhaul of the franchise Code. The Code needs an overhaul, but it cannot be done properly in the time frame given. Instead, I have deleted all PCS license provisions that duplicate or are variations of existing franchise provisions.

As requested, Section 16 of the original draft has been retained, and is now Section 6.

Please let me know if you have further questions regarding this matter or would like additional or different modifications.

1040.

Attachment

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE)	ORDINANCE NO. 91-422 B
METRO CODE TO CLARIFY AND SUPPLE-)	
MENT EXISTING PROVISIONS RELATED)	Introduced by
TO THE MANAGEMENT OF PETROLEUM)	Councilor Wyers
CONTAMINATED SOILS, AND DECLARING)	
AN EMERGENCY)	

WHEREAS, Petroleum contaminated soil removed from its site of origin is a solid waste subject to Metropolitan Service District regulatory authority under ORS 268.317; and

WHEREAS, The Regional Solid Waste Management Plan classifies contaminated soil as a "special waste," and states, in part, that "Solutions to special waste management shall be developed as a component of the Solid Waste Management Plan"; and

WHEREAS, It is necessary to amend the Metro Code to more clearly describe Metro's role in regulating disposal and processing of petroleum contaminated soils; and

WHEREAS, The Metro Code amendments described in this Ordinance are necessary to further the health, safety and welfare of District residents; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.01.010 is amended to read:

"5.01.010 Definitions: As used in this chapter, unless the context requires otherwise:

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the Code of the Metropolitan Service District.

(c) "Council" has the same meaning as in Code Section 1.01.040.

(d) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(e) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(f) "District" has the same meaning as in Code Section 1.01.040.

(g) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.

(h) ~~"Executive Officer" has the same meaning as in Code Section 1.01.040~~ means the Executive Officer of the Metropolitan Service District or the Executive Officer's designee.

(i) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

(j) "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

(k) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

(l) "Person" has the same meaning as in Code Section 1.01.040.

~~(m)~~ (n) "Petroleum Contaminated Soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300 is not included in the term.

~~(m)~~ (n) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composting, shredding, milling, or pulverizing, but excluding compaction.

~~(n)~~ (o) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

~~(o)~~ (p) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

~~(p)~~ (q) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.

~~(q)~~ **(r)** "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.

~~(r)~~ **(s)** "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.

~~(s)~~ **(t)** "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.387, petroleum contaminated soils and other wastes; ~~provided that this definition but the term does not include:~~

- (1) Hazardous wastes as defined in ORS 466.005 ~~466.005~~; and
- (2) Radioactive wastes as defined in ORS 469.300; and
- (3) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting or crops and the raising of fowls or animals; ~~and or~~
- (4) Explosives.

~~(t)~~ **(u)** "Solid Waste Management Plan" means the Metro ~~Regional~~ Solid Waste Management Plan.

~~(u)~~ **(v)** "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

~~(v)~~ **(w)** "User Fee" means a user fee established by the District under ORS 268.515.

~~(w)~~ **(x)** "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose."

Section 2. Metro Code Section 5.01.040 is amended to read:

"5.01.040 Exemptions:

(a) The following are exempt from the provisions of this chapter governing franchisees:

- (1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.
- (3) Recycling drop centers.
- (4) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivations at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.
- (5) Persons who process, transfer or dispose of solid wastes which:
 - (A) Are not putrescible, which, for the purpose of this section includes wood, dry cardboard and paper uncontaminated by food waste or petroleum products;
 - (B) Have been source separated;
 - (C) Are not and will not be mixed by type with other solid wastes; and
 - (D) Are reused or recycled.

~~For the purpose of this section, putrescible does not include wood, dry cardboard or paper~~

~~uncontaminated by feed wastes or petroleum products.~~

- (6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
- (7) Temporary transfer stations or processing centers established and operated by local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150 (User Fees), Section 5.01.180, (Determination of Rates) subsection 5.01.070(f), and Section 5.01.130, (Administrative Procedures of Franchisees) and shall require contract operators of District-owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1)."

Section 3. Metro Code Section 5.01.060 is amended to read:

"5.01.060 Applications:

(a) Applications for a franchise, or for transfer of any interest in, modification, expansion, or renewal of an existing franchise, shall be filed on forms provided by the Executive Officer.

(b) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

- (1) Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise.
- (2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee.
- (3) Proof that the applicant can obtain public liability insurance, including automotive coverage,

in the amounts of not less than ~~\$300,000~~ \$500,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law ~~for public contracts.~~

- (4) If the applicant is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer.
- (5) A duplicate copy of the ~~DEQ disposal site permit application~~ all applications for necessary DEQ permits and any other information required by or submitted to DEQ pursuant to ~~ORS Chapter 459.~~
- (6) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused.
- (7) Proof that the applicant has received proper land use approval; and
- (8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

(c) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise application is granted or denied provided, however, if an abbreviated application form provided by the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.

(d) An incomplete or insufficient application shall not be accepted for filing."

Section 4. Metro Code Section 5.01.150 is amended to read:

"5.01.150 User Fees:

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, the Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised by the District or which are liable for payment of User Fees pursuant to a special agreement with the District. User Fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation. User fees shall not apply to wastes received at franchised facilities that treat petroleum contaminated soil to applicable DEQ standards. Notwithstanding any other provision of this Code, user fees shall apply to petroleum contaminated soils disposed of by landfilling.

(b) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.

(c) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.

(e) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectible provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account. If the fees have previously been paid a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account is thereafter collected, in whole or in part, ~~is collected~~, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(f) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan."

Section 5. The following Section 5.01.230 is added to and made a part of Metro Code Chapter 5.01:

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"5.01.230 Additional Provisions Relating to Issuance of a Franchise for a Facility Processing Petroleum Contaminated Soil:

(a) The requirements of this Chapter shall apply to the processing of Petroleum Contaminated Soil as follows:

- (1) No person shall own or operate a facility for processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or any method or combination of methods that removes petroleum contamination from the soil and either destroys or contains it, without first obtaining a franchise under this Chapter. As used in this section, "bioremediation" means a process using specially cultured microorganisms to decontaminate soil under controlled conditions.
- (2) An owner or operator of a mobile facility that processes petroleum contaminated soil at the site of origin and returns the treated soil to its location of origin shall not be required to obtain a franchise under this Chapter, and shall not be required to remit user fees to the District for soil so treated.
- (3) A person who treats or disposes of petroleum contaminated soil by ventilation or aeration shall not be required to obtain a franchise under this Chapter. However, Code Section 5.05.038 imposes restrictions on treatment of petroleum contaminated soil by ventilation or aeration beginning January 1, 1992.

(b) In addition to any other conditions imposed under this Chapter, a franchisee of a petroleum contaminated soil facility shall be subject to the following conditions:

- (1) The franchisee shall establish and follow procedures for determining what materials will be accepted at the facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the facility;
- (2) In addition to the information required to be submitted under Metro Code Section 5.01.130, the franchisee shall keep accurate records containing the following information, and shall provide such information to the District on at least a quarterly basis in a form or format specified by the District:

- (A) Amount and type of material processed at the facility;
- (B) Amount and type of material delivered to, but not accepted for processing at the facility, along with the name of the individual or company attempting to deliver the material, the reason the material was rejected and, if known, the destination of the material after leaving the facility;
- (C) The destination of all materials accepted at the facility, upon leaving the facility, by county and tax lot number, or by other description that clearly identifies the destination, if no tax lot number is available.

Section 6. The following Section 5.05.038 is added to and made a part of Metro Code Chapter 5.05:

"5.05.038 Limitations on Treatment or Disposal of Petroleum Contaminated Soil:

Effective January 1, 1992:

(a) No person shall treat, process or dispose of petroleum contaminated soil generated within the District at any location other than a facility franchised by Metro under Code Chapter 5.01 or a landfill that is constructed with a geomembrane liner and otherwise designed to contain petroleum products and by-products. Aeration, ventilation or other processing of petroleum contaminated soil at its site of origin shall continue to be allowed under permit from DEQ. A person wishing to dispose of petroleum contaminated soil at a landfill that meets the description of this section but is not a "designated facility" under Code Section 5.03.030, may only do so subject to a non-system license under Code Section 5.03.035.

(b) No person shall treat, process or dispose of petroleum contaminated soil generated outside of the District at any location within the District other than a facility franchised by Metro under Code Chapter 5.01."

Section 7. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an

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emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1991.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

TSS
1051-B

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE)
METRO CODE TO CLARIFY AND SUPPLE-)
MENT EXISTING PROVISIONS RELATED) ORDINANCE NO: 91-422 A
TO THE MANAGEMENT OF PETROLEUM)
CONTAMINATED SOILS, AND DECLARING)
AN EMERGENCY)

WHEREAS, Petroleum contaminated soil removed from its site of origin is a solid waste subject to Metropolitan Service District regulatory authority under ORS 268.317; and

WHEREAS, The Regional Solid Waste Management Plan classifies contaminated soil as a "special waste," and states, in part, that "Solutions to special waste management shall be developed as a component of the Solid Waste Management Plan"; and

WHEREAS, It is necessary to amend the Metro Code to more clearly describe Metro's role in regulating disposal and processing of petroleum contaminated soils; and

WHEREAS, The Metro Code amendments described in this Ordinance are necessary to further the health, safety and welfare of District residents; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.01.010 is amended to read:

"5.01.010 Definitions: As used in this chapter, unless the context requires otherwise:

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the Code of the Metropolitan Service District.

(c) "Council" has the same meaning as in Code Section 1.01.040.

(d) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(e) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(f) "District" has the same meaning as in Code Section 1.01.040.

(g) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.

(h) ~~"Executive Officer" has the same meaning as in Code Section 1.01.040~~ means the Executive Officer of the Metropolitan Service District or the Executive Officer's designee.

(i) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

(j) "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

(k) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

~~(l) "License" means permission granted by Metro to operate a processing facility, resource recovery facility, or other solid waste facility as specified in this Code.~~

~~(l)~~ (m) "Person" has the same meaning as in Code Section 1.01.040.

~~(n) "Petroleum Contaminated Soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300 is not included in the term.~~

~~(m)~~ (o) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composting, shredding, milling, or pulverizing, but excluding compaction.

~~(n)~~ (p) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

~~(o)~~ (q) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

~~(p)~~ (r) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap

paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.

~~(q)~~ **(s)** "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.

~~(r)~~ **(t)** "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.

~~(s)~~ **(u)** "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.387, petroleum contaminated soils and other wastes; ~~provided that this definition but the term does not include:~~

- (1) Hazardous wastes as defined in ORS 466.005 ~~466.005~~; and
- (2) Radioactive wastes as defined in ORS 469.300; and
- (3) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals; and ~~or~~
- (4) Explosives.

~~(t)~~ **(v)** "Solid Waste Management Plan" means the ~~Metro~~ **Regional** Solid Waste Management Plan.

~~(u)~~ **(w)** "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

~~(v)~~ **(x)** "User Fee" means a user fee established by the District under ORS 268.515.

~~(w)~~ (y) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose."

Section 2. Metro Code Section 5.01.020 is amended to read:

"5.01.020 Findings and Purposes:

(a) The Council finds that the District has limited land and resources for the disposal of solid waste. It is the responsibility of the Council to provide and protect such resources and to do so requires that the Council franchise disposal sites, transfer stations, processing facilities and resource recovery facilities, ~~or license certain facilities.~~

(b) To protect the health, safety and welfare of the District's residents, the Council declares it to be the public policy of the District and the purpose of this chapter to establish ~~an exclusive~~ a franchise and ~~licensing~~ system for the disposal of solid waste in the District under the authority granted to the Council by ORS Chapter 268 in order to:

- (1) Provide a coordinated regional disposal program and Solid Waste Management Plan in cooperation with federal, state and local agencies to benefit all citizens of the District.
- (2) Provide standards for the location, geographical zones and total number of disposal sites, processing facilities, transfer stations and resource recovery facilities to best serve the citizens of the District.
- (3) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.
- (4) Prohibit rate preferences and other discriminatory practices.
- (5) Ensure sufficient flow of solid waste to District's resource recovery facilities.
- (6) Maximize the efficiency of the District's Solid Waste Management Plan.
- (7) Provide for cooperation between cities and counties in the District with respect to regional franchising of solid waste disposal sites, processing facilities, transfer stations and resource recovery facilities.

- (8) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery."

Section 3. Metro Code Section 5.01.030 is amended to read:

"5.01.030 Prohibited Activities: Except as provided in this chapter, it shall be unlawful:

(a) For any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility unless such person is a franchisee, has obtained a license as specified in Section 5.01.230 or is exempted by Section 5.01.040 of this chapter.

(b) For a franchisee or licensee to receive, process or dispose of any solid waste not specified in the franchise agreement or license.

(c) For any person to take, transport or dispose of solid waste at any place other than a disposal site, processing facility, transfer station or resource recovery facility operated by a franchisee, licensed under Section 5.01.230 or exempted by Section 5.01.040 of this chapter except by written authority of the Council.

(d) For a franchisee to charge any rate not established by the Council or Executive Officer under this chapter."

Section 4. Metro Code Section 5.01.040 is amended to read:

"5.01.040 Exemptions:

(a) The following are exempt from the provisions of this chapter governing franchisees:

- (1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.
- (3) Recycling drop centers.
- (4) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are

such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivations at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.

(5) Persons who process, transfer or dispose of solid wastes which:

- (A) Are not putrescible, which, for the purpose of this section includes wood, dry cardboard and paper uncontaminated by food waste or petroleum products;
- (B) Have been source separated;
- (C) Are not and will not be mixed by type with other solid wastes; and
- (D) Are reused or recycled.

~~For the purpose of this section, putrescible does not include wood, dry cardboard or paper uncontaminated by food wastes or petroleum products.~~

- (6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
- (7) Temporary transfer stations or processing centers established and operated by local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150 (User Fees), Section 5.01.180, (Determination of Rates) subsection 5.01.070(f), and Section 5.01.130, (Administrative Procedures of Franchisees) and shall require contract operators of District-owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1)."

Section 5. Metro Code Section 5.01.060 is amended to read:

"5.01.060 Applications:

(a) Applications for a franchise ~~or license~~, or for transfer of any interest in, modification, expansion, or renewal of an existing franchise ~~or license~~, shall be filed on forms provided by the Executive Officer.

(b) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

- (1) Proof that the applicant can obtain and will be covered during the term of the ~~a~~ franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise.
- (2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee.
- (3) Proof that the applicant ~~for a franchise or license~~ can obtain public liability insurance, including automotive coverage, in the amounts of not less than ~~\$300,000~~ ~~\$500,000~~ for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law ~~for public contracts.~~
- (4) If the applicant ~~for a franchise or license~~ is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer.
- (5) ~~For an applicant for a franchise or license, a duplicate copy of the DEQ disposal site permit~~

~~application~~ all applications for necessary DEQ permits and any other information required by or submitted to DEQ pursuant to ORS Chapter 459.

- (6) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, or licensee and the duration of that interest, and a franchisee shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused.
- (7) Proof that the applicant for a franchise or license has received proper land use approval, and
- (8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

(c) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise or license application is granted or denied provided, however, if an abbreviated application form provided by the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.

(d) An incomplete or insufficient application shall not be accepted for filing."

Section 6. Metro Code Section 5.01.130 is amended to read:

"5.01.130 Administrative Procedures for Franchisees and Licensees:

(a) Unless otherwise specified by the Executive Officer, the following accounting procedure shall be used for charging, collecting and recording fees and charges:

- (1) Fees and charges shall be charged on the basis of tons of waste received where weighing is practicable or on the basis of estimated cubic yards of waste received where weighing is not practicable. Either a mechanical or automatic scale approved by the National Bureau of Standards

and State of Oregon may be used for weighing waste.

- (2) Fees and charges collected in cash shall be separately recorded on a multi-total cash register. The franchisee or licensee shall total the fees and charges separately at the end of each business day as recorded on the cash register and reconcile that total with the actual cash in the register drawer. Cash receipts shall be deposited daily in a bank account. The franchisee or licensee shall reconcile the bank account each month.
- (3) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.
- (4) Where a fee or charge is levied and collected on an accounts receivable basis, prenumbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or cancelled tickets shall be retained.

(b) Each month at the time of payment, the franchisee or licensee must file with the Executive Officer, a statement including without limitation the following information:

- (1) Name and address of the franchisee.
- (2) District registration number.
- (3) Month and year of each report.
- (4) Number of truckloads received daily.
- (5) Daily number of cars, pickups, trailers, and other small hauling vehicles.
- (6) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, noncompacted, minimum loads and special loads, or by other characteristics as specified in the conditions for approval.
- (7) Detailed explanation of any adjustments made to the amount of fees paid pursuant to Section 5.01.150(e).
- (8) Signature and title of the franchisee, licensee or its agent. Misrepresentation of any information required above shall be grounds for suspension, modification, revocation or refusal to renew a

franchise or penalties as provided in Section 5.01.210.

(c) Every franchisee or licensee shall keep such records, receipts or other pertinent papers and information in such form as the District may require. The Executive Officer, ~~or his authorized agent in writing,~~ may examine during reasonable business hours the books, papers, records and equipment of any operator and may make such investigations as may be necessary to verify the accuracy of any return made, or, if no return is made by the franchisee, to ascertain and determine the amount required to be paid.

(d) Fees and charges owing to the District from the franchisee or licensee which are not paid when due shall bear a late charge equal to one and one-half percent (1-1/2%) of the amount unpaid for each month or portion thereof such fees or charges remain unpaid."

Section 7. Metro Code Section 5.01.140 is amended to read:

"5.01.140 Franchise and License Fees:

(a) The Council shall establish an annual franchise fee which and license fees that it may revise at any time upon thirty (30) days written notice to each franchisee and/or licensee and an opportunity to be heard.

(b) The Franchise fee and license fees shall be in addition to any other fee, tax or charge imposed upon a franchisee or licensee.

(c) The A franchisee or licensee shall pay the franchise or license fee in the manner and at the time required by the District."

Section 8. Metro Code Section 5.01.150 is amended to read:

"5.01.150 User Fees:

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, the Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised or licensed by the District or which are liable for payment of User Fees pursuant to a special agreement with the District. User Fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation. User fees shall not apply to wastes received at licensed facilities that treat petroleum contaminated soil to applicable DEQ standards. Notwithstanding any other provision of this Code,

user fees shall apply to petroleum contaminated soils disposed of by landfilling.

(b) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.

(c) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.

(e) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectible provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account. If the fees have previously been paid a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account ~~is~~ thereafter collected, in whole or in part, ~~is collected~~, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(f) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan."

Section 9. Metro Code Section 5.01.190 is amended to read:

"5.01.190 Enforcement of Franchise or License Provisions:
Appeal:

(a) The Executive Officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke, a franchise or license as provided in this section. If, in the opinion of the Executive Officer, there is sufficient evidence to suspend, modify, or to revoke a franchise or license, the Executive Officer shall notify the franchisee or licensee in writing of the alleged violation, and the steps necessary to be taken to cure the violation. Upon a finding that violation exists and that the franchisee or licensee is unable to or refuses to cure the violation within a reasonable time after receiving the written notice thereof, the Executive Officer may make a recommendation to the Council that the franchise or license be suspended, modified or revoked.

(b) The Council may direct the Executive Officer to give the franchisee or licensee notice that the franchise or license is, or on a specified date shall be, suspended, modified or revoked. The notice authorized by this subsection shall be based upon the Council's finding that the franchisee or licensee has:

- (1) Violated this chapter, the Code, ORS Chapter 459 or the rules promulgated thereunder or any other applicable law or regulation; or
- (2) Misrepresented material facts or information in the franchise or license application, annual operating report, or other information required to be submitted to the District;
- (3) Refused to provide adequate service at the franchised or licensed site, facility or station, after written notification and reasonable opportunity to do so;
- (4) Misrepresented the gross receipts from the operation of the franchised or licensed site, facility or station;
- (5) Failed to pay when due the fees required to be paid under this chapter; or
- (6) Been found to be in violation of a city or county solid waste management ordinance if such ordinance requires licensees or franchisees to comply with the Metro disposal franchise and license ordinance.

(c) Except as provided in subsection (d) of this section, the Council's revocation, modification or suspension of a franchise or license shall not become effective until the franchisee or licensee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(d) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a franchisee or licensee under this chapter, the Executive Officer may, in accordance with Code Chapter 2.05, immediately suspend the franchise or license and may take whatever steps may be necessary to abate the danger. In addition the case of a franchisee, the Executive Officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of the affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If a franchise or license is immediately suspended, the franchisee shall have

ninety (90) days from the date of such action to request a contested case hearing in accordance with Code Chapter 2.05.

(e) Upon revocation or refusal to renew the franchise:

- (1) All rights of the franchisee in the franchise shall immediately be divested. If the franchise is awarded to a new franchisee, the District may require the owner or prior franchisee to sell to the new franchisee the owner's or prior franchisee's interest or a leasehold interest in the real property relating to the operation of the prior franchisee. In such a case the new franchisee shall pay an amount equal to the fair market value of the ownership or leasehold interest in the real property as soon as that amount can be determined. In any event, the prior franchisee immediately upon revocation or expiration of the franchise shall vacate the property, and the new franchisee shall have the right to occupy and use the real property so as to allow continuity of service. In addition, at the option of the new franchisee, the prior franchisee shall, upon sale or lease of the real property, convey any or all personal property relating to the operation for the fair market value of such property.
- (2) If the prior franchisee whose franchise is revoked or refused renewal under this section is not the owner of the property, the owner may only be required under this section to transfer the same property interest that the owner disclosed in the consent form submitted pursuant to Section 5.01.060(b)(6) of this chapter."

Section 10. The following Section 5.01.230 is added to and made a part of Metro Code Chapter 5.01:

5.01.230 Issuance of License for Facility Processing Petroleum Contaminated Soil:

(a) The licensing requirements of this section shall apply as follows:

- (1) No person shall own or operate a facility for processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or any method or combination of methods that removes petroleum contamination from the soil and either destroys or contains it, without first obtaining a license under this section. As used in this section, "bioremediation" means a process using**

especially cultured microorganisms to decontaminate soil under controlled conditions.

(2) An owner or operator of a mobile facility that processes petroleum contaminated soil at the site of origin and returns the treated soil to its location of origin shall not be required to obtain a license under this section, and shall not be required to remit user fees to the District for soil so treated.

(3) A person who treats or disposes of petroleum contaminated soil by ventilation or aeration shall not be required to obtain a license under this section. However, Code Section 5.05.038 imposes restrictions on treatment of petroleum contaminated soil by ventilation or aeration beginning January 1, 1992.

(b) The Executive Officer shall review a complete application for a license to process petroleum contaminated soil and recommend to the Council approval of the application and conditions for approval, or denial. Following receipt of the Executive Officer's recommendation, the Council shall approve or deny the application. If approval is granted, the Council may modify or remove conditions recommended by the Executive Officer, or attach additional conditions. Council approval of an application shall be by ordinance, directing the Executive Officer to issue a license as specified.

(c) The following shall be the basis for approval or denial of an application submitted under this section:

(1) Whether the proposed facility is consistent with the Regional Solid Waste Management Plan;

(2) Whether the type of facility is needed or preferred, given the processing capabilities and methods of existing facilities, and in consideration of a hierarchy of preferred processing methods established under state law or the Regional Solid Waste Management Plan;

(3) Whether the applicant has obtained land use authority and all necessary permits for operation of the facility. In appropriate circumstances, the Executive Officer may participate in local, state or federal permitting, land use or other proceedings to facilitate coordination between approval authorities;

(4) Whether the applicant is capable of obtaining the minimum levels of insurance coverage required under this Code; and

(5) Whether the applicant is willing and able to comply with all required license conditions.

(d) A license issued under this section shall be subject to the following conditions. The licensee or its authorized representative shall sign a statement acknowledging that the licensee is bound by all conditions set forth in the license:

(1) The licensee shall provide adequate and reliable service to persons utilizing the facility;

(2) The licensee shall give immediate notice to the District if there is a change in ownership or management of the facility, if the facility is placed in receivership or conservatorship or listed as an asset in any bankruptcy proceeding, or if the facility has temporarily or permanently ceased operations;

(3) The licensee shall establish and follow procedures for determining what materials will be accepted at the facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the facility;

(4) In addition to the information required to be submitted under Metro Code Section 5.01.130, the licensee shall keep accurate records containing the following information, and shall provide such information to the District on at least a quarterly basis in a form or format specified by the District:

(A) Amount and type of material processed at the facility;

(B) Amount and type of material delivered to, but not accepted for processing at the facility, along with the name of the individual or company attempting to deliver the material, the reason the material was rejected and, if known, the destination of the material after leaving the facility;

(C) The destination of all materials accepted at the facility, upon leaving the facility, by county and tax lot number, or by other de-

scription that clearly identifies the destination, if no tax lot number is available.

(5) The licensee shall maintain liability insurance for the term of the license at least to the level specified in Metro Code Section 5.01.060(3), and shall give immediate notice to the District of any pending or actual cancellation of insurance required under this section;

(6) The licensee shall comply with all federal, state, regional and local law in operation of the facility, and with all regulations, conditions and orders of a governmental authority having jurisdiction over the facility;

(7) The licensee shall indemnify the District, Council, Executive Officer, Director, and their employees and agents, and save them harmless from any and all loss, damage, claim, expense or liability related to or arising out of the licensee's performance of or failure to perform any of its obligations under the license issued;

(8) The licensee shall remit to the District all fees and charges specified in the Metro Code, even as fee schedules may be amended during the term of the license; and

(9) The licensee shall comply with other conditions specified in the license, deemed by the Council to be reasonable and necessary to protect the public health, safety or welfare.

(e) The term of a license issued under this section shall be five years. An application to renew a license shall be processed in the same manner as an application for a new license.

(f) The Council shall approve or deny an application submitted under this section within 120 days of the date it is deemed to be complete, unless the applicant consents to an extension of the review period. The Executive Officer shall take reasonable steps to ensure that a recommendation to approve or deny the application is delivered to the Council with sufficient time to allow the Council to render a timely decision."

Section 11. Metro Code Section 5.03.010 is amended to read:

"5.03.010 Purpose and Authority: It is the purpose of this chapter to establish solid waste disposal franchise and license fees pursuant to Code Section 5.01.140."

Section 12. Metro Code Section 5.03.020 is amended to read:

"5.03.020 Franchise and License Application Fees: Each application for issuance of a solid waste disposal franchise or license shall include and be accompanied by a franchise or license application fee in the amount of Two Hundred (\$200.00) Dollars. Such fee shall defray the District's costs of processing each application and shall be nonrefundable. No application for issuance of a solid waste disposal franchise or license shall be considered without payment of said the application fee. Facilities operating pursuant to Code Section 5.01.060(c) are exempt from this section."

Section 13. Metro Code Section 5.03.030 is amended to read:

"5.03.030 Annual Franchise and License Fees:

(a) ~~Franchisees,~~ A person issued a solid waste disposal franchise or license, shall pay to the District an annual franchise or license fee. Such fee shall be paid on or before January 1 of each year for that calendar year.

(b) Annual solid waste disposal franchise and license fees shall be THREE HUNDRED AND NO/100THS (\$300) DOLLARS per site; provided, however, that said fee shall be ONE HUNDRED AND NO/100THS (\$100) DOLLARS per site for each franchised or licensed site that only receives waste from the franchisee or licensee or a company, partnership or corporation in which the franchisee or licensee has a financial interest.

(c) ~~Franchisees~~ A person who are issued franchises receives a franchise or license during a calendar year shall pay a fee computed on a pro-rated quarterly basis such that one quarter of the annual fee shall be charged for any quarter or portion of a quarter that the franchise or license is in effect. The franchisee or licensee shall thereafter pay the fee annually as required by subsection (a) of this section. Franchise and license fees shall not for any reason be refundable in whole or in part. Annual franchise and license fees shall be in addition to franchise and license application fees."

Section 14. Metro Code Section 5.03.040 is amended to read:

"5.03.040 Non-Payment of Franchise or License Fee:

(a) The issuance of any franchise or license shall not be effective unless and until the annual franchise or license fee has been paid for the calendar year for which the franchise or license is issued.

(b) Annual franchise and license fees are due and payable on January 1 of each year. Failure to remit said fee by said

date shall constitute all required fees in a timely manner is a violation of the Metro Code and of the franchise or license, and shall subject the franchisee or licensee to enforcement pursuant to Code Section 5.01.190 in addition to any other civil or criminal remedies the District may have."

Section 15. Metro Code Section 5.03.050 is amended to read:

"5.03.050 Transfer and Renewal: For purposes of this chapter, issuance of a franchise or license shall include renewal and transfer of a franchise or license. ~~provided, However, that no additional annual franchise or license fee shall be paid upon transfer or renewal when the annual franchise or license fee for the franchise or license being renewed or transferred has been paid for the calendar year in which the transfer or renewal becomes effective."~~

Section 16. The following Section 5.05.038 is added to and made a part of Metro Code Chapter 5.05:

"5.05.038 Limitations on Treatment or Disposal of Petroleum Contaminated Soil:

Effective January 1, 1992:

(a) No person shall treat, process or dispose of petroleum contaminated soil generated within the District at any location other than a facility licensed by Metro under Code Section 5.01.230 or a landfill that is constructed with a geomembrane liner and otherwise designed to contain petroleum products and by-products. Aeration, ventilation or other processing of petroleum contaminated soil at its site of origin shall continue to be allowed under permit from DEQ. A person wishing to dispose of petroleum contaminated soil at a landfill that meets the description of this section but is not a "designated facility" under Code Section 5.03.030, may only do so subject to a non-system license under Code Section 5.03.035.

(b) No person shall treat, process or dispose of petroleum contaminated soil generated outside of the District at any location within the District other than a facility licensed by Metro under Code Section 5.01.230."

Section 17. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an

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emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1991.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

TSS
1051-A

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE)	ORDINANCE NO. 91-422
METRO CODE TO CLARIFY AND SUPPLE-)	
MENT EXISTING PROVISIONS RELATED)	Introduced by Rena Cusma,
TO THE MANAGEMENT OF PETROLEUM)	Executive Officer
CONTAMINATED SOILS, AND DECLARING)	
AN EMERGENCY)	

WHEREAS, Petroleum contaminated soil removed from its site of origin is a solid waste subject to Metropolitan Service District regulatory authority under ORS 268.317; and

WHEREAS, The Regional Solid Waste Management Plan classifies contaminated soil as a "special waste," and states, in part, that "Solutions to special waste management shall be developed as a component of the Solid Waste Management Plan"; and

WHEREAS, It is necessary to amend the Metro Code to more clearly describe Metro's role in regulating disposal and processing of petroleum contaminated soils; and

WHEREAS, The Metro Code amendments described in this Ordinance are necessary to further the health, safety and welfare of District residents; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.01.010 is amended to read:

"5.01.010 Definitions: As used in this chapter, unless the context requires otherwise:

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the Code of the Metropolitan Service District.

(c) "Council" has the same meaning as in Code Section 1.01.040.

(d) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(e) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(f) "District" has the same meaning as in Code Section 1.01.040.

(g) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.

(h) ~~"Executive Officer" has the same meaning as in Code Section 1.01.040~~ means the Executive Officer of the Metropolitan Service District or the Executive Officer's designee.

(i) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

(j) "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

(k) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

(l) "License" means permission granted by Metro to operate a processing facility, resource recovery facility, or other solid waste facility as specified in this Code.

~~(l)~~ (m) "Person" has the same meaning as in Code Section 1.01.040.

(n) "Petroleum Contaminated Soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300 is not included in the term.

~~(m)~~ (o) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composting, shredding, milling, or pulverizing, but excluding compaction.

~~(n)~~ (p) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

~~(o)~~ (q) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

~~(p)~~ (r) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap

paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.

~~(g)~~ (s) "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.

~~(r)~~ (t) "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.

~~(s)~~ (u) "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cess-pool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.387, petroleum contaminated soils and other wastes; ~~provided that this definition but the term does not include:~~

- (1) Hazardous wastes as defined in ORS 466.005 ~~466.005~~; and
- (2) Radioactive wastes as defined in ORS 469.300; and
- (3) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals; and ~~or~~
- (4) Explosives.

~~(t)~~ (v) "Solid Waste Management Plan" means the ~~Metre~~ ~~Regional~~ Solid Waste Management Plan.

~~(u)~~ (w) "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

~~(v)~~ (x) "User Fee" means a user fee established by the District under ORS 268.515.

(w) (y) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose."

Section 2. Metro Code Section 5.01.020 is amended to read:

"5.01.020 Findings and Purposes:

(a) The Council finds that the District has limited land and resources for the disposal of solid waste. It is the responsibility of the Council to provide and protect such resources and to do so requires that the Council franchise disposal sites, transfer stations, processing facilities and resource recovery facilities, ~~or license certain facilities.~~

(b) To protect the health, safety and welfare of the District's residents, the Council declares it to be the public policy of the District and the purpose of this chapter to establish ~~an exclusive~~ a franchise and licensing system for the disposal of solid waste in the District under the authority granted to the Council by ORS Chapter 268 in order to:

- (1) Provide a coordinated regional disposal program and Solid Waste Management Plan in cooperation with federal, state and local agencies to benefit all citizens of the District.
- (2) Provide standards for the location, geographical zones and total number of disposal sites, processing facilities, transfer stations and resource recovery facilities to best serve the citizens of the District.
- (3) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.
- (4) Prohibit rate preferences and other discriminatory practices.
- (5) Ensure sufficient flow of solid waste to District's resource recovery facilities.
- (6) Maximize the efficiency of the District's Solid Waste Management Plan.
- (7) Provide for cooperation between cities and counties in the District with respect to regional franchising of solid waste disposal sites, processing facilities, transfer stations and resource recovery facilities.

- (8) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery."

Section 3. Metro Code Section 5.01.030 is amended to read:

"5.01.030 Prohibited Activities: Except as provided in this chapter, it shall be unlawful:

(a) For any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility unless such person is a franchisee, has obtained a license as specified in Section 5.01.230 or is exempted by Section 5.01.040 of this chapter.

(b) For a franchisee or licensee to receive, process or dispose of any solid waste not specified in the franchise agreement or license.

(c) For any person to take, transport or dispose of solid waste at any place other than a disposal site, processing facility, transfer station or resource recovery facility operated by a franchisee, licensed under Section 5.01.230 or exempted by Section 5.01.040 of this chapter except by written authority of the Council.

(d) For a franchisee to charge any rate not established by the Council or Executive Officer under this chapter."

Section 4. Metro Code Section 5.01.040 is amended to read:

"5.01.040 Exemptions:

(a) The following are exempt from the provisions of this chapter governing franchisees:

- (1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.
- (3) Recycling drop centers.
- (4) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are

such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivations at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.

(5) Persons who process, transfer or dispose of solid wastes which:

- (A) Are not putrescible, which, for the purpose of this section includes wood, dry cardboard and paper uncontaminated by food waste or petroleum products;
- (B) Have been source separated;
- (C) Are not and will not be mixed by type with other solid wastes; and
- (D) Are reused or recycled.

~~For the purpose of this section, putrescible does not include wood, dry cardboard or paper uncontaminated by food wastes or petroleum products.~~

- (6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
- (7) Temporary transfer stations or processing centers established and operated by local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150 (User Fees), Section 5.01.180, (Determination of Rates) subsection 5.01.070(f), and Section 5.01.130, (Administrative Procedures of Franchisees) and shall require contract operators of District-owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1)."

Section 5. Metro Code Section 5.01.060 is amended to read:

"5.01.060 Applications:

(a) Applications for a franchise or license, or for transfer of any interest in, modification, expansion, or renewal of an existing franchise or license, shall be filed on forms provided by the Executive Officer.

(b) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

- (1) Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise.
- (2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee.
- (3) Proof that the applicant for a franchise or license can obtain public liability insurance, including automotive coverage, in the amounts of not less than ~~\$300,000~~ \$500,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law for public contracts.
- (4) If the applicant for a franchise or license is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer.
- (5) For an applicant for a franchise or license, a duplicate copy of the ~~DEQ disposal site permit~~

~~application~~ all applications for necessary DEQ permits and any other information required by or submitted to DEQ pursuant to ORS Chapter 459.

- (6) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, or licensee and the duration of that interest, and A franchisee shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused.
- (7) Proof that the applicant for a franchise or license has received proper land use approval, and
- (8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

(c) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise or license application is granted or denied provided, however, if an abbreviated application form provided by the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.

(d) An incomplete or insufficient application shall not be accepted for filing."

Section 6. Metro Code Section 5.01.130 is amended to read:

"5.01.130 Administrative Procedures for Franchisees and Licensees:

(a) Unless otherwise specified by the Executive Officer, the following accounting procedure shall be used for charging, collecting and recording fees and charges:

- (1) Fees and charges shall be charged on the basis of tons of waste received where weighing is practicable or on the basis of estimated cubic yards of waste received where weighing is not practicable. Either a mechanical or automatic scale approved by the National Bureau of Standards

and State of Oregon may be used for weighing waste.

- (2) Fees and charges collected in cash shall be separately recorded on a multi-total cash register. The franchisee or licensee shall total the fees and charges separately at the end of each business day as recorded on the cash register and reconcile that total with the actual cash in the register drawer. Cash receipts shall be deposited daily in a bank account. The franchisee or licensee shall reconcile the bank account each month.
- (3) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.
- (4) Where a fee or charge is levied and collected on an accounts receivable basis, prenumbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or cancelled tickets shall be retained.

(b) Each month at the time of payment, the franchisee or licensee must file with the Executive Officer, a statement including without limitation the following information:

- (1) Name and address of the franchisee.
- (2) District registration number.
- (3) Month and year of each report.
- (4) Number of truckloads received daily.
- (5) Daily number of cars, pickups, trailers, and other small hauling vehicles.
- (6) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, noncompacted, minimum loads and special loads, or by other characteristics as specified in the conditions for approval.
- (7) Detailed explanation of any adjustments made to the amount of fees paid pursuant to Section 5.01.150(e).
- (8) Signature and title of the franchisee, licensee or its agent. Misrepresentation of any information required above shall be grounds for suspension, modification, revocation or refusal to renew a

franchise or penalties as provided in Section 5.01.210.

(c) Every franchisee or licensee shall keep such records, receipts or other pertinent papers and information in such form as the District may require. The Executive Officer, ~~or his authorized agent in writing,~~ may examine during reasonable business hours the books, papers, records and equipment of any operator and may make such investigations as may be necessary to verify the accuracy of any return made, or, if no return is made by the franchisee, to ascertain and determine the amount required to be paid.

(d) Fees and charges owing to the District from the franchisee or licensee which are not paid when due shall bear a late charge equal to one and one-half percent (1-1/2%) of the amount unpaid for each month or portion thereof such fees or charges remain unpaid."

Section 7. Metro Code Section 5.01.140 is amended to read:

"5.01.140 Franchise and License Fees:

(a) The Council shall establish an annual franchise fee which and license fees that it may revise at any time upon thirty (30) days written notice to each franchisee and/or licensee and an opportunity to be heard.

(b) The Franchise fee and license fees shall be in addition to any other fee, tax or charge imposed upon a franchisee or licensee.

(c) The A franchisee or licensee shall pay the franchise or license fee in the manner and at the time required by the District."

Section 8. Metro Code Section 5.01.150 is amended to read:

"5.01.150 User Fees:

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, the Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised or licensed by the District or which are liable for payment of User Fees pursuant to a special agreement with the District. User Fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation. User fees shall not apply to wastes received at licensed facilities that treat petroleum contaminated soil to applicable DEQ standards. Notwithstanding any other provision of this Code,

User fees shall apply to petroleum contaminated soils disposed of by landfilling.

(b) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.

(c) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.

(e) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectible provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account. If the fees have previously been paid a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account is thereafter collected, in whole or in part, ~~is collected~~, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(f) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan."

Section 9. Metro Code Section 5.01.190 is amended to read:

"5.01.190 Enforcement of Franchise or License Provisions; Appeal:

(a) The Executive Officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke, a franchise or license as provided in this section. If, in the opinion of the Executive Officer, there is sufficient evidence to suspend, modify, or to revoke a franchise or license, the Executive Officer shall notify the franchisee or licensee in writing of the alleged violation, and the steps necessary to be taken to cure the violation. Upon a finding that violation exists and that the franchisee or licensee is unable to or refuses to cure the violation within a reasonable time after receiving the written notice thereof, the Executive Officer may, in the case of a franchise, make a recommendation to the Council that the franchise be suspended, modified or revoked, and in the case of license, issue an order of suspension, modification or revocation.

(b) In the case of a franchise, the Council may direct the Executive Officer to give the franchisee notice that the franchise is, or on a specified date shall be, suspended, modified or revoked. In the case of a license, the Executive Officer may issue such notice without prior Council approval. The notice authorized by this subsection shall be based upon the Council's reviewing authority's finding that the franchisee or licensee has:

- (1) Violated this chapter, the Code, ORS Chapter 459 or the rules promulgated thereunder or any other applicable law or regulation; or
- (2) Misrepresented material facts or information in the franchise or license application, annual operating report, or other information required to be submitted to the District;
- (3) Refused to provide adequate service at the franchised or licensed site, facility or station, after written notification and reasonable opportunity to do so;
- (4) Misrepresented the gross receipts from the operation of the franchised or licensed site, facility or station;
- (5) Failed to pay when due the fees required to be paid under this chapter; or
- (6) Been found to be in violation of a city or county solid waste management ordinance if such ordinances require licensees or franchisees to comply with the Metro Disposal Franchise and license Ordinance.

(c) Except as provided in subsection (d) of this section, neither the Council's revocation, modification or suspension of a franchise, nor the Executive Officer's revocation, modification or suspension of a license, shall not become effective until the franchisee or licensee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(d) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a franchisee or licensee under this chapter, the Executive Officer may, in accordance with Code Chapter 2.05, immediately suspend the franchise or license and may take whatever steps may be necessary to abate the danger. In addition the case of a franchise, the Executive Officer may authorize another franchisee or another person to provide service or to use and operate the site,

station, facilities and equipment of the affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If a franchise or license is immediately suspended, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing in accordance with Code Chapter 2.05.

(e) Upon revocation or refusal to renew the franchise:

- (1) All rights of the franchisee in the franchise shall immediately be divested. If the franchise is awarded to a new franchisee, the District may require the owner or prior franchisee to sell to the new franchisee the owner's or prior franchisee's interest or a leasehold interest in the real property relating to the operation of the prior franchisee. In such a case the new franchisee shall pay an amount equal to the fair market value of the ownership or leasehold interest in the real property as soon as that amount can be determined. In any event, the prior franchisee immediately upon revocation or expiration of the franchise shall vacate the property, and the new franchisee shall have the right to occupy and use the real property so as to allow continuity of service. In addition, at the option of the new franchisee, the prior franchisee shall, upon sale or lease of the real property, convey any or all personal property relating to the operation for the fair market value of such property.
- (2) If the prior franchisee whose franchise is revoked or refused renewal under this section is not the owner of the property, the owner may only be required under this section to transfer the same property interest that the owner disclosed in the consent form submitted pursuant to Section 5.01.060(b)(6) of this chapter."

Section 10. The following Section 5.01.230 is added to and made a part of Metro Code Chapter 5.01:

"5.01.230 Issuance of License for Facility Processing Petroleum Contaminated Soil:

(a) The licensing requirements of this section shall apply as follows:

- (1) No person shall own or operate a facility for processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or any method or combination of methods that removes

petroleum contamination from the soil and either destroys or contains it, without first obtaining a license under this section. As used in this section, "bioremediation" means a process using specially cultured microorganisms to decontaminate soil under controlled conditions.

(2) An owner or operator of a mobile facility that processes petroleum contaminated soil at the site of origin and returns the treated soil to its location of origin shall not be required to obtain a license under this section, and shall not be required to remit user fees to the District for soil so treated.

(3) A person who treats or disposes of petroleum contaminated soil by ventilation or aeration shall not be required to obtain a license under this section. However, Code Section 5.05.038 imposes restrictions on treatment of petroleum contaminated soil by ventilation or aeration beginning January 1, 1992.

(b) The Executive Officer shall review a complete application for a license to process petroleum contaminated soil, and shall either deny the application, or approve it with appropriate conditions. The following shall be the basis for approval or denial of an application submitted under this section:

(1) Whether the proposed facility is consistent with the Regional Solid Waste Management Plan;

(2) Whether the type of facility is needed or preferred, given the processing capabilities and methods of existing facilities, and in consideration of a hierarchy of preferred processing methods established under state law or the Regional Solid Waste Management Plan;

(3) Whether the applicant has obtained land use authority and all necessary permits for operation of the facility. In appropriate circumstances, the Executive Officer may issue compatibility statements and otherwise participate in local, state or federal permitting, land use or other proceedings to facilitate coordination between approval authorities.

(4) Whether the applicant is capable of obtaining the minimum levels of insurance coverage required under this Code.

- (5) Whether the applicant is willing and able to comply with all required license conditions.

(c) A license issued under this section shall be subject to the following conditions. The licensee or its authorized representative shall sign a statement acknowledging that the licensee is bound by all conditions set forth in the license:

- (1) The licensee shall provide adequate and reliable service to persons utilizing the facility;
- (2) The licensee shall give immediate notice to the District if there is a change in ownership or management of the facility, if the facility is placed in receivership or conservatorship or listed as an asset in any bankruptcy proceeding, or if the facility has temporarily or permanently ceased operations;
- (3) The licensee shall establish and follow procedures for determining what materials will be accepted at the facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the facility;
- (4) In addition to the information required to be submitted under Metro Code Section 5.01.130, the licensee shall keep accurate records containing the following information, and shall provide such information to the District on at least a quarterly basis in a form or format specified by the District:
 - (A) Amount and type of material processed at the facility;
 - (B) Amount and type of material delivered to, but not accepted for processing at the facility, along with the name of the individual or company attempting to deliver the material, the reason the material was rejected and, if known, the destination of the material after leaving the facility;
 - (C) The destination of all materials accepted at the facility, upon leaving the facility, by county and tax lot number, or by other description that clearly identifies the destination, if no tax lot number is available.

- (5) The licensee shall maintain liability insurance for the term of the license at least to the level specified in Metro Code Section 5.01.060(3), and shall give immediate notice to the District of any pending or actual cancellation of insurance required under this section;
- (6) The licensee shall comply with all federal, state, regional and local law in operation of the facility, and with all regulations, conditions and orders of a governmental authority having jurisdiction over the facility;
- (7) The licensee shall indemnify the District, Council, Executive Officer, Director, and their employees and agents, and save them harmless from any and all loss, damage, claim, expense or liability related to or arising out of the licensee's performance of or failure to perform any of its obligations under the license issued;
- (8) The licensee shall remit to the District all fees and charges specified in the Metro Code, even as fee schedules may be amended during the term of the license; and
- (9) The licensee shall comply with other conditions specified in the license, deemed by the Executive Officer to be reasonable and necessary to protect the public health, safety or welfare.

(d) The term of a license issued under this section shall be five years. An application to renew a license shall be processed in the same manner as an application for a new license.

(e) The Executive Officer shall approve or deny an application submitted under this section within 120 days of the date it is deemed to be complete, unless the applicant consents to an extension of the review period. If the Executive Officer fails to take action within the time specified in this subsection, the application shall be deemed denied, and may be appealed to the Council. The Executive Officer shall file with the Council notice of all decisions made on license applications, at the time of the decision. A final decision of the Executive Officer under this section may be appealed to the Council in the manner specified in Code Chapter 2.05, or upon motion of the Council."

Section 11. Metro Code Section 5.03.010 is amended to read:

"5.03.010 Purpose and Authority: It is the purpose of this chapter to establish solid waste disposal franchise and license fees pursuant to Code Section 5.01.140."

Section 12. Metro Code Section 5.03.020 is amended to read:

"5.03.020 Franchise and License Application Fees: Each application for issuance of a solid waste disposal franchise or license shall include and be accompanied by a franchise or license application fee in the amount of Two Hundred (\$200.00) Dollars. Such fee shall defray the District's costs of processing each application and shall be nonrefundable. No application for issuance of a solid waste disposal franchise or license shall be considered without payment of said the application fee. Facilities operating pursuant to Code Section 5.01.060(c) are exempt from this section."

Section 13. Metro Code Section 5.03.030 is amended to read:

"5.03.030 Annual Franchise and License Fees:

(a) Franchisees, A person issued a solid waste disposal franchise or license, shall pay to the District an annual franchise or license fee. Such fee shall be paid on or before January 1 of each year for that calendar year.

(b) Annual solid waste disposal franchise and license fees shall be THREE HUNDRED AND NO/100THS (\$300) DOLLARS per site; provided, however, that said fee shall be ONE HUNDRED AND NO/100THS (\$100) DOLLARS per site for each franchised or licensed site that only receives waste from the franchisee or licensee or a company, partnership or corporation in which the franchisee or licensee has a financial interest.

(c) Franchisees A person who are issued franchises receives a franchise or license during a calendar year shall pay a fee computed on a pro-rated quarterly basis such that one quarter of the annual fee shall be charged for any quarter or portion of a quarter that the franchise or license is in effect. The franchisee or licensee shall thereafter pay the fee annually as required by subsection (a) of this section. Franchise and license fees shall not for any reason be refundable in whole or in part. Annual franchise and license fees shall be in addition to franchise and license application fees."

Section 14. Metro Code Section 5.03.040 is amended to read:

"5.03.040 Non-Payment of Franchise or License Fee:

(a) The issuance of any franchise or license shall not be effective unless and until the annual franchise or license fee has been paid for the calendar year for which the franchise or license is issued.

(b) Annual franchise and license fees are due and payable on January 1 of each year. Failure to remit said fee by said

date shall constitute all required fees in a timely manner is a violation of the Metro Code and of the franchise or license, and shall subject the franchisee or licensee to enforcement pursuant to Code Section 5.01.190 in addition to any other civil or criminal remedies the District may have."

Section 15. Metro Code Section 5.03.050 is amended to read:

"5.03.050 Transfer and Renewal: For purposes of this chapter, issuance of a franchise or license shall include renewal and transfer of a franchise or license. ~~provided,~~ However, that no additional annual franchise or license fee shall be paid upon transfer or renewal when the annual franchise or license fee for the franchise or license being renewed or transferred has been paid for the calendar year in which the transfer or renewal becomes effective."

Section 16. The following Section 5.05.038 is added to and made a part of Metro Code Chapter 5.05:

"5.05.038 Limitations on Treatment or Disposal of Petroleum Contaminated Soil:

Effective January 1, 1992:

(a) No person shall treat, process or dispose of petroleum contaminated soil generated within the District at any location other than a facility licensed by Metro under Code Section 5.01.230 or a landfill that is constructed with a geomembrane liner and otherwise designed to contain petroleum products and by-products. Aeration, ventilation or other processing of petroleum contaminated soil at its site of origin shall continue to be allowed under permit from DEQ. A person wishing to dispose of petroleum contaminated soil at a landfill that meets the description of this section but is not a "designated facility" under Code Section 5.03.030, may only do so subject to a non-system license under Code Section 5.03.035.

