

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL WORK SESSION MEETING – revised 7/22/03
DATE: July 29, 2003
DAY: Tuesday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

- | | | | |
|---------|----|--|-----------|
| 2:00 PM | 1. | SALEM LEGISLATIVE REPORT | Cooper |
| 2:15 PM | 2. | DISCUSSION OF AGENDA FOR COUNCIL
REGULAR MEETING, JULY 31, 2003 | |
| 2:30 PM | 3. | 2004-05 BUDGET AND CAPITAL IMPROVEMENT
PLAN DISCUSSION | Short |
| 3:15 PM | 4. | GOAL 5 ENVIRONMENTAL, SOCIAL, ECONOMIC,
AND ENERGY (ESEE) SUMMARIES | Deffebach |
| 4:15 PM | 5. | CITIZEN COMMUNICATION | |
| 4:25 PM | 6. | COUNCILOR COMMUNICATION | |
| 4:30 PM | 7. | UPDATE ON LIVE BROADCAST | Marx/Peck |

ADJOURN

2004-05 BUDGET AND CAPITAL IMPROVEMENT PLAN (CIP) DISCUSSION

Metro Council Work Session
Tuesday, July 29, 2003
Metro Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: July 29, 2003 Time: 2:30 Length: 45 min.

Presentation Title: 2004-05 Budget & CIP Process

Department: Finance

Presenters: Casey Short & Kathy Rutkowski

ISSUE & BACKGROUND

Metro's new governance structure changes the presentation and review of the annual budget and CIP, by changing the submittal of department requests from the Executive Officer to the Chief Operating Officer and Council President. This fundamental change provides the Council the opportunity to revisit the budget process and schedule.

Preparation of Metro's budget and CIP has become a year-round process. Once the Adopted Budget document is printed and submitted to the Tax Supervision & Conservation Commission (TSCC) by July 15, it's only two weeks until the CIP manual is issued and the next year's work begins. Departments are to submit their CIP requests in September, and their budgets before Thanksgiving.

This schedule has generated concern for some time that budget submittal is too early, as the prior year's audit is not even completed, and only first quarter financial information is available for the current year. Consideration and approval of the CIP are far removed from the budget process, and it does not receive much attention. Long-term financial planning and forecasting are minimal.

It is timely to address concerns about schedule and coordination, to provide better links between the CIP and the budget, to promote Council direction on priorities, and to look at extending the deadlines for departments' budget and CIP submittals.

OPTIONS AVAILABLE

There are innumerable options for the budget and CIP process. Finance staff developed a series of options, which were discussed with department representatives and the Chief Operating Officer. Based on input from these sources, Finance produced a draft budget and CIP timeline to review with the Council. This will be presented at the work session on July 29.

IMPLICATIONS AND SUGGESTIONS

The Finance Department supports changes in the overall financial management process that would accomplish the following:

- Provide a mechanism for Council to outline their priorities for upcoming CIP and budget at the beginning of the year.
- Promote more long-term financial planning.
- Improve coordination between CIP and budget decision-making.

- Provide maximum time for departments to prepare their budget & CIP requests, to have them due as late in the fiscal year as is practical.
- Clarify roles of major players throughout the process, including Council, Council President, COO, Senior Management, Financial Planning Division, and departments.
- Increase use of meaningful performance measurements.

Achieving these goals will be a multi-year – and ongoing – process. Some of the longer-term goals would best be achieved by adoption of a strategic plan for the agency, which cannot be expected to be completed in time for the FY 2004-05 budget process. In the meantime, there are timelines and processes for 2004-05 that need to be established.

Finance proposes that the Council's consideration of the CIP occur later in the fiscal year, to be more closely linked to the Council's budget deliberations. This would provide better context for both documents. We also support a later presentation of the Council President's proposed budget, to a date in the first week of April. This would give the Council about a month to deliberate on the budget and still meet our statutory deadline of submittal to TSCC by May 15.

The schedule we have developed would move back the date for department budget submittals by some five weeks, from mid-November to just before Christmas. There are two process changes or clarifications to be made in order to meet that schedule:

1. Reduce time needed for review by Financial Planning, COO, and Council President. Streamlining this process could gain up to two weeks.
2. Change presentation date of Proposed Budget to the first week of April, as noted above.