(b) No person shall treat, process or dispose of petroleum contaminated soil generated outside of the District at any location within the District other than a facility licensed by Metro under Code Section 5.01.230."

Section 17. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an

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emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1991.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

TSS
1051

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 91-422 FOR THE PURPOSE OF AMENDING THE METRO CODE TO CLARIFY AND SUPPLEMENT EXISTING PROVISIONS RELATED TO THE MANAGEMENT OF PETROLEUM CONTAMINATED SOILS, AND DECLARING AN EMERGENCY

Date: August 27, 1991

Presented by: Jim Goddard

PROPOSED ACTION

Ordinance No. 91-422 amends the Metro Code to clarify and supplement existing code provisions related to the management of petroleum contaminated soils.

BACKGROUND

Petroleum contaminated soils (PCS) are soils into which hydrocarbons such as gasoline, diesel fuel, bunker oil or other petroleum products have been released. The most common source of PCS is from the removal of leaking underground storage tanks. The number of leaking tanks identified and removed has increased dramatically in the past three years due to US Environmental Protection Agency regulations. In the Metro region, the number of reported leaking tank sites has increased from 131 in 1988 to 529 reported in 1990. During the first half of 1991, 284 new sites were reported to DEQ.

Currently there are two widely used options for managing PCS in the Metro region. The first is disposal at Hillsboro Landfill, which has permission from DEQ to accept such waste. Hillsboro landfill has been disposing of PCS in landfill cells that are clay lined, but do not have a less permeable geomembrane liner. In 1990, approximately 60,000 tons of PCS were received by Metro system landfills. The amount of PCS entering Hillsboro landfill in the first half of 1991 has already exceeded this amount and is expected to total 120,000 tons for this year.

The second most common method for managing PCS is ventilating or aerating the hydrocarbons to the atmosphere. It is estimated that approximately one-third of the PCS generated is treated in this manner. These methods generally involve spreading gasoline contaminated soil onto the land surface and turning it, to allow evaporation of the hydrocarbons. So much aeration is now taking place in uncontrolled circumstances, that contamination is potentially being spread to new areas in the guise of a "cleanup." High rainfall in the metropolitan area, combined with DEQ's inability to monitor all of the sites, may result in hydrocarbon pollution at otherwise clean sites and in adjacent waters. In addition, the evaporating hydrocarbons, containing benzene and other harmful substances, enter the atmosphere.

NEW APPROACH

A new option for managing PCS is currently being introduced in the metropolitan area, which includes a variety of methods to remove hydrocarbons from the soil and either destroy or contain them. These methods are superior to landfilling or ventilating in minimizing environmental impact and preserving space in landfills. The contaminate is either contained for reuse or destroyed, and the processed soil can be reused.

There are currently three processors actively developing processing facilities in the metropolitan region. RMAC, near Troutdale, is scheduled to begin processing PCS in October. Oregon Hydrocarbons, which purchased a site from the Port of Portland, expects to begin operating in November, and The Sonas Companies is currently negotiating for a North Portland property with start up expected in the first quarter of 1992. Both RMAC and Oregon Hydrocarbons have obtained land use approval and are in the process of obtaining DEQ permits. They will have a combined capacity to process over 200,000 tons of PCS per year based on 120 operating hours per week.

Hillsboro landfill is scheduled to have a geomembrane lined cell installed in September. This will bring Hillsboro in compliance with 'best management practice' for a landfill and will improve the landfill's ability to contain petroleum and other contaminants.

Under the Regional Solid Waste Management Plan (RSWMP), PCS is a substream of special wastes. Among other things, the RSWMP calls on Metro to develop solutions to special waste management problems, and to ensure that there is adequate capacity for disposal of special wastes. Emerging PCS processing technologies present the opportunity to recycle a major portion of the PCS waste stream in an environmentally sound manner, while preserving scarce landfill space.

Metro has been working closely with DEQ to develop a PCS management system. DEQ is drafting a streamlined statewide procedure for PCS that will establish the processing of PCS as a priority over ventilating and landfilling.

To encourage and aid in the proper management of PCS, it is necessary that Metro take a more active role in regulating the processing and disposal of PCS in the region. Proposed Ordinance No. 91-422 establishes Metro's regulatory role in the management of PCS.

DESCRIPTION OF PROPOSED ORDINANCE

The proposed ordinance reiterates that PCS becomes a solid waste subject to Metro regulation once it leaves its site of origin. If the PCS is processed on site by a mobile unit or ventilated on

site under DEQ permit and then returned to its location of origin, it is not considered to be a generated solid waste. Neither the person ventilating the soil on site, nor the operator of the mobile unit, will be subject to Metro's regulatory authority or fees.

Once the PCS is removed from its site of origin, it becomes a generated solid waste. The proposed ordinance would allow the soil to be transported to another location for aeration under DEQ permit until December 31, 1991. Beginning January 1, 1992, PCS removed from its site of origin must be disposed in a landfill with a geomembrane liner or treated in a Metro licensed facility. This ban on off-site aeration or ventilation would be enforced through coordination with DEQ. From the date of adoption, PCS generated within Metro boundaries could not be disposed of in a non-designated facility without a non-system license as provided for under Metro's flow control ordinance.

Upon adoption of Ordinance No. 91-422, a facility that processes PCS at a location other than its site of origin must obtain a license from Metro. The license would be non-exclusive, and is intended to subject the processor to minimal Metro regulation. The criteria for obtaining a license, as well as other requirements specific to PCS processors, are set forth in Section 9 of the proposal. As drafted, the Executive Officer or the Executive Officer's designee would review license applications and issue approvals or denials, with appeal to the Metro Council. Metro would not regulate the rates or other financial aspects of the licensee, but would require regular reports on types and quantities of material processed, as well as the destination of processed soil upon leaving the facility. The PCS facility licensing requirements would be added to the franchise chapter of the Metro Code, necessitating numerous conforming amendments. The conforming amendments are substantive because some of the existing franchise requirements would be imposed on the licensee, while others would not.

As proposed, Metro's user fees would not be assessed for PCS processed at licensed facilities, but would continue to be assessed for PCS disposed of by landfilling. This fee structure is intended to encourage proper treatment and recycling of petroleum contaminated soil. This is also consistent with existing code provisions that exempt waste processors that accomplish materials recovery and recycling as a primary function.

FINANCIAL IMPACT

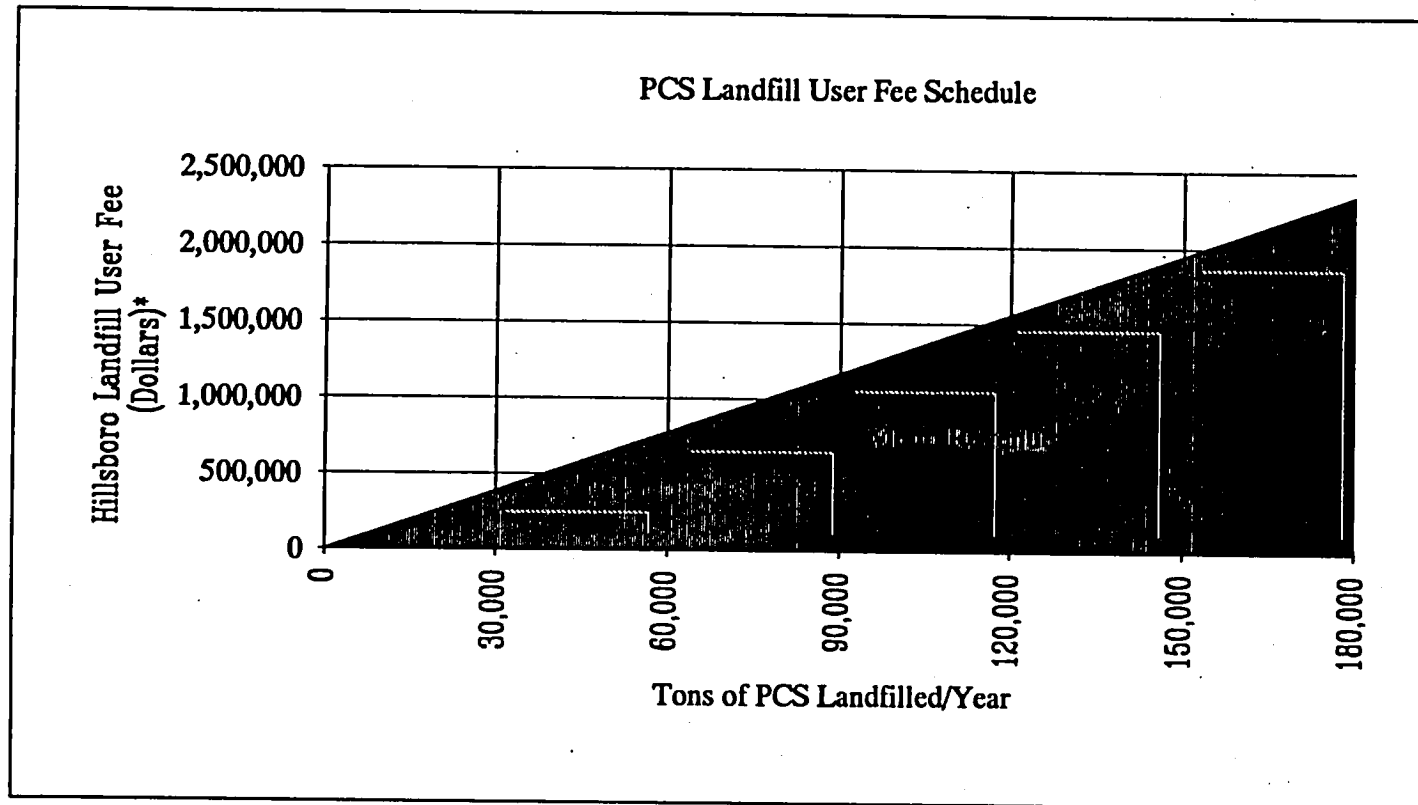
Metro's user fee revenues in calendar year 1990 for disposal of 60,000 tons of PCS were \$33,000 derived from the volume based rate. Under the current weight based rates of \$13 per ton, Metro's user fee revenues for the same amount of PCS would have been \$780,000. The PCS Landfill User Fee Schedule (Attachment A) shows the potential range of financial impact of this Ordinance.

The effect of the proposed ordinance on licensed processors will be to help make processing competitive with landfilling. Tipping fees at Hillsboro landfill are still in a state of flux due to the change to a weight based system. The tipping fee at the processors will vary based on the type of contamination, but should be in the \$50 to \$70 range. Competition in price between processors should keep the system cost at acceptable levels. Off-site aeration is currently the most cost effective option since processing and disposal costs are avoided. The proposed ordinance will substantially increase the cost of managing PCS to generators who use off-site aeration as an option.

RECOMMENDATION

The Executive Officer recommends Council approval of Ordinance No. 91-422.

Attachment A



*Based on \$13/ton User Fee.

**Request for Franchise Applications (RFF)
for the Provision of Transfer and Material Recovery
Facilities and Services for Western Washington County**

DRAFT

September 1991

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REQUIRED SUBMITTALS

Transmittal letter
Organizational structure
Experience and qualifications
Traffic flow analysis
Financial Information
Design
 Site plan
 Material flow diagram
 Transfer and recovery building layout
 Site rendering
 Milestone schedule
Capital cost estimate
Operational narrative
Operations and maintenance cost estimate
Compactor Procurement Schedule
Estimated O&M per ton payment schedule
Land use approval
Evidence of Compliance with franchise code
Completed Disadvantaged Business Compliance Form

**Request for Franchise Applications (RFF)
for the Provision of Transfer and Material Recovery
Facilities and Services for Western Washington County**

1. INVITATION TO APPLY

The Solid Waste Department of the Metropolitan Service District (Metro) is requesting franchise applications for the construction and operation of a privately owned transfer and materials recovery facility in western Washington County, Oregon. Applications are due on _____, 1991, by the close of the business day, in Metro's Solid Waste Department at 2000 SW First Avenue, Portland, Oregon 97201-5398, and should be directed to the attention of Chuck Geyer, Project Manager. Details concerning the project are contained in this document.

The purpose of this RFF is for Metro to obtain franchise application to expand the waste transferring and post-collection material recovery capacity for the mixed waste stream generated in western Washington Co. The successful applicant will also be required to transport a portion of the residual waste to the Riverbend Landfill located in Yamhill County. The remaining residual waste will be transported to the Columbia Ridge Landfill through Metro's existing waste transport system.

Questions regarding this project should be directed to Chuck Geyer, in writing, at the above address. Interested parties may obtain copies of this RFF or background materials by calling (503) 221-1646.

2. PROJECT SUMMARY

In conjunction with local Washington County governments, Metro has completed an analysis of the need for transfer and material recovery services for Washington County. A conclusion of this analysis was that two transfer and material recovery facilities should be developed in the County, each with a designated service area. Waste destined for a transfer/material recovery facility or a general purpose landfill will be allocated to the transfer/material recovery facility within a designated service area.

These facilities are to be privately owned and operated if the cost to Metro is less than or equal to the cost of Metro owning the facilities as established in the Regional Solid Waste Management Plan. This RFF solicits franchise applications for a facility to be privately developed and operated in the western service area of the county, hereinafter referred to as service area #1. A map of the service area is contained in the Appendix. The proposed term of the franchise agreement would be for a period approximately 20 years.

The facility must be sized for a peak capacity of 520 tons per day and 120,000 tons per year. The facility must provide a depot for source separated recyclables which can be accessed prior to weighing of the waste. The ability to weigh both public and commercial vehicles will be available prior to and after unloading waste. The facility must provide all weighing systems for incoming and outgoing waste, material recovery systems to process the mixed waste stream, and temporary storage areas for transfer vehicles and unacceptable waste. Details concerning required functions, features and operating parameters of the facility are contained in this request.

The successful franchise application will be one which satisfies the above objectives and is in the best interests of Metro, while ensuring the success of the project and minimizing costs. Metro desires that the facility be on-line by 1993.

3. SELECTION PROCESS AND SCHEDULE

Franchise applications are due by the close of business day on _____, 1991. Applications will be evaluated by a selection committee based upon information and criteria provided under this RFF. Additional information and/or clarification of the applications may be requested and utilized by the committee. Oral interviews with the highest-ranked applicant(s) may also be required by the committee prior to selecting an applicant with whom to enter franchise negotiations. The committee will complete the evaluation process within 45 days of the deadline for receiving applications.

Metro will then begin negotiations with the highest-ranked applicant, for a period not to exceed 120 days. During this period, Metro and the applicant will finalize the terms and conditions of the franchise agreement, as well as jointly determine the facility features and operational requirements.

At the conclusion of this period, Metro and the applicant will have reached agreement on the final franchise language, a preliminary design and the applicant will have furnished to Metro evidence of its ability to provide sufficient financial guarantees for the project. If Metro and the applicant are unable to finalize the agreement, or the applicant is unable to provide sufficient guarantees, Metro will discontinue negotiations.

If a final agreement is reached and the guarantees provided, the Metro Executive Officer will recommend to the Metro Council award of a franchise. If the Metro Council awards the negotiated franchise agreement, the franchisee will sign the franchise agreement and return it to Metro together with any required additional assurances such as letters of credit and insurance certificates. Metro will then sign the agreement.

The franchisee will then commence final design of the facility. Metro will participate in this phase of the project in a review and approval role. Upon completion of the design, the franchisee will commence construction of the facility. Construction shall be completed no later than December 31, 1993.

4. PROJECT BACKGROUND

In 1989, representatives of Washington County local governments began meeting to formulate a solid waste plan. With assistance from Metro, the representatives developed the "Washington County Solid Waste System Plan". The plan calls for a facilities configuration of two transfer and material recovery stations and a high-grade processing facility. The plan also called for Metro, in cooperation with Washington County, to complete a technical analysis of proposed system configuration and assumptions. Metro completed the analysis in 1991.

Utilizing the system plan and technical analysis, and following numerous meetings with city, county and Metro representatives, the Metro Planning Department developed Chapter 5 of the REGIONAL SOLID WASTE MANAGEMENT PLAN entitled Metro West Transfer and Material Recovery System. The purpose of this RFF is to implement the plan's requirement of a privately owned transfer and material recovery facility for service area #1. The ownership requirement is contingent upon the cost of this arrangement being less than or equal to the cost of a Metro ownership arrangement. The latter cost is presented in the technical analysis portion of Chapter 5. If, through this RFF, Metro is unable to franchise a privately owned facility for service area #1 at the appropriate cost, Metro will proceed with a public ownership procurement.

The parameters of this RFF are derived from Chapter 5 and its associated technical analysis, copies of which are available upon request. The following sections present the flow assumptions which determine the facility sizing, followed by sections on facility layout and operations. Each of these sections contain submittal requirements for an application.

5. PROJECT DATA ASSUMPTIONS FOR SERVICE AREA #1

A map of Washington County's two service areas is contained in the Appendix. This RFF solicits a facility and services for the transfer and material recovery of mixed solid waste generated in service area #1, projections of which are presented below.

The data projections contain two key assumptions. First, that the service area #1 high grade waste stream (as well as other special wastes such as household hazardous waste) will be handled at another facility. Second, that the transfer and material recovery facility requested herein will not receive more than 120,000 tons

per year. This tonnage "cap" will be a condition of the franchise agreement between the successful applicant and Metro.

Metro will make available to prospective applicants any additional information regarding the work described in the RFF. Metro, however, assumes no responsibility in respect to the sufficiency of the information provided herein or provided in response to an applicant's request. It is the responsibility of the applicant to satisfy itself as to the conditions related to the work.

5.1 Annual Tonnage Projection - The annual tonnage projection was derived from the model developed for the Washington County System Plan. Service area boundaries have been modified in developing these projections.

Figure 5A - Annual Tonnage Projections for Service Area #1

<u>1993</u> 109,296	<u>1994</u> 112,197	<u>1995</u> 114,735	<u>1996</u> 117,186	<u>1997</u> 120,000
<u>1998</u> 120,000	<u>1999</u> 120,000	<u>2000</u> 120,000	<u>2001</u> 120,000	<u>2002</u> 120,000
<u>2003</u> 120,000	<u>2004</u> 120,000	<u>2005</u> 120,000	<u>2006</u> 120,000	<u>2007</u> 120,000
<u>2008</u> 120,000	<u>2009</u> 120,000	<u>2010</u> 120,000	<u>2011</u> 120,000	<u>2012</u> 120,000
<u>2013</u> 120,000				

5.2 **Monthly Tonnage Projection** - Based on the above annual projections, monthly projections were developed based on the delivery of waste to the Metro South Station for the period of 1983 to 1989.

Figure 5B - Monthly Tonnage Projections for Service Area #1

	Waste to be Transported		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Average
YEAR				min					max						
	Annual	Cumulative	7.42%	6.73%	8.06%	8.43%	8.90%	9.00%	9.06%	9.42%	8.65%	8.88%	7.82%	7.64%	
1983	109,296	109,296	8.110	7.356	8.809	9.214	9.727	9.837	9.902	10.296	9.454	9.705	8.547	8.350	9.109
1984	112,187	221,483	8.325	7.551	8.043	9.458	9.986	10.098	10.165	10.569	9.705	9.963	8.774	8.572	9.351
1985	114,735	336,228	8.513	7.722	9.248	9.672	10.211	10.326	10.395	10.808	9.925	10.188	8.972	8.766	9.562
1986	117,186	453,414	8.695	7.887	9.445	9.879	10.430	10.547	10.617	11.039	10.137	10.406	9.164	8.953	9.766
1987	120,000	573,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
1988	120,000	693,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
1989	120,000	813,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2000	120,000	933,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2001	120,000	1,053,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2002	120,000	1,173,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2003	120,000	1,293,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2004	120,000	1,413,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2005	120,000	1,533,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2006	120,000	1,653,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2007	120,000	1,773,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2008	120,000	1,893,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2009	120,000	2,013,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2010	120,000	2,133,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2011	120,000	2,253,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2012	120,000	2,373,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001
2013	120,000	2,493,414	8.904	8.076	9.672	10.116	10.680	10.800	10.872	11.304	10.380	10.656	9.384	9.168	10.001

5.3 Daily Percentage as a Percent of the Week - The daily percentage distribution of waste was developed based on six months (January through June 1991) of flow data at Metro South Station.

Figure 5C - Daily Percentage Distribution for Service Area #1

Monday 19.7%	Tuesday 18.4%	Wednesday 18.3%	Thursday 18.4%	Friday 18.4%	Saturday 5.4%	Sunday 1.4%
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5.4 Hourly Percentage Distribution - Hourly percentage distribution by day of the week were developed from flow data at Metro South Station.

Figure 5D - Hourly Percentage Distribution for Service Area #1

Percent Distribution Of Tonnage Received During Each Day At Metro South Transfer Station							
(Based on January through June 1991 RBASE data.)							
Excludes Vehicle Codes Greater Than 14							
Time	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
6 am - 7 am	5.86%	6.84%	6.21%	6.11%	6.75%	5.37%	0.00%
7 am - 8 am	5.34%	6.80%	6.54%	6.73%	6.48%	10.13%	0.00%
8 am - 9 am	8.36%	8.90%	8.27%	8.88%	9.25%	13.27%	7.36%
9 am - 10 am	9.79%	10.04%	9.47%	10.58%	12.78%	13.66%	9.34%
10 am - 11 am	13.19%	12.71%	13.14%	13.09%	14.06%	10.17%	12.99%
11 am - Noon	16.40%	15.75%	16.10%	15.22%	15.59%	9.94%	13.72%
Noon - 1 pm	15.56%	15.67%	15.01%	15.44%	14.61%	11.59%	14.74%
1 pm - 2 pm	12.31%	10.14%	11.06%	10.52%	8.15%	8.65%	13.08%
2 pm - 3 pm	6.53%	6.57%	7.08%	7.34%	6.07%	6.17%	14.15%
3 pm - 4 pm	3.77%	3.92%	4.40%	3.55%	3.84%	4.79%	14.63%
4 pm - 5 pm	1.99%	1.75%	1.79%	1.64%	1.75%	3.90%	0.00%
5 pm - 6 pm	0.90%	0.92%	0.94%	0.89%	0.64%	2.33%	0.00%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

5.5 Design Daily Throughput Capacity - The franchisee must provide a facility designed for a daily throughput capacity of 520 tons per day. The design day of 520 tons was derived from the highest daily tonnage distribution (Monday), the highest monthly tonnage distribution (August), projected for the maximum annual capacity of 120,000 tons.

5.6 **Traffic** - Franchise applicants must prepare and submit detailed Traffic Impact Assessment (TIA) based on the Facility Site design and Metro's data for solid waste facility traffic generation as presented below. Such a study must be performed by a registered engineer in the State of Oregon and submitted as part of this application.

The analysis shall evaluate queuing requirements at the Facility Site, the impacts on the street system during both peak commercial and peak public vehicle Facility usage, as well as impacts of the Facility during peak highway traffic. Projections indicate that peak commercial traffic will occur on Mondays while peak public traffic will occur on Saturday.

For the TIA, assume the design throughput capacity of the Facility will be 520 tons per day and 120,000 tons per year. For the design year (2003) the percent of waste delivered on a Monday (19.7%) and the percent of waste delivered on a Saturday (5.4%) will be used as the peak commercial and peak public day respectively.

As a minimum, the on-site vehicle unloading stalls and queuing space shall be provided such that a 95% probability exists that vehicle queuing space for the "high weekday" and the "high weekend" will not be exceeded.

The traffic analysis shall assume the following:

- The tonnage split between commercial vehicles and public vehicles is 93.2% and 6.8% respectively.
- Metro Scalehouse staff on the average complete both commercial transactions and public transactions in one minute.
- The peak Day for commercial trips occurs on Mondays.
- The peak Day for public trips occurs on Saturdays.
- Transfer trucks carry an average load of 28 tons per trip.
- The average Tons per trip:

AVERAGE TONS/TRIP

	<u>COMMERCIAL</u>	<u>PUBLIC</u>
Monday	4.37	
Saturday	3.69	0.38

- The peak hour, as a percent of the daily waste flow:

PEAK HOUR
(% of Daily Waste Flow
for the particular day of the week)

<u>DAY</u>	<u>COMMERCIAL</u>	<u>PUBLIC</u>	<u>HOUR</u>
Monday	16.4%		11am - 12pm
Saturday		13.7%	9am - 10am

- The percentage of the average daily waste flow, to be used in computing the impacts of the Facility during peak highway traffic, is shown in Figure 5D.
- The maximum trips per hour on both the commercial and public "high Days" are based on: 1) the average daily tonnage in the design year for both a Monday and Saturday, 2) peak hour percentage from Fig. 5D, and 3) the average tons per trip:

MAXIMUM INCOMING TRIPS/HOUR
("Design Day")

	Tons /Day	Hr% /DD*	Peak Tons /Hr	Avg. Tons /Trip	Max. Trips /Hr
	(A)	(B)	(C=AB)	(D)	(E=C/D)
DCD* (Monday) Commercial	520	16.4%	85	4.37	20
DPD* (Saturday) Commercial*					
Public	131	13.7%	18	.38	47

DD = "Design Day"

DCD = "Design Commercial Day"

DPD = "Design Public Day"

*Assume little to no commercial traffic on weekends

5.7 Waste Composition- It is the responsibility of the franchise applicant to determine the availability of materials in the waste stream which are targeted for recovery. Materials which the applicant plans to recover, their quantities and method of delivery to the facility should be described in the application as part of the response to Section 6 of this RFF. A waste composition summary is presented in the appendix to the technical analysis and is available to aid applicants in the design of material recovery systems.

5.8 Riverbend Landfill- As part of the franchise agreement with the successful applicant, Metro will require the transport of residual waste, designated for disposal, to the Riverbend Landfill in Yamhill County, Oregon for as long as it is in the best interest of Metro. Metro has allocated 8% of the general purpose waste in the region, which is to be landfilled, for disposal at the Riverbend site. Projections for this amount are contained below.

Figure 5E - Forecast of Waste to Riverbend Landfill (8%)

Year	Total GP Waste	8%
1993	613,843	49,107
1994	625,436	50,035
1995	639,113	51,129
1996	655,035	52,403
1997	672,571	53,806
1998	692,778	55,422
1999	712,115	56,969
2000	734,100	58,728
2001	756,359	60,509
2002	778,891	62,311
2003	801,694	64,135
2004	824,767	65,981
2005	848,109	67,849
2006	871,719	69,738
2007	895,597	71,648
2008	918,586	73,487
2009	942,984	75,439
2010	967,646	77,412
2011	992,570	79,406
2012	1,017,757	81,421
2013	1,043,203	83,456

6. DESIGN GUIDELINES

The purpose of this section is to provide the proposer with Metro's design philosophy for this facility and the services it provides. These items are set forth in the following sections in the form of design guidelines that state what specific items Metro feels should be included in the facility. Applicants are required to demonstrate how these features will be accommodated in the designs submitted in their franchise applications. This is important since the specific site for which the proposer has received land use approval will affect the manner in which these guidelines are implemented. Each document must be of sufficient detail to ensure that the intent and methods to be employed are clearly defined.

6.1 Site Plan (1 Drawing) - The site plan shall demonstrate that the site is designed to be utilized in a logical and efficient manner to perform the primary facility functions. It must also have the flexibility and allowances for future modifications and additions in response to changes in the transfer and recovery needs. The site plan will provide details and traffic flows of all areas of the site except the main transfer and recovery building. The site plan will have the following designated areas: Access and queuing for commercial and public haulers, source separated drop off depot, scales and scale house, yard debris drop off, delivery vehicle traffic flow, transfer trailer storage and traffic flow, recovered material vehicle traffic flow, truck wash, employee, visitor and tour access and parking, office administration and storage, equipment maintenance.

6.1.1 Access, Queuing and Egress - All waste delivery vehicles (commercial and public) will be weighed on an inbound scale. Waste will be delivered to the facility in a variety of vehicles such as rear-end and front-loading collection vehicles, open-top and closed tilt-frame roll-off containers and public self haul vehicles of various configurations. Sufficient space will be provided to allow vehicles to be queued on site for the scale during peak periods per the traffic flow analysis in Section 5.6. A separate lane or egress will be provided for commercial vehicles to exit the site without having to go over the outbound scales.

6.1.2 Source Separated Drop-Off - A drop-off depot shall be provided for source separated principle recyclables. The recyclables to be included for the initial operation shall include green, clear and brown container glass, tin cans, ferrous and non ferrous scrap, aluminum, newspaper, used motor oil, corrugated cardboard, kraft paper, car batteries and white goods. A structure will protect the people using the depot and the materials from the weather. An adjacent area equal in size to the structure will be allocated for future source separated materials not yet designated. The shelter shall be designed to allow for a contiguous addition to cover the future area. The entire area must be located prior to the scales so that source

separated materials can be dropped off prior to weighing for transfer station tipping. Persons in the source separated area shall not be at risk from site traffic and scale queuing. The option of leaving the site or entering the scale queuing lanes must also be provided from the source separated area.

6.1.3 Scales - Scales should be located such that all waste vehicles entering and exiting the facility can be weighed on dedicated inbound and outbound scales. The scales shall be capable of weighing all types of vehicles on an automatic 80' scale such that the recorded weights can be used for charging fees and evaluating Facility performance. Metro will provide the controls for the scale. The current performance parameter for such a scale would include certification and validation for a range of weights from 100 to 60,000 pounds.

6.1.4 Scalehouse - A 10'x 50' scalehouse will be provided by the successful applicant. Metro will provide the capital cost estimate for this portion of the facility.

6.1.5 Source Separated Yard Debris Drop-off - Source separated yard debris will be dropped off after the scales since it will have a reduced tipping fee based on the load's weight. The drop-off area shall have sufficient area to manage yard debris until a load has been accumulated. The area, at a minimum shall be sized to store 60 cu yd of yard debris, a drop boxes, and provide space to load the drop box while tipping is occurring if the material is not tipped directly into the box. It is the responsibility of the Franchisee to manage and load the material for shipment. Metro will be responsible for transporting and processing.

6.1.6 Waste Delivery Vehicle Traffic Flow - Waste delivery vehicles constitute the majority of onsite traffic flow, so special attention shall be required to ensure that the most efficient flow is achieved. After leaving the scales, the vehicles should require a minimum of maneuvering to enter or leave the transfer and recovery building. Traffic crossovers, tight turns, two way traffic, constricted areas and difficult maneuvers should be kept to a minimum to ensure smooth traffic flow.

6.1.7 Transfer Trailer Staging and Traffic Flow - The traffic flow pattern for transfer trailers shall not interfere with the flow of the other vehicles on site. A secured, lighted and uncovered area with adequate maneuvering room shall be provided for a minimum of ten (10) transfer trailers to be staged on site.

6.1.8 Recovered Materials Vehicle Traffic Flow - Removal of recovered materials from the site will be done on an intermittent basis depending upon the recovery rates. The traffic flow can be integrated into the other commercial traffic flows as long as it does not congest or interrupt it.

6.1.9 Truck Wash - A covered 2-bay truck wash facility shall be provided to service commercial haulers. The wash water operating pressure shall be such that commercial collection vehicles which use the facility can be cleaned adequately.

6.1.10 Employee, Visitor and Tour and Parking - Parking for employees, visitors and tours shall be separate from the waste related traffic flows. Pedestrian safety on site shall be of paramount concern since visitors and public tours will be expected on a regular basis.

6.1.11 Office Administration and Storage Area - An approximate 600 square foot office to accommodate the operating staff should be isolated from the Facility's operation. Metro will provide the capital cost estimate for this item.

6.1.12 Equipment Maintenance Area - An adequate equipment maintenance area shall be provided for working on mobile equipment such as loaders, or component parts of stationary equipment if applicable. The area shall be appropriately designed to collect/clean-out oil and grease.

6.2 Material Flow Diagram (1 drawing)- Metro believes that there are currently no "High tec" methods for effectively processing a mixed waste stream that have a proven performance record. This franchise is not intended to develop new technology or provide a breakthrough in recovery methods. Instead, a practical approach to material recovery is to be undertaken for a facility with a design capacity of 520 tons per day.

Manual segregation of incoming materials from target loads shall be conducted. To do this properly and thoroughly, each incoming load needs to be spread out sufficiently to be completely inspected and categorized. This manually intensive procedure must be accounted for in the layout. Mechanized or manual sorting should be proposed only for those components of the waste that have high potential recovery rates and demonstrated markets.

In the future the composition of the waste, markets, laws and the technology to process mixed waste will change. It is therefore critical to design a facility and operations that allow for adaptation to these changes. Flexibility in processing and the ability to make changes to equipment and operations in the future are critical design features which Metro desires. The material flow diagram should

demonstrate the processing philosophy of the applicant, capacities of the material recovery and transfer equipment, as well as the flexibility to adapt to changing conditions.

The material flow diagram shall show (on a ton/day basis) all incoming and outgoing waste flows. The incoming waste flow shall be broken down based upon the delivery method (ie. commercial drop box, residential rear packer, public self haul pickup trucks, etc.). The tonnages shall be given in a range that shows the average current estimated flow from each type of delivery vehicle and the amount to be processed from each type of vehicle.

The major equipment used to recover the waste shall be shown with its expected throughput and its maximum capacity. Manual labor used in the recovery process shall also be shown. The types of materials recovered will be specified as an output of the separation process as well as total recovered tonnage.

Major equipment used to manage and transfer the waste for disposal shall be shown. The total disposal at landfill tonnages will be shown.

6.3 Transfer and Recovery Building Layout (1 drawing) The Transfer and recovery building design is the physical incarnation of the flow diagram. The same requirements apply to the layout as to the flow diagram. The layout must be flexible enough to adapt to material and process changes. Adequate space must be provided for spreading, inspecting and categorizing each load prior to processing. Space allotted for the future expansion of material recovery capacity will be included in the layout as "future." Appropriate air, dust, and noise suppression equipment should be provided.

The building shall have different functional areas. The overall building dimensions and elevations shall be shown. The following areas shall be shown on the layout along with their respective dimensions, major pieces of equipment and operations: Waste tipping area, Materials recovery area, Transfer area, Storage area.

6.3.1 Waste receiving area - The Waste receiving area shall be designed to allow unloading of drop boxes, commercial rear-end, side, and front-loading collection vehicles. Other vehicle types such as pickups and trailers from commercial accounts should be segregated in the receiving area. The area shall have a tipping floor of sufficient size to allow for the opportunity to categorize and segregate all waste into the proper components for further processing. Non-processable waste destined for disposal shall be able to be directly pushed to the Transfer area. The receiving area shall be totally enclosed. Simultaneous ingress and egress to the tipping area shall be provided.

A surge area shall be provided that will be capable of receiving and storing 520 tons of waste, thus allowing for 24 hour Facility shutdowns and to permit necessary large-scale repairs. The surge area shall not interfere with the operations or material flow to the materials recovery or transfer areas. Storage of waste in the surge area must not mitigate the opportunity to segregate the materials for further processing. Redundant transfer equipment or load out systems may be provided in lieu of the surge area.

6.3.2 Materials Recovery Area - The materials recovery area is intended to remove recoverable materials from the waste prior to transfer to the landfill. There may not be a clear boundary between the receiving and recovery areas. As mentioned above, the materials recovery system must be adaptable to changes in the waste stream, laws and recovered materials markets. The system design must be capable of processing both currently targeted and nontargeted recyclable materials from the waste stream. The design shall be accommodating to future expansions of the recovery operations in terms both of the quantity and the characteristics of the recyclable materials. Allowances should also be made for the additional future utility requirements. The need for retrofit(s) during or after construction shall be anticipated.

Adequate space shall be provided to allow waste to bypass the recovery system with a straight push to the transfer area.

6.3.3 Recovered Materials Storage Area - A totally enclosed storage area shall be provided for storage of all recovered materials. Recovered material will be prepared for shipment in this area. Load-out points will allow for the shipment of all recovered materials to markets.

Source separated materials (including items such as white goods and tires) may be brought into this area for staging or preparation for shipment as required.

6.3.4 Unacceptable Waste Storage Area - Unacceptable waste removed from the waste stream shall have its own storage area. The area shall provide for the segregation and packaging of incompatible materials, appropriate secondary containment, and shall comply with local fire codes for the appropriate occupancy class and DEQ hazardous waste generator standards. Enough space shall be provided to amass sufficient quantities to produce reasonable transport and disposal costs to Metro. Access to transport vehicles shall be available.

6.3.5 Transfer Area - The transfer area is designated to receive all nonrecoverable materials from the receiving and materials recovery areas for transfer to a landfill. Provisions for the direct push of waste from the

waste receiving and materials recovery areas to this area should be included. Appropriate air, dust, and noise suppression equipment should be provided.

The waste to be transported shall be prepared in a manner compatible with Metro's waste transport system. The transfer trailer loading area should be designed for compatibility with the compactor-based system and transfer trailer configuration currently used at other Metro facilities. Adequate maneuvering space should be provided for the transfer trailers to easily back into position to receive the waste. The Facility should also provide a means for the transport vendor to check axle weights on site. Transfer shall take place such that no waste is exposed to the elements, and waste materials do not enter the ground, the groundwater, or any water feature.

6.4 **Site Rendering** - A color site rendering will be provided to show the overall site and facility. The rendering will include the following proposed architectural design features, landscaping, and screening. Metro desires the architectural design to be aesthetically pleasing and attractive. The Facility's exterior design and material type shall be compatible with surrounding uses and local design standards. Applicants are advised to familiarize themselves with the industrial areas in Washington County in considering the appropriate architectural treatment for the Facility. The Facility should be easily identifiable for the public users, but the visual impact should be minimized. The Facility shall be designed to minimize any adverse aesthetic impacts.

Metro will negotiate a mitigation agreement with government entity which has jurisdiction over the successful applicant's proposed site. Applicants should be aware that conditions of the negotiated agreement may address design features of the facility and site contained in this section.

6.5 **Milestone Schedule (1 Page)** Provide a schedule that contains all major events during the project's design and construction.

7. **CAPITAL COST ESTIMATE**

Applicants shall provide a preliminary capital cost estimate in sufficient detail for Metro to determine the cost of major components of the project. The forms with the required cost categories are provided in the Forms section.

8. STRUCTURE OF FACILITY FINANCING

8.1 Bond Financing - Metro will provide tax-exempt bond financing for construction of the Facility on a "conduit basis" with the following terms and conditions:

8.1.1 Limited Obligation Project Bonds - Metro will issue a series of tax-exempt limited obligation revenue bonds (the Bonds) pursuant to the provisions of ORS Chapter 268 and Metro Ordinance No. 89-319 (the Ordinance). The Bonds will be issued so as to constitute a series of Project Bonds within the meaning of the Ordinance.

8.1.2 Loan of Bond Proceeds - Concurrently with the issuance of the Bonds, Metro and the successful applicant will enter into a Loan Agreement pursuant to which Metro will loan the proceeds derived from the issuance and sale of the Bonds to the successful applicant for the purpose of financing the acquisition, construction and installation of the Facility and equipment. Under the Loan Agreement, the successful applicant will be required to make loan repayments in an amount sufficient to pay, when due, principal and interest on the Bonds.

8.1.3 Debt Service Conditional Obligation of Metro - Prior to or concurrently with the issuance of the Bonds, Metro and the successful applicant will enter into a Franchise Agreement which, in addition to other necessary provisions as described in other sections of the Franchise Agreement, will provide that so long as the Facility is being operated in accordance with the terms of the Franchise Agreement, Metro will be obligated to pay the successful applicant a monthly "lump sum" payment. The lump sum payment will be in an amount equal to the debt service on the Bonds, including annual fees associated with any credit enhancement for the Bonds (the Debt Service Component). Metro's obligation to pay the Debt Service Component will be that, so long as the Facility is available for the processing of waste in accordance with the terms of the Franchise Agreement and there is no default by the franchisee under the terms of the Franchise Agreement, Metro will be obligated to pay the Debt Service Component regardless of the number of tons per year Metro sends to the Facility. Metro will be obligated to pay the Debt Service Component out of Net Revenues derived from its solid waste operations, which obligation will rank on a parity with Metro's obligation to pay debt service on its outstanding Solid Waste System Bonds.

8.1.4 Security for the Bonds - The Bonds will be limited obligation revenue bonds payable solely from the Loan Repayments payable under the Loan Agreement described above. The successful bidder will pledge

and assign as security for the Bonds and the Loan Repayments certain of its rights under the Franchise Agreement, including the right to receive the Debt Service Component. In addition, the Bonds will be secured by a mortgage on the Facility and any credit enhancement needed in order to assure a rating on the Bonds as described below. The security for the Bonds may also be pledged, assigned and mortgaged as security for any such credit enhancement device.

8.1.5 Taxable Bonds - To the extent that tax-exempt bond financing is not available for certain costs of the Facility, Metro will issue taxable limited obligation revenue bonds on a conduit basis to finance such costs. The extent (if any) to which the debt service on any such taxable bonds will be included as a component of the lump sum payable by Metro will be a matter for negotiation and will depend on the nature of the costs financed from the proceeds of the taxable bonds.

8.2 Rating - The successful applicant must either 1) have been issued an investment grade rating (defined as a rating of at least BBB by Standard and Poors Corporation and Baa by Moody's Investors Service) or 2) provide a credit enhancement device as a security for the Bonds that will result in the Bonds having at least an investment grade rating by Standard and Poors Corporation and by Moody's Investors Service. The credit enhancement device may consist of a bank letter of credit, municipal bond insurance policy, standby purchase agreement or any similar device that will result in the Bonds being assigned the required rating.

8.3 Alternative Financing - An alternative financing structure developed by the applicant under this RFF shall be considered for a franchise award. If any such alternative financing structure calls for issuance of tax-exempt bonds, such structure must result in bonds being issued that are assigned at least the rating described in Section 8.2, and with Metro as the issuer of such bonds.

8.4 Future Financing - Metro recognizes that over the life of the franchise agreement, changes will occur in material recovery and transfer technology and techniques. Metro further recognizes that it will be in Metro's and the franchisee's best interest to make capital investments which adapt the facility and operations to these changes. Metro will therefore provide a vehicle for future financings of required capital investments to the Facility.

9. **FACILITY OPERATIONS & MAINTENANCE** Metro and the successful applicant will negotiate an operations plan to be included in the franchise agreement which ensures a level of service comparable to other Metro facilities. Contained in the Appendix is a sample operations plan which will constitute the basis of the negotiations. Listed below are the major services which the franchisee will be required to provide, followed by submittal requirements for this portion of the application

9.1 **Facility Management - General** Facility operations and maintenance will include, but are not limited to, the following:

- 1) Mobilization of equipment and personnel onto the site;
- 2) Receiving Acceptable Waste on-site from the public, commercial haulers, and industrial accounts;
- 3) Traffic control;
- 4) The removal of recyclables from public loads by assisting customers;
- 5) Materials Recovery processing of Acceptable Waste;
- 6) Locating markets for recyclables and providing vehicles and personnel to transport the Source-Separated and Recovered Materials;
- 7) Prior to the beginning of each contract year, the Franchisee shall work with the Recovered Materials market to prepare an annual operating schedule as a planning document;
- 8) Handling, compacting, and loading waste on-site;
- 9) Removal, handling and preparation of unacceptable waste for final disposition;
- 10) Operating the Source-Separated recycling area;
- 11) Operation and maintenance of equipment, except weighing system;
- 12) Provision and training of personnel;
- 13) Furnishing of all supplies, materials, equipment, and services for performance of the Contract;
- 14) Grounds and landscape maintenance;
- 15) Litter control on-site, and in Metro designated surrounding areas;

- 16) 24-hour site security;
- 17) Insect, vermin, dust, and odor control;
- 18) At least monthly meetings with Metro to report on progress achieved and any special problems encountered;
- 19) Coordination with other contractors;
- 20) Maintenance of safe operating conditions at all times for all personnel and customers;
- 21) Equipment operator training;
- 22) Demobilization of equipment and personnel from the site upon completion or termination of this Franchise.

9.2 Narrative (10 page maximum)- A written narrative is required to describe how the facility will operate. The drawings developed in section 6 should provide a basis for the descriptions. It must provide a concise description of the functions and methods used to recover and transfer the waste in the facility, as well as descriptions of traffic, personnel and material flows through the facility. Operational procedures and descriptions which achieve the efficient operation of the facility should be highlighted. Include a description of measures taken to mitigate site impacts.

9.3 Itemized Annual Operating Costs - Complete the form for this item and submit it with the application.

9.4 Compactor Installation - This RFF contains projections of acceptable waste which will be delivered to the Facility and the amount of residual waste (post processing) which can be transported to the Riverbend Landfill. Utilizing this data together with projected material recovery, describe the amount of waste which will require landfilling at the Columbia Ridge Landfill (excess waste) over the term of the franchise. If the applicant does not intend to install a compactor during construction, propose how the excess waste will be disposed of in the Metro waste disposal system.

Metro will permit delivery of the excess waste to the Metro South Station, provided such deliveries do not disrupt operations and that the franchisee pays the tip fee for all waste delivered less Metro's administrative component of the fee. All costs associated with transport of excess waste shall be included in the itemized annual operating costs submittal.

Metro will permit financing of a compactor, if and when one is needed, consistent with Section 8.4 (Future Financing) of this RFF.

10. PAYMENT

For all work required under the negotiated Franchise Agreement, Metro will make monthly payments to the Franchisee. These payments shall consist of a payment for the "Capital Financing" costs as described in Section 8 of the RFF; costs associated with the transport and disposition of tires, yard debris and unacceptable waste, and the Material Recovery Incentive payment described in Section 10 of this RFF. In addition, Metro will make unit price payments for each ton of waste received and each ton transported to the Riverbend Landfill.

Unit price payments for each ton of waste received will be based on the per ton price negotiated for each of the ten tonnage categories. The categories are as follows:

<u>Category</u>	<u>Tons Per Month</u>	<u>Cost Per Ton</u>
1	First 5,499 tons per month.	To
2	Additional tonnage from 5,500 through 6,499	Be
3	Additional tonnage from 6,500 through 7,499	Indicated
4	Additional tonnage from 7,500 through 8,499	By
5	Additional tonnage from 8,500 through 9,499	Bidder
6	Additional tonnage from 9,500 through 10,499	\
7	Additional tonnage from 10,500 through 11,499	\
8	Additional tonnage from 11,500 through 12,499	\
9	Additional tonnage from 12,500 through 13,499	\
10	Additional tonnage from 13,500 through 14,499	\

Example: If Category 1 cost per ton was \$15.00, Category 2 was \$14.90, Category 3 was \$14.80, etc. then the total amount for a 14,000 month would be computed as follows:

<u>Category</u>	<u>Tons</u>	<u>Cost Per Ton</u>	<u>Cost Per Category</u>
1	5,499	\$15.00	\$82,485
2	1,000	\$14.90	\$14,900
3	1,000	\$14.80	\$14,800
4	1,000	\$14.70	\$14,700
5	1,000	\$14.60	\$14,600
6	1,000	\$14.50	\$14,500
7	1,000	\$14.40	\$14,400
8	1,000	\$14.30	\$14,300
9	1,000	\$14.20	\$14,200
10	501	\$14.10	\$ 7,064
Total	14,000		\$205,949

These unit prices will be adjusted annually based on a percentage of increase or decrease of the Consumer Price Index (CPI) submitted by the Applicant. Forms for submitting prices and percentage adjustments of the are contained in the Forms section.

In addition, Metro shall conduct a review of the unit price rates every five years to determine an equitable rate of return. Prices may be adjusted as a result of this process.

Applicants shall also submit a price per ton price for transporting waste to the Riverbend Landfill. This price will likewise be adjusted annually by the percentage adjustment used for per ton prices for tonnage categories.

11. **LAND USE APPROVAL** - In order to be considered, Facility sites must have appropriate land use approval. Evidence of such approval shall be submitted in the application.
12. **FLOW CONTROL** - As shown in the Appendix, two service areas have been established for the purpose of managing solid waste in Washington County. This RFF solicits applicants to provide a facility for waste transfer and post collection material recovery capacity for the waste generated in service area #1 which is appropriate for such a facility.

Metro, in conjunction with local governments, will direct appropriate waste to the facility procured under this RFF, up to an annual amount not to exceed 120,000 tons. In addition, Metro may direct waste from outside the service area #1 boundary, but within Washington County, to the facility until a facility is online for service area #2.

Metro reserves the right to alter the service area boundaries designated in this RFF to carry out the intent of Metro's policies as adopted by the Council of the Metropolitan Service District.

13. **CONDITIONS ON AWARD OF A METRO MAJOR FACILITIES FRANCHISE**

The Metro Franchise Code will govern the contract which will result from this Request For Franchise. The Franchise Code is contained in Chapter 5.01 of the Code of the Metropolitan Service District. A copy of the Franchise Code is contained in the Appendix.

13.1 Limitations on Grant of Franchise - The Request For Franchise applications does not commit Metro to the award of a franchise, nor to pay any costs incurred in the preparation and submission any franchise application in anticipation of being granted a Metro franchise. Metro reserves the right to accept

or reject any and all franchise applications, to negotiate with any or all qualified applicants, or to cancel RFF in whole or in part.

13.2 Franchise Agreement - A franchise agreement will be negotiated between Metro and the preferred applicant subject to the requirements and conditions contained in Section 5.01.085 or other pertinent sections of Chapter 5.01 of the Metro Code.

13.3 Franchise Agreement Provisions

Length - Metro intends to enter into a franchise agreement for a period approximately twenty (20) years.

Guarantees - Metro will require guarantees from the preferred applicant to ensure compliance with the negotiated franchise provisions for the term of the agreement. Such guarantees shall include bonds or letters of credit for the construction and operation of the proposed facility as well as for the provision of insurance coverage acceptable to Metro.

Five year financial review - After five years of operation under the franchise agreement, a full review of the operation and maintenance costs and associated revenues will be done. This will be accomplished by a full certified audit or by such means as may be acceptable to Metro. Such financial review will be used to refine or revise the franchise agreement to reflect a rate of remuneration to the franchisee consistent with reasonable industry standards .

Right to Purchase - In the event of a default of the franchise agreement which results in the inability of the facility to continue operations, Metro shall have the option to purchase the real and personal property, or any interest therein, of the Franchisee, which the Franchisee uses in performance of his duties and responsibilities under the Franchise Agreement with Metro. Valuation of the such real and personal property shall not include any sum for the value of the franchise, goodwill or any other intangible value.

Foreign Contractor - A preferred applicant that is not domiciled or registered to do business in Oregon must comply with ORS 279.021, which requires filing of a report with the Department of Revenue.