QUESTION(S) PRESENTED FOR CONSIDERATION

1. Is the Council comfortable with the April date for the Proposed Budget presentation?
2. Does the Council want to continue the part of the process begun this past spring that set aside time in March for budget and program discussions?
3. Does the Council have a preference for the time it wants to approve the CIP? (CIP consideration could be included in the March meetings.)
4. Does the Council support other elements of the proposed process, including early Council direction based on a strategic plan, greater emphasis on longer-term planning and forecasting, and development of performance measures?

LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION __Yes X No

SCHEDULE FOR WORK SESSION

Department Director/Head Approval Cheryl S. [Signature]

Chief Operating Officer Approval _____

GOAL 5 ENVIRONMENTAL, SOCIAL, ECONOMIC, AND ENERGY (ESEE) SUMMARIES

Metro Council Work Session
Tuesday, July 29, 2003
Metro Council Chamber

METRO COUNCIL

Work Session Worksheet

Presentation Date: 7/29/03

Time:

Length: 45 min

Presentation Title: Economic, Social, Energy, Environment (ESEE) analysis Findings and Conclusions for Metro's Fish and Wildlife Protection Program under Goal 5.

Department: Planning

Presenters: Deffebach, Cotugno

ISSUE & BACKGROUND

The Economic, Social, Energy, Environment (ESEE) analysis is the second step in the three-step process described by Goal 5 following the definition of the Significant Resource Inventory and before development of the program for protection of the natural resources. The ESEE analysis identifies the issues associated with a decision to allow, limit or prohibit conflicting use on natural resource lands and discusses trade-offs in these decisions. Conclusions from the ESEE analysis support the direction for the development of the protection program.

Parts or all of the ESEE Consequences papers have been reviewed by MTAC, WRPAC, ETAC, Goal 5 TAC and the Social Issues Committee. In addition, the analysis has been coordinated with the Tualatin Basin Approach, per the Metro/Tualatin Basin Intergovernmental Agreement. The full papers, in draft, are available for Council member review, if desired. The final draft report on the ESEE analysis is scheduled to be available for public review in September 2003.

The schedule for the Metro Regional Goal 5 Work Program calls for seeking public comment on the ESEE Consequences and the Program Options in the fall. At the August 12 Council Informal, Council will be asked to approve the materials that summarize the ESEE Consequences and the Program Options for release for public review. Council will be asked to adopt findings and conclusions in the ESEE Report in October 2004, after public comment has been received and approve Program Options for further study.

Today's discussion is intended to update Council on the ESEE analysis framework, the issues and trade offs. Additional time will be needed to fully complete the discussion of the ESEE analysis and conclusions on August 5.

OPTIONS AVAILABLE

Staff has followed a fairly standard format for presenting and analyzing the ESEE consequences. Council may have questions regarding how specific issues have been included or analyzed. Staff can address these questions during August as the report is being finalized for public review and/or in October after public review.

IMPLICATIONS AND SUGGESTIONS

The presentation of the ESEE consequences and the trade-offs of allow, limit or prohibit conflicting uses will affect the nature of the public discussion in the fall and define policy issues for consideration in developing a protection program.

QUESTION(S) PRESENTED FOR CONSIDERATION

Staff request Council members to identify issues for clarification, consideration or inclusion in the ESEE analysis.

LEGISLATION WOULD BE REQUIRED FOR COUNCIL ACTION __ Yes **x** __ No
DRAFT IS ATTACHED __ Yes **x** __ No

SCHEDULE FOR WORK SESSION

Department Director/Head Approval _____

Chief Operating Officer Approval _____

DRAFT

072903c-01

**Joint Policy Advisory
Committee on Transportation**

Rod Park, Chair

Metro Councilor

Rex Burkholder, Vice Chair

Metro Councilor

Rob Drake

Mayor, City of Beaverton

Cities of Washington County

Jim Francesconi

Commissioner

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Matt Garrett

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Stephanie Hallock

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Larry Haverkamp

Councilor, City of Gresham

Cities of Multnomah County

Carl Hosticka

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Bill Kennemer

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Clackamas County

Royce Pollard

Mayor

City of Vancouver, WA

Craig Pridemore

Commissioner

Clark County, WA

Roy Rogers

Commissioner

Washington County

Karl Rohde

Councilor, City of Lake Oswego

Cities of Clackamas County

Maria Rojo de Steffey

Commissioner

Multnomah County

Don Wagner

District Administrator

Washington State Department

of Transportation

Bill Wyatt

Executive Director

Port of Portland

July 29, 2003

EPA Docket #OAR 2003-0079

U. S. Environmental Protection Agency

EPA West (Air Docket)