Subcontractors/Disadvantaged Business Program - Metro has made a strong commitment to provide maximum opportunities to Disadvantaged and Women-Owned Businesses when contracting for goods or services. If portions of the work are subcontracted, the successful applicant agrees to work with Metro staff during negotiations to reach the goal of subcontracting seven percent (7%) of the total contract amount to Disadvantaged Business Enterprises (DBEs), and three percent

(3%) of the total contract amount to Women-Owned Business Enterprises (WBEs) or to make good faith efforts, as defined in Metro's Disadvantaged Business Program (Section 2.04.160 of the Metro Code), to reach the goals. The franchise application documents submitted must contain a fully completed Disadvantaged Business Program Compliance form contained in the Forms section. All questions regarding DBE/WBE requirements, should be directed to Rich Wiley, Metro's Procurement Officer.

Non-Collusion Affidavit - The successful applicant will be required to sign such an affidavit prior to entering into the franchise agreement with Metro. A sample affidavit is contained in the Forms section.

Prevailing Wage - Construction of the transfer and material recovery facility will be construction of a "public works" as defined in ORS 279.348(3), subject to the prevailing rate of wage provisions of ORS 279.350. The successful applicant must agree to comply with Oregon's prevailing wage statutes to the extent those provisions apply. A copy of the applicable regulations is contained in the Appendix.

Regulatory Compliance - Applicants will be responsible for obtaining, paying for and complying with all regulatory requirements, including but not limited to ORS 279.310-320.

13.4 Applicant's Understanding - Metro will make available to prospective applicants any information that is available regarding the work described in this RFF. Metro assumes no responsibility whatever in respect to the sufficiency or accuracy of such information. It is the responsibility of the applicant to satisfy itself as to the conditions relating to the execution of the work.

13.5 Confidentiality of Applications - At the request of an applicant, Metro will take reasonable steps to protect the confidentiality of a submitted application, and will not release such application to the public unless ordered to do so by a court of competent jurisdiction. Once Metro selects a preferred applicant and enters into negotiations, the selected application becomes a public record. In that instance, Metro can only prevent disclosure of those portions of the application that contain "trade secrets" or are otherwise exempt from disclosure under ORS 192.501 or 192.502. Metro will make a good faith effort to protect the confidentiality of any portion of the preferred applicant's franchise application that is exempt from disclosure under Oregon's public records law.

14. APPLICATION INSTRUCTIONS

A. **Submission of Applications** Applications should be printed double-sided on post consumer recycled content paper and if bound, a re-usable binding is preferred. Five (5) copies of the proposal shall be furnished to Metro addressed to:

Chuck Geyer, Project Manager
Metropolitan Service District
Solid Waste Department
2000 S.W. First Avenue
Portland, Oregon 97201-5398

B. **Deadline** - Proposals will not be considered if received after the close of the business day, _____, _____, 1991.

C. **RFF as Basis for Applications** This RFF presents the most definitive statement Metro will make concerning information upon which proposals are to be based. Any verbal information which is not contained in this RFF, or subsequently provided in writing by Metro as part of a clarification or addendum, shall not be considered as information from Metro on which to base a proposal. All questions relating to the RFF, or the project in general, must be submitted in writing to Chuck Geyer. Any questions which in the opinion of Metro warrant a written clarification or RFF addendum will be furnished to all parties receiving a copy of this RFF. Metro will not respond to questions received after 10 days prior to the deadline for submission.

15. APPLICATION CONTENTS

The application should describe the ability of the applicant to perform the work requested. To facilitate the evaluation of applications, Metro wishes that all applications adhere to the format outlined below.

A. **Transmittal Letter** - Indicate who will be the project manager, that the application will be valid for one hundred and sixty five (165) days after the submittal date; and state the name, title, address, and telephone number of an individual or individuals with authority to contractually bind the company during the period in which Metro is considering applications. The letter should also provide an overview of the applicant's approach. The overview should include key dates regarding the start of construction and facility availability (4 pages maximum).

B. Organizational Structure - Describe the organizational structure under which this project will be accomplished. Whether multiple firms will be utilized for different parts of the work and the relationships among them. Include a description of the relationships between these firms and Metro.

C. Experience/Qualifications - Submit the project manager's qualifications. In addition, identify the specific personnel assigned to major project tasks and submit their qualifications. Designate which tasks will be done by subcontractors and submit their qualifications.

List and describe projects that the proposing firm and team has conducted that are similar to the work required for this project. Identify persons on the proposed project team who worked on each project and their respective roles.

For each project, include the name of a client contact person, his or her title, their role in the project and telephone number. Metro intends to contact these references.

D. Functional Design Requirements - As described in Section 6, site plan drawing, material flow diagram, and transfer and recovery building layout drawing, site rendering and project milestone schedule.

E. Capital Cost Estimate - Utilizing the form provided in the Forms section, provide a capital cost estimate. Indicate whether the estimate complies with the accuracy requirement of Section 7.

F. Facility Financing - Indicate whether applicant intends to utilize the financial arrangements described in Section 8.1 and 8.2 or whether an alternative financing structure will be used. If the Metro structure will be used, indicate which portions of the proposed debt will be tax exempt and which portion will be taxable. Describe the credit enhancement device proposed. Submit financial statements for the last four years. For the most recent year, the financial statement must either have been audited or reviewed by a certified public accountant.

Submit audited financial statements for the last four years.

G. Facility Operation and Maintenance - Provide a brief (10 page maximum) operations and maintenance plan for the facility. Submit itemized annual operating costs estimates utilizing the forms contained in the forms section. Submit schedule for the generation of excess waste as described in Section 9.4, and compactor installation date (if any).

H. **Payment** - Utilizing the forms contained in the Appendix, submit proposed prices for each of the 10 tonnage categories, the percent adjustment, and the per ton transport cost.

I. **Land Use** - Submit evidence that the proposed site has appropriate land use approvals. Address the remaining issues contained in Section 11. Utilize the traffic analysis as appropriate.

J. **Permit Requirements** - List the regulatory approvals required to build and operate the facility including a description of any investigation already completed and required to obtain approvals.

- Provide copies of approvals already obtained.
- Description of any lands, easements or services which would have to be acquired in addition to those already owned by the applicant. Status of those acquisitions.
- Submit the Traffic Impact Analysis and list regulatory approvals required as a result of improvements indicated by the TIA.

K. **Franchise Requirements** - Applicants shall submit evidence of compliance with the criteria contained in Metro Franchise Code for Major Disposal System Components (5.01.085).

L. **Exceptions and Comments** - Applicants wishing to take exception to, or comment on the any aspect of this RFF are encouraged to document their concerns in this part of their proposal. Exceptions or comments should be succinct, thorough, and organized. Such comments or exceptions should encompass the proposed insurance requirements contained in the Appendix.

16. EVALUATION OF APPLICATIONS

A. **Evaluation Procedure** - Applications will be evaluated by a selection committee based upon information and criteria provided under this RFF. Additional information and/or clarification of the applications may be requested and utilized by Metro. Oral interviews with the highest-ranked applicant(s) may also be required by the committee prior to selecting an applicant and commencing with franchise negotiations. The evaluation period will not exceed 45 days.

B. Evaluation Criteria - This section provides a description of the criteria which will be used to evaluate applications submitted to accomplish the work described in the RFF. Applications will be ranked in relation to both the criteria and to other applications received.

1. **Experience/Qualifications** Applicants will be ranked considering the qualifications and experience of the proposed team in providing similar services requested under this RFF.
2. **Technical Strength** The committee will assess the technical strength of both the proposed design and operational plan in accomplishing the work described in the RFF.
3. **Cost** Vendors will be ranked according to acceptability of their proposed financial structure and the rate resulting from both capital and operating costs. The rate will be compared to the rate which results from a publicly financed facility utilizing the methodology and assumptions contained in the "Policy and Technical Analysis for: The Washington County System Plan".
4. **Land Use Compatibility** Applications will be evaluated only if submitted with appropriate land use approvals.
5. **Compliance with Franchise Code** Each applicant must provide sufficient information in its application for Metro to evaluate the application in the context of:
 - 1) Compliance with the Regional Solid Waste Management Plan.
 - 2) The proximity of the applicant's proposed facility to existing and planned solid waste disposal facilities.
 - 3) The type and quantity of waste that existing facilities receive and the type and quantity of waste that planned facilities will receive.
 - 4) The capacity of existing and planned solid waste disposal facilities.
 - 5) The type of vehicles that existing facilities receive and the type of vehicles that planned facilities will receive.
 - 6) The hauling time to the proposed facility from waste generation zones established by Metro.

17. NEGOTIATIONS

After selection of the top-ranked applicant, Metro will enter into negotiation of the Franchise Agreement for a period not to exceed 120 days. During this period, Metro and the applicant will work closely to finalize the Franchise Agreement language, capital and operating costs, and preliminary design of the facility. The basis for the negotiation will be the applicant's submittal.

Since Metro wishes to participate in the design process, Metro and the applicant will enter into a design agreement which defines the parties respective roles and the design products which will be completed prior to the end of the design period. Costs incurred by the applicant during this phase will be reimbursed as specified in the design agreement if negotiations are unsuccessful. If negotiations result in an executed franchise agreement, design costs incurred will be repaid as part of the financed costs.

The applicant will be responsible to provide a project team that will be able to add design, procurement, estimating and construction management services required to finalize all segments of the negotiations. Metro will provide expertise to represent its interest and to ensure input is given in a timely and unambiguous manner. Review and approval of the design by Metro will be required before negotiations are complete. The design portion of the negotiation phase will produce a project schedule, final estimate, payment milestones and schedule, and a preliminary design.

In addition, negotiations will be considered successful only if the cost of the project is less than or equal to a publicly procured facility and proof of acceptable credit enhancement for Metro-issued bonds is supplied. If negotiations are successful, the Executive Officer of Metro will recommend to the Council award of the Franchise Agreement.

18. PROJECT ADMINISTRATION

This phase of the project is the implementation of the Franchise Agreement. During the construction and startup phase of the project, Metro will have a continuing role similar to its design role during negotiations.

Metro will be given the opportunity to review and comment on all design documents including drawings, specifications, studies and calculations. Periodic meetings with the franchisee's design team will be held to review the project's progress and to ensure that the work is proceeding in accordance with the Franchise Agreement and agreed preliminary design. Changes in the design and scope of the project will require Metro approval if the change affects the intent, performance and/or cost of the project.

Construction, the procurement of equipment, materials and services will be done on a competitive basis. Metro reserves the right to review any of the bid documents and monitor the process to the extent necessary to ensure that the project is progressing in accordance with the procedures and budget approved during negotiations. Any sole source items will require prior approval by Metro.

Metro will provide periodic onsite monitoring of the construction of the facility and will require copies of the franchisee's construction management reports. If Metro determines that construction is not proceeding according to approved plans and specifications, Metro will have the right to withhold payments.

Requests for changes that arise during construction that affect the intent of agreed upon design or the capital cost, must be reviewed and approved by Metro.

Once the facility is ready for initial operations, the acceptance of the facility will begin. Since Metro will have been involved and had input throughout the project, acceptance and final payment from loan proceeds will be based on completion of punch list items and startup of installed systems.

Forms

Preliminary Capital Cost Estimate

The preliminary capital cost estimate is intended to provide sufficient detail of the proposed facility's cost to enable Metro to evaluate whether or not the facility can be designed, procured and constructed for that total. Below is an explanation of the estimate form.

The direct costs are physical items that are shown on the proposal drawings. Items are grouped into categories that are similar (ex. site work, buildings.....). Each of the categories contains individual major items (ex. scale house, truck wash ...) Large items will be broken down further to provide sufficient detail. Each of these items includes all of the materials and labor to construct or install the item.

The following describes the general parameters for each category:

- Site work - includes all development of the site not included in the other categories
- Buildings - cost for the complete building including all excavation for foundations, foundations, structure, siding, roofing, fixtures, finishes, utilities within the building,
- Process equipment - includes all major fixed equipment and their foundations.
- Rolling Stock - includes all major mobile equipment.
- Utilities - includes all utilities distributed on the site up to the point that they enter a building or piece of equipment.
- Offsite Improvements - includes any improvements to the area surrounding the site (i.e., traffic control, highway improvements, etc.).

Indirect costs are expenses that are required to execute the project but are not allocated to a specific item or category. These costs are usually calculated as a percentage of the direct costs.

Contingency is an amount of money that will be spent on the project for undefined expenses that were not accounted for in the early development stages of the project. It will be 30% for this estimate.

FORM

PRELIMINARY CAPITAL COST ESTIMATE			
DIRECT COST	\$/UNIT	QUANTITY	TOTAL AMOUNT
SITE WORK			
Land	/acre		
Demolition	/unit		
Earth work	/yd ³		
Grading	/unit		
Drainage	/unit		
Paving	/ft ²		
Landscaping	/ft ²		
BUILDINGS			
Recovery/Transfer	/ft ²	---	---
Foundations	/yd ³		
Slab	/ft ²		
Structure	/ft ²		
Fire Protection	/unit		
Electrical	/unit		
HVAC	/unit		
Plumbing	/unit		
Scalehouse	\$ 200 /ft ²	500ft ²	\$100,000.
Source-separated depot	/ft ²		
Truck wash	/ft ²		
Maintenance area storage	/ft ²		
Yard debris	/ft ²		
General office area	/ft ²		
Unacceptable Waste Storage Area	/ft ²		
Metro Office area	\$100/ft ²	600ft ²	\$60,000
PROCESS EQUIPMENT			
Scale	each		
Compactor	each		
Material recovery equipment (list seperately)	each		
	each		
	each		
	each		

(continued)

PRELIMINARY CAPITAL COST ESTIMATE

ROLLING STOCK (list separately)

Front End Loader	each		
Forklift	each		
Bobcat	each		
	each		
	each		
	each		

UTILITIES

Electricity	/unit		
Water	/unit		
Sewer	/unit		
Fire water	/unit		
Gas	/unit		

OFFSITE IMPROVEMENTS

SUBTOTAL			

INDIRECT COSTS (Overhead)

Permitting	%		
Project management	%		
Consultant fees	%		
Engineering fees	%		
General construction	%		
SUBTOTAL	%		
CONTINGENCY	30%		
TOTAL			

PROPOSED PER TON O&M PAYMENT

<u>Category</u>	<u>Tons Per Month</u>	<u>Cost Per Ton</u>
1	First 5,499 tons per month.	\$ _____.
2	Additional tonnage from 5,500 through 6,499	\$ _____.
3	Additional tonnage from 6,500 through 7,499	\$ _____.
4	Additional tonnage from 7,500 through 8,499	\$ _____.
5	Additional tonnage from 8,500 through 9,499	\$ _____.
6	Additional tonnage from 9,500 through 10,499	\$ _____.
7	Additional tonnage from 10,500 through 11,499	\$ _____.
8	Additional tonnage from 11,500 through 12,499	\$ _____.
9	Additional tonnage from 12,500 through 13,499	\$ _____.
10	Additional tonnage from 13,500 through 14,499	\$ _____.

PROPOSED PER TON RIVERBEND HAUL PAYMENT \$ _____.

PROPOSED PERCENT OF THE CPI ADJUSTMENT ____%

DISADVANTAGED BUSINESS PROGRAM COMPLIANCE FORM

(To be submitted with Proposal)

Name of Metro Project: _____

Name of Proposer: _____

Address: _____

Telephone: _____

In accordance with Metro's Disadvantaged Business Program, the above-named Proposer will make good faith efforts to work with Metro to maximize the use of DBE/WBE subcontractors.

Authorized Signature

Date

NON-COLLUSION AFFIDAVIT

SAMPLE

STATE OF _____)
County of _____) ss.

I state that I am _____ (Title) of _____ (Name of Firm) and that I am authorized to make this Affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this Bid.

I state that:

(1) The price(s) and amount of this Bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder, except as disclosed on the attached appendix.

(2) That neither the price(s) nor the amount of this Bid, and neither the approximate price(s) nor approximate amount of this Bid, have been disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before Bid opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a Bid higher than this Bid, or to submit any intentionally high or noncompetitive Bid or other form of complementary Bid.

(4) The Bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Bid.

(5) _____ (Name of Firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as listed and described on the attached sheet.

I state that _____ (Name of Firm) understands and acknowledges that the above representations are material and important, and will be relied on by _____

(Name of Public Entity) in awarding the contract(s) for which this Bid is submitted. I understand and my firm understands that any misstatement in this Affidavit is and shall be treated as fraudulent concealment from _____ (Name of Public Entity) of the true facts relating to the submission of Bids for this Contract.

Name of Company/Position

Sworn to and subscribed before me this ____ day of _____, 1989.

Notary Public for _____

My Commission Expires: / /

ITEMIZED ANNUAL OPERATING COSTS
(1991 Dollars)

A. FACILITY OPERATING PERSONNEL

<u>Job Title</u>	<u>No. of Personnel</u>	<u>Price (\$000)</u>	<u>% of Total</u>
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
Subtotal	_____	_____	

Note: Above operating personnel pricing includes a fringe benefit multiplier of ____ %.

B. UTILITIES (as applicable)

1.	Electricity	_____
2.	Water	_____
3.	Natural Gas	_____
4.	Fuel Oil	_____
5.	Sewer	_____
6.	Other _____	_____
	Subtotal	_____

C. FACILITY MAINTENANCE

1.	Supplies	_____
2.	Spare Parts	_____
3.	Other _____	_____
	Subtotal	_____

Price (\$000)

% of Total

**D. ACCEPTABLE WASTE RECEIVING AND
PROCESSING EQUIPMENT MAINTENANCE**

1. Facility Supplies
2. Materials Recovery System Supplies
3. Facility Spare Parts
4. Materials Recovery System Spare Parts
5. Other _____

Subtotal

E. BUILDING MAINTENANCE

Subtotal

F. CONTRACT SERVICES (specify)

1. Legal
2. Accounting
3. Janitorial
4. Other _____

Subtotal

G. EQUIPMENT RENTALS OR LEASES (specify)

1. Rolling Stock
2. Other _____
3. Other _____

Subtotal

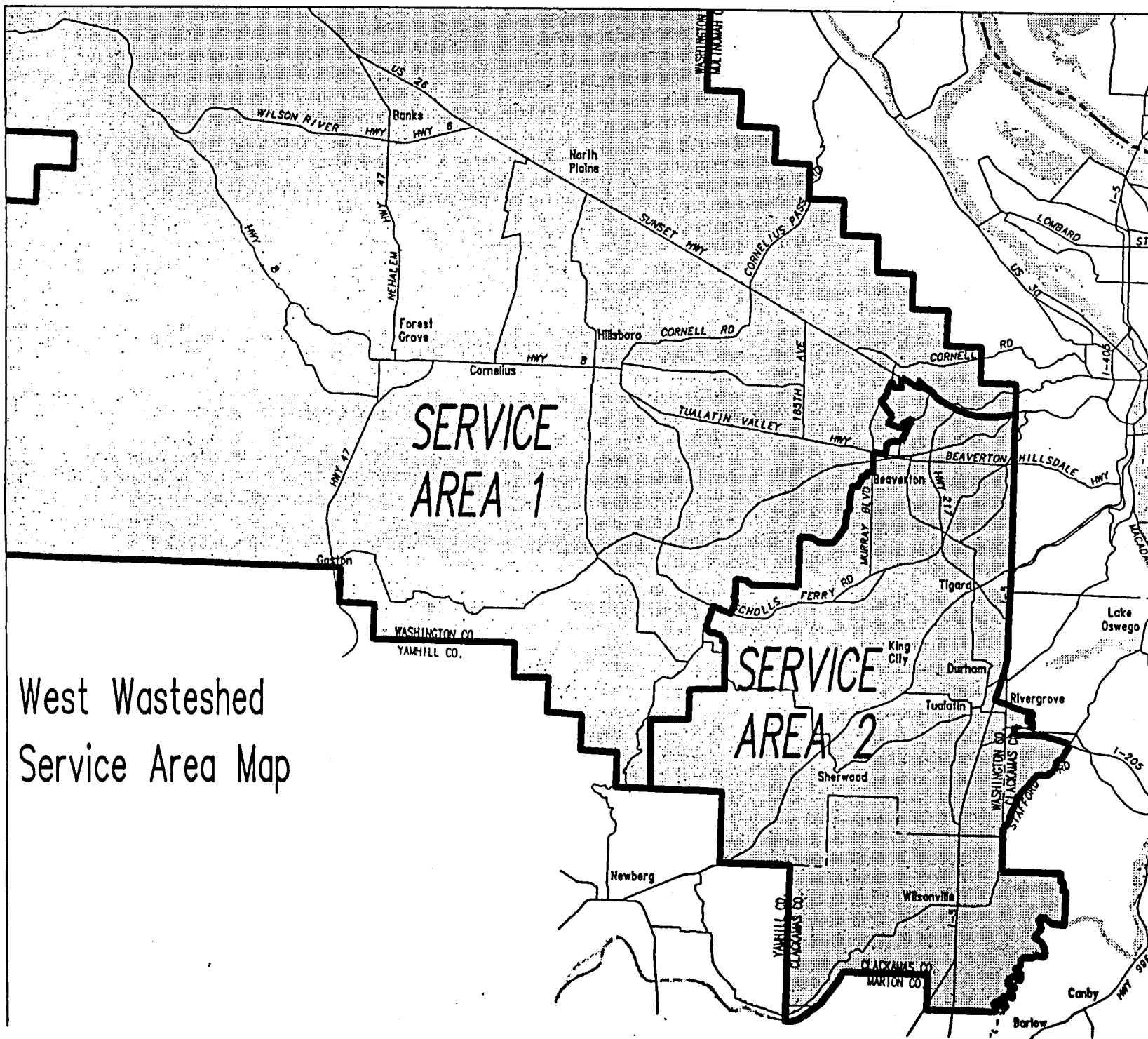
H. EQUIPMENT REPLACEMENT FUND

I. INSURANCE (Annual Premium Cost)

J. DIRECT OPERATING SERVICES COSTS (A-I)

Appendix

Service Area Map



Proposed Operations Plan

Proposed Operations Plan

FACILITY OPERATIONS & MAINTENANCE Metro and the successful applicant will negotiate an operations plan to be included in the franchise agreement which ensures a level of service comparable to other Metro facilities. Listed below are the requirement of the operations plan which will constitute the basis of the negotiations.

1. FACILITY MANAGEMENT

1.1 **General** Facility operations and maintenance will include, but are not limited to, the following:

- 1) Mobilization of equipment and personnel onto the site;
- 2) Receiving Acceptable Waste on-site from the public, commercial haulers, and industrial accounts;
- 3) Traffic control;
- 4) The removal of recyclables from public loads by assisting customers;
- 5) Materials Recovery processing of Acceptable Waste;
- 6) Locating markets for recyclables and providing vehicles and personnel to transport the Source-Separated and Recovered Materials;
- 7) Prior to the beginning of each contract year, the Franchisee shall work with the Recovered Materials market to prepare an annual operating schedule as a planning document;
- 8) Handling, compacting, and loading waste on-site;
- 9) Removal, handling and preparation of unacceptable waste for final disposition;
- 10) Operating the Source-Separated recycling area;
- 11) Operation and maintenance of equipment, except weighing system;
- 12) Provision and training of personnel;
- 13) Furnishing of all supplies, materials, equipment, and services for performance of the Contract;
- 14) Grounds and landscape maintenance;

- 15) Litter control on-site, in Metro designated surrounding areas;
- 16) 24-hour site security;
- 17) Insect, vermin, dust, and odor control;
- 18) At least monthly meetings with Metro to report on progress achieved and any special problems encountered;
- 19) Coordination with other contractors;
- 20) Maintenance of safe operating conditions at all times for all personnel and customers;
- 21) Equipment operator training;
- 22) Demobilization of equipment and personnel from the site upon completion or termination of this Franchise.

1.2 **On-Site Personnel** The Franchisee shall provide sufficient on-site personnel to ensure efficient operation, maintenance and management of the Facility. During periods of sickness and vacation, additional personnel must be available to provide the staff necessary for the continued and uninterrupted operation and maintenance for the Facility in the most efficient manner.

The Franchisee shall meet the following minimum personnel requirements during normal hours (6:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 6:00 p.m. on Saturday and Sunday):

- One superintendent or foreman who shall be considered the representative of the Franchisee in charge of work;
- Equipment operators in sufficient number to provide the necessary Facility work, Materials Recovery, refuse compaction and loading, and all other operating or maintenance work requiring the use of equipment, all in accordance with the Contract documents;
- Laborers in sufficient number to assist in the control of traffic, unloading of refuse, control of debris, maintenance of the site, recovery of recyclables from public loads, the processing of recyclables for shipment to markets including the stripping of appliances, and the checking of receipts from all customers;

- Laborers in sufficient number to maintain, clean, and ensure safe operation of the recycling station and to control traffic, direct the unloading of recycling material and control debris at the recycling station.
- Additional personnel as may be required based on seasonal fluctuations and weekend vs. weekday operations. The Franchisee is responsible for identifying such trends and adjusting the number of personnel as required at no additional cost to Metro.

1.3 Operations Reporting Requirements The Franchisee shall establish and maintain an information system to provide storage and ready retrieval of Facility operating data.

The Franchisee shall prepare and maintain proper, accurate, and complete records and accounts of all transactions related to the Facility (except for Scalehouse functions). These shall include, but not be limited to (as applicable): maintenance records, equipment replacement records and schedules, and safety and accident reports; quantity of Acceptable Waste delivered to the Facility; quantity of Source-Separated recyclable materials received and sold; quantity of Recovered Materials produced and sold; quantity of compacted waste loaded for transport to disposal; and quantity and type of Unacceptable Waste handled. Metro will have complete access to all such records.

The Franchisee shall provide Metro with monthly reports within ten calendar days of the end of each month, including, but not limited to, the following operating data (as applicable):

- 1) Complaint forms and recommended actions;
- 2) Any extraordinary occurrences affecting Metro;
- 3) Status of operating equipment;
- 4) Any correspondence between the Franchisee and governmental bodies relevant to the Contract;
- 5) Reports on accidents and their status;
- 6) Monthly sales of Recyclable Materials (by material and price):
 - A) Monthly sales of post-collection Recovered Materials (by material and price);
 - B) Monthly sales of Source-Separated Materials (by material and price);

- 7) Monthly quantity of waste compacted and loaded for transport to disposal by facility);
- 8) Quantity and type of Unacceptable Waste;
- 9) Financial data and utility consumption as deemed appropriate by Metro.

The Franchisee shall prepare an annual report subject to independent audit that incorporates a summary of the monthly operations reports for the preceding 12-month period summarizing all required data and records. This report shall be submitted to Metro within 90 days after the end of each contract year.

1.4 Facility Performance Review and Inspection In conjunction with the review of the Franchisee's annual report, Metro, at its own expense, will review records of Facility performance over the previous contract year and inspect the Facility. The primary objective of this annual review and inspection will be to verify that the Facility is operating at its design level.

The annual performance review will consist of an audit of all Facility operating records for the previous contract year. The annual inspection will consist of: 1) an inspection of the physical plant with emphasis on safety and hazard mitigation; 2) a test of all instrumentation used for determining Facility performance; 3) a review of plant and equipment maintenance and replacement records; and 4) determination of continued efficiency and optimal operation of the Facility based on evaluation of the Facility material recovery rate.

The Facility Materials Recovery Rate will be based on post-collection Recovered Materials and Source-Separated drop-off materials (including Yard Debris).

Within 30 days following the annual performance review and inspection period, Metro will issue to the Franchisee a summary of all findings.

Notwithstanding the annual review and inspection, the Franchisee shall permit inspection of the work by Metro, its representatives, and governmental authorities having jurisdiction over the Work, at all times. Directions from the inspector to the Franchisee shall be carried out in accordance with the specifications and plans contained in these Contract documents. Failure to carry out the instructions rendered by the inspectors shall be the basis for withholding monthly payments.

Instruction from inspectors do not relieve the Franchisee of any responsibility or liability associated with his/ her operations. The Franchisee shall remain fully responsible for all injuries, accidents, and other mishaps associated with his/her operation. If the Franchisee believes that the inspector's directive would cause damage, injury, or that it conflicts with this document, the Franchisee should notify

Metro by telephone to protest the directive prior to acting, and confirm said protest in writing as soon as possible.

Metro will inform the Franchisee which of Metro's employees will be responsible for routine inspections, and what authority such inspectors will have.

1.5 Contingency Plans/Safety and Emergency Response Training The Franchisee will submit contingency plans to Metro for approval.

1.5.1 Contingency Plans, General

The general contingency Plan will comprehensively provide for:

- Emergency operating procedures in the event of a work stoppage by any of the Franchisee's employees;
- Emergency bad weather operating procedures; and
- Contingency in event of equipment failure. Plans must include time frame for the implementation of the plan, and the sources for, and description of replacement equipment. Contingency plans must be approved by Metro.

1.5.2 Contingency Plans, Emergency The Franchisee shall provide to Metro a comprehensive plan for the Facility and transfer trailers (while at the site) designed to minimize hazards to human health and the environment; damage to buildings and the site; and the interruption of normal transfer station operations; due to:

- Fires;
- Explosions;
- Release of hazardous substances; and
- Discovery of Unacceptable Waste.

The contingency plan must include:

- A description of actions Facility must take in response to the items listed above;
- Evidence of arrangements with local emergency response agencies setting forth what services will be rendered by each agency in the event of an emergency;
- Names and telephone numbers of all persons who are designated as emergency coordinators by the Franchisee. Emergency coordinators

must be at the Facility and easily communicated with by telephone or radio within five (5) minutes of an emergency. Emergency coordinators must be thoroughly familiar with all parts of the contingency plan and direct emergency response drills at least twice per year; and

- A diagram of the location and intended use of all emergency equipment.

1.5.3 Safety and Emergency Response Training Program An employee safety orientation and training program will be implemented prior to completion of the Facility, and will continue throughout the term of the Franchise. The Facility manager will designate a member of the staff to serve as the Facility safety coordinator. The coordinator will be responsible to guide and direct the Facility's safety program. Specifically, the coordinator will be responsible for the implementation of the following program requirements:

- 1) Orientation for new employees on the Facility safety program and emergency contingency plan, as well as basic personal safety instruction;
- 2) Regularly scheduled safety meetings;
- 3) First aid instruction for all members of the staff;
- 4) Specific instruction for operators and maintenance personnel regarding the hazards associated with the chemicals utilized at the Facility and the location of information concerning each (in compliance with the Federal Hazard Communication Standards);
- 5) Fire prevention and fire fighting instruction;
- 6) Instruction to all personnel about how to detect Suspicious and Unacceptable Waste before and after it is unloaded into the pit, and identification and ability to prove responsibility in a court of law who disposed the waste;
- 7) Instruction concerning procedures for effective Cleanup and management of Suspicious Waste and/or Unacceptable Waste once it is detected in the collection vehicles, tipping area, or transfer trailers;
- 8) Instruction concerning detailed procedures to effectively respond to emergency situations and implement the emergency contingency plan;
- 9) Routine inspection and testing program for all safety and emergency related equipment and protective devices, the results to be discussed at the monthly meeting;

- 10) Thorough investigation of all accidents to ascertain the cause and methods of preventing their reoccurrence;
- 11) Employee Safety Manual will be issued to each member of the staff for use in training sessions and personal reference;
- 12) Posting of safety bulletins or posters concerning accidents, hazards, or hazardous conditions occurring elsewhere in the industry;
- 13) Routine walk-through inspections conducted by the Franchisee through all areas of the Facility seeking out potential or current safety hazards, including permanent equipment and building features; and
- 14) All applicable OSHA standards will be observed.

2. **FACILITY OPERATIONS** The operations will be conducted in accordance with the technical specifications outlined in these documents, and any regulatory permits or requirements. The period of operations will begin no later than 12:01 a.m. on January 1, 1993 and will continue to 11:59 p.m. on December 31, 2013.

2.1 **Definitions**

A) **Acceptable Waste** means any and all solid waste, as defined in ORS 459.005(18) as follows:

"all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semi-solid wastes, dead animals and other wastes, but the term does not include:

- a) Hazardous waste as defined in ORS 466.005.
- b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals."

B) **Hazardous Waste** (see Exhibit 9.1 at the end of Definitions) includes, but is not limited to:

1. Any waste that is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous waste," pursuant to any state or federal law, including, but not limited to, the Resource

Conservation and recovery Act, 42 USC 6901, et seq. as amended and the regulations promulgated thereunder; or

2. Any waste that contains polychlorinated biphenyls or any other substance whose storage, treatment or disposal is subject to regulation under the Toxic Substances Control Act, 15 USC 2601, et seq. as amended and the regulations promulgated thereunder; or

3. Any waste that contains a "reportable quantity" of one or more "hazardous substances," as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq. as amended and the regulations promulgated thereunder (as of December 31, 1988) and as defined under Oregon Law, ORS 466.605 et seq. and regulations promulgated thereunder; or

4. Any waste that contains a radioactive material the storage or disposal of which is subject to state or federal regulation.

C) Infectious Medical Waste means waste resulting from medical procedures which may cause or is capable of causing disease such as:

1. Biological waste, including blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, including solid or liquid waste from renal dialysis and waste materials reasonable contaminated with blood or body fluids.

2. Cultures and stocks of etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures; wastes from production or biologicals; and serums and discarded live and attenuated vaccines. Cultures under this subsection do not include throat and urine cultures.

3. Pathological waste, including biopsy materials and all human tissues and anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures; animal carcasses exposed to pathogens in research; and the bedding of the animals and other waste from such animals. Pathological waste does not include formaldehyde and other preservative agents.

4. Sharps that have been removed from their original sterile containers, including needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes.

- 2.2 General The Franchisee shall have the exclusive right and sole responsibility for the operation of the Facility and for coordinating the Facility operations with the Recovered Materials market for the full term of the Franchise Agreement. Prior to the beginning of each year, the Franchisee shall work with the Recovered Materials market to prepare an annual operating schedule as a planning document.

The services provided by the Franchisee shall be performed in accordance with all state, federal, and local regulations.

The Franchisee shall conduct his/her activities so as to maximize coordination with any Metro-designated party, and to minimize loading and unloading time spent at the Facility, in a cost effective manner.

Once the Facility is closed each day the Franchisee must continue operations until all putrescible waste is removed from the receiving area.

The Franchisee is responsible for all operation and maintenance costs associated with equipment except the weighing system. The Franchisee shall be responsible for all damage to the Facility and its equipment, and shall repair or replace any such damage in a timely manner at no additional charge to Metro.

All storage of equipment, materials, vehicles, and supplies shall be in designated storage areas only. Litter from the Facility's operations shall not be allowed off-site and shall be minimized and controlled on-site. The Facility Site shall be cleaned of litter on a daily basis.

To abate odors, a comprehensive program of manual and machine cleaning equipment, tipping areas, and platforms in the Facility, combined with disinfection and vector control procedures, should be followed.

- 2.3 Waste Flow and Hours of Operation The Facility will be open for the commercial haulers, and industrial accounts from 6:00 a.m. to 6:00 p.m., Monday through Friday, and for public self-haul from 8 a.m. to 6 p.m. on Saturday and Sunday, except for Christmas Day and New Year's Day. Commercial and industrial accounts will also be permitted to use the Facility on weekends. Metro reserves the right to prohibit or limit the type(s) of accounts which may use the Facility. Public self-haul accounts are those customers who pay cash for disposal of solid waste.

The Franchisee shall not be entitled to any reimbursement, under any provisions of these specifications or the General Conditions, for costs or revenue losses due to a reduction by Metro in the hours of operation or type of accounts which may use the Facility. For any increase in the hours of operation, by Metro, the Franchisee shall be entitled to additional payment. Metro shall provide the

Franchisee with 15 days written notice of any change in hours of operation or types of accounts which may use the Facility.

Once the Facility is closed each day the Franchisee must continue to provide services and equipment until all the Acceptable Waste has been processed or removed from the Facility.

- 2.4 Acceptance of Acceptable Waste The Franchisee shall operate the Facility to receive regular deliveries of Acceptable Waste on a seven-day per week basis from packer trucks, transfer vehicles, compactor-type vehicles, large dump trucks, and private citizen vehicles. The Franchisee shall accept all waste which is delivered to the Facility, except waste which is Unacceptable Waste as defined in this Contract.

Metro employees, operating the scalehouse, shall make all determinations regarding fees to be paid by haulers using the Facility.

Each commercial Acceptable Waste hauling vehicle shall be weighed upon entering the Facility to determine the net weight of Acceptable Waste delivered. The empty or tare weight of each commercial vehicle shall be established and recorded so that the vehicles will not be required to re-weigh each time after unloading. The tare weights must be determined at least twice each year without advance notice to the vehicle owners or drivers.

All Recovered Materials, compacted waste, and Unacceptable Waste shall be weighed prior to removal from the Facility. This data will provide checks on the Facility efficiency and known quantities for Materials Recovery and landfilling.

The Franchisee shall be required to accept all Metro Acceptable Waste specified in the Agreement unless it is unable to operate because of planned downtime at the Facility.

- 2.5 Unloading of Refuse The Franchisee shall be responsible for directing onsite traffic to the appropriate waste tipping area. Metro may direct the flow of traffic at any time for any purpose.

- 2.6 Compaction, Transport, and Loading of Waste The Franchisee is responsible for the provision of equipment and personnel, loading of waste and its transport to the Riverbend Landfill for that portion of waste as projected in Figure 5E. Once the waste requiring landfilling exceeds the 8% allocation of the region's waste, the Franchisee will install compaction equipment and load the waste into Metro's Waste Transport Service Contractor's vehicle in accordance with the procedures presented below, or, at the Franchisee's own expense, transport and unload the excess waste at the Metro South Station. The Franchisee will be required to pay the tip fee at Metro South Station, less the tier 1 user fee component.

The Franchisee is responsible for moving an empty transfer trailer from the staging area to the compactor, extruding an untied bale of waste into the transfer trailer (or container), installing a seal on the transfer trailer (or container) door handle and returning the sealed transfer trailer (container) to the staging area with applicable documentation.

The Franchisee is responsible for producing road legal weights, and for unloading and balancing loads which are found to be out of compliance with appropriate regulations. Certified scales will be used to make such a determination.

Each seal shall be marked with three letters identifying the Facility, the Franchisee, and a sequentially increasing set of at least four digits.

Example: FGS-CON-0000

The operator shall also record the container I.D.# using a bar code reader located in the loading area. The transfer trailer seal will be inspected by both the Waste Transport Contractor and Franchisee prior to shuttling of the trailer to the staging area by the Waste Transport Contractor.

It is the responsibility of the Waste Transport Services Contractor to ensure that the seal was properly installed before the transfer trailer leaves the staging area. The Waste Transport Services Contractor is responsible for inspecting the empty transfer trailers for damage before release to the Franchisee, inspecting the loaded transfer trailers for damage and verifying that the seal was installed properly before removing the transfer trailer from the Facility, transporting the Load of Waste from the Facility to the Gilliam County Landfill, and then unloading it.

If the Franchisee improperly installs the seal, the Waste Transport Services Contractor is required to notify the Franchisee prior to leaving the Facility and request a new seal. The Franchisee shall comply with any such requests. Failure to request a new seal will preclude Waste Transport Services Contractor from any recovery for damages arising out of any improperly installed seal. The Waste Transport Services Contractor and Franchisee shall use an interchange agreement for inspection of transfer trailers, or a similar agreement as approved by Metro. In addition, the Waste Transport Services Contractor can request removal of the seal to inspect the interior of the transfer trailer, its contents, and request and receive a new seal from the Franchisee.

Once the transporter has verified that the seal is properly installed the waste contained within the transfer trailer is the responsibility of the transporter until the seal is broken by the Disposal Site operator. If the seal is broken by other than Disposal Site personnel, the transporter will be responsible for all associated costs and liabilities involved with managing any waste contained within the transfer trailer, above and beyond normal disposal costs.

Metro reserves the right to contract with other parties, other than the Waste Transport Services Contractor, for the transport of waste. Such contracts with other parties shall not entitle the Franchisee to additional payment.

2.6.1 Maximizing the Compacted Load The Franchisee shall use best faith effort to maximize the transporter's payload, without overloading the transfer trailer. The Franchisee is responsible for removing waste as necessary to correct loads which exceed the length and/or weight capabilities or the transporter. Maximum payload shall be no more than 32 tons at a density of 900 lbs/cu. yd. The weights should be verified with the axle scales available on the Facility Site.

The Franchisee shall be entitled to a bonus per the formula below, for maximizing the Waste Transport Services Contractor's payloads. The bonus is an attempt to share Metro's transportation cost savings resulting from transporting loads at average densities greater than 28 tons (or 790 lb/cu. yd. in the compactor).

COMPACTION MAXIMIZATION BONUS

1. Base tonnage (BT) = (Loads/Mo.) x 28 tons
2. Tons transported (TT) = Tons transported per month
3. Bonus tons = (TT-BT) + (Bonus tons from previous month)

If "bonus tons" is greater than zero, the Franchisee receives a per ton bonus equal to 50 percent of the Franchisee's Unit Price per ton payment for each "bonus tons" for that month, and "bonus tons from the previous month" is equal to zero for the following month. If "bonus tons" is less than zero, then it is carried forward in equation 3 as "Bonus tons from previous month" to reduce any "bonus tons" accrued during the following month.

2.7 Suspicious or Unacceptable Waste The Franchisee shall inspect all waste delivered to the Facility in a manner which is reasonably necessary to determine whether or not such waste is Unacceptable Waste as that term is defined in this document. The Franchisee shall implement inspection procedures which at a minimum should include the following:

- A. Waste that is received at the Facility shall be visually inspected as it is being tipped. Visual inspection shall be done by at least one person, whose primary duty is to monitor the tipping of waste. A communication device shall be provided that will allow communication between the inspector and the equipment operator in the waste receiving area; and

- B. Metro shall randomly select two Loads of Waste delivered to the Facility each day. The selected waste hauler shall be instructed to dump approximately four cubic yards of waste in a specific separated area for inspection by the Franchisee's designated inspector. The hauler should be encouraged to wait for the inspector to finish manually searching through the waste;
- C. Records will be kept for each load physically inspected, and for any instances when Unacceptable Waste has been delivered to or found on the Facility Site. These records shall include, at a minimum, time, date, name of hauling firm, name of driver, source of waste, vehicle identification numbers, type and quantity of hazardous waste found, and any other observations made by the inspector. A Metro employee and the inspector will both sign the record form to verify that the waste inspected or found was delivered by the named hauler; and
- D. Inspectors shall be trained to spot suspicious and Unacceptable Waste. Inspectors must be knowledgeable of the identifiable characteristics of Unacceptable Waste, the distinctive markings on containers of Unacceptable Waste, and available field and laboratory tests to detect Unacceptable Waste. Inspectors shall also be trained in documenting the person or persons who disposed of the Unacceptable Waste by methods sufficient to prove responsibility in a court of law.

2.7.1 Testing and Management of Suspicious Waste The Franchisee shall manage any Suspicious Waste delivered to the Facility in accordance with all requirements of the law, and shall cause to be performed any testing of the Suspicious Waste which is reasonably necessary to determine whether or not the waste is Unacceptable Waste.

Metro will reimburse the Franchisee for fifty percent (50%) of any testing and management costs which the Franchisee reasonably incurs under this section if test results determine the waste to be Acceptable Waste. Refer to the following section for reimbursement conditions if test results determine the waste to be unacceptable.

2.7.2 Management and Reimbursement of Unacceptable Waste If any inspection or testing performed or caused to be performed by the Franchisee (or any governmental authority or agency having jurisdiction over Unacceptable Waste) reveals that any waste which is delivered to the Facility is Unacceptable Waste, the Franchisee shall perform the Cleanup of such Unacceptable Waste in accordance with all requirements of law. Metro will reimburse the Franchisee for one hundred percent (100%) of the Cleanup (see definitions) costs which the Franchisee reasonable incurs under this section, except as provided in (E) below.

When the Franchisee detects that Unacceptable Waste has been unloaded at the Facility the Franchisee shall at a minimum:

- A. Use good faith efforts to identify the person or persons who dumped the Unacceptable Waste by methods which are generally accepted as sufficient to prove responsibility for disposal by a preponderance of the evidence;
- B. Require the person or persons who dumped the Unacceptable Waste to perform the Cleanup of the Unacceptable Waste immediately, and in a manner which minimizes contamination of the Facility and Acceptable Waste, minimizes risk of damage to persons or the environment and is in accord with state and federal regulations;
- C. If the responsible person(s) is unknown or, in the Franchisee's judgement, incapable of complying with the requirements as specified above, then the Franchisee shall perform the Cleanup of the Unacceptable Waste immediately, and in a manner which minimizes contamination of the Facility and Acceptable Waste, minimizes risk of damage to persons or the environment and is in accord with state and federal regulations;
- D. Notify Metro as soon as possible; and
- E. If the Cleanup of the Unacceptable Waste is not carried out, as specified above, within a reasonable time, Metro shall cause the Cleanup to be performed at the Franchisee's expense.

2.7.3 Conditions and Limitations on Reimbursement The following conditions shall apply to the Franchisee's right to any reimbursement under Section 2.6 of these specifications:

- A. The Franchisee shall use good faith efforts to identify, by methods which are generally accepted as sufficient to prove responsibility for disposal by a preponderance of the evidence, the person or persons who are responsible for the Unacceptable Waste for which the Franchisee seeks reimbursement for expenses associated with the Cleanup of such Unacceptable Waste;
- B. The Franchisee shall preserve and protect any and all evidence which may assist Metro in proving ownership of or responsibility for the Unacceptable Waste;

- C. The Franchisee shall fully document the Franchisee's actual costs and the reasonableness of the Franchisee's actual costs for testing and managing Suspicious Waste and for Cleanup of Unacceptable Waste;
- D. Metro's reimbursement to the Franchisee pursuant to this section is limited to costs which are considered reasonable by Metro, or result from arbitration pursuant to the General Conditions;
- E. The Franchisee must prove by clear and convincing evidence that the Franchisee used reasonable care in its inspections and other measures described in Section 2.6 to prevent such Unacceptable Waste from being dumped in the Facility;
- F. Any other conditions precedent or limitations upon reimbursement established by the Contract remain valid; and
- G. The Franchisee shall comply with Section 2.6 of these Specifications.

2.7.4 General Limitation on Metro's Liability Except as otherwise provided in Section 2.6 of these Specifications, Metro shall have no duty to reimburse the Franchisee for nor to hold harmless, indemnify, nor defend the Franchisee against any claims, demands, suits, damages, penalties, charges, judgments, liabilities, or losses of whatsoever character or kind which may arise directly or indirectly from or are in any way connected with any negligent acts or omissions of the Franchisee which relate to the management or disposal of Unacceptable Waste.

2.7.5 Refusal of Waste by the Franchisee The Franchisee may refuse to accept any waste at the Facility if the Franchisee can demonstrate that acceptance of this waste is prohibited by current state or federal regulations, the solid waste permit, or is an Unacceptable Waste as defined in the Contract. The Franchisee shall immediately notify Metro's scalehouse personnel in writing of this refusal, including the justification. For any portion of the waste which has been unloaded, the Franchisee shall follow the procedures specified under the section for "Suspicious and Unacceptable Waste" in the Contract. Records must be kept by the Franchisee which contain the following information regarding the party which unloaded the waste: date, time, vehicle license number, company and/or the individual's name and address, conversation regarding waste, and approximate volume.

2.7.6 Materials Excluded from Compaction It is the responsibility of the Franchisee to load the compactor so it will function properly without jamming, puncturing the compactor or container walls, causing fire, explosion, or any other damage. In general, materials of concern such as those listed below should either make up a minimal portion and be placed

in the middle of the load or be excluded/removed, to avoid problems. The following is a partial list of those materials the operator should either exclude/remove or exercise appropriate caution during the loading procedure. Materials listed in item #1 should be excluded from the compactor and the Franchisee shall receive additional compensation for their proper disposal (the Franchisee must use best faith efforts to identify generator) if they cannot be recycled. Materials listed in terms #2 shall be accepted and managed with appropriate caution during the loading procedure, unless they occur in quantities which exclude them under other sections of this Contract.

A. Construction debris (large structural timber or steel), engine parts, car axles, and other materials may puncture the walls of the transfer trailer, container, or compactor. Concrete or rock (greater than 3 feet in diameter) or large stumps. Tires. Flammables such as aerosol cans, thinners, and paints. Explosives and semi-explosives.

B. Sheetrock and cement in large quantities may cause jamming.

2.7.7 Franchisee's Responsibility for Shipped Waste The Franchisee shall become responsible for all costs associated with the Cleanup and proper management of Unacceptable Waste that has been loaded into a transfer trailer or container, properly sealed and transported to a Disposal Site. If the seal is broken upon arrival at the Disposal Site, the Franchisee shall not be reimbursed by Metro for any cost associated with the Cleanup of the Unacceptable Waste or any material contaminated by it at the Disposal Site.

2.8 Safety and Emergency The Franchisee shall make available to the Metro's employees upon request all information about the safety and emergency program and a copy of the training material. The Franchisee shall be responsible for the occupational health and safety of all persons employed by the Franchisee.

If death, or serious injuries or serious damages are caused by an accident, the accident shall be reported immediately by telephone or messenger to Metro. In writing to Metro all accidents whatsoever arising out of, or in connection with the performance of the work whether on, or adjacent to, the site, giving full details and statements of witnesses.

If a claim is made by anyone against the Franchisee or any subcontractor on account of any accident, the Franchisee shall promptly report the facts in writing to Metro, giving the details of the claim.

- 2.9 **Traffic Control** The Franchisee shall have responsibility for controlling the movement of traffic on-site and off-site if needed. This shall include the optimal use of queuing lanes and unloading spaces, and the provision of personnel to direct traffic. Traffic-related noise on the facility site shall be minimized by enforcement of on-site speed limits.

The Franchisee shall assist all disabled vehicles and remove them from the traffic ways if necessary.

- 2.10 **Security** The Franchisee is responsible for 24-hour site security, 365 days a year, to ensure no unauthorized entry and/or facility misuse. The Franchisee shall make good all damages resulting from his/her failure to provide adequate security.

- 2.11 **Source-Separated Public Recycling Station** The Franchisee shall be required to maintain, clean and operate the recycling station on a daily basis. The recycling station shall act as a storage/processing area for recyclable materials which are separated prior to entering the Facility, as a place to High-grade White Goods for recycling, and receive recyclables which are recovered from public loads. The recycling station will handle: glass, tin cans, mixed ferrous, mixed non-ferrous, aluminum, newspaper, used motor oil, corrugated cardboard and kraft paper, yard debris, lumber, tires, white goods and car batteries.