1200 Pennsylvania Avenue, NW, Room B108

Mail Code: 6102T

Washington, DC 20460

RE: Implementation of 8-hour Ozone National Ambient
Air Quality Standard

Thank you for the opportunity to comment on the Environmental Protection Agency's (EPA's) proposal for implementing the new 8-hour ozone National Ambient Air Quality Standard (NAAQS). While we appreciate your effort to provide flexibility with regard to meeting the new standard, we have serious concerns that the proposed rule is vague in many areas, making it difficult to precisely determine what impact the rule will have in Oregon and the Portland metropolitan region.

Compounding this uncertainty, the proposed 8-hour ozone rule does not include the actual regulatory text that would implement the rule, an oversight that prevents an appropriate and effective review. We strongly urge the Environmental Protection Agency (EPA) to seek additional comment from affected local governments and agencies before enacting the regulatory text.

Re: Implementation of 8-hour Ozone National Ambient Air Quality Standard

We are particularly concerned that proposed changes to Congestion Mitigation and Air Quality (CMAQ) funding could penalize regions that are accomplishing positive results. We have worked hard in this region to build livable communities that provide opportunities for walking, biking and use of transit to help reduce vehicle emissions and protect public health and air quality in the region. We are concerned that implementation of the proposed rule will serve as a disincentive to our area, thus threatening the very investments that have kept our air quality standard since 1997. We do not doubt that other successful communities will face a similar predicament.

The Metro Council and the Joint Policy Advisory Committee on Transportation (JPACT) are designated as the Metropolitan Planning Organization (MPO) for the Portland metropolitan region. The areas of most concern to the Portland metropolitan region are described below. As the MPO, the Metro Council and JPACT request that EPA take the following actions:

- Seek additional comment before enacting the regulatory text.
- Continue "Maintenance" as a category with associated implementation of a maintenance plan to ensure there is no backsliding in our region's attainment status.
- Do not eliminate the transportation conformity requirement for maintenance areas that formerly violated the 1-hour standard but have not violated the 8-hour standard.
- Develop guidance for how states are to demonstrate that a control measure is not needed to maintain the 8-hour ozone standard in areas that formerly violated the 1-hour standard but have not violated the 8-hour standard.
- Consider the potential impacts of the implementation rule and subsequent regulatory text in coordination with Title 23.
- Include a "hold harmless" clause in the implementation rule for maintenance areas to mitigate any unintended consequences affecting their ability to spend or receive CMAQ funds.

These requested actions are described in more detail in the following paragraphs.

Application of rule to existing maintenance areas

Since 1997, the Portland metropolitan region's Ozone Maintenance Plan has been successful in keeping the region's air quality in attainment of the old 1-hour and the new 8-hour ozone standards. In recent years, neither the 1-hour standard nor the 8-hour standard have been violated in our region. Specific control measures that address the impacts of growth on air quality, including transportation conformity, new source review, vehicle inspection/maintenance and linking land use and transportation planning, are key strategies that have led our success in preserving air quality.

Oregon's Governor Kulongoski requested an 8-hour ozone attainment designation statewide. However, there are days where the ozone levels are high, and we rely on the

Re: Implementation of 8-hour Ozone National Ambient Air Quality Standard

strategies in the maintenance plan to protect public health and ensure that we do not violate the standard. The proposed rule is not clear with regard to its effect on areas currently designated as maintenance areas and how the maintenance plan could be modified. It is important that maintenance areas for the former 1-hour standard continue and that strategies included in the maintenance plan for the 1-hour standard that are still needed to maintain the 8-hour standard continue to be implemented in the future.