All Source-Separated materials will be stored in containers. The Franchisee shall provide sufficient labor and equipment to:

- A. Recover recyclables from public loads which are not Source-Separated, by informing the customer of the materials' recyclability and asking them to set the materials next to their vehicle;
- B. Remove Source-Separated recyclables from public loads in the Facility unloading area, to containers in the recycling station;
- C. High-Grade White Goods;
- D. Assure the materials are properly prepared for market;
- E. Assure sufficient containers are available for use;
- F. Transfer materials in filled containers to market and/or processing center;
- G. Maintain all Facility's equipment;
- H. Keep the recycling station free from litter and contaminated material at all times.

Metro wishes to encourage the maximum recovery of recyclables possible, and therefore, will allow the Franchisee to keep the revenues from all Source-Separated materials. The Franchisee shall report monthly the volume of materials, by type, recovered.

The Franchisee shall select the markets/brokers. The Franchisee shall be fully responsible, at his/her own expense, for transportation of Source-Separated materials to market. No Source-Separated recyclables brought to the Facility will be placed in the tipping area.

As a principal recyclable, Yard Debris must be accepted at the Facility. Metro will be responsible for its transport and processing at a Yard Debris facility. The Franchisee is responsible for providing an area for unloading and storage of the material, and the loading of the transporter's equipment.

Metro will arrange for and be responsible for all costs associated with removing Yard Debris and tires from the site.

The Franchisee shall not be entitled to additional compensation for the loss of or fluctuations in recycling revenues due to actions taken by Metro.

- 2.12 Materials Recovery Compensation Metro will compensate the Franchisee for Recycled Materials recovered from the mixed waste stream in the amount of the avoided costs of transportation and disposal as determined by Metro. Materials Recovery compensation will be adjusted annually as a part of Metro's annual performance review and inspection summary.

The Franchisee is responsible for finding markets and transporting the Recovered Materials, at his/her own expense, to the markets.

- 2.13 Preferential Treatment The Franchisee shall not, by act or omission, discriminate against, treat unequally, or prefer any user of the Facility in the operation of the Facility. Preferential treatment within the site will be considered a default by the Franchisee and a breach of the Franchise.

- 2.14 Fire Control The site shall be provided with fire control equipment. Any additional or replacement equipment required for fire protection, and any maintenance shall be the responsibility of the Franchisee. The equipment shall be tested in accordance with manufacturer's guidelines and any applicable local requirements. The Franchisee shall provide 24-hour monitored alarm service for the system in place.

- 2.15 Vector Control The Franchisee shall conduct the operation of the Facility in a manner considered unfavorable for attracting or breeding rodents and insects.

Strict adherence to these specifications and operation procedures will reduce the potential problems to a minimum. In the event that rodent and insect activity become apparent to Metro, supplemental vector control measures will be initiated by the Franchisee at his/her expense, with the approval of the Department of Environmental Quality. Semi-annual inspections by a certified exterminator shall be conducted at the Franchisee's expense and a copy of the findings will be forwarded to Metro. Metro may direct the Franchisee to undertake any recommended actions by the exterminator, at the Franchisee's expense.

2.16 **Odor, Dust, and Noise Control** The Franchisee shall control odor and dust on the site by use of the installed dust control system whenever excessive dust and odor occur or at the direction of Metro. Alternative dust and odor control measures may be performed by the Franchisee with the approval of Metro. The Franchisee's equipment will be operated within limits of noise regulations.

2.17 **Weighing and Billing System** The weighing and billing system located at the scalehouse will be the responsibility of Metro. Maintenance of the scalehouse and Metro administration building and the provision of janitorial services will be the responsibility of the Franchisee. The Franchisee shall coordinate his/her activities with Metro personnel. The Franchisee shall provide and maintain an alternative radio communication link between Metro's personnel and the Franchisee's spotters in the Facility.

Metro will be responsible for the operation of the weighing and billing system, and for admitting public, commercial haulers, and industrial accounts into the Facility. The Franchisee shall not be allowed to operate the weighing and billing system, and shall not be responsible for maintenance of the system's equipment, except for cleaning of the scale pit semi-annually.

2.18 **Litter Control** The Franchisee shall conduct a daily litter cleanup covering the entire Facility Site before 10:00 a.m. each day. In addition, the Franchisee shall collect litter on Tuesdays and Saturdays on all streets used to access the Facility within a reasonable distance of the Facility to ensure:

- All visible, unconcealed litter greater than one square inch in size shall be collected and bagged;
- Bulky items may be separately set along the roadside for collection by the Franchisee that same day;
- Work crews are properly supervised to reduce chances of accidents;
- Full litter bags are to be transported from the roadside to the Facility, there shall be no disposal charge for this litter;

- That all required permits are secured and coordination made with local jurisdictions and agencies; and
- Workers will not obstruct traffic.

The Franchisee may elect, with the approval of Metro, to contract with a community group for local litter collection; however, the Franchisee is ultimately responsible for all litter collection. The Franchisee shall also respond and collect any litter reported, the same day the report is received.

- 2.19 **Transfer Station Equipment** It is the intent of these specifications to ensure that adequate equipment suitable for arduous, heavy-duty service in connection with a solid waste Facility is utilized by the Franchisee. The equipment utilized must be specifically designed for the use intended. Modified or "built-up" equipment will not be acceptable. The Franchisee shall properly protect the equipment and place it in the charge of competent operators.

The Franchisee shall make his/her own determination of the number and type of equipment needed to achieve compliance with the Contract document.

- 2.20 **Permits** The Franchisee shall be responsible for obtaining all necessary approvals and permits, complying with all applicable regulations, for the services rendered under this Contract including, but not limited to appropriate land use approvals, DEQ solid waste permit and hazardous waste generator I.D. number as defined under OAR 340-102. Copies of all current permits and conditions shall be submitted with the Application, together with a timetable for obtaining necessary permits not yet approved. Land use approvals must be obtained prior to submission of the Franchise Application.

Any penalties levied by the regulatory agencies for Permit noncompliance due to negligent operation or omission by the Franchisee, shall be paid by the Franchisee.

It is the responsibility of the Franchisee to implement any testing programs required by a permit. One such example is the Industrial Wastewater Discharge Permit, which requires:

- Continuous recording of flow;
- Daily grab samples of pH and temperature;
- Monthly composite samples of: BOD, oil and grease, total suspended solids, phenolic compounds, and metals of concern.

Lab costs for the analysis of the samples shall be the responsibility of the Franchisee. The Franchisee shall be responsible for cooperating with any changes

in law and additional conditions, as required, to remain in compliance with any permits.

- 2.21 Temporary Fuel Storage The Franchisee may supply temporary fuel storage on-site for Facility equipment at a location and design approved by Metro. The Franchisee must meet all code and regulatory requirements for installation, transfer, and storage.
- 2.22 Utilities All utility charges, including water/sewer, electricity, and telephone, shall be the responsibility of the Franchisee.
- 2.23 Coordination The Franchisee shall be responsible for coordinating its activities with the Waste Transport Services Contractor.

Coordination meetings will be held monthly to review the progress of the work, discuss operational problems and procedures, and complaints. It will be the responsibility of the Franchisee to prepare for and respond to complaints, charges, and allegations brought against him/her prior to this meeting. The Franchisee shall also be required to present a monthly report summarizing activities during the prior month and plans and schedules for future activities. The organization of and invitation to the meeting will be the responsibility of Metro.

3. FACILITY MAINTENANCE

The Franchisee shall have sole responsibility for maintaining the Facility in good working order and condition. The Franchisee shall be responsible for the maintenance and repair of all equipment and facilities, including the scalehouse (except for the weighing system), and all plumbing, mechanical, and electrical systems and components, all landscaping, drainage structures, all fixtures and devices related thereto which form a part of, or are installed therein. All stationary equipment shall be suitably painted and/or finished so as to present an acceptable appearance in the opinion of Metro. The Franchisee shall plan, schedule, and control preventative maintenance to ensure minimum equipment downtime.

A reporting system shall be instituted to log all preventative maintenance activities and to confirm that the planned work has been performed. The maintenance log shall also record all corrective maintenance activities, including all equipment failures (identifying the failed unit), and recording the necessary action taken.

The Franchisee shall prepare and maintain a schedule for replacement of major equipment based on the best available data regarding useful life of the equipment. This replacement schedule shall be revised, updated, and submitted to Metro as Facility operating history becomes available.

3.1 Buildings The buildings shall be maintained in good condition at all times. Painted surfaces on the interior and exterior shall be repainted by the Franchisee as needed.

The Franchisee shall be responsible for inspection, lubrication, adjustment, repair, and maintenance of all building systems (including the Scalehouse) to include, but not necessarily be limited to, plumbing, sumps, fixtures; heating, ventilating, and air conditioning systems, components, and devices; fire and dust suppression systems; radio communications equipment. Any item, component, or device which is lost, damaged, destroyed, or which fails during the Contract period shall be replaced by the Franchisee at no cost to Metro with a new item, component, device, or fixture of the same type and quality.

The Franchisee will be required to test water quality in all sumps twice per year at the direction of Metro at no additional cost. This does not need to additionally be done if it is already required by permits.

3.2 Weighing System Maintenance and repair of weighing system scales and associated equipment will be performed by Metro at no expense to the Franchisee. The Franchisee shall be required to clean the scale pits semi-annually.

3.3 Commercial and Industrial Vehicles Truck Wash The Franchisee shall operate and maintain the truck wash, including: the inspection of the truck wash sump; cleaning as needed or at least weekly; daily general cleanup of the area; and weekly removal of all accumulated solids from catch basins. Hoses must be maintained in operable condition and nozzles must be attached to hoses at all times. Brooms, hoses, and trash cans should be regularly replaced. The Franchisee shall be responsible for maintaining the sewer lines from the truck wash, and for all other parts of the truck wash as well, including their replacement.

3.4 Drives and Pavements

Repair, replacement, patching, and remarking of drives and pavements inside and outside of structures, but within the Facility's boundaries, shall be the responsibility of the Franchisee, as needed or directed by Metro.

3.5 Street Cleaning and Maintenance The Franchisee shall daily remove all ferrous metal from the roadway and from all roads used by customers, the truck wash, Facility Site area and the entrance.

The same area will be kept clean by high pressure washing with water, power broom or other street cleaning equipment approved by Metro. These areas must be cleaned at least one time per week or as often as necessary, as determined by Metro.

The Franchisee shall be responsible for painting and maintaining traffic direction lines on the roadways from the scalehouse. There will be two different colored lines, one leading into the public area, and the other into the commercial area.

3.6 Housekeeping The Franchisee shall:

- Steam clean the interior and exterior of the main building with Metro-approved chemicals at least annually from the time the operation commences, and at one month prior to the completion of the Contract;
- Clean all surfaces of accumulated dust within the main building on a weekly basis

Work and vehicle maneuvering areas within the Facility shall be swept and hosed daily, at a minimum, and washed with detergent if necessary. Volatile materials shall be properly stored in covered metal containers. Wastes shall be removed daily and shall not be buried or burned on the site or disposed of into storm drains or sanitary sewers.

The Franchisee shall supply all equipment, supplies, and labor for cleaning.

3.7 Janitorial Services Janitorial services to maintain all offices, rest rooms, conference room(s), break room(s), and foyer of the main building, as well as the Scalehouse, will be regularly provided by the Franchisee. Such services may include vacuuming, dusting, sweeping, mopping, cleaning, buffing floors, stripping and waxing floors, emptying the trash, cleaning windows, scrubbing carpets, cleaning bathroom sinks, toilets, and counters, replacing toilet tissue and paper towels, replace and clean doormats, and provide all janitorial and cleaning supplies as needed.

3.8 Landscape Maintenance Landscape maintenance activities are to be regularly undertaken in the area immediately surrounding the Facility. Such activities may include, but not be limited to: planting, weed control, turf maintenance, mulching, mowing, irrigating, mechanical weed control, maintaining turf, pruning, tree staking, and clearance of drainage ways.

Recommended Insurance Coverage

RECOMMENDED INSURANCE COVERAGE

- A. **General.** The Franchisee shall provide from insurance companies acceptable to Metro the following coverage:

Before commencing work under this Franchise, the Franchisee shall furnish Metro with certificates of insurance specified herein, in the amount of \$3,000,000, naming Metro, its officers, employees, and agents an additional named insured and showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statements:

1. Policies shall be considered as primary insurance and exclusive of any insurance carried by Metro and the insurance endorsed by this certificate shall be exhausted first, notwithstanding the fact that Metro may have other valid and collectible insurance covering the same risk.
2. Policies shall not be canceled, reduced in coverage, nor materially altered until after sixty (60) day's written notice of such cancellation, reduction or alteration in coverage shall have been received by Metro.
3. No act on the part of the insured shall affect the coverage afforded to Metro under the insurance covered by this certificate.
4. Policies consist only of insurance on an occurrence basis, not on a claims-made basis.

The Franchisee shall immediately increase the amounts of insurance required to reflect any changes in Oregon Law to ensure that the insurance provided shall cover, at a minimum and in addition to, the designated insurance requirements listed below, the maximum limits under the Oregon Tort Claims Act, or any other applicable tort claims act.

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

Designated Insurance Requirements

Limits

- 1.) a. Workers' Compensation covering all employees who are engaged in any work under the Franchise (including subcontractor's employees).

Statutory
(State/Federal)

The Franchisee shall require its Workers' Compensation carrier to provide Metro with an endorsement for waiver of subrogation.

Designated Insurance Requirements

Limits

- | | | |
|----|---|-------------|
| b. | U.S. Longshoremen and the Harbor Workers Acts (USL+H) coverage covering all employees who are engaged in any applicable work under the Franchise. | Statutory |
| c. | Federal Employees Liability Act (FELA) coverage, extended to include "Jones Act" -- i.e., captains and crews of vessels, covering all employees who are engaged in any applicable work under the Franchise. | \$1,000,000 |
| d. | Employers' Liability including bodily injury caused by disease. | \$ 500,000 |
- 2.) Broad Form Comprehensive General Liability, covering bodily injury, property damage, and personal injury with automatic coverage for premises, completed operations and product liability.
- | | | |
|----|---|--|
| a. | Policy must be endorsed with contractual liability coverage | \$1,000,000 per occurrence/aggregate combined single limit bodily injury and property damage |
|----|---|--|
- 3.) Comprehensive Automobile Liability including Owned, Non-owned and Hired Vehicles:
- | | | |
|----|------------------------------------|--|
| a. | Bodily injury (inc. death) | \$1,000,000 per occurrence/aggregate combined single limit bodily injury and property damage |
| b. | Property damage (a and b coverage) | |
- 4.) Umbrella Coverage - to achieve a total coverage of \$3 million
- 5.) Special "All Risk" Property Insurance written on an "agreed amount" basis naming Metro as an insured equal to the replacement cost of the facility coverage shall include:
- | | |
|----|--|
| a. | Earth movement and flood |
| b. | Business interruption for a minimum of \$1,000,000 |
| c. | Extra expenses for a minimum of \$1,000,000 |

- d. Demolition expense
- e. Increased cost of construction

6.) Boiler and machinery coverage naming Metro as an insured for a minimum of \$1,000,000.

7.) Environmental Impairment Liability in the amount of \$1,000,000 covering emissions, discharges, dispersals, disposals, releases, escapes or seepages of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials, irritants, and contaminants that spoil the land, atmosphere, or water. Franchisee may provide evidence of such insurance by:

- a. Commercial insurance certificate
- b. Self-insurance bond
- c. Self-insurance letter of credit

B. When activities of the Franchisee are to be accomplished within a public or private right-of-way requiring special insurance coverage, the Franchisee shall conform to the particular requirements and provide the required insurance.

The Franchisee shall include in its liability policy all endorsements that the said authority may require for the protection of the authority, its officers, agents, and employees. Insurance coverage for special conditions, when required, shall be provided by the Franchisee at its own expense at no additional cost to Metro.

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

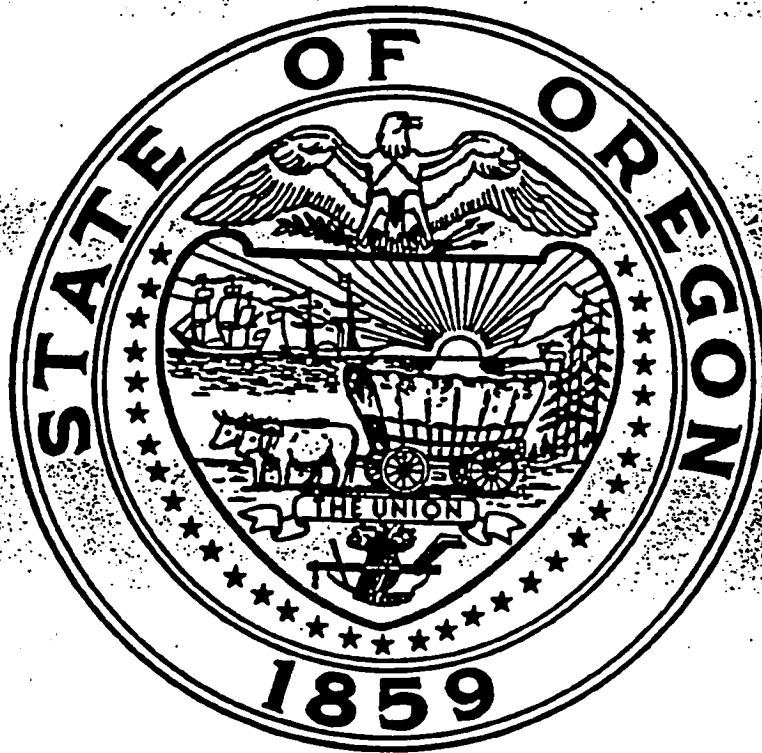
D. Maintenance of insurance by the Franchisee as specified in this Article shall constitute the minimum coverage required and shall in no way lessen or limit the liability or responsibility of Franchisee under this Franchise and the Franchisee may carry, at its own expense, such additional insurance as it deems necessary.

Prevailing Wage Requirements

PREVAILING WAGE RATES

for

Public Works Contracts in Oregon



BOLI

Mary Wendy Roberts
Commissioner
Bureau of Labor and Industries

Effective January 1, 1991



BUREAU OF LABOR AND INDUSTRIES

Mary Roberts, Commissioner

January 1, 1991

This booklet contains the Prevailing Wage Rates for the building and construction trades in the State of Oregon. These rates are effective Jan 1, 1991. These rates have been amended in accordance with ORS 279.348 through ORS 279.365.

Prevailing Wage Rates are the minimum wages that must be paid to all workers employed in the construction, reconstruction, major renovation or painting of any public works. Copies of these rates must be incorporated into all bid specifications when the advertisement for a public works contract is issued. A provision that Prevailing Wage Rates be paid must also be put in the contract. The rates in effect at the time the bid specifications are first advertised are those that apply for the duration of the project, with one exception: if during the bidding process the Prevailing Wage Rates change, the public contracting agency has the option of amending the bid specifications to reflect such changes.

If you identify any errors in the rates published, please bring them to the attention of the Prevailing Wage Rate specialist in Portland (229-6655). If you have any questions about the manner in which the Prevailing Wage Rates are enforced, contact the Wage and Hour Division in Portland (229-5750).

MARY WENDY ROBERTS

Commissioner

Bureau of Labor and Industries

PORTLAND
1400 SW 5th Avenue
Portland, Oregon 97201

MEDFORD
700 E. Main
Medford, Oregon 97504

SALEM
3865 Wolverine St. NE; E-1
Salem, Oregon 97310

COOS BAY
320 Central Ave., Suite 510
Coos Bay, Oregon 97420

BEND
1250 NE 3rd, Suite B105
Bend, Oregon 97701

EUGENE
165 E. 7th Street, Suite 220
Eugene, Oregon 97401

PENDLETON
700 SE Emigrant, Suite 240
Pendleton, Oregon 97801

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ANNOUNCEMENT

The Prevailing Wage Rates contained in this booklet generally reflect those rates determined for Oregon by the Secretary of Labor of the United States pursuant to the Davis-Bacon Act; certain changes have been made to better reflect prevailing practices in Oregon. Pursuant to ORS 279.348 to ORS 279.365, these rates have been adopted for use on public works contracts in Oregon. If you have specific questions regarding how rates are determined or if you would like a copy of this booklet, please contact:

Prevailing Wage Rate Analyst
Bureau of Labor and Industries
P.O. Box 800,
Portland, OR 97207-0800
(503)229-6655

The first copy is free. Additional copies are available for 75¢ each.

GENERAL INFORMATION

Information in this section and in the "Commonly Asked Questions" is meant to provide a convenient reference to Oregon's Prevailing Wage Rate Law. It is in no way a complete statement of the laws and rules.

If you have questions about the enforcement of Prevailing Wage Rates, please contact the Wage and Hour Division. Division offices may be reached at the following phone numbers:

Bend	388-6330
Eugene	686-7623
Medford	776-6201
Pendleton	276-7884
Portland	229-5750
Salem	378-3292

Apprentices and Trainees

Apprentices and trainees may be employed on public works. To qualify as an apprentice or trainee, the worker must be registered in a bonafide apprenticeship or training program of the U.S. Department of Labor, Bureau of Apprenticeship and Training (BAT) or with any State Apprenticeship and Training Agency recognized by BAT. The apprentice or trainee is to receive all fringe benefits and a percentage of the journeyman's wage rate; the appropriate percentage shall be determined by the apprenticeship or training committee. All other workers must receive rates as published.

Zone Pay

In certain trades, the basic hourly rate of pay progressively increases based upon the distance between the job site and a designated landmark; this is commonly referred to as zone pay. To determine the hourly wage, find the correct zone based on the number of road miles the job site is from the closest designated city (based either on distance from city hall or from geographical center of the city, depending on the trade) and add the amount for that zone to the basic hourly rate. Zone pay, unlike travel pay, is the basic hourly wage upon which overtime is computed.

Bid Specifications

The specifications for every public works contract must include the current Prevailing Wage Rates in effect at the time the specifications are first advertised. A statement incorporating the existing rates by reference will not satisfy this requirement (ORS 279.352).

NOTE: If a public agency fails to include the Prevailing Wage Rates in the contract specifications or fails to include in the contract the provision that Prevailing Wage Rates must be paid, the liability for any unpaid prevailing wages could be exclusively that of the agency.

Fringe Benefits

Payments for fringe benefits are in addition to the basic hourly rate. Fringe benefits means the amount for:

- a) medical or hospital care; pensions on retirement or death; compensation for injuries or illness resulting from an occupational activity, or insurance to provide any of the foregoing;
- b) unemployment benefits, life insurance, disability and sickness insurance or accident insurance;
- c) vacation and holiday pay;
- d) defraying costs of apprenticeship or other similar programs; and
- e) other such bona fide benefits.

NOTE: For the purpose of Prevailing Wage Rates, fringe benefits do not include any benefits which may be required by federal, state or local law (e.g. Workers' Compensation, Unemployment Insurance, etc.).

Fringe benefits may be paid to the worker in cash or to a third party administering a fringe benefit program. When an hourly rate in excess of the required prevailing base rate is paid, the amount by which the rate is exceeded may be credited toward payment of fringe benefits.

Overtime

Workers employed on a public works job for more than eight hours in a day or 40 hours in a week must be paid overtime for each additional hour so worked (ORS 279.334). Overtime is calculated at no less than one and one-half times the basic hourly rate as determined by the Commissioner of Labor (not including fringe benefits which are paid at the straight rate for every hour worked). In the computation of overtime, travel pay does not need to be included but zone pay differentials do.

Work performed on Saturday, Sunday or legal holidays must also be compensated at time and one-half. Legal holidays for purposes of Prevailing Wage Rates include the following: 1) New Year's Day on January 1; 2) Memorial Day on the last Monday in May; 3) Independence Day on July 4; 4) Labor Day on the first Monday in September; 5) Thanksgiving Day on the fourth Thursday in November; 6) Christmas Day on December 25.

NOTE: Contractors who are signatory to a collective bargaining agreement may be subject to different overtime requirements (ORS 279.334[3]).

Certification of Payroll

The law requires every contractor and subcontractor to file certain information on wages paid to each worker employed on a public works contract. This statement must completely and accurately reflect payroll records for the work week immediately preceding the submission. A contractor or subcontractor must complete and submit the certified statement contained on Form WH-38 as well as the information required on the weekly payroll side of the form. A copy of Form WH-38 and instructions for completing it are included in the back of this booklet; xeroxed copies may be used for filing.

The schedule for submitting payroll information is as follows: once within 15 days of the date the contractor or subcontractor first began work on the project and once before the final inspection of the project by the public contracting agency; in addition, for projects exceeding 90 days, submissions are to be made at 90 day intervals. Payroll information is to be filed with both the public contracting agency and the Wage and Hour Division, Bureau of Labor and Industries, P.O. Box 800, Portland, Oregon 97201-0800. The payroll information must be kept by the contractor and or subcontractor for three years.

COMMONLY ASKED QUESTIONS

1) What are "Prevailing Wage Rates?"

A prevailing wage rate is the minimum wage, including fringe benefits to be paid workers employed on contracts for public works. Different rates are established for specific trades and specific geographical areas.

2) Who must be paid "Prevailing Wage Rates?"

All employees of a contractor or subcontractor engaged on a public works project when the total price of the project is \$10,000 or more must receive at least the Prevailing Wage Rate (PWR) for time worked on the project, unless otherwise exempt.

Supervisory and office/clerical employees are not required to be paid the PWR. A person who owns and operates his/her own truck on construction projects (Owner/Operator) is not required to be paid the PWR.

3) What about contracts when Federal funds are used?

When more than \$2,000 of federal funds are involved, the contract is usually subject to the provisions of the Davis-Bacon Act, not Oregon statutes. Further information may be obtained from the U.S. Department of Labor, Wage and Hour Division, Portland, Oregon (326-3057). However, in the event that federal funds are involved, but the contract is not regulated under Davis-Bacon, Oregon's Prevailing Wage Rates Statutes may apply (ORS 279.348 - 279.365).

4) I don't have a pension fund. How do I calculate fringe benefits?

Workers must receive at a minimum the sum of the basic hourly rate plus all fringe benefits for each hour worked on a public works contract. Fringe benefits may be paid either to a third party trust account or in cash directly to the worker.

5) My employees receive health benefits. Do I get credit for the health benefit when I prepare my payroll on a public works project?

Yes. Any expenditures an employer makes for bona fide employee benefits can be charged against the fringe benefit payments designated in the Prevailing Wage Rate Booklet. To learn how to compute the correct hourly charge, call the Wage and Hour Division (229-5750).

6) What if the employees are not paid on an hourly basis?

All workers must receive at least the basic hourly rate of wage and fringe benefits for each hour worked on the project. If an employee is paid other than on an hourly basis, the equivalent hourly rate (for both wages and fringe benefits) must still be at least equal to the rates published.

7) How do I classify workers?

Virtually all of the job classifications/trades normally used in the construction industry are represented by the job classifications used in this PWR publication. These classification titles should be used according to common practice. Try to fit your workers into existing classifications. If you have questions about how to classify workers, contact the Wage and Hour Division at 229-5750 in Portland or at one of the offices listed on page 1 of this booklet.

Laborers who do basic work requiring no specific skills, training or knowledge are generally classified as Group 1 Laborers.

(Note that Landscapers are classified as Laborers, and Ornamental Ironworkers are classified as Ironworkers.)

COMMONLY ASKED QUESTIONS (Continued)

8) When are new rates determined? How long are they effective?

Prevailing Wage Rates are determined once each year by the Commissioner of the Bureau of Labor and Industries. The Commissioner may amend the rates at any time. The rates are usually amended at least once each year. The rates in effect at the time the bid specifications are first advertised are those that apply for the duration of the contract, with one exception. If during the bidding process the prevailing wage rate changes, the public contracting agency (not the contractor) has the option of amending the bid specifications to reflect such change.

9) How do I post Prevailing Wage Rates?

Every contractor or subcontractor employing workers on a public works project is required to post the applicable Prevailing Wage Rates in a conspicuous and accessible place in or about the work-site. Rates need to be posted for the duration of the job. Contractors and subcontractors who intentionally fail to post the PWR can be made ineligible to receive any public works contract for up to three years.

10) What can I do about a contractor who is not complying with Oregon's PWR law?

File a complaint with the nearest office of the Oregon Bureau of Labor and Industries or contact the Wage and Hour Division, Bureau of Labor and Industries, 1400 S.W. 5th Avenue, Portland, Oregon 97201 (229-5750). Other Bureau offices are located in Bend (388-6330), Coos Bay (269-4575), Eugene (686-7623), Medford (776-6013), Pendleton (276-7884) and Salem (378-3292). You may also complain to the contracting agency, which has the contractual authority to pay PWR claims directly to a contractor's or subcontractor's workers (ORS 279.314).

11) What happens to contractors who do not comply with PWR statutes?

Contractors and subcontractors who pay less than the Prevailing Wage Rates may be liable to the workers affected for the amount found due plus an equal amount as liquidated damages (ORS 279.356). Contracting agencies also have the contractual authority to withhold payments due or to be due to the contractor or subcontractor in order to pay the unpaid prevailing wages directly to the worker (ORS 279.314).

Contractors and subcontractors who intentionally refuse to pay the Prevailing Wage Rate to workers employed on public works or to post the PWR on the job site may be determined to be ineligible to receive any public works contracts for a period of up to three years (ORS 279.361). Workers employed by the contractor or subcontractors have a right of action against the surety of the prime contractor for any unpaid prevailing wages.

A list is kept of all contractors, subcontractors, and other persons ineligible to receive public works contracts and subcontracts. When a contractor or subcontractor is a corporation, the individual officers and agents of the corporation can be debarred, in addition to the corporation. As a result, individuals who intentionally fail to pay or post the PWR are prevented from simply moving from one corporation to another.

12) How much do I pay apprentices?

To qualify as an apprentice, the worker must be registered in a bona fide apprenticeship program of the U.S. Department of Labor, Bureau of Apprenticeship and Training (BAT) or with any State Apprenticeship Agency recognized by BAT. The apprentice is to receive all fringe benefits and a percentage of the journeyman's wage rate; the appropriate percentage shall be determined by the apprenticeship committee. All other workers receive rates as published.

COMMONLY ASKED QUESTIONS (Continued)

13) What records must I keep? For how long?

Contractors and subcontractors are required to keep records necessary for determining if Prevailing Wage Rates were paid. These records must include the Payroll and Certified Statement Form (WH-38) as well as the following: The name and address of each employee; the work classification(s) of each employee; the rate(s) of wages and fringe benefits paid to each employee; the rate(s) of fringe benefit payments made in lieu of those required to be provided to each employee; total daily and weekly compensation paid to each employee; daily and weekly hours worked by each employee; apprenticeship and training agreements; any payroll and other such records pertaining to the employment of employees upon a public works contract.

These need to be kept for a period of three (3) years from the completion of the public work contract. Records relating to public works contracts must be maintained separately from records relating to private projects/contracts.

14) What forms are public agencies required to file with the Bureau of Labor and Industries?

Public agencies are required to prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every public improvement that the agency intends to fund during the subsequent budget period (ORS 279.023[2]). If, after the original filing, the agency plans additional public improvements, a revised list is to be submitted (OAR 839-16-008[2]).

The "Notice of Award of Public Works Contract" is to be filed with the Wage and Hour Division within 30 days of the date when a contract is awarded which requires the payment of Prevailing Wage Rates (i.e., is regulated under ORS 279.348 to 279.365).

Copies of the "Planned Public Improvement Summary" (Form No. WH-118), the "Capital Improvement Project Cost Comparison Estimate" (WH-119), and the "Notice of Award of Public Works Contract" (WH-81) can be found at the back of this booklet.

15) Does a contracting agency have any power to enforce payment of Prevailing Wage Rates on its public works projects?

Yes. According to ORS 279.314, all public contracts for work or services must contain a clause or condition permitting the contracting agency to pay a worker's past due wage claim, charging the payment against funds due or to become due to the contractor.



NOTE

There have been several changes in addition to the usual wage and fringe up-dates in the section which follows. We have attempted to make them more noticeable by printing them in bold type. You will find such changes under the following trades.

DREDGING

A zone pay differential has been added.

GLAZIER

A hazard pay differential has been added to both area 1 and area 2.

LABORERS

A Hazardous Waste Removal differential and fringe benefit supplement have been added.

LINE CONSTRUCTION

A change will occur on February 1, 1991, which will affect all six groups' fringe benefits and the basic wage rate of group 3. This has been included.

POWER EQUIPMENT OPERATORS

- o The number of groups has been reduced from 18 to 6.
- o The group classifications have been completely overhauled.
- o The Less-Than-100% base wage rate has been dropped.
- o A Hazardous Waste Removal differential and fringe benefit supplement has been added.

SHEETMETAL WORKERS

A hazard pay and unusual job condition differential has been added to Areas 1, 2, and 3.

TENDERS TO MASON TRADES

A hazard pay and unusual job condition differential has been added.

TRUCK DRIVERS

A Hazardous Waste Removal differential and fringe benefit supplement have been added.

TRADES	BASIC HOURLY RATE	FRINGE BENEFITS
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ASBESTOS WORKERS

Installation of insulation on mechanical systems*

Journeyman Asbestos Worker

o Projects in buildings which are not used for manufacturing, manufacturing services or similar processes (Offices, schools, laboratories, etc.)	17.25	4.68
o Projects in buildings which are used for manufacturing, manufacturing services and similar processes (water treatment plants, electrical generating plants, road maintenance shops, etc.)	18.60	4.68

Removal of insulation on mechanical systems* which are not going to be scrapped.**

o Hazardous Materials Handler Mechanic (in any type of project regardless of value)	12.00	2.45
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* Mechanical systems include pipes, boilers, ducts, flues, breechings, etc.

** The removal of all insulation materials from mechanical systems is exclusively the work of Asbestos Workers, unless the mechanical systems are going to be scrapped. It does not matter whether the insulation materials contain asbestos. Laborers do all removal of insulation materials on mechanical systems to be scrapped and any non mechanical (walls, ceilings, floors, beams, etc.) insulation. They also do loading of any insulation materials that have already been removed, bagged and tagged, as well as cleanup at the removal site and all work done at the disposal site. Laborers performing asbestos removal are classified as Group 3 laborers.

BOILERMAKERS

o Erection and repair of storage tanks, tower tanks, standpipes, swimming pools and reservoirs.	20.58	5.27
o All other work	21.79	5.27

TRADES	BASIC HOURLY RATE	FRINGE BENEFITS
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BRICKLAYERS/STONEMASONS

Area 1	18.88	4.58
(add \$0.75 per hour to Fringe for Refractory repair work.)		

Area 2	18.00	4.37
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Area 1

Baker	Hood River	Polk	Wallowa
Clackamas	Malheur (a)	Sherman	Wasco (b)
Clatsop	Marion	Tillamook	Washington
Columbia	Morrow	Umatilla	Yamhill
Gilliam	Multnomah	Union	

Area 2

Benton	Douglas	Josephine	Linn
Crook	Grant	Klamath	Malheur (c)
Coos	Harney	Lake	Wasco (d)
Curry	Jackson	Lane	Wheeler
Deschutes	Jefferson	Lincoln	

- a) North half
- b) North of the City of Maupin
- c) South half
- d) Including the City of Maupin and South thereof

CARPENTERS (see page 16)

CEMENT MASONS

Zone 1 (Base Rate):

o Group 1	17.14	5.27
o Group 2	17.48	5.27
o Group 3	17.48	5.27
o Group 4	17.83	5.27

Group 1 Cement Masons, hand chipping and patching grouting, end pointing, screed setting, plugging, filling bolt holes, dry packing, setting curb forms, planks, stakes, lines and grades.

Group 2 Composition Workers (includes installation of epoxy & other resinous toppings), and Power Machine Operators.

Group 3 Cement masons working on suspended, swinging and/or hanging scaffold.

Group 4 Cement Masons performing work of both Group 2 and Group 3 at the same time.

TRADES

BASIC
HOURLY RATE FRINGE
BENEFITSBASIC
HOURLY RATE FRINGE
BENEFITSCEMENT MASONS (continued)Zone Differential for Cement Masons
(Add to Zone 1 Rate)

Zone 2	.65
Zone 3	1.15
Zone 4	1.70
Zone 5	2.75

Zone 1: Projects within 30 miles of City Hall in the cities listed below.

Zone 2: More than 30 miles but less than 40 miles.

Zone 3: More than 40 miles but less than 50 miles.

Zone 4: More than 50 miles but less than 80 miles.

Zone 5: More than 80 miles.

Cities

Bend	Corvallis	Coos Bay	Roseburg	Eugene
Pasco	The Dalles	Medford	Longview	K. Falls
Salem	Pendleton	Astoria	Portland	Newport

DIVERS & DIVERS' TENDERS

o Divers	44.61	4.02
o Divers' Tenders	19.72	4.02

Depth Pay and Enclosure Pay are added to the Divers' Basic Hourly Rate to obtain the Total Hourly Rate for the diver.

BASIC HOURLY + RATE	HOURLY DEPTH + PAY	HOURLY ENCLOSURE PAY	DIVERS' = TOTAL HOURLY PAY
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o Divers' Depth Pay

Depth of Dive	Hourly Depth Pay
50-100 ft	$[(\text{total ft} - 50) \times \$1.00]/\text{hr.}$
100-150 ft	$\$50 + [(\text{total ft} - 100) \times \$1.50]/\text{hr.}$
150-200 ft	$\$125 + [(\text{total ft} - 150) \times \$2.00]/\text{hr.}$

o Divers' Enclosure Pay(working without vertical escape)

Distance Travelled
In the Enclosure

Hourly Enclosure Pay

5 - 50 ft	\$.50/hr
50 - 100 ft	\$.63/hr
100 - 150 ft	\$ 2.13/hr
150 - 200 ft	\$ 4.63/hr
200 - 300 ft	$\$4.63 + [(\text{total ft} - 200) \times \$0.05]/\text{hr}$
300 - 450 ft	$\$9.63 + [(\text{total ft} - 300) \times \$0.10]/\text{hr}$
450 - 600 ft	$\$24.63 + [(\text{total ft} - 450) \times \$0.20]/\text{hr}$

DREDGING

Zone 1 (Base Rate):

o Leverman-Hydraulic	20.07	5.17
o Leverman-Dipper	20.88	5.17
o Asst. Engineer (including: Watch Engineer, Welder, Mechanic, Machinist)	19.45	5.17
o Tenderman (Boatman, Attending Dredge Plan); Fireman	18.98	5.17
o Assistant Mate (Deckhand); Oiler	18.58	5.17

Zone Differential for Dredging
(Add to Zone 1 Rate)

Zone 2	1.50
Zone 3	1.90
Zone 4	2.40
Zone 5	3.00

Zone 1: Center of job site not more than 15 miles from the City Hall of Portland

Zone 2: More than 15 miles but not more than 30

Zone 3: More than 30 miles but not more than 50

Zone 4: More than 50 miles but not more than 70

Zone 5: More than 70 miles.

DRYWALL/WETWALL

o Drywall (Accoustical and Drywall Applicator)	17.55	4.77
o Wetwall (Lather)	16.50	5.82

ELECTRICIANSArea 1:

o Electricians	17.90	3.35
o Cable Splicers	19.69	3.43

Area 2:

o Electricians	20.71	5.63
o Cable Splicers	21.75	5.66

Area 3:

	17.35	5.32
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Area 4:

	19.15	3.77
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Area 5:

o Electricians	21.35	5.74
o Cable Splicers	22.10	5.76

Area 6:

o Electricians	17.83	4.98
o Cable Splicers	19.61	5.04

TRADES	BASIC HOURLY RATE	FRINGE BENEFITS	TRADES	BASIC HOURLY RATE	FRINGE BENEFITS
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ELECTRICIANS (continued)

<u>Area 1</u> Malheur	<u>Area 2</u> Baker Gilliam Grant Morrow	<u>Area 2(cont)</u> Umatilla Union Wallowa Wheeler	<u>Area 3</u> Coos Curry Lincoln Douglas (a) Lane (a)
<u>Area 4</u> Benton Crook Deschutes Jefferson Lane (b) Linn Marion Polk Yamhill(c)	<u>Area 5</u> Clackamas Clatsop Columbia Hood River Multnomah Sherman Tillamook Wasco Washington Yamhill (d)	<u>Area 6</u> Harney Jackson Josephine Klamath Lake Douglas (b)	

- a) Those portions lying west of a line North and South from the NE corner of Coos County to the SE corner of Lincoln County
- b) That portion lying east of a line running North and South from the NE corner of Coos County to the SE corner of Lincoln County
- c) South half
- d) North half

ELEVATOR CONSTRUCTORS

<u>Area 1</u>		
o Mechanic	18.80	5.23 + a
o Helper	13.16	5.23 + a
o Probationary Helper	9.40	-

<u>Area 2</u>		
o Mechanic	20.95	5.23 + a
o Helper	14.67	5.23 + a
o Probationary Helper	10.48	-

- a) Plus 8% of basic hourly rate for employees with more than 5 years of service; 6% of basic hourly rate for 6 months to 5 years of service.

<u>Area 1</u> Umatilla Wallowa Union Baker	<u>Area 2</u> All Remaining Counties
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GLAZIERS

Area 1	18.95	3.25
(Add \$1.00 to base rate if safety belt is required by State safety regulations) (Add \$4.00 to base rate for work done from a non-motorized single-man bosun chair)		
Area 2	14.36	2.44
(Add \$0.50 to base rate if working at over 35 feet of free fall in height)		

<u>Area 1</u> All Counties except Malheur	<u>Area 2</u> Malheur
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HIGHWAY AND PARKING STRIPERS

18.00 2.00

IRONWORKERS

o Structural, Reinforcing, Ornamental, Riggers, Fence Erectors, Signal Men	19.26	6.16
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LABORERS (see page 17)

LIMITED ENERGY ELECTRICIANS

May only be used for electrical work not exceeding 100 va in Class II and III installations (as defined in Article 725 of the National Electrical Code):

Area 1	15.77	3.37
Area 2	15.77	3.37
Area 3	10.83	2.30
Area 4	11.12	2.46
Area 5	12.13	2.49
Area 6	10.96	2.62
Area 7	11.34	2.03
Area 8	10.79	2.50
Area 9	15.77	3.37
Area 10	11.26	1.83
Area 11	12.22	1.91
Area 12	14.66	1.94
Area 13	12.38	2.34
Area 14	12.09	2.11

TRADES		BASIC HOURLY RATE	FRINGE BENEFITS		BASIC HOURLY RATE	FRINGE BENEFITS
LIMITED ENERGY ELECTRICIANS (continued)				MARBLE SETTERS (Includes Granite)		
<u>Area 1</u>	Clatsop, Columbia, Tillamook			Area 1	19.88	4.58
<u>Area 2</u>	Clackamas, Multnomah, Washington, Yamhill (north half)			<u>Area 1</u>		
<u>Area 3</u>	Marion, Polk, Yamhill (south half)			Baker	Hood River	Sherman Wallowa
<u>Area 4</u>	Benton, Lincoln, Linn			Clackamas	Malheur (a)	Tillamook Wasco (b)
<u>Area 5</u>	Lane			Clatsop	Morrow	Union Washington
<u>Area 6</u>	Douglas			Columbia	Multnomah	Umatilla Yamhill (a)
<u>Area 7</u>	Coos, Curry			Gilliam		
<u>Area 8</u>	Jackson, Josephine			a) North half b) North of the City of Maupin		
<u>Area 9</u>	Hood River, Sherman, Wasco			PAINTERS & DRYWALL TAPERS		
<u>Area 10</u>	Crook, Deschutes, Jefferson			Area 1		
<u>Area 11</u>	Klamath, Lake			o Painters & Drywall Tapers	13.00	2.41
<u>Area 12</u>	Gilliam, Grant, Morrow, Umatilla, Wheeler			Area 2		
<u>Area 13</u>	Baker, Union, Wallowa			o Brush	15.00	2.44
<u>Area 14</u>	Harney, Malheur			o Spray, sandblasting, other pressure blasting over 3000 psi, and steam cleaning.	15.50	2.44
				o Drywall Tapers	19.30	3.05
LINE CONSTRUCTION				<u>Area 1</u>	<u>Area 2</u>	
				Malheur County	Remaining Counties	
				PLASTERERS		
				Area 1	18.58	4.02
				Area 2		
				o Nozzleman	20.08	4.01
				o Swinging scaffold	19.08	4.01
				o all other work	18.58	4.01
				<u>Area 1</u>	<u>Area 1(cont)</u>	<u>Area 1(cont)</u> <u>Area 2</u>
				Benton	Deschutes	Lincoln (b) All
				Coos	Harney	Linn (b) remaining
				Crook	Jefferson	Wasco (b) counties
				Curry	Klamath (a)	Wheeler (b)
				Douglas	Lane	
				a) Northern one-third b) South half		
				PLUMBERS & STEAMFITTERS/PIPEFITTERS		
				Area 1 (Both)	19.55	5.05
				Area 2 (Both)	21.75	4.91
				Area 3 (Both)	19.60	4.90

LIMITED ENERGY ELECTRICIANS (continued)						
<u>Area 1</u>	Clatsop, Columbia, Tillamook					
<u>Area 2</u>	Clackamas, Multnomah, Washington, Yamhill (north half)					
<u>Area 3</u>	Marion, Polk, Yamhill (south half)					
<u>Area 4</u>	Benton, Lincoln, Linn					
<u>Area 5</u>	Lane					
<u>Area 6</u>	Douglas					
<u>Area 7</u>	Coos, Curry					
<u>Area 8</u>	Jackson, Josephine					
<u>Area 9</u>	Hood River, Sherman, Wasco					
<u>Area 10</u>	Crook, Deschutes, Jefferson					
<u>Area 11</u>	Klamath, Lake					
<u>Area 12</u>	Gilliam, Grant, Morrow, Umatilla, Wheeler					
<u>Area 13</u>	Baker, Union, Wallowa					
<u>Area 14</u>	Harney, Malheur					
LINE CONSTRUCTION						

TRADES	BASIC HOURLY RATE	FRINGE BENEFITS	TRADES	BASIC HOURLY RATE	FRINGE BENEFITS
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PLUMBERS & STEAMFITTERS/PIPEFITTERS (cont)

Area 1	Area 2	Area 3
Baker	Grant (b)	All remaining counties
Harney (a)	Morrow	
Malheur	Umatilla	
	Wallowa	
	Union	
a) Except Northwest Portion		
b) Except Southwest Corner		

POWER EQUIPMENT OPERATORS

(Note that this trade no longer includes
Less Than 100% Rate)

Zone 1 (Base Rate):

o Group 1	19.35	5.42 + a
o Group 2	19.00	5.42 + a
o Group 3	18.40	5.42 + a
o Group 4	18.00	5.42 + a
o Group 5	17.50	5.42 + a
o Group 6	16.80	5.42 + a

- a) Add \$0.15 to fringe benefit of all Group classifications for work performed inside a Federally Designated Hazardous Waste Site.

ZONE RATES AND DESCRIPTIONS

(Add to Zone 1 Rate)

Zone 2	.65
Zone 3	1.15
Zone 4	1.70
Zone 5	2.75

Zone 1: Projects within 30 miles of City Hall in the Cities listed below.

Zone 2: More than 30 miles but less than 40 miles.

Zone 3: More than 40 miles but less than 50 miles.

Zone 4: More than 50 miles but less than 80 miles.

Zone 5: More than 80 miles.

Cities

Albany	Eugene	Longview	Portland
Astoria	Goldendale	Madras	PortOrford
Baker	Grants Pass	Medford	Reedsport
Bend	Hermiston	McMinnville	Roseburg
Brookings	Hood River	Newport	Salem
Burns	Klamath Falls	Oregon City	The Dalles
Coos Bay	LaGrande	Ontario	Tillamook
Corvallis	Lakeview	Pendleton	

POWER EQUIPMENT OPERATORS (Continued)

HAZARDOUS WASTE REMOVAL DIFFERENTIALS
(Type of required protective clothing determines the amount to be added to the base rate)

Class "C" Suit	1.00
Class "B" Suit	1.50
Class "A" Suit	2.00

GROUP CLASSIFICATIONS

ASPHALT

- 6 Plant Oiler
- 6 Plant Fireman
- 6 Pugmill Operator (any type)
- 6 Truck mounted asphalt spreader, with screed
- 4 Screed Operator
- 5 Extrusion Machine Operator
- 2 Asphalt Plant Operator (any type)
- 4 Asphalt Paver Operator
- 5 Roller Operator (any asphalt mix)
- 4 Diesel-Electric Engineer, Plant
- 5 Asphalt Burner and Reconditioner Operator (any type), 84
- 4 Roto-Mill, pavement profiler operator, under 6 foot lateral cut
- 5 Roto-Mill, pavement profiler, ground man
- 2 Roto-Mill, pavement profiler operator, 6 foot lateral cut and over

BLADE

- 6 Blade Operator, pulled type
- 4 Blade Operator
- 4 Blade Operator, Finish
- 4 Blade Operator, externally controlled by electronic, mechanical hydraulic means
- 4 Blade Operator, multi-engine
- 2 Auto Grader or "Trimmer" Operator

BULLDOZERS

- 4 Bulldozer Operator
- 4 Drill Cat Operator
- 4 Side-Boom Operator
- 2 Tandem bulldozer operator (quadnine and similar type, D-11)
- 4 Bulldozer Operator, twin engine (TC 12 and similar type, D-10)
- 4 Cable-Plow Operator (any type)

POWER EQUIPMENT OPERATORS
(GROUP CLASSIFICATIONS continued)**CLEARING**

- 4 Log Skidder Operator
- 4 Chipper Operator
- 4 Incinerator Operator
- 4 Stump Splitter Operator

COMPRESSORS

- 6 Compressor Operator (any power), under 1,250 cu. ft. total capacity
- 5 Compressor Operator (any power), over 1,250 cu. ft. capacity

COMPACTORS - Self-Propelled

- 5 Compactor Operator, including vibratory
- 5 Wagner Patcor Operator or similar type (without blade)
- 4 Compactor Operator, with blade
- 4 Compactor Operator, multi-engine

CONCRETE

- 6 Plant Oiler
- 6 Assistant Conveyor Operator
- 6 Conveyor Operator
- 6 Mixer Box Operator (C.T.B., dry batch, etc.)
- 6 Cement Hog Operator
- 6 Concrete Saw Operator
- 6 Concrete Curing Machine Operator (riding type)
- 6 Wire Mat or Brooming Machine Operator
- 5 Combination Mixer and Compressor Operator, gunite work
- 5 Concrete Batch Plant Quality Control Operator
- 5 Belcrete Operator
- 5 Pumpcrete Operator (any type)
- 5 Pavement Grinder and/or Grooving Machine Operator (riding type)
- 4 Mixer Mobile Operator
- 5 Cement Pump Operator, Fuller-Kenyon and similar
- 5 Concrete Pump Operator
- 5 Grouting Machine Operator
- 4 Screed Operator
- 4 Concrete Cooling Machine Operator
- 5 Concrete Mixer Operator, single drum, any capacity
- 2 Batch Plant and/or Wet Mix Operator, one and two drum
- 1 Batch Plant and/or Wet Mix Operator, 3 units or more
- 5 Cast in place pipe laying machine
- 5 Maginnis Internal Full Slab Vibrator Operator
- 5 Concrete Finishing Machine Operator, Clary, Johnson, Bidwell, Burgess bridge deck or similar type
- 5 Curb Machine Operator, Mechanical Berm, Curb and/or Curb and Gutter

POWER EQUIPMENT OPERATORS
(GROUP CLASSIFICATIONS continued)**CONCRETE(Continued)**

- 5 Concrete Joint Machine Operator
- 5 Concrete Planer Operator
- 5 Tower Mobile Operator
- 5 Power Jumbo Operator setting slip forms etc., in tunnels
- 5 Slip Form Pumps, power driven hydraulic lifting device for concrete forms
- 5 Concrete Paving Machine Operator
- 5 Concrete Finishing Machine Operator
- 5 Concrete Spreader Operator
- 4 Concrete Paving Road Mixer
- 2 Automatic Concrete Slip Form Paver Operator
- 2 Concrete Canal Line Operator
- 4 Concrete Breaker
- 4 Reinforced Tank Banding Machine (K-17 or similar types)
- 2 Concrete Profiler, Diamond Head

CRANE

- 6 Oiler
- 6 Truck Crane Oiler-Driver, 25 ton capacity or over
- 6 Fireman, all equipment
- 6 A-Frame Truck Operator, single drum
- 6 Tugger or Coffin Type Hoist Operator
- 5 Helicopter Hoist Operator
- 5 Hoist Operator, single drum
- 5 Elevator Operator
- 5 A-Frame Truck Operator, double drum
- 5 Boom Truck Operator
- 4 Chicago Boom and similar types
- 4 Lift Slab Machine Operator
- 4 Boom Type lifting device, 5 ton capacity or less
- 4 Cerry Picker or similar type crane-hoist, 5 ton capacity or less
- 4 Crane Operator, under 25 ton (except for rough terrain)
- 4 Hoist Operator, two drum
- 4 Hoist Operator, three or more drums
- 4 Derrick Operator, under 100 ton
- 4 Hoist Operator, stiff leg, guy derrick or similar type, 50 ton and over
- 4 Cableway Operator, up to 25 tons
- 2 Cableway Operator, 25 tons and over
- 4 Crane Operator, over 25 tons and including 40 tons
- 4 Bridge Crane Operator, Locomotive, Gantry, Overhead
- 2 Crane Operator, over 40 tons and including 200 tons
- 1 Crane Operator, over 200 tons

TRADES

BASIC
HOURLY
RATE

FRINGE
BENEFITS

TRADES

BASIC
HOURLY
RATE

FRINGE
BENEFITS

POWER EQUIPMENT OPERATORS
(GROUP CLASSIFICATIONS continued)

CRANE (Continued)

- 2 Tower Crane Operator
- 2 Whirley Operator, up to and including 150 tons
- 1 Whirley Operator, over 150 tons
- 1 Helicopter Operators, when used in erecting work
- 5 Hydraulic Boom Truck Operator, Pittman

CRUSHER

- 6 Crusher Oiler
- 6 Crusher Feeder
- 4 Generator Operator
- 4 Diesel-Electric Engineer
- 4 Grizzly Operator
- 4 Crusher Plant Operator

DRILLING

- 6 Drill Tender
- 6 Auger Oiler
- 5 Churn Drill and Earth Boring Machine Operator
- 4 Drill Doctor
- 4 Boring Machine Operator
- 4 Driller - Percussion, Diamond, Core, Cable, Rotary and similar type

FLOATING EQUIPMENT

- 6 Deckhand
- 6 Boatman
- 5 Fireman
- 4 Diesel-Electric Engineer
- 4 Jack Operator, elevating barges
- 4 Barge Operator, self-unloading
- 4 Piledriver Operator (not crane type)
- 4 Floating Clamshell, etc. Operator, under 3 cu. yd.
- 4 Floating Crane (derrick barge) Operator, less than 30 tons
- 2 Floating Clamshell, etc. Operator, 3 cu. yd. and over
- 2 Floating Crane (derrick barge) Operator, 30 tons but less than 150 tons
- 1 Floating Crane, 150 tons and over

FORK LIFT

- 6 Self-Propelled Scaffolding Operator (excluding working platform)
- 6 Fork Lift or Lumber Stacker Operator
- 6 Ross Carrier Operator
- 5 Lull Hi-Lift Operator or similar type
- 5 Fork Lift, over 5 tons
- 3 Rock Hound Operator

POWER EQUIPMENT OPERATORS
(GROUP CLASSIFICATIONS continued)

GENERATORS

- 4 Generator Operator
- 4 Diesel-Electric Engineer

GUARDRAIL EQUIPMENT

- 6 Oiler
- 6 Auger Oiler
- 6 Oiler, combination guardrail machines
- 4 Guardrail Punch Operator (all types)
- 6 Guardrail Punch Oiler
- 4 Guardrail Auger Operator (all types)
- 4 Combination Guardrail machines. i.e. punch, auger, etc.

HAZARDOUS WASTE REMOVAL

- 5 Assistant to the Engineer (Oiler)
- 4 Assistant Incinerator Control Board Operator
- 3 Incinerator Control Board Operator

HEATING PLANT

- 6 Temporary Heating Plant Operator
- 4 Surface Heater and Planer Operator

HYDRAULIC HOES

- 5 Hydraulic Backhoe Operator, wheel type 3/8 cu. yd. and under with or without front end attachments 2-1/2 cu. yd. and under (Ford, John Deere, Case type)
- 4 Hydraulic Backhoe Operator, Track Type 3/8 cu. yd.
(Note: Over 3/8 cu. yd. takes Shovel Classification rate)

LOADERS

- 6 Bucket Elevator Loader Operator, Barber-Greene and similar types
- 5 Loaders, rubber-tired type, 2-1/2 cu. yd. and under
- 5 Elevating Grader Operator, Tractor Towed requiring Operator or Grader
- 4 Belt Loader Operator, Kolman and Ko Cal types
- 4 Loader Operator, front end and overhead, 2-1/2 cu. yd. and under 4 cu. yd.
- 4 Elevating Loader Operator, Athey and similar types
- 4 Elevating Grader Operator, Sierra, Euclid or similar types
- 3 Loader Operator, 4 cu. yd. but less than 6 cu. yd.
- 2 Loader Operator, 6 cu. yd. and over

TRADES

BASIC
HOURLY FRINGE
RATE BENEFITSBASIC
HOURLY FRINGE
RATE BENEFITS**POWER EQUIPMENT OPERATORS**
(GROUP CLASSIFICATIONS continued)**OILERS**

- 6 Oiler
- 6 Guardrail Punch Oiler
- 6 Truck Crane Oiler-Driver, 25 ton or over
- 6 Auger Oiler
- 6 Grade Oiler, required to check grade
- 5 Service Oiler (Greaser)
- 6 Grade Checker

PILEDRIVERS (Use Crane rates when driving or pulling piling)

- 4 Hammer Operator
- 4 Piledriver Operator (not crane type)

PIPE LINE - Sewer Water

- 6 Tar Pot Fireman
- 6 Tar Pot Fireman (power agitated)
- 6 Hydraulic Pipe Press Operator
- 5 Hydra Hammer or similar types
- 5 Pavement Breaker Operator
- 4 Pipe Cleaning Machine Operator
- 4 Pipe Doping Machine Operator
- 4 Pipe Bending Machine Operator
- 4 Pipe Wrapping Machine Operator
- 4 Boring Machine Operator
- 4 Back Filling Machine Operator

PUMPS

- 6 Pump Operator, any power
- 6 Hydrostatic Pump Operator
- 5 Pump Operator, more than 5 (any size)
- 5 Pot Rammer Operator

RAILROAD EQUIPMENT

- 6 Brakeman
- 6 Oiler
- 6 Switchman
- 6 Motorman
- 6 Ballast Jack Tamper Operator
- 5 Locomotive Operator
- 5 Ballast Regulator Operator
- 5 Ballast Tamper Multi-Purpose Operator
- 5 Track Liner Operator
- 5 Tie Spacer Operator
- 5 Shuttle Car Operator

POWER EQUIPMENT OPERATORS
(GROUP CLASSIFICATIONS continued)**REMOTE CONTROL**

- 2 Remote controlled earth-moving equipment

REPAIRMEN, Heavy Duty

- 6 Parts Man (Tool Room)
- 6 H.D. Repairman Tender
- 6 Welder's Tender
- 4 Diesel-Electric Engineer (Plant or Floating)
- 4 Bolt Threading Machine Operator
- 4 Drill Doctor (Bit Grinder)
- 4 H.D. Mechanic
- 4 H.D. Welder
- 4 Machine Tool Operator
- 4 Combination H.D. Mechanic-Welder, when dispatched and/or when required to do both
- 4 Welder - Certified, when dispatched and/or required

RUBBER-TIRED SCRAPERS

- 4 Rubber-tired Scraper Operator, single engine, single scraper
- 4 Self-loading, paddle wheel, auger type under 15 cu. yd.
- 4 Rubber-tired Scraper Operator, twin engine
- 4 Rubber-tired Scraper Operator, with push-pull attachments
- 3 Rubber-tired Scraper Operator with tandem scrapers
- 2 Rubber-tired Scraper Operator, with tandem scrapers, multi-engine
- 4 Self-loading, paddle wheel, auger type 15 cu. yd. and over, single engine
- 3 Self-loading, paddle wheel, auger type, finish and/or 2 or more units

SHOVEL, DRAGLINE, CLAMSHELL, BACKHOE, SKOOPER, ETC., OPERATOR

- 6 Oiler
- 6 Grade Oiler (required to check grade)
- 6 Grade Checker
- 6 Fireman
- 4 Diesel-Electric Engineer
- 4 Stationary Drag Scraper Operator
- 4 Shovel, Dragline, Clamshell, Hoe etc., Operator under 3 cu. yd.
- 4 Grade-all Operator
- 2 Shovel, Dragline, Clamshell, Hoe etc., Operator 3 cu. yd. and over

TRADES

BASIC
HOURLY
RATE FRINGE
BENEFITS

TRADES

BASIC
HOURLY
RATE FRINGE
BENEFITSPOWER EQUIPMENT OPERATORS
(GROUP CLASSIFICATIONS continued)SIGNALMAN

- 6 Bell Boy, phones, etc., Operator
- 6 Helicopter Radioman (ground)

SURFACING (BASE) MATERIAL

- 6 Roller Operator, grading of base rock (not asphalt)
- 5 Roller Operator, Oiling, C.T.B.
- 6 Tamping Machine Operator, mechanical, self-propelled
- 6 Hydrographic Seeder Machine Operator, straw, pulp or seed
- 5 Rock Spreaders, self-propelled
- 5 Pulva-mixer or similar types
- 4 Blade Mounted Spreaders, Ulrich and similar types
- 5 Chip Spreading Machine Operator
- 5 Lime Spreading Operator

SWEEPERS

- 6 Broom Operator, self-propelled
- 5 Sweeper Operator (Wayne type) self-propelled

TRACTOR - RUBBER TIRED

- 5 Tractor Operator, rubber-tired, 50 H.P. Flywheel and under
- 4 Tractor Operator, rubber -tired, over 50 H.P. Flywheel
- 4 Tractor Operator, with boom attachment
- 4 Rubber-tired Dozers and Pushers (Michigan, Cat, Hough type)

TRENCHING MACHINE

- 6 Oiler
- 6 Grade Oiler (required to check grade)
- 5 Trenching Machine Operator, maximum digging capacity 3 ft. depth
- 4 Trenching Machine Operator, maximum digging capacity over 3 ft. depth
- 4 Back Filling Machine Operator
- 2 Wheel Excavator
- 2 Canal Trimmer
- 2 Band Wagon (in conjunction with wheel excavator)

TUNNEL

- 4 Mucking Machine Operator
- 6 Conveyor Operator (any type)
- 4 Shield Operator
- 6 Air Filtration Equipment Operator

POWER EQUIPMENT OPERATORS
(GROUP CLASSIFICATIONS continued)WELDING MACHINES

- 6 Welding Machine Operator

UNDERWATER EQUIPMENT

- 2 Underwater Equipment Operator, remote or otherwise, when used in construction work

ROOFERS

Area 1:

- o Roofers 16.10 4.10
- o Handling coal tar pitch 17.20 4.10

Area 2:

- o Roofers 15.04 4.18
- (Add \$2.00 per hour to Fringe for work with irritable Bituminous material.)

Area 3:

- o Roofers 13.44 2.70
- (Add \$1.50 per hour to Fringe for work with irritable Bituminous material.)

Area 4:

- o Roofers 15.00 3.85
- (Add \$2.00 per hour to Fringe for work with irritable Bituminous materials)

Area 5:

- o Roofers 11.90 3.55
- (Add \$3.00 per hour to Fringe for work with irritable Bituminous materials)

Area 1

Baker
Clackamas
Clatsop
Columbia
Jefferson
Gilliam
Grant
Hood River

Area 1(cont)

Multnomah
Sherman
Tillamook
Wasco
Washington
Wheeler

Area 2

Benton
Coos
Crook
Curry
Deschutes
Douglas
Harney
Jackson
Josephine

Area 2(cont)

Klamath
Lake
Lane
Lincoln
Linn
Marion
Polk
Yamhill

Area 3

Malheur

Area 4

Umatilla
Union
Wallowa

Area 5

Morrow

SHEETMETAL WORKERS

Area 1 17.90 5.32

(Add \$0.75 to base rate for work performed on any swinging platform, swinging chair, or swinging ladder)

Area 2 16.23 3.87

(Add \$1.75 to base rate for work performed whenever it is possible for worker to fall 30 feet or more)
(Add \$1.75 to base rate for work performed in an area where epoxy resins or other injurious chemicals are being applied)

Area 3 19.01 4.78

(Add \$1.00 to base rate for work where it is necessary to wear a chemically activated face mask)
(Add \$1.00 to base rate for work where employee is required to wear a fresh air mask due to nuclear related work)
(Add \$.45 to base rate for work on a swinging stage, swinging scaffold or bosun chair in excess of 30 feet above the ground)

Area 4 16.92 3.71

Area 1

Benton	Gilliam	Linn	Tillamook
Clackamas	Grant	Marion	Wasco
Clatsop	Harney	Multnomah	Washington
Columbia	Hood River	Polk	Wheeler
Crook	Jefferson	Sherman	Yamhill
Deschutes	Lincoln		

<u>Area 2</u>	<u>Area 3</u>	<u>Area 4</u>	<u>Area 4 (cont)</u>
Baker	Morrow	Coos	Josephine
Malheur	Umatilla	Curry	Klamath
	Union	Douglas	Lake
	Wallowa	Jackson	Lane

SOFT FLOOR LAYERS

Area 1 15.41 4.00 + a

Area 2 12.99 2.01

a) plus 4% of basic hourly rate for employees with less than one year of service, 6% for those with more than one year.

SOFT FLOOR LAYERS (Continued)

Area 1 - All counties except Malheur County

Area 2 - Malheur County

SPRINKLER FITTERS 20.30 4.75

TENDERS TO MASON TRADES

o Tenders for Bricklayers, Tile Setters, Marble Setters and Terrazzo Workers; Topping for Cement Finishers and Mortar Mixers.

15.36 4.00

(Add \$0.50 to base rate for refractory work)
(Add to base rate an amount equal to that received for safety belt requirements or other unusual job conditions by the mechanic this worker is tending)

TENDERS TO PLASTERERS 14.87 4.00

TILE SETTERS

Area 1 17.60 4.20

(Add \$.50 to base rate if safety belt required by State safety regulations or work involves epoxy, furnane, alkox, acetylene, black grouting and/or steam cleaning.)

Area 2 18.00 4.37

(Add \$.24 to base rate if safety belt required by State safety regulations; \$.20 if work involves epoxy, furnane, alkox, acetylene, black grouting, and/or steam cleaning.)

<u>Area 1</u>	<u>Area 1(cont)</u>	<u>Area 2</u>	<u>Area 2(cont)</u>
Baker	Polk	Benton	Josephine
Clackamas	Sherman	Coos	Klamath
Clatsop	Tillamook	Crook	Lake
Columbia	Umatilla	Curry	Lane
Gilliam	Union	Deschutes	Lincoln
Hood River	Wallowa	Douglas	Linn
Malheur(a)	Wasco (b)	Grant	Malheur (c)
Marion	Washington	Harney	Wasco (d)
Morrow	Yamhill	Jackson	Wheeler
Multnomah		Jefferson	

a) North half

b) North of Maupin

c) South half

d) Maupin and south thereof

TILE & TERRAZZO HELPERS

Area 1 13.54 2.85
(Add \$.50 to base rate if safety belt required by State safety regulations or work involves epoxy, furnane, alkor, acetylene, black grouting and/or steam cleaning.)

Area 1

Baker	Hood River	Sherman	Wallowa
Clackamas	Gilliam (a)	Tillamook	Wasco (b)
Clatsop	Morrow	Umatilla	Washington
Columbia	Multnomah	Union	Yamhill (a)
Malheur (North Half)		Yamhill (North Half)	
Wasco (North of Maupin)			

TRUCK DRIVERS (see next section)

WELDERS; RIGGERS

Receive rate for craft performing operation to which welding and rigging are incidental.

CARPENTERS, LABORERS, and TRUCK DRIVERS

Under the following circumstances a rate lower than the basic hourly rate may be used for these three trades:

The lower rate applies to all public works projects of less than \$1.0 million. The lower rate also applies to projects under \$1.5 million involving the construction, reconstruction, major renovation or painting of buildings, bridges or docks. (When the amount is between \$1.0 and \$1.5 million the work done on a building, bridge or dock must constitute at least 20% of the total project price to use the lower rates.) In determining the \$1.5 million figure, do not include the cost of underground utilities (i.e., the amount of the contract dedicated to facilities for electricity, water, gas, sewerage including storm water, and communications) which are five feet or more outside of and away from the building, bridge or dock and are subordinate and incidental to the major purpose of the project.

NOTE: In determining whether or not the lower rates are applicable, consider the total project cost, and not the cost of any individual contract (or schedule) within that project.

CARPENTERS, LABORERS, and TRUCK DRIVERS

(Continued)

ZONE RATES AND DESCRIPTIONS

Zone Differential for Carpenters (Groups 1 and 2 only), Laborers and Truck Drivers

(Add to Zone 1 Rate)

Zone 2	.65
Zone 3	1.15
Zone 4	1.70
Zone 5	2.75

Zone 1: Projects within 30 miles of City Hall in the Cities listed below.

Zone 2: More than 30 miles but less than 40 miles.

Zone 3: More than 40 miles but less than 50 miles.

Zone 4: More than 50 miles but less than 80 miles.

Zone 5: More than 80 miles.

Cities

Albany	Eugene	Longview	Portland
Astoria	Goldendale	Madras	Port Orford
Baker	Grants Pass	Medford	Reedsport
Bend	Hermiston	McMinnville	Roseburg
Brookings	Hood River	Newport	Salem
Burns	Klamath Falls	Oregon City	The Dalles
Coos Bay	LaGrande	Ontario	Tillamook
Corvallis	Lakeview	Pendleton	

CARPENTERS (See above for explanation of when the lower rates may be used)

LESS THAN
100% 100%

Zone 1 (Base Rate):*

o Group 1	15.19	18.17	4.02
o Group 2	15.31	18.32	4.02
o Group 3	15.39	18.42	4.02
o Group 4	15.51	18.57	4.02
o Group 5	15.27	18.27	4.02
o Group 6	15.35	18.37	4.02

*NOTE: Zone rates for Carpenter Groups 1 and 2 are listed at the top of this page. Zone rates for Carpenter Groups 3 through 6 are listed below.

TRADES

BASIC
HOURLY FRINGE
RATE BENEFITSBASIC
HOURLY FRINGE
RATE BENEFITSCARPENTERS (Continued)Zone Differential for Groups 3 through 6 Only
(Add to Zone 1 Rate)

Zone 2	.85
Zone 3	1.25
Zone 4	1.70
Zone 5	1.95
Zone 6	2.80

Zones for Groups 3, 4, 5 and 6 Carpenters are determined by the distance between the project site and either 1) the worker's residence or 2) City Hall of a reference city for the appropriate group shown below, whichever is closer.

<u>Zone 1:</u>	0-30 miles.
<u>Zone 2:</u>	30-40 miles.
<u>Zone 3:</u>	40-50 miles.
<u>Zone 4:</u>	50-60 miles.
<u>Zone 5:</u>	60-70 miles.
<u>Zone 6:</u>	Over 70 miles.

Cities for Groups 3 and 4

Corvallis	Longview	North Bend	The Dalles
Eugene	Medford	Portland	

Cities for Groups 5 and 6

Astoria	Eugene	Newport	Salem
Bend	Klamath Falls	Portland	The Dalles
Coos Bay	Medford	Roseburg	

Group 1

Auto. Nailing Machine
Carpenters
Form Stripper
Manhole Builders
Non-irritating Ins.

Group 3

Millwrights
Machine Erectors
Machinists

Group 5

Bridge, Dock & Wharf
Builders
Piledrivermen

Group 2

Floor Layers & Finishers
Stationary Power Saw
Operators
Wall & Ceiling Insulators
Irritating Insulation

Group 4

Certified Welders

Group 6

Boom Men

LABORERS¹LESS THAN
100% 100%Zone 1 (Base Rate):²

o Group 1	11.82	13.99	5.00+a
o Group 2	12.10	14.34	5.00+a
o Group 3	12.34	14.64	5.00+a
o Group 4	12.54	14.89	5.00+a
o Group 5	10.77	12.40	5.00+a
o Group 6	9.15	9.15	5.00+a

a) Add \$0.15 to fringe benefit of all Group classifications for work performed inside a Federally Designated Hazardous Waste Site.

HAZARDOUS WASTE REMOVAL DIFFERENTIAL
(There is no Less-Than-100% rate for Hazardous Waste Removal. Type of required protective clothing determines the amount to be added to the 100% base rate.)

Class "C" Suit	1.00
Class "B" Suit	1.50
Class "A" Suit	2.00

Group 1

Asphalt Plant Laborers	General Laborer ***
Asphalt Spreaders	Guardrail, Median
Batch Weighman	Rail (c)
Broomers	Leverman or Aggregate
Brush Burners/Cutters	Spreader (d)
Carpenter Tender	Material Yard Man (e)
Car & Truck Loaders	Powderman Tender
Change-House Man	Railroad Track Laborers
Choke Setter	Ribbon Setters (f)
Chipper Operator (a)	Rip Rap Man (Hand
Clean-up Laborers ***	Placed)
Concrete Laborers	Road Pump Tender
Culvert (hand labor)	Sewer Laborer
Curing, concrete	Signalman
Demolition, wrecking	Skipman
and moving ***	Slopers
Driller Tender	Sprayman
Dry-shack Man	Stake Chaser
Dumpers, road oiling	Stockpiler
crew	Timber Faller/Bucker
Dumpmen for grading	(Hand Labor)
crew	Toolroom Man (Job site)
Elevator Feeders	Tunnel Bull Gang
Fine Graders	(Above Ground)
Fire Watch	Weight-Man-Crusher (g)
Form Strippers (b)	

TRADES	BASIC HOURLY RATE	FRINGE BENEFITS	TRADES	BASIC HOURLY RATE	FRINGE BENEFITS
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LABORERS (Group 1 continued)

- a) Pittsburg or similar types
- b) Not swinging stages
- c) Reference Post, Guide Post, or Right-of Way Marker
- d) Flaherty, Loading Spotters or similar types
- e) Including electrical
- f) Including steel forms
- g) Aggregate when used

*** Laborers can tear off roofs, clean up or handle roofing materials only when at least one new story is added or in demolition work, where no reroofing will occur.

Group 2

Applicators (a)	Guniting or Pot Tender
Brush Cutters (b)	Handlers/Mixers (f)
Burners	Post Hole Digger, Air, gas or electric
Choker Splicer	Power Tool Operators (g)
Clay Power Spreader(c)	Sand Blasting (wet)
Clean up Nozzleman-	Stake Setter
Green Cutter (d)	Tampers
Concrete Power Buggyman	Tunnel Muckers/Brakeman/
Crusher Feeder	Concrete Crew/Bull
Demolition/Wrecking (e)	Gang (underground)
Grade Checker	
Granite Nozzleman	
Tender	

- a) Including Pot Tender for same, applying protective material by hand or nozzle on utility lines or storage tanks on project
- b) Power saw
- c) And similar types of spreaders
- d) Concrete, rock, etc.
- e) Charred Materials
- f) Of all materials of an irritating nature including cement and lime
- g) Includes, but not limited to: Dry Pack Machine, Jackhammer, Chipping Guns, Paving Breakers, Vibrators (less than 4" diameter)

Group 3

Asbestos Removal	Power Saw Operators (d)
Asphalt Rakers	Pumpcrete Nozzleman
Bit Grinder	Sand Blasting (dry)
Concrete Saw Operator	Pipe Layers of all Types
Drill Doctor	Sewer Timberman
Drill Operators (a)	Track Liners (e)
Guniting Nozzleman	Tugger Operator
High Scalers,	Tunnel-Chuck Tenders,
Strippers, Drillers(b)	Nippers, Timberman
Laser Beam (c)	Vibrator (4" and larger)

LABORERS (Group 3 continued)

Manhole Builder	Water Blaster
Powdermen	Welder

- a) Air Tracks, Cat Drills, Wagon Drills, Rubber-mounted drills, and other similar types
- b) Covers work in Swinging Stages, chairs or belts, under extreme conditions unusual to normal drilling, blasting, barring-down, or sloping and stripping
- c) Pipe laying, applicable when employee assigned to move, set up, align Laser Beam.
- d) Bucking and falling
- e) Anchor Machines, Ballast Regulators, Multiple Tampers, Power Jacks

Group 4

Laser Beam (Tunnel), applicable when employee assigned to move, set-up, align laser beam
Tunnel Miners
Tunnel Powderman

Group 5**

Flagger

Group 6**

Fence Builder Landscaping or planting laborer

**Groups 5 and 6 were at one time a single group. Note the difference in rates between the two groups now.

TRUCK DRIVERS¹

	LESS THAN		
	100%	100%	
Zone 1 (Base Rate): ²			
o Group 1	13.34	15.98	5.45 + a
o Group 2	13.38	16.03	5.45 + a
o Group 3	13.42	16.08	5.45 + a
o Group 4	13.46	16.13	5.45 + a
o Group 5	13.50	16.18	5.45 + a
o Group 6	13.58	16.28	5.45 + a
o Group 7	13.66	16.38	5.45 + a
o Group 8	13.74	16.48	5.45 + a
o Group 9	13.82	16.58	5.45 + a
o Group 10	13.96	16.75	5.45 + a
o Group 11	14.04	16.85	5.45 + a
o Group 12	14.12	16.95	5.45 + a
o Group 13	14.20	17.05	5.45 + a
o Group 14	14.28	17.15	5.45 + a

¹ See page 16 for explanation of Less Than 100% Rates.

² See page 16 for zone rates and descriptions.

TRUCK DRIVERS (Continued)

- a) Add \$0.15 to fringe benefit of all Group classifications for work performed inside a Federally Designated Hazardous Waste Site.

HAZARDOUS WASTE REMOVAL DIFFERENTIALS
(There is no Less-Than-100% rate for Hazardous Waste Removal. Type of required protective clothing determines the amount to be added to the 100% base rate.)

Class "C" Suit	1.00
Class "B" Suit	1.50
Class "A" Suit	2.00

<u>Work</u>	<u>Group</u>
A-Frame or Hydra-lift Truck w/load bearing surface.	2
Battery Rebuilder.	1
Bus or Man-Haul Driver.	1
Concrete Buggies (Power operated) Drivers and Helpers handling sacked cement—add 15¢ per hour.	1
Dump Trucks, Side, End and Bottom Dumps, including Semi-Trucks and trains or combinations thereof:	
6 cu. yds. and under.	1
Over 6 cu. yds. and inc. 10 cu. yds.	3
Over 10 cu. yds. and inc. 20 cu. yds.	6
Over 20 cu. yds. and inc. 30 cu. yds.	7
Over 30 cu. yds. and inc. 40 cu. yds.	8
Over 40 cu. yds. and inc. 50 cu. yds.	9
Over 50 cu. yds. and inc. 60 cu. yds.	10
Over 60 cu. yds. and inc. 70 cu. yds.	11
Over 70 cu. yds. and inc. 80 cu. yds.	12
Over 80 cu. yds. and inc. 90 cu. yds.	13
Over 90 cu. yds. and inc. 100 cu. yds.	14
Dumpsters or Similar Equipment—all sizes.	5
Flaherty Spreader Driver or Leverman.	4
Lift Jitneys, Fork Lifts—all sizes—used in loading, unloading & transporting material on job site.	1
Loader and/or Leverman on Concrete Dry Batch Plant, manually operated.	1

TRUCK DRIVERS (Continued)

Low Bed Equipment, Flat Bed Semi-Truck and Trailer or Doubles transporting equipment or wet or dry materials.	4
Lubrication Man, Fuel Truck Driver, Driver, Tireman, Wash Rack, Steam Cleaner or combination.	2
Lumber Carrier, Driver-Straddle Carrier—used in loading, unloading and transportation of material on job site.	4
Oil Distributor Driver or Leverman.	4
Pilot Car.	1
Slurry Truck Driver or Leverman.	3
Solo Flat Bed and Misc. Body Trucks—0-10 tons.	1
Transit Mix and Wet or Dry Mix Trucks:	
5 cu. yds. and under.	1
Over 5 cu. yds. and inc. 7 cu. yds.	5
Over 7 cu. yds. and inc. 9 cu. yds.	6
Over 9 cu. yds. and inc. 11 cu. yds.	7
Over 11 cu. yds. and inc. 13 cu. yds.	8
Over 13 cu. yds. and inc. 15 cu. yds.	9
Team Drivers.	2
Tireman, full-time basis.	3
Truck Helper.	1
Truck Mechanic—Welder—Body Repairman. ...	6
Truck Mechanic Helper.	1
Water Wagons (Rated Capacity) up to:	
1600 gallons.	1
1600 to 3000 gallons.	3
3000 to 5000 gallons.	4
5000 to 7000 gallons.	6
7000 to 10,000 gallons.	7
10,000 to 15,000 gallons.	8
Winch Truck—takes classification of truck on which winch is mounted	

PLANNED PUBLIC IMPROVEMENT SUMMARY

ISCAL YEAR _____ - _____

PAGE _____ OF _____

(Name of State or Local Government Agency)

Project Number	Project Name	Project Type	Project Location	Estimated Project Cost	Agency or Contract Work

ORS 279.023 generally states that not less than 30 days prior to adoption of its budget for the subsequent budget period, each public agency shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every public improvement known to that agency that the agency plans to fund in the budget period... If the agency decides to use its own equipment and personnel for constructing projects estimated to cost more than \$50,000, the agency shall show that the decision conforms to the policy of the State of Oregon that public agencies shall make every effort to construct public improvements at the least cost to the public agency, and the public agency shall cause to be kept and preserved a full, true and accurate account of the costs of performing the work including all engineering and administrative expenses and a reasonable estimate of the cost, including investment cost, of the equipment used. NOTE: This Improvement Summary together with the project

CAPITAL IMPROVEMENT PROJECT COST COMPARISON ESTIMATE

(Name of State or Local Government Agency)

DEPARTMENT:
PROPOSED YEAR:
PROJECT DESCRIPTION:

PROJECT NAME:

FUND:
PROJECT NUMBER:

Rough Quantity Estimate	Units	Work Class Description	Agency Force Estimate		Agency Contract Estimate	
			Unit Cost	Total Cost	Unit Cost	Total Cost
		</				

Bureau of Labor and Industries
Wage and Hour Division

PAYROLL

**Payroll and Certified Statement
Form - For Use in Complying
with ORS 279.354**[illegible]

CERTIFIED STATEMENT

1. (Name or signatory party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

(Contractor, subcontractor or surety) on the (Building or work)

_____; that during the payroll commencing on the _____ day of _____, 19____, and ending the _____ day of _____

_____, 19____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____

(Contractor, subcontractor or surety)

from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as specified in ORS 652.610, and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for workers contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each worker conform with work performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

FORM WH-34 (3/34)

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS OR PROGRAMS
In addition to the basic hourly wage rates paid to each worker listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

Each worker listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXEMPTIONS

[illegible]

I have read this certified statement, know the contents thereof and it is true to my knowledge.

NAME AND TITLE	ADDRESS	TELEPHONE	DATE
Mr. J. Edgar Hoover	Washington, D. C.		
Mr. Clegg			
Mr. Glavin			
Mr. Ladd			
Mr. Nichols			
Mr. Rosen			
Mr. Tracy			
Mr. Carson			
Mr. Egan			
Mr. Gurnea			
Mr. Hendon			
Mr. Pennington			
Mr. Quinn			
Mr. Nease			
Mr. Gandy			

SIGNATURE

<input type="checkbox"/>	Contractor
--------------------------	------------

☐ Subcontractor

<input type="checkbox"/>	Surety
--------------------------	--------

File this form with the contracting agency and send a true copy to the Bureau of Labor and Industries, 1400 SW Fifth Ave., Portland, OR 97201

FRINGE BENEFITS -- Contractors who pay all required fringe benefits: A contractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Commissioner of the Bureau of Labor and Industries shall continue to show on the payroll the basic cash hourly rate and overtime rate paid to employees. Such a contractor shall check paragraph 4(a) of the Certified Statement to indicate that he/she is also paying to approved plans, funds, or programs not less than the amount predetermined as fringe benefits for each craft. Any exceptions shall be noted in Section 4(c).

Contractors who pay no fringe benefits: A contractor who pays no fringe benefits shall pay to the employee, and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the contractor shall check paragraph 4(b) of the Certified Statement to indicate that he/she is paying fringe benefits in cash directly to employees. Any exceptions shall be noted in Section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination required is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the contractor may check, shall be entered in Section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringes and the hourly amount paid to plans, funds, or programs as fringes. The contractor shall pay, and shall show that he/she is paying to each such employee for all hours (unless otherwise provided by applicable determination) worked on the project an amount not less than the predetermined rate plus cash in lieu of fringes as shown in Section 4(c). The rate paid and amount of cash paid in lieu of fringe benefits per hour should be entered in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of the employees' wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the project and then the gross amount earned on all projects, thus \$63.00/120.00.

Column 8 - Deductions: Four columns are provided for showing deductions made. If more than four deductions should be involved, use first 3 columns; show the balance of deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deductions contained in the "Other" column. All deductions must be in accordance with the provisions of ORS 652.610. If the employee worked on other jobs in addition to this project, show actual deductions from gross wage, but indicate that deductions are based on gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory.

Certified Statement Required by ORS 279.354: While this form need not be notarized, the Certified Statement is subject to the penalties provided by ORS 279.990. Accordingly, the party signing this required statement should have knowledge of the facts represented as true.

Space has been provided between items (1) and (2) of the Statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "See Deductions column in this payroll." See paragraph entitled "FRINGE BENEFITS" above for instructions concerning filling out paragraph 4 of the Statement.

BUREAU OF LABOR AND INDUSTRIES - WAGE AND HOUR DIVISION

INSTRUCTIONS FOR COMPLETING PAYROLL AND CERTIFIED STATEMENT FORM, WH-38 (Rev 3/84)

General: This form meets needs resulting from the 1983 amendments to the Prevailing Wage Rate Law. Under this amended law, the contractor is required to pay not less than fringe benefits as predetermined by the Bureau of Labor and Industries, in addition to payment of not less than the predetermined rates. The contractor's obligation to pay fringe benefits may be met either by payment of the fringes to the various plans, funds, or programs or by making these payments to the employees as cash in lieu of fringes.

This form provides for the contractor's showing of the payroll and all monies paid to the employees, whether as basic rates or as cash in lieu of fringes and provides for the contractor's representation in the certified statement that he/she is paying to others fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions concerning the preparation of the form follow:

Fill in all boxes at top of form. Be sure to enter the date the contract was first advertised for bid by the contracting agency. This date should appear on the bid documents.

Column 1 - Name, Address, and Social Security number of Employee: The employee's full name must be shown on each payroll submitted. The employee's address must also be shown on the first payroll submitted. The address need not be shown on subsequent payrolls unless the address changes. Although not required, space is available in the name and address section so that Social Security numbers may be listed.

Column 2 - Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement.

Column 3 - Work Classifications: List classification descriptive of work actually performed by employees. Include group number when appropriate. Consult classifications and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. Employee may be shown as having worked in more than one classification provided accurate breakdown of hours so worked is maintained and shown on submitted payroll by use of separate line entries.

Column 4 - Hours Worked: Enter as overtime hours all hours worked in excess of 8 hours per day, all hours worked on Saturday and Sunday and hours worked on legal holidays as defined in ORS 279.334.

Column 5 - Total: Self-explanatory.

Column 6 - Rate of Pay, including Fringe Benefits: In straight time box, list actual hourly rate paid the employee for straight time worked plus any cash in lieu of fringes paid the employee. When recording the straight time hourly rate, any cash paid in lieu of fringes may be shown separately from the basic rate, thus \$12.50/2.35. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. Payment of not less than time and one half the basic or regular rate paid is required for overtime under ORS 279.334. In addition to paying not less than the predetermined rate for the classification in which the employee works, the contractor shall pay to approved plans, funds, or programs or shall pay as cash in lieu of fringes amounts predetermined as fringe benefits in the wage decision made part of the contract. See "FRINGE BENEFITS" below.

NOTICE OF AWARD OF PUBLIC WORKS CONTRACT
(For Use by Public Agency in Complying with ORS 279.363)

1. PRIME CONTRACTOR

Name _____

Address _____

City, State, Zip _____

Phone Number () _____

2. CONTRACTING AGENCY

Name _____

Address _____

City, State, Zip _____

Phone Number () _____

Submit this completed notice to:
Wage and Hour Division,
Prevailing Wage Section,
1400 S.W. 5th Avenue - Room 306
Portland, Oregon 97201

FORM WH-81 (Rev. 6/88)

3. CONTRACT INFORMATION

A. Contract Name and Number: _____

B. Location of work: _____

C. County: _____

D. Amount of the Award: \$ _____

E. Source of Funds: (i.e. 100%
Federal Funds; 50/50,
Federal, State; 100% local)

F. Date Contract Awarded: _____

G. Date Contract Specifications
Advertised for Bid: _____

NOTICE OF AWARD OF PUBLIC WORKS CONTRACT
(For Use by Public Agency in Complying with ORS 279.363)

1. PRIME CONTRACTOR

Name ZAK CONSTRUCTION COMPANY

Address 1234 N.W. Camille Street

City, State, Zip Alexandra, OR 97201

Phone Number (503) 12-4567

2. CONTRACTING AGENCY

Name LOPEZ IRRIGATION DISTRICT

Address 1234 N.W. Shannon Court

City, State, Zip Jamestown, OR 97201

Phone Number (503) 987-6543

Submit this completed notice to:
Wage and Hour Division,
Prevailing Wage Section,
1400 S.W. 5th Avenue - Room 306
Portland, Oregon 97201

FORM WH-81 (Rev. 6/88)

3. CONTRACT INFORMATION

A. Contract Name and Number:

Dam Repair 100-H

B. Location of work: Becca, Oregon

C. County: Malheur

D. Amount of the Award: \$ 25,000

E. Source of Funds: (i.e. 100%
Federal Funds; 50/50,
Federal, State; 100% local)

100% State

F. Date Contract Awarded: July 16, 1985

G. Date Contract Specifications
Advertised for Bid:

July 10, 1985

BUREAU OF LABOR AND INDUSTRIES
1400 S.W. 5th AVENUE
PORTLAND, OREGON 97201

ADDRESS CORRECTION REQUESTED

BULK RATE
U.S. Postage
PAID
Portland, Oregon
Permit No. 0458

Metro Disadvantaged Business Program

METRO CODE SECTION 2.04.100
Disadvantaged Business Program
METROPOLITAN SERVICE DISTRICT
Revised June 1991

2.04.100 Disadvantaged Business Program, Purpose and Authority:

(a) It is the purpose of this ordinance to establish and implement a program to encourage the utilization by Metro of disadvantaged and women-owned businesses by creating for such

businesses the maximum possible opportunity to compete for and participate in Metro contracting activities.

(b) The portions of this ordinance which relate to federally funded contracts are adopted pursuant to 49 CFR 23 and are intended to comply with all relevant federal regulations. Federal regulation 49 CFR 23 and its amendments implement section (105)(f) of the Surface Transportation Assistance Act of 1982 relating to the participation by Minority Business Enterprises in Department of Transportation programs.

(c) This ordinance shall be known and may be cited as the "Metro Disadvantaged Business Program," hereinafter referred to as the "Program."

(d) This ordinance supersedes the Metro "Minority Business Enterprise (MBE) Program" dated October 1980 and amended December 1982.

(Ordinance No. 83-165, Sec. 1; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.105 Policy Statement:

(a) Through this Program, Metro:

- (1) Expresses its strong commitment to provide maximum opportunity to disadvantaged and women-owned businesses in contracting;
- (2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and
- (3) Assures conformity with applicable federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by this ordinance shall apply to all Metro departments and project areas except as expressly provided in this ordinance.

(d) The objectives of the program shall be:

(1) To assure that provisions of this ordinance are adhered to by all Metro departments, contractors, employees and USDOT subrecipients and contractors.

(2) To initiate and maintain efforts to increase program participation by disadvantaged and women businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43(a)(1) and (2), and said statements shall be included in all USDOT agreements with USDOT subrecipients and in all USDOT assisted contracts between Metro or USDOT subrecipients and any contractor.

(Ordinance No. 83-165, Sec. 2; amended by Ordinance No. 84-181, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.110 Definitions: For purposes of this Ordinance, the following definitions shall apply:

(a) "Applicant" means one who submits an application, request or plan to be approved by a USDOT official or by Metro as a condition to eligibility for Department of Transportation (USDOT) financial assistance; and "application" means such an application, request or plan.

(b) "Construction Contract" means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(c) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this ordinance a lease or a purchase order of \$500.00 or more is a contract.

(d) "Contractor" means the one who participates, through a contract or subcontract, in the Program and includes lessees.

(e) "Department or USDOT" means the United States Department of Transportation, including its operating elements.

(f) "Disadvantage Business Enterprise or DBE" means a small business concern which is certified by an authorized agency and:

- (1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

For purposes of USDOT assisted contracts, the term Disadvantaged Business Enterprise shall be deemed to include Women-Owned Business Enterprises.

(g) "Executive Department" means the State of Oregon's Executive Department.

(h) "Joint Venture" is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a DBE/WBE and non-DBE/WBE, the DBE/WBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a DBE/WBE and a non-DBE/WBE must receive Metro approval prior to contract award to be counted toward any DBE/WBE contract goals.

(i) "Labor and Materials Contract" is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

(j) "Lessee" means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

(k) "Oregon Department of Transportation or ODOT" means the State of Oregon's Department of Transportation.

(l) "Personal Services Contract" means a contract for services of a personal or professional nature.

(m) "Procurement Contract" means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.

(n) "Recipient" means any entity, public or private, to whom USDOT financial assistance is extended, directly or through another recipient for any program.

(o) "Small Business Concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated thereto.

(p) "Socially and Economically Disadvantaged Individuals or Disadvantaged Individuals" means those individuals who are

citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. Certifying recipients shall make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged. Certifying recipients also may determine, on a case-by-case basis, that individuals who are not a member of one of the following groups are socially and economically disadvantaged:

- (1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Portuguese-American, Spanish culture or origin, regardless of race;
- (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; and
- (5) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

(q) "USDOT Assisted Contract" means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with USDOT financial assistance.

(r) "USDOT Financial Assistance" means financial aid provided by USDOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

(s) "Women-Owned Business Enterprise or WBE" means a small business concern, as defined pursuant to section 3 of the Small

Business Act and implementing regulations which is owned and controlled by one or more women and which is certified by an authorized agency. "Owned and controlled" means a business which is at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women. For purposes of USDOT assisted contracts, the term Disadvantaged Business Enterprise shall be deemed to include Women-Owned Business Enterprises.

(Ordinance No. 165, Sec. 3; amended by Ordinance No. 84-181, Sec. 2; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.115 Notice to Contractors, Subcontractors and Subrecipients: Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the Program which are USDOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate. Likewise, contractors of Metro accepting locally-funded contracts under the Program shall be advised that failure to carry out the applicable provisions of the Program shall constitute a breach of contract and, after notification by Metro, may result in termination or such other remedy as Metro deems appropriate.

(Ordinance No. 83-165, Sec. 4; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.120 Liaison Officer:

(a) The Executive Officer shall by executive order, designate a Disadvantaged Business Liaison Officer and, if necessary, other staff adequate to administer the Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the Program.

(b) The Liaison Officer shall be responsible for developing, managing and implementing the program, and for disseminating information on available business opportunities so that DBEs and WBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the Liaison Officer, all department heads and program managers shall have responsibility to assure implementation of the Program.

(Ordinance No. 83-165, Sec. 5; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.125 Directory: A directory of DBEs and WBEs certified by ODOT or the Executive Department, as applicable shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet Program requirements.

(Ordinance No. 83-165, Sec. 6; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.130 Minority-Owned Banks: Metro will seek to identify minority-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE/WBE banks.

(Ordinance No. 83-165, Sec. 7; amended by Ordinance No. 84-181, Sec. 3; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.135 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate DBE and WBE participation in contracting activities. These techniques include:

(a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of DBEs and WBEs.

(b) Referring DBEs and WBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.

(c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) Distribution of copies of the program to organizations and individuals concerned with DBE/WBE programs.

(e) Periodic reviews with department heads to insure that they are aware of the program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE/WBE goals for department

contracts shall be factors considered during annual performance evaluations of the department heads.

(f) Monitor and insure that Disadvantaged and Women Business Enterprise planning centers and likely DBE/WBE contractors are receiving requests for bids, proposals and quotes.

(g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE/WBE participation.

(h) Distribution of lists to potential DBE/WBE contractors of the types of goods and services which Metro regularly purchases.

(i) Advising potential DBE/WBE vendors that Metro does not certify DBE/WBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.

(j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE and WBE participation in contracts. In an effort to become more knowledgeable regarding DBE and WBE resources, the committee shall also invite potential DBE and WBE contractors to attend selected meetings.

(l) Requiring that at least one DBE or WBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$15,001 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$10,001 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no DBEs or WBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs and WBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(m) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs and WBEs in Metro contracting activities.

(Ordinance No. 83-165, Sec. 8; amended by Ordinance No. 84-181, Sec. 4; Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.140 Certification of Disadvantaged Business Eligibility:

(a) To participate in the Program as a DBE or WBE, contractors, subcontractors and joint ventures must have been certified by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the certification and recertification processes of ODOT and will utilize ODOT's certification list until December 31, 1987, and, thereafter, the Executive Department's list in determining whether a prospective contractor or subcontractor is certified as a DBE or WBE. A prospective contractor or subcontractor must be certified as a DBE or WBE by one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible DBE or WBE and be counted toward meeting goals. Metro will adhere to the Recertification Rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for USDOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the USDOT-assisted portion of this Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

- (1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the certifying agency as a disadvantaged business. The challenge shall be made in writing to the recipient.
- (2) With its letter, the challenging party shall include all information available to it relevant to

a determination of whether the challenged party is in fact socially and economically disadvantaged.

- (3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.
 - (i) if the recipient determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.
 - (ii) if the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.
- (4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as a socially and economically disadvantaged individual.
- (5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.
- (6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.

- (7) In making the determinations called for in paragraphs (b)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.
- (8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect." 49 CFR 23.69.

(Ordinance No. 83-165, Sec. 9; amended by Ordinance No. 84-181, Sec. 5; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.145 Annual Disadvantaged Business Goals:

(a) The Metro Council shall, by resolution each June, establish annual DBE goals and for locally-funded contracts, separate WBE goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts, and USDOT assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) Projection of the number and types of contracts to be awarded by Metro;
- (2) Projection of the number, expertise and types of DBEs and WBEs likely to be available to compete for the contracts;
- (3) Past results of Metro's efforts under the Program;
- (4) For USDOT-assisted contract goals, existing goals of other local USDOT recipients and their experience in meeting these goals; and
- (5) For locally-funded contract goals, existing goals of other Portland metropolitan area contracting agencies, and their experience in meeting these goals.

(c) Annual goals for USDOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the USDOT-assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available

for 30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice.

(e) Metro will publish notice regarding proposed locally-funded contract goals not later than ten (10) days prior to adoption of the goals.

(Ordinance No. 83-165, Sec. 10; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.150 Contract Goals:

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000.

(b) The Liaison Officer may set a contract goal for any contract other than construction contracts over \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the Liaison Officer and shall not be tied, necessarily, to the annual goal for such contract type.

(c) Even though no DBE/WBE goals are established at the time that bid/proposal documents are drafted, the Liaison Officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.160, to achieve DBE/WBE participation in the same goal amount as the current annual goal for that contract type.

(d) Contract goals may be complied with pursuant to Section 2.04.160 and/or 2.04.175. The extent to which DBE/WBE participation will be counted toward contract goals is governed by the latter section.

(Ordinance No. 83-165, Sec. 11; repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.155 Contract Award Criteria:

(a) To be eligible for award of contracts containing a DBE/WBE goal, prime contractors must either meet or exceed the specific goal for DBE and WBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of DBEs and WBEs

certified by ODOT until December 31, 1987, and, thereafter, by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or request for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.160 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged Business Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a DBE/WBE in which the DBE/WBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders/proposers shall, by the close of the next working day following bid opening (or proposal submission date when no public opening is had), submit to Metro detailed DBE and WBE Utilization Forms listing names of DBEs and WBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and DBE/WBE subcontractors and suppliers to be utilized in performance of the contract. A sample Letter of Agreement will be provided by Metro. The DBE and WBE Utilization Forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that the DBE/WBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right to determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided

above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law.

(Ordinance No. 83-165, Sec. 12; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.160 Determination of Good Faith Efforts:

(a) Bidders or Proposers on USDOT-assisted contracts to which DBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. A showing of good faith efforts must include written evidence of at least the following:

- (1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform disadvantaged and women business enterprises of contracting and subcontracting or material supply opportunities available on the project;
- (2) Advertisement in trade association, general circulation, minority and trade-oriented, women-focus publications, if any and through a minority-owned newspaper or minority-owned trade publication concerning the sub-contracting or material supply opportunities at least 10 days before bids or proposals are due.
- (3) Written notification to a reasonable number but no less than five (5) DBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from

DBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE sufficient opportunity to develop quotes or proposals for the work described.