Anti-Backsliding Provisions

While we support provisions to prevent backsliding by prohibiting local rollbacks of existing measures that would interfere with meeting Clean Air Act (CAA) requirements, this rulemaking does not result in the desired effect stated at the beginning of the proposed rule as follows:

"principal objectives for the mechanism that would ensure a smooth transition to implementation of the 8-hour standard are to ensure (1) that there will be no degradation of air quality, (2) that areas continue to make progress toward ozone attainment, and (3) consistency with the intent of Congress when it originally established the implementation structure for ozone in subpart 2 of the CAA."

As proposed, Air Quality Maintenance Area's (AQMA's) designated "attainment" for the new 8-hour ozone standard would no longer be required to demonstrate conformity of transportation plans and programs with ozone maintenance components of the State Implementation Plan (SIP). It appears EPA is willing to risk loss of a tool to reduce backsliding in exchange for easing the regulatory burden of the conformity process for areas that have achieved the 8-hour ozone standard. Although there are appropriate changes that could streamline the conformity requirement, elimination of the requirements is not the right solution.

The elimination of conformity has significant implications for Oregon's economic recovery and the state and region's long-term land use and transportation planning goals. In our region, emissions budgets for transportation have been deliberately set to preserve a portion of the emissions budget for industrial expansion. Conformity evaluations have been a valuable tool to proactively ensure that the region's motor vehicle emissions impacts on air quality do not consume the carrying capacity of the Portland area's airshed and prevent desirable economic expansion of our industrial base.

Under EPA's proposed rule, if a violation of the 8-hour standard occurs, emission control requirements for new and expanding industries would be increased from the current Best Achievable Control Technology (BACT) to requiring these industries to install the highest level of pollution control equipment regardless of cost to accomplish the Lowest Achievable Emission Rate (LAER). These industries would be required to "offset" their emissions increases with even greater reductions of the same pollutant from other sources.

As proposed, the elimination of transportation conformity requirements for areas designated as maintenance areas for ozone would mean that this region would lose the

Re: Implementation of 8-hour Ozone National Ambient Air Quality Standard

ability to forecast whether a violation could occur based on implementation of local, regional and state plans to address future growth. Actual failure of the standard is the only way to make this determination and would likely result in the region having to reduce the industrial component of the overall emissions budget to accommodate growth in motor vehicle emissions over time, which could in turn inadvertently limit economic development in this region.

It is also unclear how states are to demonstrate that a control measure is not needed to meet the 8-hour ozone standard. EPA needs to develop specific guidance on this subject.

Nexus of TEA-21 to the Clean Air Act

The Clean Air Act (CAA) and Title 23 are linked in statute. The proposed rule inappropriately denies this legal nexus by stating that air quality actions do not require consideration of the impacts to transportation programs and through elimination of certain sections of the CAA that are tied to CMAQ funding provisions identified in TEA-21. Proposed changes to the air quality designations and classifications in the CAA will have the effect of eliminating or reducing this region's CMAQ funding for ozone, unless these provisions are restored as part of the TEA-21 reauthorization.

The reasonableness of EPA's proposed implementation rule remains in question if the impacts to CMAQ funding and state and local plans are not reviewed, documented and discussed in coordination with and prior to approval of the proposed 8-hour ozone NAAQS implementation rule. If all anticipated impacts of the implementation rule (not simply the introduction of the new 8-hour standard) are considered, there may be impacts to statutory and executive orders, such as the Regulatory Planning and Review order, the Regulatory Flexibility Act, Unfunded Mandates Reform Act and the Federalism Act.

Maintain CMAQ funding with MPO oversight

We are very concerned that the proposed rule will have the effect of penalizing metropolitan areas that have worked diligently to attain the Clean Air Act requirements by eliminating or reducing their CMAQ funding. Our region's ability to implement projects and programs to reduce air pollution is directly linked to the types and amounts of funding we receive.