- (4) Evidence of follow-up to initial solicitations of interest, including the following:
 - (A) The names, addresses, telephone numbers of all DBE contacted;
 - (B) A description of the information provided to DBE firms regarding the plans and specifications for portions of the work to be performed; and
 - (C) A statement of the reasons for non-utilization of DBE firms, if needed to meet the goal.
- (5) Negotiation in good faith with DBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE firms;
- (6) Where applicable, the bidder must provide advice and assistance to interested DBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder;
- (7) Overall, the bidder's efforts to obtain DBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals; and
- (8) The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs.

(b) Bidders or proposers on locally-funded contracts to which DBE/WBE goals apply shall achieve the applicable contract goal or demonstrate that they have made good faith efforts to achieve the

goals. Good faith efforts shall include written documentation of at least the following actions by bidders:

- (1) Attendance at any presolicitation or prebid meetings that were scheduled by Metro to inform DBEs and WBEs of contracting and subcontracting or material supply opportunities available on the project;

Documentation required: Signature of representative of bidder or proposer on prebid meeting attendance sheet.

- (2) Identifying and selecting specific economically feasible units of the project to be performed by DBEs or WBEs to increase the likelihood of participation by such enterprises;

Minimum documentation required: At least the documentation required under subsection (4) below.

- (3) Advertising in, at a minimum, a newspaper of general circulation, and trade association, minority and trade oriented, women-focused publications, if any, concerning the subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due;

Documentation required: copies of ads published.

- (4) Providing written notice soliciting sub-bids/proposals to not less than five (5) DBEs or WBEs for each subcontracting or material supply work item selected pursuant to (2) above not less than ten (10) days before bids/proposals are due.

If there are less than five certified DBEs/WBEs listed for that work or supply specialty then the solicitation must be mailed to at least the number of DBEs/WBEs listed for that specialty. The solicitation shall include a description of the work for which subcontract bids/proposals are requested and complete information on bid/proposal deadlines along with details regarding where project specifications may be reviewed.

Documentation required: Copies of all solicitation letters sent to DBE/WBE along with a written statement from the bidder/proposer that all the letters were sent by regular or certified mail not less than 10 days before bids/proposals were due.

- (5) Making, not later than five days before bids/proposals are due, follow-up phone calls to all DBEs/WBEs who have not responded to the solicitation letters to determine if they would be submitting bids and/or to encourage them to do so.

Minimum documentation required: Log showing a) dates and times of follow-up calls along with names of individuals contacted and individuals placing the calls; and b) results attained from each DBE/WBE to whom a solicitation letter was sent (e.g., bid submitted, declined, no response). In instances where DBE/WBE bids were rejected, the dollar amount of the bid rejected from the DBE/WBE must be indicated along with the reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

- (6) Using the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women Business that provide assistance in the recruitment and placement of DBEs and WBEs; where applicable, advising and assisting DBEs and WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by DBEs and WBEs which could reasonably be expected to produce a level of participation sufficient to meet the goals.

Minimum documentation required: Letter from bidder/proposer indicating all special efforts made to facilitate attainment of contract goals, the dates such actions were taken and results realized.

- (7) Notwithstanding any other provision of this section, bidders and proposers on locally-funded contracts to which DBE/WBE goals apply need not accept the bid of a DBE or WBE on any particular subcontract or material supply item if the bidder/proposer demonstrates that none of the DBEs or WBEs submitting bids were the lowest responsible, responsive and qualified bidders/proposers on that particular subcontract item and that the subcontract item was awarded to the lowest responsible, responsive bidder/proposer.

Metro reserves the right to require additional written documentation of good faith efforts and bidders and proposers shall comply with all such requirements by Metro. It shall be a rebuttable presumption that a bidder or proposer has made a good faith effort to comply with the contract goals if the bidder has performed and submits written documentation of all of the above actions. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not performed or has not submitted documentation of all of the above actions.

(Ordinance No. 83-165, Sec. 13; amended by Ordinance No. 84-181, Sec. 6 and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.165 Replacement of DBE or WBE Subcontractors: Prime contractors shall not replace a DBE/WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE or WBE subcontractor shall replace such DBE/WBE subcontractor with another certified DBE/WBE subcontractor or make good faith efforts as described in the preceding section to do so.

(Ordinance No. 83-165, Sec. 14; amended by Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.170 Records and Reports:

(a) Metro shall develop and maintain a recordkeeping system to identify and assess DBE and WBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

- (1) Awards to DBEs and WBEs by number, percentage and dollar amount.
- (2) A description of the types of contracts awarded.
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All DBE and WBE records will be separately maintained. Required DBE and WBE information will be provided to federal agencies and administrators on request.

(c) The Liaison Officer shall prepare reports, at least semiannually, on DBE and WBE participation to include the following:

- (1) The number of contracts awarded;
- (2) Categories of contracts awarded;
- (3) Dollar value of contracts awarded;
- (4) Percentage of the dollar value of all contracts awarded to DBE/WBE firms in the reporting period; and
- (5) The extent to which goals have been met or exceeded.

(Ordinance No. 83-165, Sec. 15; amended by Ordinance No. 84-181, Sec. 7, and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

2.04.175 Counting Disadvantaged Business Participation Toward Meeting Goals:

(a) DBE/WBE participation shall be counted toward meeting the goals on each contract as follows:

- (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a prime contract or subcontract to be performed by DBEs or WBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
- (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged or female business partner in the joint venture.

- (4) Metro shall count toward its goals only expenditures to DBEs and WBEs that perform a commercially useful function in the work of a contract. A DBE or WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE or WBE is performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- (5) Consistent with normal industry practices, a DBE or WBE may enter into subcontracts. If a DBE or WBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE or WBE shall be presumed not to be performing a commercially useful function. The DBE or WBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by USDOT for USDOT-assisted contracts.
- (6) A DBE or WBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than DBE or WBE suppliers and manufacturers, provided that the DBE or WBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.
- (7) Metro shall count its entire expenditure to a DBE or WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- (8) Metro shall count against the goals 60 percent of its expenditures to DBE or WBE suppliers that are not manufacturers, provided that the DBE or WBE supplier performs a commercially useful function in the supply process.
- (9) When USDOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any DBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project managers

responsible for administration of pass-through agreements shall include the following language in those agreements:

- (a) Policy. It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this agreement.
- (b) MBE Obligation. The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts."

(b) DBE or WBE participation shall be counted toward meeting annual goals as follows:

- (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a DBE or WBE is counted toward meeting annual goals.
- (2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

(Ordinance No. 83-165, Sec. 16; amended by Ordinance No. 84-181, Sec. 8; and Ordinance No. 86-197, Sec. 1; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1; and Ordinance No. 88-252, Sec. 1)

2.04.180 Compliance and Enforcement:

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by

a contractor prior to contract award pertaining to DBE and WBE participation in the contract.

(b) The Liaison Officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE and WBE participation.

(Ordinance No. 83-165, Sec. 17; all previous Ordinances repealed by Ordinance No. 87-216, Sec. 1; amended by Ordinance No. 87-231, Sec. 1)

Metro Franchise Code

CHAPTER 5.01

DISPOSAL SITE FRANCHISING

SECTIONS

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5.01.010 Definitions: As used in this chapter, unless the context requires otherwise:

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the Code of the Metropolitan Service District.

(c) "Council" has the same meaning as in Code Section 1.01.040.

(d) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(e) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(f) "District" has the same meaning as in Code Section 1.01.040.

(g) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.

(h) "Executive Officer" has the same meaning as in Code Section 1.01.040.

(i) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

(j) "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

(k) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

(l) "Person" has the same meaning as in Code Section 1.01.040.

(m) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composing, shredding, milling, or pulverizing, but excluding compaction.

(n) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

(o) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

(p) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.

(q) "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by

which useful material or energy resources are obtained from solid waste.

(r) "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.

(s) "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; provided that this definition does not include:

(1) Hazardous wastes as defined in ORS 459.410, and

(2) Radioactive wastes as defined in ORS 469.300, and

(3) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, and

(4) Explosives.

(t) "Solid Waste Management Plan" means the Metro Solid Waste Management Plan.

(u) "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

(v) "User Fee" means a user fee established by the District under ORS 268.515.

(w) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose.

(Ordinance No. 81-111, Sec. 2)

5.01.020 Findings and Purposes:

(a) The Council finds that the District has limited land and resources for the disposal of solid waste. It is the

responsibility of the Council to provide and protect such resources and to do so requires that the Council franchise disposal sites, transfer stations, processing facilities and resource recovery facilities.

(b) To protect the health, safety and welfare of the District's residents, the Council declares it to be the public policy of the District and the purpose of this chapter to establish an exclusive franchise system for the disposal of solid waste in the District under the authority granted to the Council by ORS Ch. 268 in order to:

(1) Provide a coordinated regional disposal program and Solid Waste Management Plan in cooperation with federal, state and local agencies to benefit all citizens of the District.

(2) Provide standards for the location, geographical zones and total number of disposal sites, processing facilities, transfer stations and resource recovery facilities to best serve the citizens of the District.

(3) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.

(4) Prohibit rate preferences and other discriminatory practices.

(5) Ensure sufficient flow of solid waste to District's resource recovery facilities.

(6) Maximize the efficiency of the District's Solid Waste Management Plan.

(7) Provide for cooperation between cities and counties in the District with respect to regional franchising of solid waste disposal sites, processing facilities, transfer stations and resource recovery facilities.

(8) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery.

(Ordinance No. 81-111, Sec. 3)

5.01.030 Prohibited Activities: Except as provided in this chapter, it shall be unlawful:

(a) For any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or

resource recovery facility unless such person is a franchisee or exempted by Section 5.01.040 of this chapter.

(b) For a franchisee to receive, process or dispose of any solid waste not specified in the franchise agreement.

(c) For any person to take, transport or dispose of solid waste at any place other than a disposal site, processing facility, transfer station or resource recovery facility operated by a franchisee or exempted by Section 5.01.040 of this chapter except by written authority of the Council.

(d) For a franchisee to charge any rate not established by the Council or Executive Officer under this chapter.

(Ordinance No. 81-111, Sec. 4; amended by Ordinance No. 87-217, Sec. 1)

5.01.040 Exemptions:

(a) The following are exempt from the provisions of this chapter governing franchisees:

(1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.

(2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.

(3) Recycling drop centers.

(4) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivations at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.

(5) Persons who process, transfer or dispose of solid wastes which:

- (A) are not putrescible;
- (B) have been source separated;
- (C) are not and will not be mixed by type with other solid wastes; and
- (D) are reused or recycled.

For the purpose of this section, putrescible does not include wood, dry cardboard or paper uncontaminated by food wastes or petroleum products.

(6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.

(7) Temporary transfer stations or processing centers established and operated by local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150 (User Fees), Section 5.01.180, (Determination of Rates) subsection 5.01.070(f), and Section 5.01.130, (Administrative Procedures of Franchisees) and shall require contract operators of District owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1).

(Ordinance No. 81-111, Sec. 5; amended by Ordinance No. 82-136, Sec. 1)

5.01.050 Administration: The Executive Officer shall be responsible for the administration and enforcement of this chapter.

(Ordinance No. 81-111, Sec. 6)

5.01.060 Applications:

(a) Applications for a franchise or for transfer of any interest in, modification, expansion, or renewal of an existing franchise shall be filed on forms provided by the Executive Officer.

(b) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

(1) Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise.

(2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee.

(3) Proof that the applicant can obtain public liability insurance, including automotive coverage, in the amounts of not less than \$300,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law for public contracts.

(4) If the applicant is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer.

(5) A duplicate copy of the DEQ disposal site permit application and any other information required by or submitted to DEQ pursuant to ORS ch. 459.

(6) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused.

(7) Proof that the applicant has received proper land use approval.

(8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

(c) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise application is granted or denied provided, however, an abbreviated application form provided by the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.

(d) An incomplete or insufficient application shall not be accepted for filing.

(Ordinance No. 81-111, Sec. 7; amended by Ordinance No. 82-136, Sec. 2)

5.01.070 Issuance of Franchise:

(a) Applications filed in accordance with Section 5.01.060 shall be reviewed by the Executive Officer. The Executive Officer or his/her designated representative may make such investigation as the Executive Officer deems appropriate, and shall have the right of entry onto the applicant's proposed franchise site with or without notice before or after the franchise is granted to assure compliance with this chapter, the Code, DEQ permit and franchise agreement.

(b) Upon the basis of the application, evidence submitted and results of any investigation, the Executive Officer shall formulate recommendations regarding whether the applicant is qualified, whether the proposed franchise complies with the District's Solid Waste Management Plan, whether the proposed franchise is needed considering the location and number of existing and planned disposal sites, transfer stations, processing facilities and resource recovery facilities and their remaining capacities, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements.

(c) The Executive Officer shall recommend to the Council whether the application should be granted, denied, or modified. If the Executive Officer recommends that the application be granted, the Executive Officer shall recommend to the Council specific conditions of the Franchise Agreement and whether or not the franchise should be exclusive. Following the recommendation of the Executive Officer, the Council shall issue an order granting, denying or modifying the application. The Council may attach conditions to the order, limit the number of franchises

granted, and grant exclusive franchises. If the Council issues an order to deny the franchise, such order shall be effective immediately. An exclusive franchise may be granted if the Council determines that an exclusive franchise is necessary to further the objectives of the Solid Waste Management Plan. In determining whether an exclusive franchise should be granted, the Council shall consider the following:

(1) The proximity of existing and planned solid waste disposal facilities to the proposed site.

(2) The type and quantity of waste that existing facilities receive and the type and quantity of waste that planned facilities will receive.

(3) The capacity of existing and planned solid waste disposal facilities.

(4) The type of vehicles that existing facilities receive and the type of vehicles that planned facilities will receive.

(5) The hauling time to the proposed facility from waste generation zones established by the District.

(d) If the Council does not act to grant, or deny, a franchise application within one hundred twenty (120) days after the filing of a complete application, a Temporary Franchise shall be deemed granted for the site requested in the application unless the Executive Officer notifies the applicant that more time is needed to review and process the application and advises the applicant how much time will be needed to complete the review. The one hundred twenty (120) days will not begin until the Executive Officer has accepted the application as complete and ready for processing.

(e) Within ten (10) days after receipt of an order granting a franchise, the applicant shall:

(1) Enter into a written franchise agreement with the District,

(2) Obtain a corporate surety bond guaranteeing full and faithful performance during the term of the franchise of the duties and obligations of the franchisee under the franchise agreement, and

(3) Proof that the applicant can obtain public liability insurance, including automotive coverage, in the amounts of not less than \$300,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number

of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law for public contracts.

(4) Name the District as an additional insured in the insurance policy required by Section 5.01.060(b)(3).

(f) The granting of a franchise shall not vest any right or privilege in the franchisee to receive specific types or quantities of solid waste during the term of the franchise.

(1) To ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council may, upon thirty (30) days prior written notice, without hearing at any time during the term of the franchise, direct solid waste away from the franchisee. Whenever possible the District shall divert an equitable amount of waste from each franchised facility to the resource recovery facility. In such case, the Council shall make every reasonable effort to provide notice of such direction to affected haulers of solid waste.

(2) In emergency situations, to ensure a sufficient flow of solid waste to the District's resource recovery facilities, the Council or the Executive Officer may, without hearing, issue a sixty (60) day temporary order directing solid wastes away from the franchisee. In such situations, the Council or Executive Officer shall give the franchisee as much advance notice as is reasonably possible under the circumstances, and shall make a reasonable effort to provide notice of such direction to affected haulers of solid waste. A temporary order issued by the Executive Officer under this subsection shall be subject to codification or revocation by the Council.

(g) In addition to the authority contained in Section 5.01.070(f)(1), for the purposes of this chapter, the Council may, upon sixty (60) days prior written notice, direct solid waste away from the franchisee, direct additional solid waste to the franchisee, or limit the type of solid wastes which the franchisee may receive. Sixty (60) days prior notice shall not be required if the Council finds that there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay. The direction of the solid waste away from a franchisee or limitation of the types of solid wastes a franchisee may receive under this subsection shall not

be considered a modification of the franchise, but a franchisee shall have the right to request a contested case hearing pursuant to Code Chapter 2.05. However, a request for a contested case hearing shall not stay action under this subsection.

(Ordinance No. 81-111, Sec. 8; amended by Ordinance No. 82-136, Sec. 3)

5.01.080 Term of Franchise:

(a) The term of a new or renewed franchise shall be the site longevity or five (5) years, whichever is less. In recommending site longevity, the Executive Officer shall consider the population to be served, the location of existing franchises, probable use and any other information relevant to the franchise term. The Executive Officer shall recommend the term of the franchise to the Council. The Council shall establish the term of the franchise.

(b) Franchises shall be renewed unless the Council determines that the proposed renewal does not meet the criteria of Section 5.01.070(b), provided that the franchisee files an application for renewal not less than one hundred twenty (120) days prior to the expiration of the franchise term, together with a statement of material changes in its initial application for the franchise and any other information required by the Executive Officer. The Council, upon recommendation from the Executive Officer, may attach conditions or limitations to the renewed franchise.

(Ordinance No. 81-111, Sec. 9)

5.01.085 Franchises for Major Disposal System Components:

(a) Consistent with the provisions of the Solid Waste Management Plan, the Council may authorize franchise agreements governing the operation of the components of the solid waste disposal system found by the Council to be major components of the system. Prior to authorizing a franchise agreement pursuant to this Section, the Council shall by resolution state Council's intent to authorize such an agreement, describe the system component which will be the subject of the agreement, describe other terms and conditions deemed necessary by the Council and establish the procedures to be followed by the Council in authorizing any such agreement. The procedures for authorizing any such agreement shall at a minimum meet the requirements of subsection 5.01.085(d)

(b) If the Council elects to authorize a franchise agreement pursuant to this Section the procedural terms and conditions set forth in the resolution stating the intent to

authorize an agreement shall govern the approval of any franchise agreement subsequently authorized by the Council. Sections 5.01.060, Application; 5.01.070, Issuance; 5.01.080, Term; 5.01.090, Transfer of Franchise; and 5.01.100, Appeals, of this Chapter, shall not be applicable to such franchise agreements.

(c) Any franchise agreement authorized by the Council pursuant to this Section may contain such substantive terms and conditions as the Council deems appropriate. To the extent a franchise agreement authorized by this Section specifically provides to the contrary the provisions of Sections 5.01.120, Procedures for Franchises; 5.01.140, Franchise Fees; 5.01.150, User Fees; 5.01.180, Determination of Rates; 5.01.190, Enforcement of Franchise Provisions, Appeal; 5.01.200, Right to Purchase; and 5.01.210, Penalties, of this Chapter shall not apply.

(d) Prior to authorizing any franchise agreement pursuant to this section the Council shall establish procedures for receiving applications, review of such applications and criteria to be utilized in determining which, if any, application should be approved.

~~All applications shall provide information regarding the ownership and legal structure of the applicant, the ownership and legal structure of the property owner of the proposed site location, the status of any required permits from the DEQ and other regulatory bodies including local land use authorities and such other information as the District may find necessary or appropriate. Incomplete or insufficient applications may not be accepted.~~

All applications shall be investigated and reviewed by the Executive Officer who shall make a recommendation to the Council regarding each applicant.

In determining whether to authorize a franchise agreement the Council shall consider whether the applicant has satisfied the criteria established by the Council for the approval of such franchise agreements. The Council may reject any and all franchise applications. Nothing in this chapter shall be construed as creating a duty on the part of the District to approve any application for a franchise. Criteria utilized shall at a minimum address the following issues and such other issues as the Council finds appropriate.

(1) Compliance with the District 's Solid Waste Management Plan.

(2) The proximity of existing and planned solid waste disposal facilities to the proposed site.

(3) The type and quantity of waste that existing facilities receive and the type and quantity of waste that planned facilities will receive.

(4) The capacity of existing and planned solid waste disposal facilities.

(5) The type of vehicles that existing facilities receive and the type of vehicles that planned facilities will receive.

(6) The hauling time to the proposed facility from waste-generation zones established by the District.

(e) Franchise agreements authorized by this section shall at a minimum contain provisions requiring the franchisee to obtain public liability insurance policies in a minimum amount of \$500,000 or such greater amount as the District may require and naming the District, its employees and agents as additional named insureds; such surety bonds as the District may require; restrictions on the transfer or assignment or subcontracting out of the franchise or change in control of the franchisee; reports to the District as found appropriate; waste reduction plans of the franchisee and such other terms and conditions found appropriate or necessary by the District.

(Ordinance No. 88-276, Sec. 1)

5.01.090 Transfer of Franchises:

(a) A franchisee may not lease, assign, mortgage, sell or otherwise transfer, either in whole or in part, its franchise to another person unless an application therefor has been filed in accordance with Section 5.01.060 and has been granted. The proposed transferee must meet the requirements of this chapter.

(b) The Council shall not unreasonably deny an application for transfer of a franchise. If the Council does not act on the application for transfer within ninety (90) days after filing of a complete application, the application shall be deemed granted.

(c) The term for any transferred franchise shall be for the remainder of the original term unless the Council establishes a different term based on the facts and circumstances at the time of transfer.

(Ordinance No. 81-111, Sec. 10)

5.01.100 Appeals: Any applicant or franchisee is entitled to a contested case hearing pursuant to Code Chapter 2.05 upon the Council's suspension modification or revocation or refusal to

issue, renew or transfer a franchise or to grant a variance, as follows:

(a) Except as provided in subsection (c) of this section, the Council's refusal to renew a franchise shall not become effective until the franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(b) The Council's refusal to grant a variance, or to issue or transfer a franchise shall be effective immediately. The franchisee or applicant may request a hearing on such refusal within sixty (60) days of notice of such refusal.

(c) Upon a finding of serious danger to the public health or safety, the Executive Officer may suspend a franchise or the Council may refuse to renew a franchise and such action shall be effective immediately. If a franchise renewal is refused effective immediately, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing.

(Ordinance No. 81-111, Sec. 11)

5.01.110 Variances:

(a) The Council, upon recommendation of the Executive Officer, may grant specific variances from particular requirements of this chapter to such specific persons or class of persons upon such conditions as the Council may deem necessary to protect public health, safety and welfare, if the Council finds that the purpose and intent of the particular requirement can be achieved without strict compliance and that strict compliance:

(1) Is inappropriate because of conditions beyond the control of person(s) requesting the variance; or

(2) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or

(3) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of the District.

(b) A variance must be requested in writing and state in a concise manner facts to show cause why such variance should be granted. The Executive Officer may make such investigation as he/she deems necessary and shall make a recommendation to the Council within sixty (60) days after receipt of the variance request.

(c) If the Council denies a variance request, the Executive Officer shall notify the person requesting the variance of the right to a contested case hearing pursuant to Code Chapter 2.05.

(d) If a request for a variance is denied, no new application for this same or substantially similar variance shall be filed for at least six (6) months from the date of denial.

(Ordinance No. 81-111, Sec. 12)

5.01.120 Responsibilities of Franchisees: A franchisee: -

(a) Shall provide adequate and reliable service to the citizens of the District.

(b) May discontinue service only upon ninety (90) days prior written notice to the District and the written approval of the Executive Officer. This section shall not apply to any order for closure or restriction of use by any public agency, public body or court having jurisdiction.

(c) May contract with another person to operate the disposal site, processing or resource recovery facility or transfer station only upon ninety (90) days prior written notice to the District and the written approval of the Executive Officer. If approved, the franchisee shall remain responsible for compliance with this chapter and the terms and conditions of the franchise.

(d) Shall establish and follow procedures designed to give reasonable notice prior to refusing service to any person. Copies of notification and procedures for such action will be retained on file for three (3) years by each franchisee for possible review by the Executive Officer.

(e) Shall maintain during the term of the franchise public liability insurance in the amounts set forth in Section 5.01.070(e) or such other amounts as may be required by State law for public contracts and shall give thirty (30) days written notice to the Executive Officer of any lapse or proposed cancellation of insurance coverage or performance bond.

(f) Shall file an annual operating report on forms provided by the Executive Officer on or before March 1 of each year for the preceding year.

(g) Shall comply with all provisions of this chapter, the Code, ORS ch. 459, DEQ permit and franchise agreement.

(h) Shall submit duplicate copies to the Executive Officer of all correspondence, exhibits or documents submitted to

the DEQ relating to the terms or conditions of the DEQ solid waste permit or disposal franchise during the term of the franchise. Such correspondence, exhibits or documents shall be forwarded to the District within two working days of their submission to DEQ.

(i) Shall indemnify the District, the Council, the Executive Officer, the Director and any of their employees or agents and save them harmless from any and all loss, damage, claim, expense or liability related to or arising out of the franchisee's performance of or failure to perform any of its obligations under the franchise or this chapter.

(j) Shall have no recourse whatsoever against the District or its officials, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of the franchise or because of the enforcement of the franchise or in the event the franchise or any part thereof is determined to be invalid.

(k) Shall, if the franchisee accepts solid waste from the general public and from commercial haulers other than the franchisee, implement a program based on District guidelines approved by the Council for reducing the amount of solid waste entering disposal sites, processing facilities, or transfer stations.

(l) Shall not, either in whole or in part, own, operate, maintain, have a proprietary interest in, be financially associated with or subcontract the operation of the site to any individual, partnership or corporation involved in the business of collecting residential, commercial, industrial or demolition refuse within the District. A transfer station or processing center franchisee who only receives waste collected by the franchisee shall be exempt from this subsection.

(Ordinance No. 81-111, Sec. 13)

5.01.130 Administrative Procedures for Franchisees:

(a) Unless otherwise specified by the Executive Officer, the following accounting procedure shall be used for charging, collecting and recording fees and charges:

(1) Fees and charges shall be charged on the basis of tons of waste received where weighing is practicable or on the basis of estimated cubic yards of waste received where weighing is not practicable. Either a mechanical or automatic scale approved by the National Bureau of Standards and State of Oregon may be used for weighing waste.

(2) Fees and charges collected in cash shall be separately recorded on a multi-total cash register. The franchisee shall total the fees and charges separately at the end of each business day as recorded on the cash register and reconcile that total with the actual cash in the register drawer. Cash receipts shall be deposited daily in a bank account. The franchisee shall reconcile the bank account each month.

(3) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.

(4) Where a fee or charge is levied and collected on an accounts receivable basis, prenumbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or cancelled tickets shall be retained.

(b) Each month at the time of payment, the franchisee must file with the Executive Officer, a statement including without limitation the following information:

(1) Name and address of the franchisee.

(2) District registration number.

(3) Month and year of each report.

(4) Number of truckloads received daily.

(5) Daily number of cars, pickups, trailers, and other small hauling vehicles.

(6) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, noncompacted, minimum loads and special loads.

(7) Detailed explanation of any adjustments made to the amount of fees paid pursuant to Section 5.01.150(e).

(8) Signature and title of the franchisee or its agent. Misrepresentation of any information required above shall be grounds for suspension, modification, revocation or refusal to renew a franchise or penalties as provided in Section 5.01.210.

(c) Every franchisee shall keep such records, receipts or other pertinent papers and information in such form as the District may require. The Executive Officer, or his authorized agent in writing, may examine during reasonable business hours the books, papers, records and equipment of any operator and may make such investigations as may be necessary to verify the accuracy of any return made, or if no return is made by the franchisee, to ascertain and determine the amount required to be paid.

(d) Fees and charges owing to the District from the franchisee which are not paid when due shall bear a late charge equal to one and one-half percent (1-1/2%) of the amount unpaid for each month or portion thereof such fees or charges remain unpaid.

(Ordinance No. 81-111, Sec. 14)

5.01.140 Franchise Fee:

(a) The Council shall establish an annual franchise fee which it may revise at any time upon thirty (30) days written notice to each franchisee and an opportunity to be heard.

(b) The franchise fee shall be in addition to any other fee, tax or charge imposed upon a franchisee.

(c) The franchisee shall pay the franchise fee in the manner and at the time required by the District.

(Ordinance No. 81-111, Sec. 15)

5.01.150 User Fees:

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, the Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised by the District or which are liable for payment of User Fees pursuant to a special agreement with the District. User Fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation.

(b) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.

(c) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.

(e) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectible provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account. If the fees have previously been paid a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account thereafter, in whole or in part, is collected, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(f) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan.

(Ordinance No. 81-111, Sec. 16; amended by Ordinance No. 86-214, Sec. 1)

5.01.160 Reports from Collection Services: Upon request of the Executive Officer, a solid waste collection service shall file periodic reports with the District, containing information required by the Executive Officer.

(Ordinance No. 81-111, Sec. 17)

5.01.170 Rate Review Committee:

(a) The Council shall appoint a five-member Rate Review Committee to gather information and provide recommendations for the establishment of rates.

(b) Initially, three members shall serve two-year terms and two members shall serve one-year terms, in order to provide continuity in Rate Review Committee membership. Thereafter, Rate Review Committee members shall serve two-year staggered terms.

(c) The members of the Rate Review Committee shall be as follows:

(1) One Certified Public Accountant with expertise in cost accounting and program auditing.

(2) One Certified Public Accountant with expertise in the solid waste industry or public utility regulation.

(3) One local government administrator with expertise in governmental financing, agency budgeting and/or rate regulation.

(4) Two members of the public.

(d) No representative or affiliate of the solid waste industry and no employee of the District shall serve on the Rate Review Committee.

(Ordinance No. 81-111, Sec. 18)

5.01.180 Determination of Rates:

(a) No franchisee or operator of a site operating under a District Certificate or Agreement upon the effective date of this chapter shall charge a rate which is not established by the Council or, pending establishment of a rate by the Council, an interim rate established by the Executive Officer.

(b) At the time the Council grants a franchise, or after the Council grants a franchise it shall establish the rate(s) to be charged by the franchisee. The Council may establish uniform rates for all franchisees or varying rates based on the factors specified in this section.

(c) Effective January 1, 1982, before the Council establishes or adjusts any rate, the Rate Review Committee shall investigate the proposed rates and submit a recommendation to the Executive Officer. The Executive Officer shall forward the Committee's recommendation along with his/her recommendation to the Council, after which the Council shall hold a public hearing. The Council shall then set forth its findings and decision.

(d) In determination of rates, the Rate Review Committee, Executive Officer and Council shall give due consideration to the following:

(1) Operating and nonoperating revenues.

(2) Direct and indirect operating and nonoperating expenses including franchise fees.

(3) Nonfranchise profits.

(4) Reasonable return on investment exclusive of any capital investment in the franchise or any sum paid for the value of the franchise or any other intangible value.

(5) Any other factors deemed relevant by the Council.

(e) The rate(s) shall be reviewed and, if necessary, adjusted in the manner set forth in Section 5.01.180(c):

(1) At any time by the Council after giving ten (10) days written notice to the franchisee of the intent to review; or

(2) Upon written request by the franchisee on forms provided by the Executive Officer, which request may be made not more than once every six months; or

(3) In the event the District exercises its right to control the flow of solid waste as provided in Section 5.01.070(f) or 5.01.070(g).

(Ordinance No. 81-111, Sec. 19; amended by Ordinance No. 82-136, Sec. 4)

5.01.190 Enforcement of Franchise Provisions; Appeal:

(a) The Executive Officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke, a franchise as provided in this section. If, in the opinion of the Executive Officer, there is sufficient evidence to suspend, modify, or to revoke a franchise, the Executive Officer shall notify the franchisee in writing of the alleged violation, and the steps necessary to be taken to cure the violation. Upon a finding that violation exists and that the franchisee is unable to or refuses to cure the violation within a reasonable time after receiving written notice thereof, the Executive Officer may make a recommendation to the Council that the franchise be suspended, modified or revoked.

(b) The Council may direct the Executive Officer to give the franchisee notice that the franchise is, or on a specified date shall be, suspended, modified or revoked. The notice authorized by this subsection shall be based upon the Council's finding that the franchisee has:

(1) Violated this chapter, the Code, ORS ch. 459 or the rules promulgated thereunder or any other applicable law or regulation; or

(2) Misrepresented material facts or information in the franchise application, annual operating report, or other information required to be submitted to the District;

(3) Refused to provide adequate service at the franchised site, facility or station, after written notification and reasonable opportunity to do so;

(4) Misrepresented the gross receipts from the operation of the franchised site, facility or station;

(5) Failed to pay when due the fees required to be paid under this chapter; or

(6) Been found to be in violation of a city or county solid waste management ordinance if such ordinances require licensees or franchisees to comply with the Metro Disposal Franchise Ordinance.

(c) Except as provided in subsection (d) of this section, the Council's revocation, modification or suspension of a franchise shall not become effective until the franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(d) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a franchisee under this chapter, the Executive Officer may in accordance with Code Chapter 2.05 immediately suspend the franchise and may take whatever steps may be necessary to abate the danger. In addition, the Executive Officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of the affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If a franchise is immediately suspended, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing in accordance with Code Chapter 2.05.

(e) Upon revocation or refusal to renew the franchise:

(1) All rights of the franchisee in the franchise shall immediately be divested. If the franchise is awarded to a new franchisee, the District may require the owner or prior franchisee to sell to the new franchisee the owner's or prior franchisee's interest or a leasehold interest in the real property relating to the operation of the prior franchisee. In such a case the new franchisee shall pay an amount equal to the fair market value of the ownership or leasehold interest in the real property as soon as that amount can be determined. In any event, the prior franchisee immediately upon revocation or expiration of the franchise shall vacate the property, and the new franchisee shall have the right to occupy and use the real property so as to allow continuity of service. In addition,

at the option of the new franchisee, the prior franchisee shall, upon sale or lease of the real property, convey any or all personal property relating to the operation for the fair market value of such property.

(2) If the prior franchisee whose franchise is revoked or refused renewal under this section is not the owner of the property, the owner may only be required under this section to transfer the same property interest that the owner disclosed in the consent form submitted pursuant to Section 5.01.060(b)(6) of this chapter.

(Ordinance No. 81-111, Sec. 20; amended by Ordinance No. 82-136, Sec. 5)

5.01.200 Right to Purchase: The District may purchase or condemn any real or personal property or any interest therein of the franchisee. If such purchase or condemnation occurs upon revocation or termination of the franchise, valuation of the real and personal property purchased or condemned shall not include any sum for the value of the franchise or any other intangible value.

(Ordinance No. 81-111, Sec. 21)

5.01.210 Penalties:

(a) Each violation of this chapter shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00). Each day a violation continues constitutes a separate violation. Separate offenses may be joined in one indictment or complaint or information in several counts.

(b) In addition to subsection (a) of this section, any violation of this chapter may be enjoined by the District upon suit in a court of competent jurisdiction and shall also be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00) per day for each day of violation.

(Ordinance No. 81-111, Sec. 22)

5.01.220 Acceptance of Tires at a Disposal Site:

(a) No Disposal Site may accept whole tires for burial, except that whole tires greater than 48 inches in diameter may be accepted if the Disposal Site's Franchise Agreement allows such acceptance.

(b) Processed scrap tires accepted for burial at a Disposal Site must be capable of meeting the following criteria:

the volume of 100 unprocessed, randomly selected tires shall have been reduced in volume to less than 35 percent of the original volume with no single void space greater than 125 cubic inches remaining in the processed tires.

(c) The test shall be as follows:

(1) Unprocessed tire volume shall be calculated by multiplying the circular area, with a diameter equal to the outside diameter of the tire, by the maximum perpendicular width of the tire. The total test volume shall be the sum of the individual, unprocessed tire volumes; and

(2) Processed tire volume shall be determined by randomly placing the processed tire test quantity in a rectangular container and leveling the surface. It shall be calculated by multiplying the depth of processed tires by the bottom area of the container.

(Ordinance No. 81-111, Sec. 25)

SCHNITZER STEEL PRODUCTS CO.

3200 N.W. Yeon Ave. P.O. Box 10047 Portland, Oregon 97210
Phone 503/224-9900 Telex/W.U.36-0144 FAX 503/323-2793



Metro Council 6.4
10/10/91

October 9, 1991

Councilor Judy Wyers
METRO
2000 S.W. First Avenue
Portland, Oregon 97201

Dear Judy:

This is to follow up the conversation that I had with you and also with Bob Martin today regarding the proposed Ordinance No. 91-422. As you know, I was inquiring about the intent of the proposed ordinance and whether it was METRO's view that this change could impact or otherwise affect scrap metal recycling operations.

I appreciate your indication that it was not your intent or understanding that the proposed ordinance would impose any regulatory management on scrap metal recycling - and that the proposed ordinance was utilizing language consistent with the recently enacted S.B 66.

I did have several conversations with Bob Martin also, regarding this issue, and he also reassured me that METRO's intent and understanding of this matter was the same as yours.

Consequently, we will not be suggesting any amendments or changes to the proposed ordinance when it comes before the METRO council. As I indicated to you, scrap metal has real value and scrap that never enters the solid waste stream isn't "waste" and should not be regulated as such. Well developed markets and demand for scrap metal exist -- Schnitzer for example, has been doing business in Oregon for over 80 years -- and METRO's attention and resources, as you pointed out, are more appropriately focused on recycling and waste reduction, and resource management in markets not well developed or managed.

Thank you for making the time to consider our concerns. We appreciate your recognition and support of our concerns.

sincerely,

SCHNITZER STEEL INDUSTRIES, INC.

Loren Kramer
Vice President

cc:Bob Martin

St. Johns Review • Thursday, September 26, 1991

Firm begins building; Peninsula group turns on pressure

By ALISON BAKER
The St. Johns Review

Construction is beginning at Oregon Hydrocarbon Inc.'s Rivergate site as the company faces pressure from the Peninsula's Odor Abatement Committee and other North Portland citizens to be a responsible industry and neighbor.

Concerns about the soil recycling company expressed at a meeting last week between company officials, Odor Abatement Committee members and other Peninsula neighbors centered on increased truck traffic, previous lack of opportunity for neighborhood input on the construction of the plant and the potential for odor and noise at the site.

"You forgot someone when you decided to move to Rivergate," Leora Mahoney, St. Johns Neighborhood Association president, told Oregon Hydrocarbon president Charlie Chisholm.

"You forgot the St. Johns neighborhood. I'm not sure about the odor, but truck traffic is running through our streets and destroying our liveability.

"We don't doubt that you're doing a great job for the environment, but the trucks are a problem," Mahoney said.

Chisholm said his company would look into specifying an alternative truck route that would avoid the St. Johns Bridge and neighborhood.

"I don't want to unnecessarily intrude on the neighborhood," Chisholm said. "I'm here to take care of a problem. If I'm creating a problem, I feel I should not be here."

When neighbors expressed concerns that the process of Oregon Hydrocarbon gaining its building permit did not include input from Peninsula citizens, Chisholm told them that they had the power to stop him now if they chose to do so.

"That the process didn't include you is out of my control," Chisholm said, indicating that it was the responsibility of the city of Portland and the Metropolitan Service District to publicize land-use hearings.

"But now I want to talk to you. You could stop this process now. Your gun is not empty. If you have a valid concern, let me know."

"We thought everyone had been included," Chisholm told *The St. Johns Review*.

Neighbors used the meeting to voice concerns about odor, noise and traffic and also to ask questions about the mechanics of the industry.

The plant uses a thermal process to rid contaminated soil of petroleum products. "Clean" soil is then taken to wherever it is needed.

The plant will accomplish three environmental goals, according to Chisholm.

Waste is minimized; contaminated soil is treated, and dirt is returned to the earth in a useable form, he said.

The Rivergate plant, which is being built at 9333 N. Harborgate, is modeled after Nevada Hydrocarbon, a Reno facility of which Chisholm also is president.

The noise produced at the Rivergate site will produce less than the 92 decibels of noise measured in a test of the Reno facility.

The Rivergate plant will be non-polluting and process soil contaminated with non-hazardous waste such as gasoline, diesel, kerosene and jet fuel.

"These are basic products used in everyday life," Chisholm said. "We operate outside the scope of hazardous waste."

Chisholm also assured Peninsula residents that the plant will produce less discharge than a car out of tune.

"At nine parts per million, this is like your car when you don't change the sparkplugs after 50,000 miles," he said.

But North Portland neighbors and Odor Abatement Committee members said they wanted a financial commitment from the new industry to help guarantee that Oregon Hydrocarbon would be what they call a good neighbor.

Odor Abatement Committee Chair Lee Poe asked Chisholm if his company would be willing to contribute to the Enhancement Committee fund.

"This could be a win-win situation," Poe said.

Oregon Hydrocarbon would be willing to contribute to a fund that helped children, beautified the community and targeted environmental awareness, Chisholm said.

Oregon Hydrocarbon General Manager Lex Johnson contacted the Metropolitan Service District (Metro) the day following the meeting about the possibility of the company contributing to the North Portland Enhancement Committee (NPEC) fund, Katie Dowdall of Metro told *The Review*.

Chisholm told *The Review* he supported the kind of community activism displayed by citizens on the Peninsula who are questioning and watchdogging his company.

"They'll prevent people who will make a mess from going in there," he said.

But the company was at first unresponsive to contacts from the Odor Abatement Committee, Poe said, pointing out that she had tried to contact the company at least twice a month beginning in May when she first heard that Oregon Hydrocarbon was considering the Rivergate site.

Since Lex Johnson became general manager this summer, the company has been quite responsive to citizen input, Poe said.

"I chased them to the wire," Poe said.

A November start-up date is set for the plant which could employ up to 25 people, Chisholm said.

A hearing for Oregon Hydrocarbon's Oregon Department of Environmental Quality (DEQ) air permit is scheduled for 7 p.m. Wednesday, Oct. 23 or Thursday, Oct. 24 in Columbia Hall on the University of Portland campus, John Mackellar, spokesperson for the DEQ, told *The Review*.

Council
10/10/91
6.4



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: October 9, 1991

TO: Metro Council

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NO. 6.5; ORDINANCE NO. 91-406A

Attached are comments received at the Solid Waste Committee meeting on October 1, 1991 on Ordinance No. 91-406A.



Port of Portland

Box 3529 Portland, Oregon 97208
503/231-5000

September 30, 1991

Solid Waste Committee
METRO
2000 SW 1st
Portland, OR 97204

ILLEGAL DUMPING CHAPTER COMMENTS

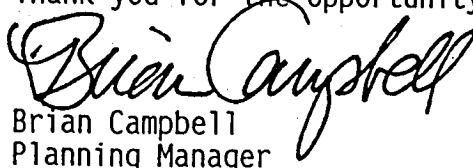
The Port of Portland has had representation on both the Solid Waste Policy and Technical Advisory Committees for the last several years and has long been an advocate for a regional approach to the problem of illegal dumping. We have also participated on the Illegal Dumping sub-committee in its efforts to devise a viable strategy to address this problem. The Port strongly supports the proposed Illegal Dumping chapter of the Solid Waste Plan.

The Port owns approximately 9500 acres in the Portland region, much of it vacant industrial or natural resource land. Illegal dumping has always been a problem on these properties, and is especially acute in the Rivergate Industrial District and the Smith and Bybee Lakes area near the St. Johns Landfill. For several years we have had a program of actively pursuing those who are responsible for illegal dumping on Port property. While this has been somewhat successful in both identifying those responsible and having them remove their trash, this success has been limited, expensive, and does not get to the root of the problem.

Though no plan by itself can eliminate illegal dumping, the proposed language identifies the problem accurately and begins to articulate how the region can deal with it over the long term. The Port believes that provisions for a hearings officer to deal with the legal impediments to resolution of illegal dumping cases is the most important step included in the plan. Another important provision that will greatly reduce roadside litter (probably the most visible of the illegal dumping problems) is the requirement that all loads, commercial as well as private, be securely covered.

Though not all of the concerns raised by this issue may have been adequately addressed by the proposed language, it can certainly be updated and improved over the years as new techniques for dealing with illegal dumping are devised. What the region needs now is to start addressing the problem in a comprehensive and coordinated manner. Metro should adopt this chapter as soon as possible.

Thank you for the opportunity to comment.


Brian Campbell
Planning Manager



Port of Portland offices located in Portland, Oregon, U.S.A.
Boise, Idaho, Chicago, Illinois, Washington, D.C., Hong Kong, Seoul, Taipei, Tokyo



CITY OF

PORTLAND, OREGON

BUREAU OF ENVIRONMENTAL SERVICES

Earl Blumenauer, Commissioner
Mary T. Nolan, Director
1120 S.W. 5th, Rm. 400
Portland, Oregon 97204-1972
(503) 796-7740
FAX: (503) 796-6995

September 30, 1991

TO: Metro Council
Solid Waste Committee

FROM: Susan Keil *Susan D. Keil*

SUBJECT: Illegal Dumping Chapter to the Regional Solid Waste Management Plan

We believe the Chapter properly addresses issues surrounding those problems associated with illegal dumping and provides positive direction for corrective action. Portland supports the current Chapter and recommends that it be approved.

Topics in the Chapter of particular concern include focusing on and mitigating the causes of illegal dumping and waste tire clean-up in the region. Probable causes are well documented in the Chapter, with a strong need shown for development of a consistent and uniform program that local governments can use to discourage illegal dumping activities. We look forward to development of the proposed model illegal disposal ordinance and public education programs to work in conjunction with HB 3361 to allow implementation of a consistent set of penalties.

DEQ having an emphasis on cleaning up large piles of waste tires illegally dumped outside of the Portland area is understandable, however, we continue to urge a higher priority be given to the local situation. In this regard we are most interested in programs that Metro and DEQ can enact jointly to reduce the numerous small, illegal deposits of waste tires in our area.

I am available to answer questions in this matter or provide additional information. My telephone number is 796-7763.

sw/other/illegal.mcm



WASHINGTON
COUNTY,
OREGON

WASHINGTON COUNTY SOLID WASTE SYSTEMS DESIGN STEERING COMMITTEE
TESTIMONY TO METRO COUNCIL SOLID WASTE COMMITTEE REGARDING
METRO WEST TRANSFER AND MATERIAL RECOVERY SYSTEM CHAPTER, AND
REQUEST FOR FRANCHISE APPLICATIONS FOR THE PROVISION OF TRANSFER AND
MATERIAL RECOVERY SERVICES FOR WESTERN WASHINGTON COUNTY

October 1, 1991

My name is Delyn Kies. I am the Solid Waste Management Coordinator for Washington County and am here this evening on behalf of the Washington County Solid Waste Systems Design Steering Committee.

On July 1 the Steering Committee reviewed and recommended approval of the Metro West Transfer and Material Recovery System Chapter to METRO's Regional Solid Waste Management Plan. The Steering Committee also reviewed and recommends approval of the amendments made by the Policy Committee this summer, and the subsequent amendments made by staff. The Steering Committee believes that the Plan Chapter is consistent with the Washington County System Plan, the Resolution passed by the Council in June, and the policies and operational requirements of METRO's regional system. We urge your approval of the Chapter.

At its meeting yesterday, September 30, the Steering Committee reviewed the Request for Franchise Applications for the Provision of Transfer and Material Recovery Services for Western Washington County. The Committee unanimously supports this document and urges your approval of it. We specifically addressed the issue of the modified service areas and are supportive of staff's proposed changes so long as the economic viability of the second transfer station is not negatively affected and the timeline for procuring the second transfer station remains unchanged. We believe it is important to begin procurement of the second transfer station as early in 1992 as possible.

The Steering Committee appreciates the opportunity to comment. I would be happy to answer any questions you may have.



WASHINGTON
COUNTY,
OREGON

Council
10/10/91
6.6

WASHINGTON COUNTY SOLID WASTE SYSTEMS DESIGN STEERING COMMITTEE
TESTIMONY TO METRO COUNCIL REGARDING
METRO WEST TRANSFER AND MATERIAL RECOVERY SYSTEM CHAPTER, AND
REQUEST FOR FRANCHISE APPLICATIONS FOR THE PROVISION OF TRANSFER AND
MATERIAL RECOVERY SERVICES FOR WESTERN WASHINGTON COUNTY

October 10, 1991

My name is Delyn Kies. I am the Solid Waste Management Coordinator for Washington County and am here this evening on behalf of the Washington County Solid Waste Systems Design Steering Committee.

On July 1 the Steering Committee reviewed and recommended approval of the Metro West Transfer and Material Recovery System Chapter to METRO's Regional Solid Waste Management Plan. The Steering Committee also reviewed and recommends approval of the amendments made by the Policy Committee this summer, and the subsequent amendments made by staff. The Steering Committee believes that the Plan Chapter is consistent with the Washington County System Plan, the Resolution passed by the Council in June, and the policies and operational requirements of METRO's regional system. We urge your approval of the Chapter.

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The Steering Committee appreciates the opportunity to comment. I would be happy to answer any questions you may have.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

10/10/91

Agenda Item 7.1

DATE: October 8, 1991
TO: Metro Councilors
FROM: Casey Short, ^{CS} Council Analyst
RE: Information on Proposed Sears Building Purchase

Attached you will find a series of memos and a financial analysis relating to Metro's proposed purchase of the Sears Building. This information was included in packets distributed to the Regional Facilities Committee earlier in the summer, but was not included in the packet for the October 8 meeting. Councilors Van Bergen and Wyers attended tonight's committee meeting and asked to be provided with this information. They specifically asked for the financial analysis in order to assess the impact the purchase would have on the ability to fund Metro programs.

Included in the attached information are two July memos from me to the Regional Facilities Committee and Neil Saling, and Mr. Saling's responses to the questions I raised in the memos; the financial analysis prepared by Finance & Management Information staff in August; and two September memos from me, with responses from Neil Saling and Chris Scherer. In the interest of addressing the issues raised by Councilors Van Bergen and Wyers, please refer to Exhibits 7-9 in the financial analysis, which are attached to Mr. Scherer's September 11 memo.

You will notice that the July memos refer to Resolution No. 91-1478. This was the earlier version of the Sears agreement, later replaced by Resolution 91-1494; the latter is on the October 10 Council agenda.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DRAFT

DATE: July 31, 1991

TO: Casey Short, Council Analyst

FROM: Neil Saling, Director, Regional Facilities

SUBJECT: Analysis of Resolution No. 91-1478

Your July 3, 1991 memorandum to the Regional Facilities Committee summarizes succinctly the most recent proposal for purchase of the old Sears facility by Metro. As the draft Sale Agreement is taking final form, I would recommend you familiarize yourself with the changes which have evolved.

Your policy questions provide a thoughtful basis for Council deliberations. I can only provide comment and offer my assistance as the Council wrestles with the issues. Staff believes that, given the criteria which were established by the Relocation Task Force, and the evaluation of other possible Headquarters alternatives, the Executive Officer's recommendation is well founded. We have not found an alternative that is clearly "better".

The Financial Analysis of Headquarters Purchase and Renovation now appended to the Staff Report should provide a clear picture of the financial implications. However, there is no simple formula for establishing affordability and the Finance Department will make every effort to assure that the Council understands the financial issues and analyses.

Our real estate consultant, CB Commercial, believes that our risks in leasing space at the current Metro Center have been minimized. Moreover, informal discussions with the Lessor indicate a potential for release from our lease should a solid replacement firm be identified. Finance Department is preparing estimates of the impact should the worst case be realized.

On your specific question regarding operating costs in the new building, we have relied on our real estate consultant's estimates. These estimates are based on averages for new office areas in Portland.

Please call me if you have any further questions or observations on this proposed major action.

cc: Dick Engstrom
Jennifer Sims



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DRAFT

DATE: July 31, 1991

TO: Casey Short, Council Analyst

FROM: Neil Saling

SUBJECT: Resolution No. 91-1478 - Responses to Questions

The following represents the Metro staff responses to the questions posed in your July 5, 1991 memorandum to me regarding the proposed Sale Agreement for the Sears Facility. Changes to the Staff Report and Concept Agreement which have taken place since your memorandum are noted.

Q1. What is the breakdown of costs used to arrive at the estimate project costs of \$14.5 to \$15.2 million?

A1. The presently estimated total project cost is \$18.5 million. A general breakdown of costs is shown below. Note that \$1.4 million of the financing costs is a recoverable reserve.

Construction
FF&E plus Art
Purchase Price
Project Management
Financing Costs
Broker Fees

\$ 9,410,000
1,268,000
2,550,000
1,775,000
3,247,000
318,000
\$ 18,568,000

SPECIFICS
ON EACH
CATEGORY?

Q2. What is included in the \$16.50 per square foot rate cited in the staff report? Does it include the semi-annual \$50,000 option payment for the garage? If the annual cost calculation included these option payments and operating costs which were equal to our current (Metro Center) operating costs, how would these affect the rate per square foot?

A2. Included in the \$16.50 per square foot initial costs are operating costs and debt service offset by parking revenues. The cost of FF&E is \$1.11 per square foot and is not included. The option costs for the parking garage are not included. Inclusion of option payments of \$100,000 annually and operating costs equivalent to the current Metro Center could raise the initial per square foot cost to approximately \$19.20.

Q3. Please clarify the garage purchase element referred to on page 3. As I understand it, the escalating purchase price for the garage would translate to the following effective purchase prices for each six month period (please confirm accuracy):

10/15/91 - 4/14/92:	\$2,600,000
4/15/92 - 10/14/92:	2,730,000
10/15/92 - 4/14/93:	2,866,500
4/15/93 - 10/14/93:	3,009,825
10/15/93 - 4/14/94:	3,160,286
4/15/94 - 10/14/94:	3,318,300

Regarding the \$50,000 semi-annual option fee, is any of this money refundable if Metro decides not to buy the parking garage? What will be the Council's role in determining whether to continue option payments, buy the garage, or terminate the option - will Council authorization be required every six months?

A3. The six month options would begin December 1, 1991 (12/1/91). The escalating purchase price would be as follows:

<u>Option Period</u>	<u>Closing Date</u>	<u>Price</u>
0	Before 12/1/91	\$2,600,000
1	12/2/91 to 5/31/92	2,730,000
2	6/1/92 to 12/1/92	2,866,500
3	12/2/92 to 5/31/93	3,009,800
4	6/1/93 to 12/1/93	3,106,300
5	12/2/93 to 5/31/94	3,318,300
6	6/1/94 to 12/1/94	3,484,200

The semi-annual option fee is not refundable if Metro chooses not to purchase the parking garage. Council will be asked to make a decision on purchase of the parking garage prior to December 1, 1991.

Q4. Why was the date for payment of the \$2.3 million balance moved from December 15 to October 15?

A4. The date was moved at the request of Pacific Development, Inc. (PDI) based upon an estimated early completion of contractor selection. This date is now December 1, 1991.

Q5. Hazardous Waste: This section needs further clarification. What are "direct" costs for removing any hazardous waste, and what are "indirect" costs? If the costs exceed \$250,000, what are Metro's alternatives? If PDI terminates the offer because the direct costs of removing the waste exceed

\$250,000, will Metro's earnest money be refunded? Is the \$250,000 ceiling for the entire facility--including the garage-- or is there a \$250,000 ceiling for each part of the facility? At what point would Metro have to make a final decision whether to cover direct costs above \$250,000: when costs exceeded that amount (even though final costs were not yet known); when the final costs had been determined; when an estimate is made; or at some other time? Who defines "hazardous waste" or "hazardous materials?" (Both are used in the letter.)

A5. Direct costs include the costs of the remediation effort to adhere to applicable Environmental Laws plus any monitoring; indirect costs are not stipulated, but would refer to PDI supervisory and overhead costs. If the \$250,000 remediation cost were exceeded, Metro could choose to pay the excess and continue or ask PDI to pay the excess. If PDI chose not to pay, they are in default and the Metro earnest money is refunded. The \$250,000 ceiling is for the entire property. Metro could make a decision on paying for any excess as early as the consultants' estimate; however, the contract calls for payment based on costs incurred. The terminology for the hazardous materials is now "asbestos containing materials" (ACM) and "Hazardous Substances".

Q6. Parking: My reading of the parking agreement leads me to the following understanding (please confirm or correct):

Metro will construct some 220 stalls in the main building as part of the building renovation. In addition, Metro may lease up to 100 stalls in the garage at any time following our occupancy of the building. (The rate shall begin at \$56/month/stall, with a 10% annual limit on rate increases for 3 years.) If Metro does not buy the garage, we may lease up to 100 stalls for an additional 7 years, with 3 five-year options. If we remodel the Grand Avenue parking area, we may add another 100 stalls in the garage at the same monthly rate.

How would the parking rate for the 7-year extension be determined? Would the stalls in the garage be used for employee parking, visitor parking, or other? Would Metro receive revenue from this parking? Who would set the rate for the end use, and how would that rate be determined?

A6. The parking arrangements in the absence of a Metro purchase of the garage have been changed to coincide more closely with the State/PDI Parking Agreement. The agreement to lease Metro 100 stalls may be extended through notification for up to 22 years. Should Metro exercise its option to 100 spaces, the charges will be at fair market value. The end use for these 100 stalls cannot be determined at this time. It is anticipated that Metro would institute some schedule of charges for these stalls, but would be liable for the total monthly charge by the facility operator.

Q7. State Parking Requirement: Please explain why there is a variance of \$5 per stall, "depending on management".

A7. The \$5 per stall difference pays for the management of the garage by PDI instead of Metro.

Q8. How many parking stalls are in the garage? What is PDI's arrangement with the State for parking? What are the revenue projections for the garage? Is Metro expected to make money on the garage if purchased?

A8. As presently striped, the parking garage has 477 stalls. The State/PDI parking arrangement is somewhat complex, but it basically provides that PDI will provide 346 parking stalls in close proximity to the new State Office Building at an escalating charge over a 30 year period. Preparation of the financial projections for the Parking Garage are a part of the proposed Resolution.

Q9. State Parking Obligation: Please explain the nature of the obligation, and Metro's potential obligations, liabilities, and revenues under the arrangement.

A9. PDI and the State of Oregon have entered into an agreement whereby PDI furnishes the State 346 parking spaces within a six-block radius of the new State Office Building. Should Metro purchase the parking garage, all 346 spaces would be demanded in the parking garage. While this provides a desirable revenue stream, the contracted price may fall below the market in the future. The analysis recommended as a part of the proposed Resolution will define Metro's options in detail.

Q10. OCC Transportation Capital Improvements: What is the cost of assuming the applicable portion of the LID (annual cost and term)? Have those costs been included in the estimate of annual costs for the facility?

A10. The cost to Metro of the OCC Transportation Capital Improvement LID payment is estimated to be \$73,000 for the entire facility. This amount is included in the "Note to Lien" and could change at the actual assessment stage. This amount is included in the project cost estimate.

Q11. Hazardous Waste: PDI "may elect to decommission underground tanks in place." Will Metro have any binding voice in this decision? Why will Metro share the cost of environmental testing, if for any reason other than to ensure the objectivity of the tests? How much is such testing estimated to cost?

Please clarify the statement, "The parties will approve before closing, based on the testing and bids obtained by the Seller, a specific scope of work and charge to Seller for any such remediation work" (emphasis added). Does this effectively limit PDI's obligation to pay for the complete remediation work? What happens if there is more remediation required than was originally anticipated - who is responsible to pay for it, and what are Metro's options?

Does this handwritten amendment, "The deposit shall be refunded to Purchaser if the transaction terminates pursuant to the foregoing" refer to the \$250,000 earnest money?

A11. Metro will not permit decommissioning of underground storage tanks (UST) in locations planned for construction of building components. Metro agreed to share in the environmental surveys as a negotiation issue. Based on the surveys already accomplished, Metro anticipates a charge not to exceed \$20,000. PDI anticipates paying for all remediation required to bring the building into compliance with applicable Environmental Laws. Metro would pay for costs above \$250,000 or for removal of substances not required by law. Please see the revised draft Sales Agreement for the concept for remediation. (See also A5.)

Q12. Do you anticipate MERC moving its offices to the Sears facility? If so, what will be the cost to MERC, and how will the vacated office space at the Convention Center be used? How would costs to Metro's other departments be affected with MERC in or out of the Sears facility? In any case, has the matter been presented to/discussed with the MERC Commission?

A12. The space planning for the new Metro Headquarters includes the MERC management pool plus other selected staff for a total office of 21 employees. Upon the MERC move, the Oregon Convention Center space will revert to its designed purpose of housing OCC staff. MERC will be charged for space on the same basis as other Metro departments. Charges to other Metro departments would increase over planned levels should MERC not occupy space in the new Metro Headquarters. The MERC Commission has received no formal presentation on the space planning for the new facility.

Q13. At the June 7 meeting of the Building Relocation Task Force, there was mention of Metro contributing to a "gateway" project which would mark entrance to the Lloyd district. There is no mention of this in the materials submitted. What is the status of this, and what would the cost be?

A13. There has been an implicit request for Metro to participate, if not fully fund, some structure signifying entry into the Lloyd district. The design would be provided by the successful design/build team and funding has been included in the project costs.

Q14. How is the project proposed to be financed? Will any adjustments to the 91/92 budget be required, and if so, what will they be?

A14. Please see the Financial Analysis of Headquarters Purchase and Renovation included with the Staff Report. Fund sources include Revenue Bonds (\$17,441,000), Metro funds (\$620,000) and Interest Income (\$507,000).

Q15. Is it possible to provide drawings of the proposed renovation for the committee and Council?

A15. Not at this time. The proposed renovation scheme will be a consultant product.

Q16. After renovation, what will be the building's capacity to withstand an earthquake?

A16. Metro will ask that the building be renovated to Zone 3 standards.

Q17. Earlier discussions of the proposal included provision for a day care center. Is this included in the latest plan?

A17. A day care center is included in the Metro space program.

Q18. Have we received appraisals of the Sears building and land, and the parking garage? If so, how do they relate to the \$2,550,000 and \$2,600,000 prices for the facilities?

A18. We have received one "as is" appraisal which valued the parking structure at \$1,980,000 and the Sears Building at \$2,029,000 and the "whole property" at \$4,000,000. We have also received an "as proposed" appraisal which was based on the original renovation plan and valued the property after renovation at \$21,500,000.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: July 3, 1991

TO: Regional Facilities Committee

FROM: Casey Short, Council Analyst ↵

RE: Analysis of Resolution No. 91-1478, Purchase of the
Sears Building for Development as Metro Headquarters

Resolution No. 91-1478 would authorize execution of a sales agreement and payment of \$250,000 in earnest money to Pacific Development, Inc. (PDI) for Metro's purchase of the Sears Building. It would also authorize preparation of a Request For Proposals for renovation of the building, with the intention of awarding a contract for renovation and completing the sales agreement by mid-October, 1991. This memo is the Council staff's analysis of the proposal.

BACKGROUND

In May, 1990 a Building Relocation Task Force was formed to investigate alternatives for housing Metro's administrative offices. The Task Force, consisting of Presiding Officer Collier, Councilors DeJardin and Bauer, Executive Officer Cusma, and staff members, agreed to a set of Objectives and Criteria (Attachment A) that included a preference for siting a Metro Headquarters facility near the Oregon Convention Center on Portland's east side. The Task Force received comparative information on 22 potential sites, selected seven of these for further investigation, and chose the Sears building as the facility that most closely met the objectives and criteria. (It should be noted that the information gathered in this process was obtained on an informal basis, not on the basis of actual proposals.)

Council approved Resolution No. 90-1338 in September 1990, authorizing a sales agreement for acquisition of the Sears facility, and directing the staff to perform due diligence activities to determine the suitability and affordability of the facility. \$65,000 was allocated for the due diligence activities. The due diligence period was to last until December 17, 1990, but was extended to April 30, 1991 under the provisions of Resolution No. 90-1357A and with the agreement of Pacific Development. Council subsequently approved Resolution No. 91-1393 in February 1991, authorizing an additional \$85,000 for due diligence work.

Staff and consultants presented a report to the Building Relocation Task Force in March, 1991. That report estimated the cost of the project to be approximately \$26 million. The conclusion was that the Sears project was not affordable and staff recommended Metro inform PDI that we would not be pursuing the project any further. The Task Force concurred with the recommendation.

CURRENT STATUS

The current proposal is a modification of one submitted by H. Naito Properties. The original Naito proposal called for the Naito company to buy and renovate the Sears building, and sell it to Metro. Legal counsel advised that this proposal was not legal because the renovation would have to be publicly bid. The revised proposal calls for Metro to buy the building from PDI and issue an RFP for the renovation.

Based on the Naito proposal, staff estimates the total cost of the building project to be in the neighborhood of \$15-16 million. The principal differences between the latest proposal and the original proposal that was deemed too expensive are that the current proposal includes only an option on the parking structure rather than its purchase; development of only the upper two floors as office space and the lower two floors as parking; and consequent absence of surplus space that the original proposal would have required Metro to lease, generally at a loss.

Usable space in the top two floors of the Sears building will be approximately 76,000 square feet. Metro uses 34,000 square feet in its current location, and the space plan prepared as part of the due diligence process outlined needs for 67,000 square feet. (The 34,000 figure is low, given the planned move of the Transportation Department to occupy 6,000+ square feet of nearby space.)

ISSUES

There seems to be consensus that Metro's current office space is inadequate and we should move to larger quarters. Expansion in any form will cost the departments more money - this includes not only the occupants of Metro Center but also the satellite departments such as MERC and the Zoo who will pay higher transfers. If we accept the need to expand to roughly double our current space, there are a few issues to resolve before going forward on the Sears project.

1. Is the Sears facility clearly the best alternative for a new Metro headquarters?

This issue breaks down into several separate issues. First is the simple question of geography. The May 31, 1990 Objectives and Criteria to which the Task Force agreed establish a clear preference for an eastside Portland location near the Convention Center. These criteria have not been formally reviewed nor adopted by the Council, yet have served as a basis for work done to date in investigating alternatives. Is it the Council's conclusion that the siting criteria are appropriate, and that an inner eastside location is preferable? Would such a location be preferable if another site were identified that was less expensive, in a central location such as the central business district?

Second, is it Council's conclusion that the Sears facility should be considered at the exclusion of any other proposals? Following the expiration of the due diligence period and the decision to drop Sears from consideration (at least temporarily), staff was approached about the possibility of considering other proposals for developing a Metro headquarters facility on the west side. The focus of Metro's efforts for the past several months has been exclusively on the Sears facility - are we ignoring the potential of a more attractive offer by limiting our research to that facility? Do we want to open the process now to evaluate our options before making a final decision?

Third is the question of renovation versus new construction. A strong argument has been made in favor of renovating Sears in order to bring activity to the Lloyd District in a building that has stood vacant for several years. The value to the area of restoring that building cannot be denied. New construction, however, was estimated to be considerably cheaper than the first Sears proposal and would likely be of comparable or lower cost than the current proposal. If Metro could build a new facility at less cost than the Sears renovation, would the prudent expenditure of public dollars be as compelling an argument in favor of new construction as restoring the Sears building is in favor of renovation?

The questions surrounding the proposal to buy and renovate the Sears building can be distilled into one basic question: Has our research clearly identified the Sears facility as the best alternative for Metro? The proposal before you addresses Metro's current space needs, and provides the capacity for future expansion. It does not, however, clearly demonstrate that purchase and renovation of that facility is the best available opportunity: it may be, but in the absence of a full analysis of

other alternatives, the Council cannot be certain. Your policy decision is to determine whether to commit to the Sears alternative as an acceptable - or even preferable - solution to Metro's space problems, or take action necessary to find what can be demonstrated to be the best solution. If the Council determines that the process should be expanded, one approach would be to issue an RFP to meet the agency's needs as defined by the Council.

2. Is the Sears Building affordable?

In the analysis leading to rejection of the original Sears proposal, information was generated showing the proposal's financial impact on Metro's departments. Comparable information is not included with the materials submitted for committee review. Is such information available? If so, what are the effects on the departments? In a broader sense, what criteria are used to determine affordability, and does this proposal meet those criteria?

3. Regardless of the option chosen, how should the debt service be structured?

Attachment B shows two alternatives for structuring debt service. Finance staff is recommending the "ramped debt service" alternative, which would be lower cost (both in total and per square foot) in the first five years but higher in the out years. Debt service payments under this alternative would begin at approximately \$800,000 and increase at roughly a 4% rate each year, reaching a level of \$1.9 million in year 24. (Estimated net annual costs for debt service, operations, capital and contingency would correspondingly range from \$1.1 million to \$2.9 million.) The flat debt service alternative would have constant debt service payments each year, at an estimated level of \$1.125 million. (Total annual costs under this alternative range from \$1.4 million to \$2.1 million.)

Total debt service payments under the ramped approach are estimated at \$34.2 million, with a net present value of \$13.7 million. Under the flat approach the total debt service is estimated at \$28.1 million, with a net present value of \$12.8 million.

The argument for ramped debt service is that it is cheaper in the early years, and increases with inflation; Metro's costs per square foot would remain comparable with estimated market costs. Early year costs are an issue for Metro's departments, because they will be absorbing significantly higher costs in any case due to the increase in space: even under this alternative,

the costs will jump in the first year from \$645,000 (91-92 budget) to \$1.1 million. The down side to this alternative is the long range cost. Under the more typical flat rate alternative, which is similar to a fixed-rate home mortgage, total costs are lower, passing the break-even point in total expenditures in year 14.

The policy question here is how does the Council want to structure the building payments? The ramped alternative provides an easier entry into the building, but at the cost of higher payments over the course of the financing agreement. The flat rate alternative represents lower overall costs, but imposes a serious financial strain on the operations of the District at the outset, which is exacerbated by the current financial problems at MERC and the Zoo.

4. What assurances or contingencies are proposed for leasing the space at the current Metro Center?

In the deliberations surrounding the first Sears proposal, there was a good deal of discussion regarding the alternatives for sub-leasing the space at 2000 SW First. Our lease runs to 1996, and the proposed date of moving to Sears is December 1992. Arrangements need to be made to find tenants for this building, preferably with PDI's assistance as a way to facilitate the sale of their property. If no arrangements have been made, estimates of the increased costs required to uphold our lease agreement should be included in the projections of the early year costs.

5. Why are the operating costs for the Sears Building projected to be lower than those for Metro's current building?

The FY 91-92 budget for Metro Center in the Building Management Fund is \$685,483. If we subtract from that the lease payment (\$290,760) and property taxes (\$16,600) the resulting budget for operations is \$378,123, including \$40,000 for capital.

The Finance Department has prepared a space cost analysis that includes an estimate of Operating Costs for the Sears Building. That operating cost estimate is \$240,657, plus \$25,000 in capital and \$13,283 in contingency, for a total operating budget of \$278,940. Why are the operating costs so much lower for the Sears Building, especially for a building that is considerably larger than the current Metro Center?

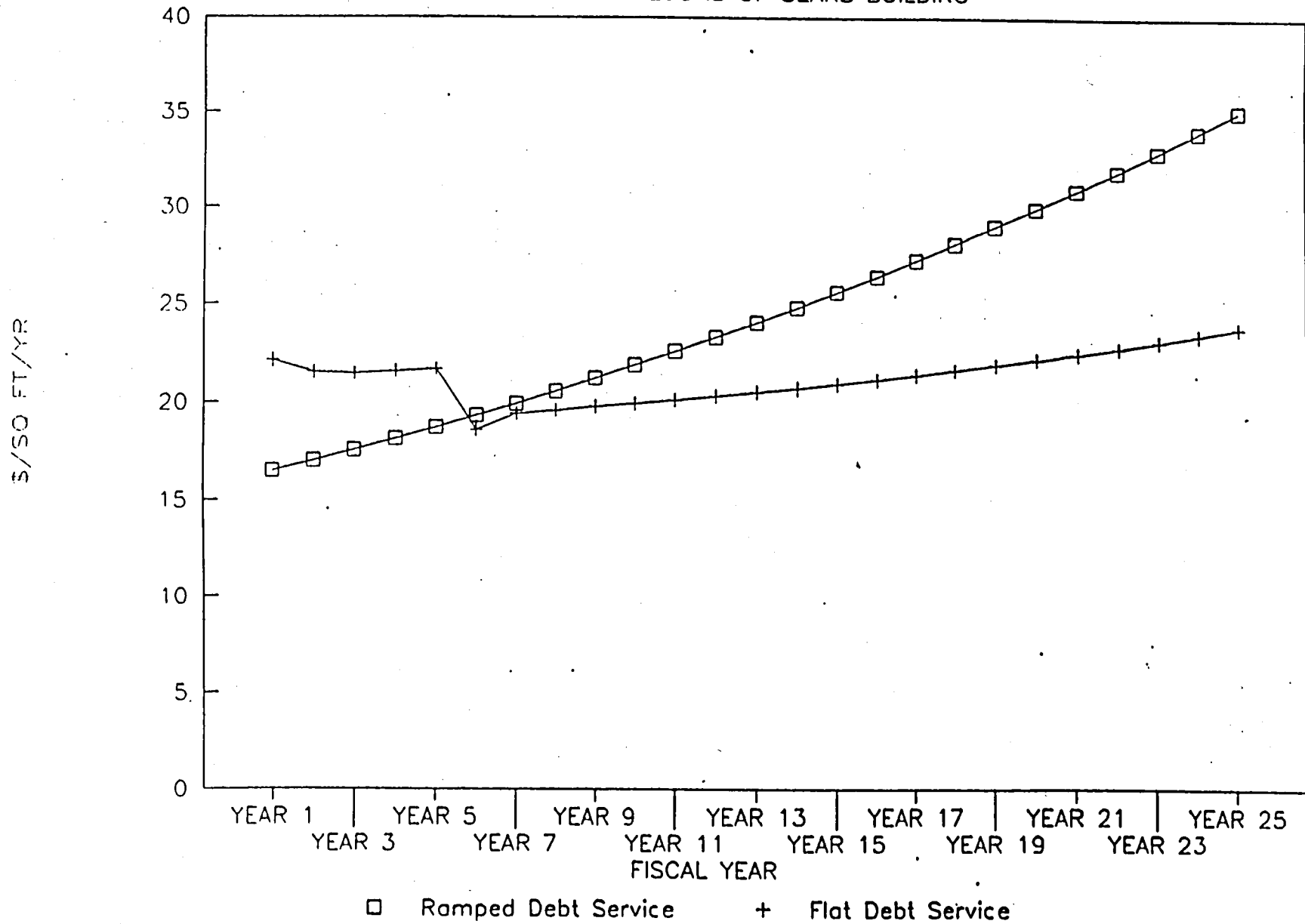
METRO CENTER RELOCATION TASK FORCE
OBJECTIVES AND CRITERIA

May 31, 1990

- A. Establish a stronger regional identity for Metro.
 - Location preferably near the Convention Center site.
 - Quality of space appropriate for government offices.
 - Easily accessible from all parts of the region.
- B. Support public policies promoting eastside development.
 - Promote redevelopment sparked by the Oregon Convention Center.
- C. Serve as an environmentally and socially concerned model office.
 - Location on or near mass transit routes.
 - Complete recycling facilities.
 - Attention to health considerations (e.g., lighting, HVAC, noise, etc.).
 - Day care facilities.
 - Energy efficient building.
 - Fitness facilities (showers and workout areas).
 - Fully handicapped accessible.
- D. Provide adequate space and parking to meet current and future needs.
 - Provide opportunity for sharing offices with Metro ERC.
 - Provide overflow parking for the Oregon Convention Center.
 - Provide free parking for Metro visitors.
 - Provide contiguous space on preferably two floors, maximum three.
 - Provide option to expand space.
 - Provide a minimum 50,000 sq. ft. of office, meeting and storage space for immediate needs.
 - Provide up to 45,000 sq. ft. of office, meeting and storage space for long-term needs.
 - Provide for Metro ownership.
- E. Minimize the disruption and cost impacts of an office move.
 - Package must address Metro's lease obligations at current location.
 - Costs similar to Metro Center at about \$12.00 per sq. ft.

COST FOR BUILDING SPACE

USING TOP TWO FLOORS OF SEARS BUILDING





METRO

Memorandum

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

DATE: July 5, 1991
TO: Neil Saling
FROM: Casey Short *CS*
RE: Resolution No. 91-1478 - Sears Agreement

I have several questions to ask regarding the proposal to purchase the Sears facility, for which Resolution No. 91-1478 would commit \$250,000 in non-refundable earnest money. Some of these are included in my July 3 memo to the Regional Facilities Committee, but there are others that I did not have time to include in that memo. Please do what you can to be prepared to discuss the questions in both memos at the July 9 committee meeting.

Questions from the Staff Report

1. What is the breakdown of costs used to arrive at the estimated project costs of \$14.5 to \$15.2 million?
2. What is included in the \$16.50 per square foot rate cited in the staff report? Does it include the semi-annual \$50,000 option payment for the garage? If the annual cost calculation included these option payments and operating costs which were equal to our current (Metro Center) operating costs, how would these affect the rate per square foot?
3. Please clarify the garage purchase element referred to on page 3. As I understand it, the escalating purchase price for the garage would translate to the following effective purchase prices for each six month period (please confirm accuracy):

10/15/91 - 4/14/92:	\$2,600,000
4/15/92 - 10/14/92:	\$2,730,000
10/15/92 - 4/14/93:	\$2,866,500
4/15/93 - 10/14/93:	\$3,009,825
10/15/93 - 4/14/94:	\$3,160,286
4/15/94 - 10/14/94:	\$3,318,300

Regarding the \$50,000 semi-annual option fee, is any of this money refundable if Metro decides not to buy the parking garage? What will be the Council's role in determining whether to continue the option payments, buy the garage, or terminate the option - will Council authorization be required every six months?

Questions from the Letter of Intent

Option 1: Sears Building and Land \$2,550,000

4. Close: Why was the date for payment of the \$2.3 million balance moved from December 15 to October 15?

5. Hazardous Waste: This section needs further clarification. What are "direct" costs for removing any hazardous waste, and what are "indirect" costs? If the costs exceed \$250,000, what are Metro's alternatives? If PDI terminates the offer because the direct costs of removing the waste exceed \$250,000, will Metro's earnest money be refunded? Is the \$250,000 ceiling for the entire facility - including the garage - or is there a \$250,000 ceiling for each part of the facility? At what point would Metro have to make a final decision whether to cover direct costs above \$250,000: when costs exceeded that amount (even though final costs were not yet known); when the final costs had been determined; when an estimate is made; or at some other time? Who defines "hazardous waste" or "hazardous materials?" (Both are used in the letter.)

6. Parking: My reading of the parking agreement leads me to the following understanding (please confirm or correct):

Metro will construct some 220 stalls in the main building as part of the building renovation. In addition, Metro may lease up to 100 stalls in the garage at any time following our occupancy of the building. (The rate shall begin at \$56/month/stall, with a 10% annual limit on rate increases for 3 years.) If Metro does not buy the garage, we may lease up to 100 stalls for an additional 7 years, with three five-year options. If we remodel the Grand Ave. parking area, we may add another 100 stalls in the garage at the same monthly rate.

How would the parking rate for the 7-year extension be determined? Would the stalls in the garage be used for employee parking, visitor parking, or other? Would Metro receive revenue from this parking? Who would set the rate for the end user, and how would that rate be determined?

Option 2: Garage Facility

7. State Parking Requirement: Please explain why there is a variance of \$5 per stall, "depending on management."

8. Supplemental Questions: How many parking stalls are in the garage? What is PDI's arrangement with the State for parking? What are the revenue projections for the garage? Is Metro expected to make money on the garage if purchased?

Questions from the Addendum

9. State Parking Obligation: Please explain the nature of the obligation, and Metro's potential obligations, liabilities, and revenues under the arrangement.

10. OCC Transportation Capital Improvements: What is the cost of assuming the applicable portion of the LID (annual cost and term)? Have those costs been included in the estimate of annual costs for the facility?

11. Hazardous Waste: PDI "may elect to decommission underground tanks in place." Will Metro have any binding voice in this decision? Why will Metro share the cost of environmental testing, if for any reason other than to ensure the objectivity of the tests? How much is such testing estimated to cost?

Please clarify the statement, "The parties will approve before closing, based on the testing and bids obtained by Seller, a specific scope of work and charge to Seller for any such remediation work" (emphasis added). Does this effectively limit PDI's obligation to pay for the complete remediation work? What happens if there is more remediation required than was originally anticipated - who is responsible to pay for it, and what are Metro's options?

Does the handwritten amendment, "The deposit shall be refunded to Purchaser if the transaction terminates pursuant to the foregoing" refer to the \$250,000 earnest money?

Other Questions

12. Do you anticipate MERC moving its offices to the Sears facility? If so, what will be the cost to MERC, and how will the vacated office space at the Convention Center be used? How would costs to Metro's other departments be affected with MERC in or out of the Sears facility? In any case, has the matter been presented to/discussed with the MERC Commission?

13. At the June 7 meeting of the Building Relocation Task Force, there was mention of Metro contributing to a "gateway" project which would mark entrance to the Lloyd district. There is no mention of this in the materials submitted. What is the status of this, and what would the cost be?

14. How is the project proposed to be financed? Will any adjustments to the 91-92 budget be required, and if so, what will they be?

15. Is it possible to provide drawings of the proposed renovation for the committee and Council?

Sears Purchase Issues

July 5, 1991

Page 4

16. After renovation, what will be the building's capacity to withstand an earthquake?

17. Earlier discussions of the proposal included provision for a day care center. Is this included in the latest plan?

18. Have we received appraisals of the Sears building and land, and the parking garage? If so, how do they relate to the \$2,550,000 and \$2,600,000 prices for the facilities?

cc: Metro Council
Executive Officer
Don Carlson
Berit Stevenson
Jennifer Sims

**FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING
PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

**Prepared by:
Finance and Management Information
Regional Facilities
August 13, 1991**

Executive Summary

Background

The Metro Executive Officer has been in negotiations with Pacific Development Inc., (PDI) for the purchase of the former Sears department store building in northeast Portland. It is intended that the building be renovated and converted to a new Metro headquarters. An agreement in principal has been reached on a Sales Agreement (Current Proposal). This Sales Agreement and the planned renovation program is significantly altered from the agreement and renovation contemplated earlier in 1991 (the Initial Proposal). The table below shows the key differences.

Item	Initial Proposal	Current Proposal
Rentable square feet	140,000	76,000
Usable square feet	129,000	69,100
Parking spaces	580	220
Parking/1000 sf	2.4	3.4
Total project cost w/o financing	\$21.3 million	\$15.3 million
Bond amount w/financing and reserves	\$25.8 million	\$17.4 million
Real estate cost	\$5.15 million	\$2.55 million
	Building & Garage	Building only
Rate - level (1st yr.)	\$28/sq. ft.	\$21.88/sq. ft.
Rate - ramped (1st yr.)	\$23/sq. ft.	\$16.50/sq. ft.

Sales Agreement

As stated above, the sales price for the building (not including the parking garage) is \$2.55 million. The anticipated closing date is December 1, 1991. The Sales Agreement includes an option to purchase the adjacent parking garage for \$2.60. This option can be renewed each six month periods for a payment of \$50,000 per period. At each renewal period, the price for the garage will increase by 5.0%.

The Project

The renovation program will convert the top two floors of the building into 76,000 square feet of office space. The basement and ground floor of the building would be used for parking and provide approximately 220 spaces. Long-term Metro growth beyond 76,000 square feet could be accommodated by converting the ground floor to office space. The current Metro headquarters contains 43,000 of office space and includes 117 parking spaces for employees, tenant, visitors, loading and fleet requirements.

Total Project costs are estimated at \$15,321,000. Of this total, it is currently assumed that \$14,701,000 would be financed through the sale of revenue bonds and that \$620,000 would be financed through Metro cash flow. Metro intends to develop a Request for Proposal to construct the Project. It is assumed that the Project would be complete approximately one year after awarding the design build contract.

Financing and Debt Service

It is assumed that Metro would issue General Revenue Bonds to finance the majority of the Project. These bonds would be secured by departmental interfund transfers related to the occupancy of space in the new headquarters facility. The total bonding amount of \$17,441,000 provides for \$15.3 million in real estate purchase and construction costs, and \$3,247,000 in financing costs (including \$1,449,000 deposit as a reserve for debt service) net of \$507,000 in interest earnings on bond proceeds during the period of construction.

Three alternative financing alternatives are under study; (1) an alternative using level annual debt service; (2) an alternative using variable debt service; and (3) an alternative in which debt service payments are purposely ramped each year to simulate a rate of inflation. Under these alternatives, it is estimated that the first year's debt service would range from \$861,000 to \$1,345,000 and the final year's debt service would range from \$1,345,000 to \$2,506,000. Final determination on financing alternatives will be made by the financing team comprised of Bond Counsel, General Counsel, Metro Financial Planning staff, the underwriters, and Metro's Financial Advisors.

Operating Costs

Operating and maintenance expenses for the new building have been projected on the basis of our actual experience in the current Metro Center. Our current cost per square foot is approximately \$5.00. This amount has been adjusted for inflation and somewhat modified in anticipation of lower maintenance costs related to new building systems and utilities.

Capital outlays are assumed to average \$25,000 per year adjusted for inflation.

Contingency is set at 5% per year during FY 1994-95 (the first full year of occupancy) and 1.5% in the remaining years.

Space Program

The space program for the new headquarters building has been developed, in consultation with Metro Regional Facilities staff, by BOOR/A. Department plans have been developed on the basis of current and anticipated growth in personnel over the next several years. The programmed usable square feet allow approximately 7,000 square feet for future growth.

Rates Per Square Foot

Rates per square foot for selected years for each of the three financing alternatives are as follows:

	FY 94/95	FY 99/00	FY 09/10	FY 23/24
Alternative 1 (Level debt service)	\$21.88	\$21.42	\$24.58	\$33.42
Alternative 2 (Variable debt service)	\$19.87	\$20.49	\$25.52	\$36.30
Alternative 3 (Ramped debt service)	\$16.50	\$20.32	\$29.64	\$50.38

FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING

Because costs associated with purchase and installation of furnitures and fixtures are typically not used in calculating rental rates in leasing situations these costs have not been included in the calculation of the rates shown above.

Affordability

Increases in building costs above Metro's current payments will affect both required enterprise revenues and excise taxes. Under each of the three financing alternatives, first year costs will increase as follows: Alternative 1 - \$630,000; Alternative 2 - \$503,000; Alternative 3 - \$290,000.

Approximately \$254,000 of the increases in costs is attributable to increases in space. The amounts attributable to increases in the rate per square foot range from \$36,000 to \$376,000.

The affect of these increases in building costs on enterprise revenues and excise taxes can be approximated within certain limitations. Generally, the increased costs would comprise less than one percent of the enterprise revenues of the Zoo or MERC, require as low as a \$0.01 and as high as a \$0.05 increase in Solid Waste tipping fees in the first year of occupancy, and an increase in excise taxes ranging from \$71,000 to \$226,000 in the first year of occupancy. The required increases could be somewhat less depending on increases in enterprise activity (tons of solid waste delivered, numbers of Zoo visitors, numbers of MERC events).

FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING

CAPITAL COSTS

- Exhibit 1: Estimated Project Costs
- Exhibit 2: Estimated Financing Plan
- Exhibit 3: Estimated Annual Debt Service

Key Assumptions:

Project costs - Costs to be financed include real estate costs, project management costs, the costs of construction, and other costs, including furniture and fixtures and art. Non-financed costs include broker fees relating to leasing of 2000 SW First Avenue, Metro project administration, and due diligence costs. A portion of these costs may be eligible for reimbursement financing. Proceeds related to reimbursement of previous expenditures could be used to fund certain required reserve accounts. This issue is undergoing evaluation by Bond Counsel.

Costs for furniture and fixtures (\$1,200,000) are included in this analysis. These costs have not been included in previous analyses presented to the Council or Relocation Task Force.

Financing Plan - It is assumed for the purposes of this analysis that Metro funds will be used for non-financed costs. Assumptions for interest rates, capitalized interest period, and bond amortization period are included on Exhibit 2.

Annual Debt Service - Three financing options are under consideration by the Finance and Management Information Department. These options are under review by Metro's bond counsel and financial advisors.

Alternative 1: It is assumed that debt service would be level throughout the 29 year amortization period.

Alternative 2: It is assumed that bonds are issued at a variable rate. The effective rate (including letter of credit and related costs) is assumed to be 1% lower than the financing rate (7.2%). It is further assumed that the interest rate increases .5% every five years.

Alternative 3: It is assumed that the bond maturities have been structured to provide lower debt service in the first fifteen years of the amortization period and increasing amounts during the remaining years.

Exhibit 1

**ESTIMATED PROJECT COSTS
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

Estimated costs to be financed through revenue bonds

Real estate	2,550,000
Purchase of land and building	188,000
Brokers fee	—
	2,738,000
Project management	460,000
Design services	30,000
Hook-up charges	110,000
Permits	15,000
Printing	90,000
Utilities	80,000
Taxes	500,000
Owner's contingency	—
	1,285,000
Construction	6,800,000
Renovation/new construction	1,800,000
Tenant improvements	680,000
Contingency	130,000
Telephone/data wiring	—
	9,410,000
Other	1,200,000
Furniture and Fixtures	68,000
Art (1% of construction)	—
	1,268,000
	—
Total to be financed	14,701,000
Estimated costs not included in bond financing	
Brokers fees related to leasing of 2000 SW 1st Avenue	130,000
Project administration (Metro)	340,000
Due diligence	150,000
	—
Total not included in bond financing	620,000
	—
Total Project costs	15,321,000

8/13/91

Exhibit 2

**ESTIMATED FINANCING PLAN
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

Sources

Revenue bonds	17,441,000
Metro funds	620,000
Interest income	336,000
Construction Account	104,000
Reserve Account	67,000
Debt Service Account (for capitalized interest)	507,000
	18,568,000

Uses

Total "Project" costs	15,321,000
Reserve Account deposit	1,449,000
Capitalized interest	1,449,000
Issuance costs	349,000
	18,568,000

Assumptions:

Interest rates	
Short-term	6.20%
Long-term	7.20%
Period of construction	1 year
Amortization period	29
Issuance costs	2.00% of total bonds

Exhibit 3

**ESTIMATED ANNUAL DEBT SERVICE
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

	Fiscal Years						
	1994-95 (a)	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
ALTERNATIVE 1: (level debt service)	\$1,345,000	\$1,345,000	\$1,345,000	\$1,345,000	\$1,345,000	\$1,345,000	\$1,345,000
ALTERNATIVE 2: (variable interest rate) (b)	\$1,206,000	\$1,275,000	\$1,345,000	\$1,416,000	\$1,488,000	\$1,562,000	\$1,562,000
ALTERNATIVE 3: (ramped debt service) (c)	\$861,000	\$1,149,000	\$1,361,000	\$1,612,000	\$1,910,000	\$2,263,000	\$2,506,000

Note: Debt service amounts are net of interest earned on Reserve Account balances.

a. First full year of debt service.

b. Assuming the following effective rate:

Years 1 through 5:	6.20%
Years 6 through 10:	6.70%
Years 11 through 15:	7.20%
Years 16 through 20:	7.70%
Years 21 through 25:	8.20%
Years 26 through 29:	8.70%

c. Debt service carries a basic interest rate, but principal payment is delayed to provide escalating debt service payments that are estimated to generally track inflation.

OPERATING COSTS

Exhibit 4: Operating and Maintenance Expenses
Capital outlays
Contingencies

Key Assumptions:

Operation Maintenance Expenses - The operation and maintenance expenses per square foot has been calculated on the basis the total building costs during the most recent fiscal year for which there is complete available data (FY 1989-90). This amount has been escalated at 5% per year during each year shown in the analysis.

Capital outlays - It is assumed that capital outlays would average \$25,000 per year. The amounts shown on Exhibit 4 have been adjusted for 5% inflation.

Contingencies - Contingency is set at 5% during FY 1994-95 and 1.5% in the remaining years.

Exhibit 4

OPERATING COSTS AND REVENUES
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT

	Fiscal Years						
	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Operating costs							
Operation and maintenance expenses (a)	334,000	466,000	595,000	759,000	969,000	1,237,000	1,579,000
Capital outlays (b)	25,000	32,000	41,000	52,000	66,000	84,000	107,000
Contingencies (c)	18,000	7,000	10,000	12,000	16,000	20,000	25,000
	-----	-----	-----	-----	-----	-----	-----
Total	377,000	505,000	646,000	823,000	1,051,000	1,341,000	1,711,000
Operating revenues-parking (d)	124,000	158,000	202,000	258,000	329,000	420,000	536,000

a. Calculated on the basis of most recent Fiscal Year cost per square foot inflated at 5% per year.

b. Assuming 5% annual inflation.

c. Assuming 5% of expenses and capital outlays in first year and 1.5% thereafter.

d. Assuming 175 revenue-generating spaces. Charges would be \$60 per month subject to 5% annual inflation.

SPACE PROGRAM

Exhibit 5: Current space
Department request
Allocation of common area

Key Assumptions:

The space program was prepared by BOOR/A (Metro's architect) in consultation with Metro Headquarters Project staff. Current department requests have been made on the basis of current and anticipated growth in personnel over the next few years. Usable square feet in the headquarters building will total approximately 70,000, thereby allowing 7,000 feet for further growth.

Exhibit 5

**SPACE PROGRAM
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

	Current space	Department request	Proposed space	Total
			Allocation of common area	
General government				
Executive management	1,104	2,285	878	3,163
Council	1,032	1,456	559	2,015
Council Chamber	1,296	2,000	768	2,768
Facilities development/construction	1,044	1,735	667	2,402
	4,476	7,476	2,872	10,348
Transportation Planning	9,100	7,085	2,722	9,807
Planning and Development	3,528	4,410	1,694	6,104
Solid Waste	7,394	6,250	2,401	8,651
MERC	0	3,795	1,458	5,253
	20,022	21,540	8,276	29,816
Support Services				
Legal	1,440	1,695	651	2,346
Public Affairs	2,472	3,980	1,529	5,509
Personnel	1,584	1,250	480	1,730
Financial Planning/Office Services	2,844	3,175	1,220	4,395
Accounting	2,041	3,235	1,243	4,478
Information Systems	1,575	2,355	905	3,260
Procurement	558	560	215	775
Facilities Management	1,456	425	163	588
	13,970	16,675	6,407	23,082
Common area				
Shared space	5,227	10,220		
Day care		4,035		
Building services	344	900		
General storage	396	2,400		
Archives	216	--		
Circulation	3,312	--		
Common Subtotal	9,495	17,555		
Total	47,963	63,246	17,555	63,246

8/13/91

RATES AND AFFORDABILITY

Exhibit 6: Rate per Square Foot
 Exhibit 7A, 8A, 9A: Building Management Fund Transfers
 Exhibit 7B, 8B, 9B: Effect on Enterprise Revenues/Excise Tax
 Graph 1: Components of Building Cost Increase
 Graph 2: Comparison of Rates

Key Assumptions:

Rate per Square Foot - Estimated rates per square foot for the headquarters building are shown for each of the three financing alternatives on Exhibit 6. Rate requirements include operating costs and debt service. These costs are netted against parking revenues to determine the net requirement. This amount is divided by the occupied square feet in the building to determine the rate per square foot paid by departments for occupancy.

Transfers to Building Management Fund - Exhibits 7A, 8A, and 9A show the transfers to the Building Management Fund required by each operating department under each financing option. The amounts shown include Support Service building costs allocated on the same basis as that shown in the FY 1991-92 Approved Budget.

Effect on Enterprise Revenues and Excise Tax - Exhibits 7B, 8B, 9B show the effect of the increased building costs on certain enterprise revenues and Metro excise tax. The calculation of Solid Waste tipping fees provides for increased building costs related to Solid Waste occupancy of space and the allocable costs of Transportation Planning and Planning and Development. The calculation of excise tax provides for increased building costs related to increases in General Government occupancy of space and the allocable costs of Transportation Planning and Planning and Development.

Limitations of the analysis:

- The increase in tipping fees has been calculated on the basis of currently budgeted tons of solid waste. It can be assumed that this amount will increase in the future.
- MERC and Zoo revenues are projected to increase at 3% per year. No attempt has been made to accommodate possible changes in MERC revenues related to construction of the new arena, revenue measures implemented to fund deficits at the Civic Stadium and the Portland Center for the Performing Arts. Similarly no attempt has been made to anticipate any revenue adjustments related Zoo revenue increases to alleviate potential future shortfalls in funding.
- The amount of excise tax revenues collected is dependent on revenues of other departments. This analysis holds other department revenues constant except to the extent that increased revenue requirements related to increased building costs affect department earnings. Growth in department earnings would lessen the effect of increases in excise tax shown on the Exhibits.

Exhibit 6

**RATE PER SQUARE FOOT
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

METROPOLITAN SERVICE DISTRICT	Fiscal Years						
	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
ALTERNATIVE 1 (LEVEL DEBT SERVICE)							
Requirements							
Operating costs	377,000	505,000	646,000	823,000	1,051,000	1,341,000	1,711,000
Debt service	1,235,000	1,235,000	1,235,000	1,235,000	1,235,000	1,235,000	1,235,000
	-----	-----	-----	-----	-----	-----	-----
	1,612,000	1,740,000	1,881,000	2,058,000	2,286,000	2,576,000	2,946,000
Revenue							
Parking	124,000	158,000	202,000	258,000	329,000	420,000	536,000
Interest on Reserve Account	104,000	104,000	104,000	104,000	104,000	104,000	104,000
	-----	-----	-----	-----	-----	-----	-----
Net requirements	1,384,000	1,478,000	1,575,000	1,696,000	1,853,000	2,052,000	2,306,000
Occupied square footage (a)	63,246	69,000	69,000	69,000	69,000	69,000	69,000
	-----	-----	-----	-----	-----	-----	-----
Base rate per square foot	\$21.88	\$21.42	\$22.83	\$24.58	\$26.86	\$29.74	\$33.42
Furniture and fixture rate (b)	\$1.74	\$1.59	\$1.59	\$1.59	\$1.59	\$1.59	\$1.59
ALTERNATIVE 2 (VARIABLE INTEREST RATE)							
Requirements							
Operating costs	377,000	505,000	646,000	823,000	1,051,000	1,341,000	1,711,000
Debt service	1,108,000	1,171,000	1,235,000	1,300,000	1,367,000	1,434,000	1,434,000
	-----	-----	-----	-----	-----	-----	-----
	1,485,000	1,676,000	1,881,000	2,123,000	2,418,000	2,775,000	3,145,000
Revenue							
Parking	124,000	158,000	202,000	258,000	329,000	420,000	536,000
Interest on Reserve Account	104,000	104,000	104,000	104,000	104,000	104,000	104,000
	-----	-----	-----	-----	-----	-----	-----
Net requirements	1,257,000	1,414,000	1,575,000	1,761,000	1,985,000	2,251,000	2,505,000
Occupied square footage (a)	63,246	69,000	69,000	69,000	69,000	69,000	69,000
	-----	-----	-----	-----	-----	-----	-----
Rate per square foot	\$19.87	\$20.49	\$22.83	\$25.52	\$28.77	\$32.62	\$36.30
Furniture and fixture rate (b)	\$1.55	\$1.51	\$1.59	\$1.68	\$1.75	\$1.86	\$1.86

Exhibit 6 (page 2 of 2)

**RATE PER SQUARE FOOT
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

	Fiscal Years						
	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
ALTERNATIVE 3 (ESCALATED DEBT SERVICE)							
Requirements							
Operating costs	377,000	505,000	646,000	823,000	1,051,000	1,341,000	1,711,000
Debt service	791,000	1,055,000	1,250,000	1,480,000	1,754,000	2,078,000	2,301,000
	<u>1,168,000</u>	<u>1,560,000</u>	<u>1,896,000</u>	<u>2,303,000</u>	<u>2,805,000</u>	<u>3,419,000</u>	<u>4,012,000</u>
Revenue							
Parking	124,000	158,000	202,000	258,000	329,000	420,000	536,000
	<u>1,044,000</u>	<u>1,402,000</u>	<u>1,694,000</u>	<u>2,045,000</u>	<u>2,476,000</u>	<u>2,999,000</u>	<u>3,476,000</u>
Net requirements	63,246	69,000	69,000	69,000	69,000	69,000	69,000
Occupied square footage (a)							
	<u>\$16.50</u>	<u>\$20.32</u>	<u>\$24.55</u>	<u>\$29.64</u>	<u>\$35.88</u>	<u>\$43.46</u>	<u>\$50.38</u>
Rate per square foot	\$1.11	\$1.36	\$1.61	\$1.91	\$2.26	\$2.68	\$2.96
Furniture and fixture rate (b)							

a. Assuming full occupancy in FY 1999-2000

b. Furniture and fixture rate is calculated by dividing the debt service allocable to furniture and fixtures by the number of occupied square feet.

Exhibit 7A

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

Alternative 1: Laval Debt Service

Transfer to Building Management Fund (a)

	Budget	Fiscal Years						
	1991-92	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Solid Waste	271,507	458,000	486,000	516,000	553,000	601,000	662,000	740,000
General Government	68,208	286,000	305,000	323,000	346,000	376,000	415,000	463,000
Transportation Planning	165,728	284,000	301,000	320,000	343,000	373,000	410,000	459,000
Planning and Developme	93,520	182,000	194,000	206,000	220,000	240,000	264,000	295,000
MERC	33,245	199,000	212,000	224,000	241,000	262,000	288,000	322,000
Zoo	37,675	85,000	90,000	96,000	103,000	112,000	123,000	137,000
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	669,883	1,494,000	1,588,000	1,685,000	1,806,000	1,964,000	2,162,000	2,416,000

a. Includes allocable Support Service costs.

Exhibit 7B

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

Alternative 1: Level Debt Service

Effect on Enterprise Revenues and Excise Tax

	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
SOLID WASTE TIPPING FEES								
Estimated tonnage	1,200,000							
Increased building costs (a)		228,000	261,000	297,000	342,000	399,000	472,000	565,000
Increase in tipping fees		\$0.19	\$0.22	\$0.25	\$0.29	\$0.33	\$0.39	\$0.47
MERC REVENUES								
Budgeted revenues (1991-92)	16,447,000							
Estimated revenues (b)		17,972,000	20,835,000	24,153,000	28,000,000	32,460,000	37,630,000	39,921,000
Increased building costs		166,000	179,000	191,000	208,000	229,000	255,000	289,000
Increase as a percentage of revenues		0.92%	0.86%	0.79%	0.74%	0.71%	0.68%	0.72%
ZOO REVENUES								
Budgeted revenues	11,973,793							
Estimated revenues (b)		13,084,000	15,168,000	17,584,000	20,385,000	23,631,000	27,395,000	29,064,000
Increased building costs		47,000	52,000	58,000	65,000	74,000	85,000	99,000
Increase as a percentage of revenues		0.36%	0.34%	0.33%	0.32%	0.31%	0.31%	0.34%
EXCISE TAX								
Increased building costs (c)		268,000	292,000	318,000	349,000	391,000	443,000	510,000
Increase in Excise Tax revenue		23,000	26,000	28,000	32,000	37,000	42,000	50,000
Net increase in Excise Tax requirement		245,000	266,000	290,000	317,000	354,000	401,000	460,000
Increase in Excise Tax percentage		0.32%	0.34%	0.38%	0.41%	0.46%	0.52%	0.60%

a. Includes increased Solid Waste costs and allocable portions of Transportation Planning and Planning and Development costs.

b. Assuming revenues increase at 3% per year.

c. Includes increased costs for general government and allocable portions of Transportation Planning and Planning and Development costs.

Exhibit 8A

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

Alternative 2: Variable Debt Service

Transfer to Building Management Fund (a)

	Budget	Fiscal Years						
	1991-92	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Solid Waste	271,507	415,000	465,000	516,000	575,000	645,000	729,000	806,000
General Government	68,208	260,000	291,000	323,000	360,000	404,000	456,000	505,000
Transportation Planning	165,728	257,000	288,000	320,000	356,000	400,000	452,000	500,000
Planning and Developme	93,520	165,000	185,000	206,000	229,000	257,000	290,000	321,000
MERC	33,245	181,000	202,000	224,000	250,000	281,000	317,000	351,000
Zoo	37,675	77,000	86,000	96,000	107,000	120,000	135,000	150,000
	-----	-----	-----	-----	-----	-----	-----	-----
	669,883	1,355,000	1,517,000	1,685,000	1,877,000	2,107,000	2,379,000	2,633,000

Exhibit 8B

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

Alternative 2: Variable Debt Service

Effect on Enterprise Revenues and Excise Tax

	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
SOLID WASTE TIPPING FEES								
Estimated tonnage	1,200,000							
Increased building costs (a)		176,000	236,000	298,000	368,000	452,000	553,000	645,000
Increase in tipping fees		\$0.15	\$0.20	\$0.25	\$0.31	\$0.38	\$0.46	\$0.54
MERC REVENUES								
Budgeted revenues (1991-92)	16,447,000							
Estimated revenues (b)		17,972,000	20,835,000	24,153,000	28,000,000	32,460,000	37,630,000	39,921,000
Increased building costs		148,000	169,000	191,000	217,000	248,000	284,000	318,000
Increase as a percentage of revenues		0.82%	0.81%	0.79%	0.78%	0.76%	0.75%	0.80%
ZOO REVENUES								
Budgeted revenues	11,973,793							
Estimated revenues (b)		13,084,000	15,168,000	17,584,000	20,385,000	23,631,000	27,395,000	29,064,000
Increased building costs		39,000	48,000	58,000	69,000	82,000	97,000	112,000
Increase as a percentage of revenues		0.30%	0.32%	0.33%	0.34%	0.35%	0.35%	0.39%
EXCISE TAX								
Increased building costs (c)		239,000	282,000	326,000	376,000	436,000	508,000	575,000
Increase in Excise Tax revenue		19,000	24,000	28,000	34,000	41,000	49,000	56,000
Net increase in Excise Tax requirement		220,000	258,000	298,000	342,000	395,000	459,000	519,000
Increase in Excise Tax percentage		0.28%	0.33%	0.39%	0.44%	0.51%	0.59%	0.67%

a. Includes increased Solid Waste costs and allocable portions of Transportation Planning and Planning and Development costs.

b. Assuming revenues increase at 3% per year.

c. Includes Increased costs for general government and allocable portions of Transportation Planning and Planning and Development cost.

Exhibit 9A

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

Alternative 3: Ramped Debt Service

Transfer to Building Management Fund (a)

	Budget	Fiscal Years						
	1991-92	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Solid Waste	271,507	341,000	458,000	553,000	667,000	806,000	975,000	1,127,000
General Government	68,208	214,000	287,000	346,000	417,000	505,000	611,000	706,000
Transportation Planning	165,728	211,000	284,000	343,000	413,000	500,000	604,000	699,000
Planning and Development	93,520	136,000	183,000	220,000	266,000	321,000	389,000	449,000
MERC	33,245	148,000	199,000	240,000	290,000	351,000	424,000	490,000
Zoo	37,675	63,000	85,000	103,000	124,000	150,000	181,000	209,000
	-----	-----	-----	-----	-----	-----	-----	-----
	669,883	1,113,000	1,496,000	1,805,000	2,177,000	2,633,000	3,184,000	3,680,000

a. Includes allocable Support Service costs.

Exhibit 9B

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

Alternative 3: Escalated Debt Service

Effect on Enterprise Revenues and Excise Tax

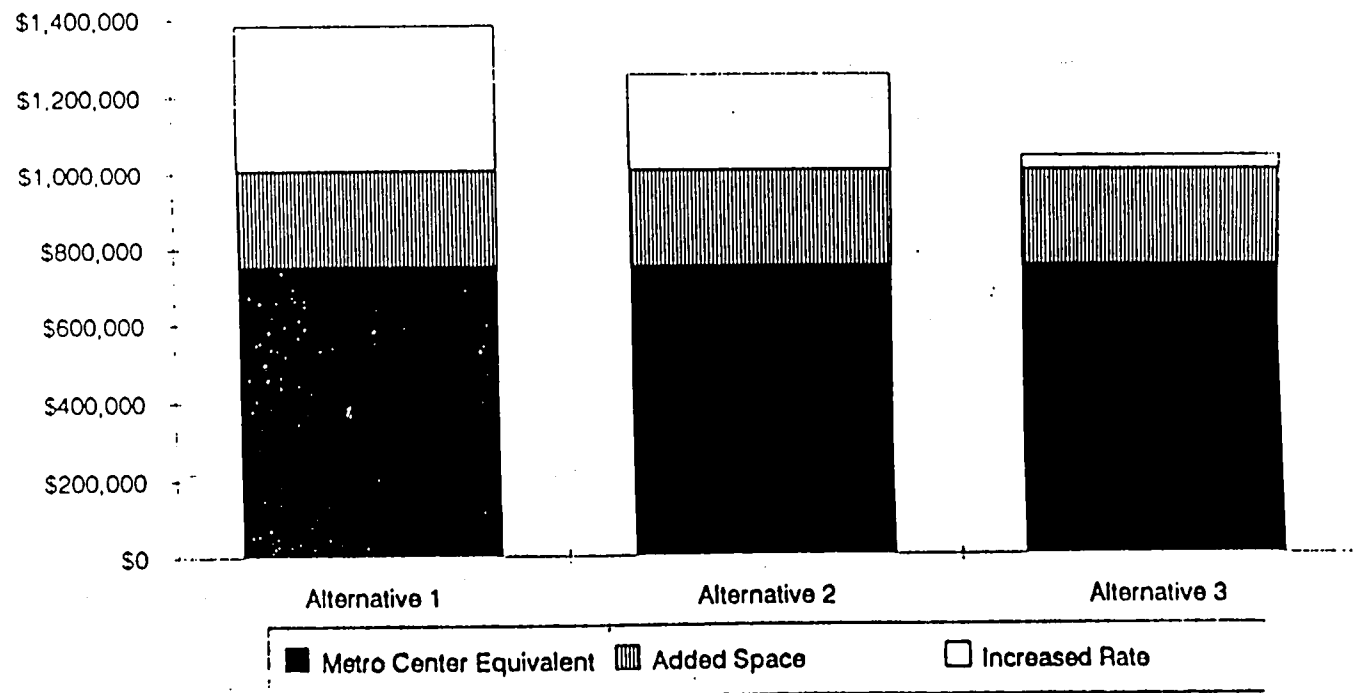
	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
SOLID WASTE TIPPING FEES								
Estimated tonnage	1,200,000							
Increased building costs (a)		88,000	228,000	342,000	479,000	645,000	848,000	1,030,000
Increase in tipping fees		\$0.07	\$0.19	\$0.29	\$0.40	\$0.54	\$0.71	\$0.86
MERC REVENUES								
Budgeted revenues (1991-92)	16,447,000							
Estimated revenues (b)		17,972,000	20,835,000	24,153,000	28,000,000	32,460,000	37,630,000	39,921,000
Increased building costs		115,000	166,000	207,000	257,000	318,000	391,000	457,000
Increase as a percentage of revenues		0.64%	0.80%	0.86%	0.92%	0.98%	1.04%	1.14%
ZOO REVENUES								
Budgeted revenues	11,973,793							
Estimated revenues (b)		13,084,000	15,168,000	17,584,000	20,385,000	23,631,000	27,395,000	29,064,000
Increased building costs		25,000	47,000	65,000	86,000	112,000	143,000	171,000
Increase as a percentage of revenues		0.19%	0.31%	0.37%	0.42%	0.47%	0.52%	0.59%
EXCISE TAX								
Increased building costs (c)		168,000	251,000	313,000	396,000	497,000	620,000	723,000
Increase in Excise Tax revenue		12,000	23,000	32,000	43,000	56,000	72,000	86,000
Net increase in Excise Tax requirement		156,000	228,000	281,000	353,000	441,000	548,000	637,000
Increase in Excise Tax percentage		0.20%	0.30%	0.36%	0.46%	0.57%	0.71%	0.82%

a. Includes Increased Solid Waste costs and allocable portions of Transportation Planning and Planning and Development costs.

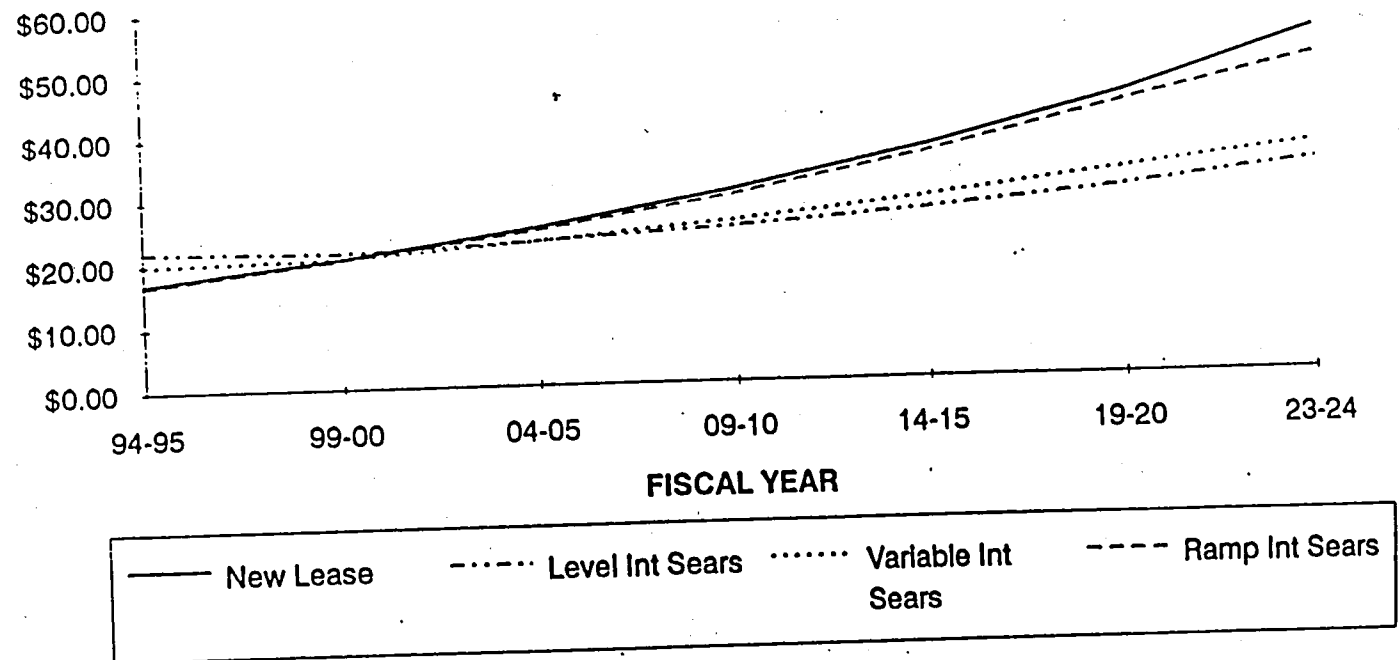
b. Assuming revenues increase at 3% per year.

c. Includes increased costs for general government and allocable portions of Transportation Planning and Planning and Development cost.

GRAPH 1
CURRENT FACILITY COSTS PLUS
INCREASED SPACE AND INCREASED RATE



GRAPH 2
ANNUAL PER SQUARE FOOT COSTS
EXCLUDES FURNITURE





METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: August 20, 1991

TO: Casey Short, Council Analyst

FROM: Neil Saling

SUBJECT: Resolution No. 91-1478 - Responses to Questions

The following represents the Metro staff responses to the questions posed in your July 5, 1991 memorandum to me regarding the proposed Sale Agreement for the Sears Facility and updates my July 31, 1991 response. Changes to the Staff Report and Concept Agreement which have taken place since your memorandum are noted.

Q1. What is the breakdown of costs used to arrive at the estimate project costs of \$14.5 to \$15.2 million?

A1. The presently estimated total project cost is \$18.5 million. A general breakdown of costs is shown below. Note that \$1.4 million of the financing costs is a recoverable reserve.

Construction	\$ 9,410,000
FF&E plus Art	1,268,000
Purchase Price	2,550,000
Project Management	1,775,000
Financing Costs	3,247,000
Broker Fees	<u>318,000</u>
	\$ 18,568,000

Q2. What is included in the \$16.50 per square foot rate cited in the staff report? Does it include the semi-annual \$50,000 option payment for the garage? If the annual cost calculation included these option payments and operating costs which were equal to our current (Metro Center) operating costs, how would these affect the rate per square foot?

A2. Included in the \$16.50 per square foot initial costs are operating costs and debt service offset by parking revenues. The cost of FF&E is \$1.11 per square foot and is not included. The option costs for the parking garage are not included. Inclusion of option payments of \$100,000 annually and operating costs equivalent to the current Metro Center could raise the initial per square foot cost to approximately \$19.20.

Q3. Please clarify the garage purchase element referred to on page 3. As I understand it, the escalating purchase price for the garage would translate to the following effective purchase prices for each six month period (please confirm accuracy):

10/15/91 - 4/14/92:	\$2,600,000
4/15/92 - 10/14/92:	2,730,000
10/15/92 - 4/14/93:	2,866,500
4/15/93 - 10/14/93:	3,009,825
10/15/93 - 4/14/94:	3,160,286
4/15/94 - 10/14/94:	3,318,300

Regarding the \$50,000 semi-annual option fee, is any of this money refundable if Metro decides not to buy the parking garage? What will be the Council's role in determining whether to continue option payments, buy the garage, or terminate the option - will Council authorization be required every six months?

A3. The six month options would begin December 1, 1991 (12/1/91). The escalating purchase price would be as follows:

<u>Option Period</u>	<u>Closing Date</u>	<u>Price</u>
0	Before 12/1/91	\$2,600,000
1	12/2/91 to 5/31/92	2,730,000
2	6/1/92 to 12/1/92	2,866,500
3	12/2/92 to 5/31/93	3,009,800
4	6/1/93 to 12/1/93	3,106,300
5	12/2/93 to 5/31/94	3,318,300
6	6/1/94 to 12/1/94	3,484,200

The semi-annual option fee is not refundable if Metro chooses not to purchase the parking garage. Council will be asked to make a decision on purchase of the parking garage prior to December 1, 1991.

Q4. Why was the date for payment of the \$2.3 million balance moved from December 15 to October 15?

A4. The date was moved at the request of Pacific Development, Inc. (PDI) based upon an estimated early completion of contractor selection. The latest version of the Sale Agreement returns the closing to December 15, 1991.

Q5. Hazardous Waste: This section needs further clarification. What are "direct" costs for removing any hazardous waste, and what are "indirect" costs? If the costs exceed \$250,000, what are Metro's alternatives? If PDI terminates the offer because the direct costs of removing the waste exceed \$250,000, will Metro's earnest money be refunded? Is the \$250,000 ceiling for the entire facility--including the garage--or is there a \$250,000 ceiling for each part of the facility? At what point would Metro have to make a final decision whether to cover direct costs above \$250,000: when costs exceeded that amount (even though final costs were not yet known); when the final costs had been determined; when an estimate is made; or at some other time? Who defines "hazardous waste" or "hazardous materials?" (Both are used in the letter.)

A5. Direct costs include the costs of the remediation effort to adhere to applicable Environmental Laws plus any monitoring; indirect costs are not stipulated, but would refer to PDI supervisory and overhead costs. The proposed Sale Agreement now calls for an agreed PDI role in remediation based upon the consultant's report and estimate of costs. The consultant (Brown & Caldwell) will determine what remediation is required by "applicable Environmental Law" based upon the projected building use. The terminology for the hazardous materials is now "asbestos containing materials" (ACM) and "Hazardous Substances".

Q6. Parking: My reading of the parking agreement leads me to the following understanding (please confirm or correct):

Metro will construct some 220 stalls in the main building as part of the building renovation. In addition, Metro may lease up to 100 stalls in the garage at any time following our occupancy of the building. (The rate shall begin at \$56/month/stall, with a 10% annual limit on rate increases for 3 years.) If Metro does not buy the garage, we may lease up to 100 stalls for an additional 7 years, with 3 five-year options. If we remodel the Grand Avenue parking area, we may add another 100 stalls in the garage at the same monthly rate.

How would the parking rate for the 7-year extension be determined? Would the stalls in the garage be used for employee parking, visitor parking, or other? Would Metro receive revenue from this parking? Who would set the rate for the end use, and how would that rate be determined?

A6. In the absence of a Metro purchase of the garage, the Parking Supply Agreement governs the Metro lease alternatives. The first alternative is to lease up to 100 spaces at a starting rate of \$56.00. This rate would escalate to the market rate or to the limit of an annual 10% cap in October of each year. After the first three years there are three consecutive renewal options of seven, five and five years respectively. In addition, Metro may lease up to 100 spaces on a "use or lose" basis upon conversion of Grand Avenue parking space to office space. Payment for parking is similar to the first 100 space increment.

Q7. State Parking Requirement: Please explain why there is a variance of \$5 per stall, "depending on management".

A7. The \$5 per stall difference pays for the management of the garage by PDI instead of Metro.

Q8. How many parking stalls are in the garage? What is PDI's arrangement with the State for parking? What are the revenue projections for the garage? Is Metro expected to make money on the garage if purchased?

A8. As presently striped, the parking garage has 477 stalls. The State/PDI parking arrangement is somewhat complex, but it basically provides that PDI will provide 346 parking stalls in close proximity to the new State Office Building at an escalating charge over a 30 year period. Preparation of the financial projections for the Parking Garage are a part of the proposed Resolution.

Q9. State Parking Obligation: Please explain the nature of the obligation, and Metro's potential obligations, liabilities, and revenues under the arrangement.

A9. PDI and the State of Oregon have entered into an agreement whereby PDI furnishes the State 346 parking spaces within a six-block radius of the new State Office Building. Should Metro purchase the parking garage, all 346 spaces would be demanded in the parking garage. While this provides a desirable revenue stream, the contracted price may fall below the market in the future. The analysis recommended as a part of the proposed Resolution will define Metro's options in detail.

Q10. OCC Transportation Capital Improvements: What is the cost of assuming the applicable portion of the LID (annual cost and term)? Have those costs been included in the estimate of annual costs for the facility?

A10. The cost to Metro of the OCC Transportation Capital Improvement LID payment is estimated to be \$73,000 for the entire facility. This amount is included in the "Notice to Lien" and could change at the actual assessment stage. This amount is included in the project cost estimate.

Q11. Hazardous Waste: PDI "may elect to decommission underground tanks in place." Will Metro have any binding voice in this decision? Why will Metro share the cost of environmental testing, if for any reason other than to ensure the objectivity of the tests? How much is such testing estimated to cost?

Please clarify the statement, "The parties will approve before closing, based on the testing and bids obtained by the Seller, a specific scope of work and charge to Seller for any such remediation work" (emphasis added). Does this effectively limit PDI's obligation to pay for the complete remediation work? What happens if there is more remediation required than was originally anticipated - who is responsible to pay for it, and what are Metro's options?

Does this handwritten amendment, "The deposit shall be refunded to Purchaser if the transaction terminates pursuant to the foregoing" refer to the \$250,000 earnest money?

A11. Metro will not permit decommissioning of underground storage tanks (UST) in locations planned for construction of building components. Metro agreed to share in the environmental surveys as a negotiation issue. Based on the surveys already accomplished, Metro anticipates a charge not to exceed \$20,000. PDI anticipates paying for all remediation required to bring the building into compliance with applicable Environmental Laws. Please see the revised draft Sales Agreement for the concept for remediation. (See also A5.)

Q12. Do you anticipate MERC moving its offices to the Sears facility? If so, what will be the cost to MERC, and how will the vacated office space at the Convention Center be used? How would costs to Metro's other departments be affected with MERC in or out of the Sears facility? In any case, has the matter been presented to/discussed with the MERC Commission?

A12. The space planning for the new Metro Headquarters includes the MERC management pool plus other selected staff for a total office of 21 employees. Upon the MERC move, the Oregon Convention Center space will revert to its designed purpose of housing OCC staff. MERC will be charged for space on the same basis as other Metro departments. Charges to other Metro departments would increase over planned levels should MERC not occupy space in the new Metro Headquarters. The MERC Commission has received an informational briefing on Metro planning for the new facility.

Q13. At the June 7 meeting of the Building Relocation Task Force, there was mention of Metro contributing to a "gateway" project which would mark entrance to the Lloyd district. There is no mention of this in the materials submitted. What is the status of this, and what would the cost be?

A13. There has been an implicit request for Metro to participate, if not fully fund, some structure signifying entry into the Lloyd district. The design would be provided by the successful design/build team and funding has been included in the estimated project costs.

Q14. How is the project proposed to be financed? Will any adjustments to the 91/92 budget be required, and if so, what will they be?

A14. Please see the Financial Analysis of Headquarters Purchase and Renovation included with the Staff Report. Fund sources include Revenue Bonds (\$17,441,000), Metro funds (\$620,000) and Interest Income (\$507,000).

Q15. Is it possible to provide drawings of the proposed renovation for the committee and Council?

A15. Not at this time. The proposed renovation scheme will be a consultant product.

Q16. After renovation, what will be the building's capacity to withstand an earthquake?

A16. Metro will ask that the building be renovated to Zone 3 standards.

Q17. Earlier discussions of the proposal included provision for a day care center. Is this included in the latest plan?

A17. A day care center is included in the Metro space program.

Q18. Have we received appraisals of the Sears building and land, and the parking garage? If so, how do they relate to the \$2,550,000 and \$2,600,000 prices for the facilities?

A18. We have received one "as is" appraisal which valued the parking structure at \$1,980,000 and the Sears Building at \$2,029,000 and the "whole property" at \$4,000,000. We have also received an "as proposed" appraisal which was based on the original renovation plan and valued the property after renovation at \$21,500,000.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503 221-1646

Memorandum

DATE: September 3, 1991
TO: Metro Council
FROM: Casey Short, Council Analyst
RE: Resolution No. 91-1494 - Sears Building Purchase

In reviewing the Executive Officer's proposal to purchase and remodel the Sears Building for use as Metro's administrative headquarters, I prepared two series of questions for Neil Saling. Those questions are contained in memos dated July 3 and July 5, 1991; Mr. Saling's responses came in two memos dated July 31. (Questions and responses are included in the August 13 Regional Facilities Committee agenda packet.) At the August 27 Regional Facilities Committee meeting, Councilor Van Bergen asked whether I was satisfied with Mr. Saling's responses, and requested that I ask Mr. Saling in writing for further information on any answers that I thought needed elaboration or clarification.

The purpose of this memo is to advise the Council of policy questions the Sears Building purchase raises, which I asked in my July 3 memo. I am also attaching a memo to Neil Saling which asks for clarification of some of his earlier responses, in accordance with Councilor Van Bergen's request.

1. Is the Sears facility clearly the best alternative for a new Metro headquarters?

In my July 3 memo, I identified three sets of questions around this broad theme. Those questions asked whether the siting criteria of the Relocation Task Force were appropriate in limiting potential headquarters sites to the Lloyd Center - Convention Center area in inner Northeast Portland; whether the Sears facility should be considered to the exclusion of any other formal proposals; and whether renovation of the Sears facility would be preferable to new construction if new construction were cheaper than Sears renovation. I summarized the above questions by asking whether our research clearly identified the Sears facility as the best alternative for Metro. Mr. Saling's response correctly identified the basic question as a policy issue for Council to consider, adding that staff has not found an alternative that is clearly better.

My contention over the course of the summer, when this issue has been intermittently before the Regional Facilities committee, is that the Council cannot make a truly informed decision without investigating the full range of possibilities. Those possibilities include renovation of Sears or another building; purchase of another existing building; and new construction. Possible sites for these alternatives include the inner east side, the central business district, or a location outside the urban core. It is Council's decision whether to accept the siting criteria of the Relocation Task Force, which point to the area of the inner east side of Portland in the neighborhood of the Oregon Convention Center as the preferred site, but the Council is not bound by these criteria since you have never formally reviewed or approved those criteria.

If the Council accepts the siting criteria as acceptable - either on their own merits or by virtue of their having gone unchallenged since their approval by the task force in May 1990 - the alternatives to the renovation of the Sears building have not been adequately investigated. We cannot know whether a less expensive alternative which meets Metro's needs exists - under the criteria that dictate an inner east side location or otherwise - unless we provide an opportunity for prospective proposers to develop formal proposals for a Metro headquarters in which cost is a critical factor. Such a process would require us to develop a list of requirements we would have for a headquarters facility, and allow developers to put together packages that met those requirements while allowing Metro to determine the mix of costs, building amenities, and other criteria that best suited our needs.

The current proposal does not give us the chance to determine whether the Sears renovation is the best deal for the agency and the taxpayers of the region. It identifies a proposal that meets certain important criteria, but does not give the Council the flexibility to determine whether these are the only criteria it should consider in making a significant long-range policy decision with fiscal implications that run into millions of dollars.

2. Is the Sears Building affordable?

My July 3 memo asked this question, which is inextricably tied to the policy question discussed above. The response from Mr. Saling included Finance & Management Information staff's financial analysis of the Sears proposal for review by Council and Council staff, and concluded by saying that there is no simple formula for establishing affordability. That

determination is ultimately a policy question for Council to resolve.

There are three issues surrounding the affordability question that should be resolved before Council determines whether it considers the Sears proposal to be affordable. The first issue concerns the annual and total costs of purchasing and renovating the Sears facility, to which I will ask more detailed questions in the attached memo. In a nutshell, the issue is whether the Council is willing to commit to a program of purchase and renovation without knowing what the project is going to cost. Finance & Management Information staff have proposed three alternatives for financing the project, but their analysis provides neither total cost figures nor a recommendation from among the alternatives. Does the Council want to know the costs of the alternatives and determine how to structure the debt, before committing to purchase?

The second issue concerns the financial effects of the Sears project on Metro's departments. The financial analysis does not include specific figures on the annual costs to Metro departments, nor is there an analysis of the effects that building-related cost increases will have on the departments' operations. Of particular concern are the effects on enterprise departments such as MERC and the Zoo (which already face financial difficulties without additional transfers to the Building Management Fund), and the effects that excise tax increases related to debt service on the building will have on General Fund programs. Is it appropriate to increase central costs to departments which already have financial problems, and might these increases affect our ability to find long-term solutions to their problems?

The final issue is perhaps of greater significance than the simple increase in departmental requirements, and concerns the need to coordinate increased requirements with efforts to raise money to resolve existing fiscal problems and fund new initiatives. Currently in various stages of development are proposals to fund MERC operations; the Greenspaces program; Zoo operations and long-term capital needs; and regional arts programs. How would Metro's purchase of the Sears building affect our ability to implement these new revenue programs? The issue here is primarily one of public credibility. Most, if not all, of the ideas for raising program revenues will require a vote of the people. If Metro buys a headquarters building, particularly one that is not clearly demonstrated to be the most affordable, will that have a negative effect on public perceptions of the agency as it tries to raise more funds or pass a charter? Should we be considering this building purchase in

the context of other agency priorities, and have the Council establish its priority in relation to support of programs?

CONCLUSION

Council's approval of Resolution No 91-1494 will commit Metro to spending \$325,000, at a minimum. It commits the agency to a \$250,000 earnest money payment to Pacific Development, and \$25,000 to each of the three qualifying design/build teams for their work in preparing responses to the RFP. This is a lot of money to spend for a proposal that still has as many questions surrounding it as the purchase of the Sears building has. I would like to suggest two alternatives for your consideration before you commit to proceeding on Sears.

First, the Council could direct its negotiators to return to Pacific Development with the instruction that the \$250,000 earnest money payment be refundable if Metro decides not to proceed with the purchase of the Sears building. This would allow us to review the proposals we will be receiving in the fall to determine whether any of them meets our needs at a price we can afford to pay.

Second, the Council could reject the resolution, and instead direct staff to modify the RFP to open it to any and all qualified proposers. Council could then determine whether the criteria of the Relocation Task Force were consistent with Council's criteria and assessment of the agency's needs. This would give us the opportunity to open the building acquisition process to determine conclusively what our options are in terms of site, type of property (new, remodel, or existing building), and cost. Such a process would ensure that we got the best deal for the public's dollar, which is an assurance I don't believe we can make now.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503 221-1646

Memorandum

DATE: September 4, 1991
TO: Neil Saling
FROM: Casey Short *CS*
RE: Resolution No. 91-1494 - Sears Purchase Agreement

At last week's Regional Facilities Committee meeting, Councilor Van Bergen asked me to request clarification from you on any questions regarding the Sears building purchase which remained following your July 31 responses to my July 3 and July 5 questions. This memo is in response to Councilor Van Bergen's request. I expect that the questions related to finance and debt service will have to be answered by Finance & Management Information staff.

Issues from July 3 memo

Questions 1 and 2 dealt with the issues of affordability and whether the Sears building was clearly Metro's best alternative for a headquarters. I have discussed those issues in the attached memorandum to the Council.

Question 3 asked, "Regardless of the option chosen, how should the debt service be structured?"

The financial analysis prepared by the Finance & Management Information Department outlines three options for structuring the debt service to pay for the purchase and renovation of Sears. The analysis does not break down the costs of the three alternatives by annual cost and total cost; it only provides a breakdown in five-year increments. Will you please see that the information outlining annual costs and total costs of each of the three options is made available to the Council before they consider Resolution No. 91-1494?

In a related issue, what will be the Council's role in determining how the debt service is to be structured, and when will Council be involved in reviewing the debt service alternatives?

Question 4 asked about the potential for leasing the Metro Center. I understand a potential tenant is interested in leasing this building, which should resolve this issue. I'll refrain from going into more detail in the interests of preserving the rights of the potential tenant.

Sears Purchase Issues - Neil Saling
September 4, 1991
Page 2

Question 5 asked why the projected maintenance costs for the Sears Building are lower than the costs for our current building. You have discussed this with me, but the Council has not received any such information in writing. Will you please provide that information for the Council?

Issues from July 5 memo

Question 1 asked, "What is the breakdown of costs used to arrive at the estimated project costs of \$14.5 to \$15.2 million?" (Now projected at \$18.2 million). Your response and the financial analysis break those costs down to their component parts, but I still have a question about what is involved in the \$1.2 million for Furniture, Fixtures, and Equipment. Will you please provide a breakdown of these costs? To what extent does this include replacement of current office furniture and equipment?

The remainder of the questions from the July 5 memo are satisfactorily answered. The issue of the parking garage will be analyzed and alternatives presented to the Council prior to their making a decision on its purchase or the payment of the semi-annual \$50,000 option.

The only issue I would still like to raise concerns the financial effects of the Sears Building purchase on Metro's departments, which I alluded to in the attached memo to the Council. Any information you could provide to the Council prior to their consideration of Resolution No. 91-1494 would be appreciated.

Thank you.

cc: Metro Council
Jennifer Sims
Chris Scherer
Don Carlson
Berit Stevenson
Dick Engstrom




METRO

2000 S.W. First Avenue
Portland, OR 97201-5346
503/221-1646

Memorandum

DATE: September 11, 1991

TO: Neil Saling, Director of Regional Facilities

FROM:  Chris Scherer, Financial Planning Manager

RE: RESPONSE TO FINANCIAL ISSUES RAISED IN CASEY
SHORT'S SEPTEMBER 4, 1991, MEMORANDUM REGARDING
THE SEARS PURCHASE AGREEMENT

As requested, we are providing information related to the captioned memo from Casey Short.

Issue: Should the Council commit to a program of purchase and renovation without knowing what the project is going to cost?

Project costs have been estimated by Metro staff and are included in the August 13, 1991, Financial Analysis of Headquarters Building Purchase and Renovation (the Report) prepared by the Finance and Management Information Department. Although these estimates are subject to modification, they have been prepared on the basis of analysis performed by Metro's architectural and construction consultants and provide an "order of magnitude" benchmark on cost information. Although we would expect that the actual costs of the Project would be somewhat different from those currently estimated, we are confident that the estimates provide sufficient information for analysis and decision-making. The Report contains the following breakdown of costs:

Cost of the Project:	\$15,321,000
Cost of the Project with Financing Costs:	\$18,568,000
Total Bond Size:	\$17,441,000

Issue: What are the financial effects of the increased costs related to the headquarters building purchase and renovation on Metro departments?

Mr. Short's memo states that the Report does not include specific figures on the annual costs to Metro departments or information on the effects of these increased costs on department operations. Exhibits 7A, 8A, and 9A specifically show estimated transfers to

Metro departments resulting from the headquarters building purchase and renovation. Exhibits 7B, 8B, and 9B attempt to illustrate the effect of these increased transfers on Metro's various revenue sources. We have attached these Exhibits for reference.

Issue: Is it appropriate to increase central costs to departments which already have financial problems, and do these increases affect our ability to find long-term solutions to their problems?

We have provided a fact-based report for the Executive Officer and the Council to use in their decision-making process. We will, however, point out that Metro's growth has resulted in the need for additional space. Satisfying this need will inevitably result in increased central costs to departments regardless of the location of such space. Any long-term solution to Metro's funding problems must take Metro's growth pattern and space requirements into consideration.

Issue: How should the debt service be structured?

The Report contained information relating to three alternatives for structuring debt service--level debt service, variable debt service, and "ramped" debt service. The purpose of showing these alternatives was to inform the Council and Executive Officer of the various options for financing currently under consideration by staff and Metro's financial consultants. Other options that are also under consideration include interest rate swaps, a different style of ramped debt service, and other innovative debt instruments currently available. The decision as to which financing method is ultimately selected for implementation is subject to current financial market conditions, the appropriateness of each alternative relative to Metro's existing debt, and the advice of Metro's financial consultants.

It is inappropriate at this time for the Finance and Management Information Department to provide a recommendation on financing structure. When all relevant information is available, we will evaluate the alternatives in consultation with our advisors and select that alternative that is most appropriate in light of the considerations listed above. The Council will have the final determination on financing structure when it approves the master and supplemental ordinances related to the financing prior to execution of the bond purchase agreement.

Issue: Mr. Short asked that information related to the annual cost and total cost of each financing alternative be provided. They are as follows:

Annual Cost (thousands)

	<u>Level</u>	<u>Variable</u>	<u>Ramped</u>
1994-95	1,345	1,206	861
1995-96	1,345	1,206	891
1996-97	1,345	1,206	921
1997-98	1,345	1,206	953
1998-99	1,345	1,206	986
1999-00	1,345	1,275	1,149
2000-01	1,345	1,275	1,188
2001-02	1,345	1,275	1,229
2002-03	1,345	1,275	1,272
2003-04	1,345	1,275	1,316
2004-05	1,345	1,345	1,361
2005-06	1,345	1,345	1,408
2006-07	1,345	1,345	1,456
2007-08	1,345	1,345	1,507
2008-09	1,345	1,345	1,559
2009-10	1,345	1,416	1,612
2010-11	1,345	1,416	1,668
2011-12	1,345	1,416	1,726
2012-13	1,345	1,416	1,785
2013-14	1,345	1,416	1,847
2014-15	1,345	1,488	1,910
2015-16	1,345	1,488	1,976
2016-17	1,345	1,488	2,045
2017-18	1,345	1,488	2,115
2018-19	1,345	1,488	2,188
2019-20	1,345	1,562	2,263
2020-21	1,345	1,562	2,342
2021-22	1,345	1,562	2,422
2022-23	<u>1,345</u>	<u>1,562</u>	<u>2,506</u>
Total cost	39,005	39,894	46,461
Present value	16,193	15,800	16,174

Neil Saling
September 11, 1991
Page 4

Issue: Why are projected maintenance costs lower than the costs for our current building?

Projected operating costs are not lower than the costs for our current building. The operating cost per square foot use in the Report was calculated on the basis of actual costs for FY 1989-90 (\$4.34 per square foot) adjusted for inflation. It is likely that the maintenance costs for the new building will be lower because of new and more efficient building systems. Therefore, we believe the costs shown in the Report are sufficiently conservative.

Exhibit 7B

BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT

Alternative 1: Level Debt Service

Effect on Enterprise Revenues and Excise Tax

	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
SOLID WASTE TIPPING FEES								
Estimated tonnage	1,200,000							
Increased building costs (a)		228,000	261,000	297,000	342,000	399,000	472,000	565,000
Increase in tipping fees		\$0.19	\$0.22	\$0.25	\$0.29	\$0.33	\$0.39	\$0.47
MERC REVENUES								
Budgeted revenues (1991-92)	16,447,000							
Estimated revenues (b)		17,972,000	20,835,000	24,153,000	28,000,000	32,460,000	37,630,000	39,921,000
Increased building costs		166,000	179,000	191,000	208,000	229,000	255,000	289,000
Increase as a percentage of revenues		0.92%	0.86%	0.79%	0.74%	0.71%	0.68%	0.72%
ZOO REVENUES								
Budgeted revenues	11,973,793							
Estimated revenues (b)		13,084,000	15,168,000	17,584,000	20,385,000	23,631,000	27,395,000	29,064,000
Increased building costs		47,000	52,000	58,000	65,000	74,000	85,000	99,000
Increase as a percentage of revenues		0.36%	0.34%	0.33%	0.32%	0.31%	0.31%	0.34%
EXCISE TAX								
Increased building costs (c)		268,000	292,000	318,000	349,000	391,000	443,000	510,000
Increase in Excise Tax revenue		23,000	26,000	28,000	32,000	37,000	42,000	50,000
Net increase in Excise Tax requirement		245,000	266,000	290,000	317,000	354,000	401,000	460,000
Increase in Excise Tax percentage		0.32%	0.34%	0.38%	0.41%	0.46%	0.52%	0.60%

a Includes increased Solid Waste costs and allocable portions of Transportation Planning and Planning and Development costs.

b Assuming revenues increase at 3% per year.

c Includes increased costs for general government and allocable portions of Transportation Planning and Planning and Development costs

Exhibit 7A

BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT

Alternative 1: Level Debt Service

Transfer to Building Management Fund (a)

	Budget	Fiscal Years						
	1991-92	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Solid Waste	271,507	458,000	486,000	516,000	553,000	601,000	662,000	740,000
General Government	68,208	286,000	305,000	323,000	346,000	376,000	415,000	463,000
Transportation Planning	165,728	284,000	301,000	320,000	343,000	373,000	410,000	459,000
Planning and Developme	93,520	182,000	194,000	206,000	220,000	240,000	264,000	295,000
MERC	33,245	199,000	212,000	224,000	241,000	262,000	288,000	322,000
Zoo	37,675	85,000	90,000	96,000	103,000	112,000	123,000	137,000

	669,883	1,494,000	1,588,000	1,685,000	1,806,000	1,964,000	2,162,000	2,416,000

a. Includes allocable Support Service costs.

Exhibit 8A

BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT

Alternative 2: Variable Debt Service

Transfer to Building Management Fund (a)

	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Solid Waste	271,507	415,000	465,000	516,000	575,000	645,000	729,000	806,000
General Government	68,208	260,000	291,000	323,000	360,000	404,000	456,000	505,000
Transportation Planning	165,728	257,000	288,000	320,000	356,000	400,000	452,000	500,000
Planning and Developme	93,520	165,000	185,000	206,000	229,000	257,000	290,000	321,000
MERC	33,245	181,000	202,000	224,000	250,000	281,000	317,000	351,000
Zoo	37,675	77,000	86,000	96,000	107,000	120,000	135,000	150,000

	669,883	1,355,000	1,517,000	1,685,000	1,877,000	2,107,000	2,379,000	2,633,000

Exhibit 8B

BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT

Alternative 2: Variable Debt Service

Effect on Enterprise Revenues and Excise Tax

	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
SOLID WASTE TIPPING FEES								
Estimated tonnage	1,200,000							
Increased building costs (a)		176,000	236,000	298,000	368,000	452,000	553,000	645,000
Increase in tipping fees		\$0.15	\$0.20	\$0.25	\$0.31	\$0.38	\$0.46	\$0.50
MERC REVENUES								
Budgeted revenues (1991-92)	16,447,000							
Estimated revenues (b)		17,972,000	20,835,000	24,153,000	28,000,000	32,460,000	37,630,000	39,921,000
Increased building costs		148,000	169,000	191,000	217,000	248,000	284,000	316,000
Increase as a percentage of revenues		0.82%	0.81%	0.79%	0.78%	0.76%	0.75%	0.74%
ZOO REVENUES								
Budgeted revenues	11,973,793							
Estimated revenues (b)		13,084,000	15,168,000	17,584,000	20,385,000	23,631,000	27,395,000	29,064,000
Increased building costs		39,000	48,000	58,000	69,000	82,000	97,000	112,000
Increase as a percentage of revenues		0.30%	0.32%	0.33%	0.34%	0.35%	0.35%	0.38%
EXCISE TAX								
Increased building costs (c)		239,000	282,000	326,000	376,000	436,000	508,000	575,000
Increase in Excise Tax revenue		19,000	24,000	28,000	34,000	41,000	49,000	56,000
Net increase in Excise Tax requirement		220,000	258,000	298,000	342,000	395,000	459,000	519,000
Increase in Excise Tax percentage		0.28%	0.33%	0.39%	0.44%	0.51%	0.59%	0.67%

a. Includes increased Solid Waste costs and allocable portions of Transportation Planning and Planning and Development costs.

b. Assuming revenues increase at 3% per year.

c. Includes increased costs for general government and allocable portions of Transportation Planning and Planning and Development cost.

Exhibit 9A

BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT

Alternative 3: Ramped Debt Service

Transfer to Building Management Fund (a)

	Budget	Fiscal Years						
	1991-92	1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
Solid Waste	271,507	341,000	458,000	553,000	667,000	806,000	975,000	1,127,000
General Government	68,208	214,000	287,000	346,000	417,000	505,000	611,000	706,000
Transportation Planning	165,728	211,000	284,000	343,000	413,000	500,000	604,000	699,000
Planning and Development	93,520	136,000	183,000	220,000	266,000	321,000	389,000	449,000
MERC	33,245	148,000	199,000	240,000	290,000	351,000	424,000	490,000
Zoo	37,675	63,000	85,000	103,000	124,000	150,000	181,000	209,000
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	669,883	1,113,000	1,496,000	1,805,000	2,177,000	2,633,000	3,184,000	3,680,000

a. Includes allocable Support Service costs.

Exhibit 9B

**BUILDING MANAGEMENT FUND TRANSFERS AT DEPARTMENT LEVEL
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

Alternative 3: Escalated Debt Service

Effect on Enterprise Revenues and Excise Tax

	Budget 1991-92	Fiscal Years						
		1994-95	1999-2000	2004-05	2009-10	2014-15	2019-20	2023-24
SOLID WASTE TIPPING FEES								
Estimated tonnage	1,200,000							
Increased building costs (a)		88,000	228,000	342,000	479,000	645,000	848,000	1,030,000
Increase in tipping fees		\$0.07	\$0.19	\$0.29	\$0.40	\$0.54	\$0.71	\$0.86
MERC REVENUES								
Budgeted revenues (1991-92)	16,447,000							
Estimated revenues (b)		17,972,000	20,835,000	24,153,000	28,000,000	32,460,000	37,630,000	39,921,000
Increased building costs		115,000	166,000	207,000	257,000	318,000	391,000	457,000
Increase as a percentage of revenues		0.64%	0.80%	0.86%	0.92%	0.98%	1.04%	1.14%
ZOO REVENUES								
Budgeted revenues	11,973,793							
Estimated revenues (b)		13,084,000	15,168,000	17,584,000	20,385,000	23,631,000	27,395,000	29,064,000
Increased building costs		25,000	47,000	65,000	86,000	112,000	143,000	171,000
Increase as a percentage of revenues		0.19%	0.31%	0.37%	0.42%	0.47%	0.52%	0.59%
EXCISE TAX								
Increased building costs (c)		168,000	251,000	313,000	396,000	497,000	620,000	723,000
Increase in Excise Tax revenue		12,000	23,000	32,000	43,000	56,000	72,000	86,000
Net increase in Excise Tax requirement		156,000	228,000	281,000	353,000	441,000	548,000	637,000
Increase in Excise Tax percentage		0.20%	0.30%	0.36%	0.46%	0.57%	0.71%	0.82%

a. Includes increased Solid Waste costs and allocable portions of Transportation Planning and Planning and Development costs.

b. Assuming revenues increase at 3% per year.

c. Includes increased costs for general government and allocable portions of Transportation Planning and Planning and Development cost



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: September 10, 1991

TO: Casey Short, Council Analyst

FROM: Neil Salinger, ~~Director~~, Regional Facilities

SUBJECT: Resolution No. 91-1494 - Sears Purchase Agreement

This memorandum responds to your September 4, 1991 memo, subject as above. The majority of the questions you pose relate to financing the project and are answered in the attached response from the Finance and Management Information staff.

• Issues from July 3 memo

- Affordability: See attached. Note that generally a significant portion of the cost increase which must be borne by each department is a function of the demand for additional space.
- Best Alternative: Based upon the criteria originally established, staff believes the Sears facility provides the most desirable alternative for a new Metro headquarters. We believe that the purchase and renovation option recommended is competitive in price to other options available and provides the qualitative features unavailable from other options. No algorithm exists which can "clearly" show a "best" alternative.
- Debt Service Structure: See attached. It is anticipated that the Council will select the format for debt service at the time it approves the issuance of bonds for the renovation of the facility.
- Metro Center Lease: Self explanatory. CB Commercial believes that a potential replacement tenant has been identified.
- Maintenance Costs: See attached. Metro's real estate consultant, CB Commercial, initially identified \$4.00 per square foot as a planning factor for initial maintenance costs in a new or newly renovated office facility. However, the subsequent financial analysis used actual historical costs from the present Metro headquarters.

• Issues from July 5 memo

- Breakdown of Costs: The breakdown of costs, extracted from the Financial Analysis of Headquarters Building Purchase and Renovation, dated August 13, 1991, is attached. "Scheme B" for furniture, fixtures and equipment envisions retaining the maximum level of existing furniture from the present Metro Center. The Correy-Hiebert line is the standard furniture for the agency.
- Financial Impacts on Departments: See attached. A breakout of projected departmental transfers is contained in the above referenced financial analysis.

With regard to the questions raised in your September 3, 1991 memo to the Council, staff has continued to work toward a new facility utilizing the established criteria. Based upon previous Council actions, it would appear that there exists a reasonable level of comfort with the criteria. Staff has extended its examination of costs to alternatives outside the Lloyd Center area to determine the sensitivity of the criterion for locale.

Staff believes the Sears facility provides an affordable solution to housing our growing work force. While other alternatives may exist, staff does not believe that any one has the potential for displaying significant advantages over the Sears facility proposal.

cc: Dan Cooper
David Knowles
Berit Stevenson

Enclosures

Exhibit 1

**ESTIMATED PROJECT COSTS
FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION
METROPOLITAN SERVICE DISTRICT**

Estimated costs to be financed through revenue bonds

Real estate	2,550,000
Purchase of land and building	188,000
Brokers fee	-----
	2,738,000
Project management	460,000
Design services	30,000
Hook-up charges	110,000
Permits	15,000
Printing	90,000
Utilities	80,000
Taxes	500,000
Owner's contingency	-----
	1,285,000
Construction	6,800,000
Renovation/new construction	1,800,000
Tenant improvements	680,000
Contingency (10%)	130,000
Telephone/data wiring	-----
	9,410,000
Other	1,200,000
Furniture and Fixtures	68,000
Art (1% of construction)	-----
	1,268,000

Total to be financed	14,701,000
Estimated costs not included in bond financing	
Brokers fees related to leasing of 2000 SW 1st Avenue	130,000
Project administration (Metro)	340,000
Due diligence	150,000

Total not included in bond financing	620,000

Total Project costs	15,321,000

Exhibit 2

ESTIMATED FINANCING PLAN FINANCIAL ANALYSIS OF HEADQUARTERS BUILDING PURCHASE AND RENOVATION METROPOLITAN SERVICE DISTRICT

Sources

Revenue bonds	17,441,000
Metro funds	620,000
Interest income	
Construction Account	336,000
Reserve Account	104,000
Debt Service Account (for capitalized interest)	67,000

	507,000

	18,568,000

Uses

Total "Project" costs	15,321,000
Reserve Account deposit	1,449,000
Capitalized interest	1,449,000
Issuance costs	349,000

	18,568,000

Assumptions:

Interest rates	
Short-term	6.20%
Long-term	7.20%
Period of construction	1 year
Amortization period	29
Issuance costs	2.00% of total bonds

PRELIMINARY FURNITURE BUDGET SUMMARY

SCHEME "B"

Reception	\$31,900
Council Chamber	249,500
Panels Only	455,598
Conference Rooms	143,300
Department Lobbies	26,600
Telephones and AV	<u>145,000</u>
Subtotal	1,051,898
Plus 15 Percent Contingency	<u>157,785</u>
TOTAL	\$1,209,683