CMAQ funding is an important federal funding mechanism that this region uses to comply with the federal air quality standards. As we have attained the 1-hour NAAQS for both ozone and carbon monoxide, we are concerned that we may lose future federal funding allocations and ability to spend CMAQ funds, and, therefore, lose this tool to continue to maintain the standard. This funding provided us the opportunity to make significant air quality improvements and to keep pace with the air pollution associated with growth in our region. CMAQ funding has been critical to improving this region's air quality and provides an important resource for maintaining the 1-hour and new 8-hour NAAQS for ozone. This funding source should not be reduced or eliminated for areas like the Portland metropolitan region that have worked long and hard to improve air quality and demonstrated conformity with the Clean Air Act.

Re: Implementation of 8-hour Ozone National Ambient Air Quality Standard

As proposed, when the 1-hour ozone standard is revoked, it appears the Portland metropolitan region may lose CMAQ funding apportioned to the region for ozone due to the region's 8-hour ozone attainment status (rather than the previous 1-hour ozone maintenance status). Oregon will continue to be allocated CMAQ funding based on the Portland metropolitan region's carbon monoxide area population, and eligible projects can still be funded in the region using these funds. However, the exact amount of funding that could be lost under the proposed rule is unclear and would be determined under reauthorization of TEA-21, scheduled to be completed by October 2003, not through implementation of this rule.

The rationale for extending CMAQ funding eligibility to AQMA's designated attainment for the 1-hour ozone standard should not change simply because a new, 8-hour standard was adopted by EPA. Metropolitan planning organizations, such as Metro, will continue to need transportation funding flexibility to assure continued maintenance of the new 8-hour standard.

There should be a "hold harmless" clause in the EPA implementation rule as the intent is not to reduce funding levels, but to apply a new 8-hour ozone standard. Therefore, the unintended result of the implementation rule should be buffered through addition of a section describing unintentional consequences of the implementation rule and intent to "hold harmless" for maintenance areas. The "hold harmless" provision should ensure CMAQ apportionment is not below current levels for maintenance areas for the life of reauthorization of TEA-21. Maintenance plans would continue and would not be compromised by reduced funding to air quality programs and projects. We also request that USDOT revisit the CMAQ formula nationally with the intent of increasing funding levels to provide funds for the added metropolitan areas that will become eligible for CMAQ funding under the new standard.

Thank you, in advance, for your consideration of these comments. If you have any questions or would like further information, please contact Andy Cotugno, Metro Planning Director, at (503) 797-1916.

We look forward to commenting on future regulatory text related to the 8-hour ozone NAAQS and conformity rulemaking that is expected to occur later this year.

Sincerely,

Rod Park
Deputy Metro Council President
Chair, Joint Policy Advisory Committee on
Transportation

David Bragdon
Metro Council President

cc: A-and-R-Docket@epamail.epa.gov

DRAFT

**Joint Policy Advisory
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July 24²⁹, 2003

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meeting the new standard, However, we have serious
concerns that the proposed rule is vague in many areas,
making it difficult to precisely determine what impact the rule
will have in Oregon and the Portland metropolitan region.

Compounding this uncertainty, the proposed 8-hour ozone
rule does not include the actual statutory-regulatory text that
would implement the rule, an oversight that prevents an
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We are particularly concerned that proposed changes to Congestion Mitigation and Air Quality (CMAQ) funding could. The rule also appears to have unintended consequences that could penalize areas like the Portland metropolitan regions that are accomplishing positive results. We have worked hard in this region to build livable communities that provide opportunities for walking, biking and use of transit to help reduce vehicle emissions and protect public health and air quality in the region. We are concerned that implementation of the proposed rule will serve as a disincentive to our area, thus threatening the very investments that have kept our air quality standard since 1997. We do not doubt that other successful communities will face a similar predicament.

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- Develop guidance for how states are to demonstrate that a control measure is needed (or not needed) to meet/maintain the 8-hour ozone standard in areas that formerly violated the 1-hour standard but have not violated the 8-hour standard.
- Do not separate application of the standard from implementation of the standard. RecConsider the potential impacts of the implementation plan_rule and subsequent rule_regulatory text in coordination with Title 23.
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These requested actions are described in more detail in the following paragraphs.

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Re: Implementation of 8-hour Ozone National Ambient Air Quality Standard

The Oregon's Governor Kulongoski Department of Environmental Quality (DEQ) requested an 8-hour ozone attainment designation statewide. However, there have been ~~are~~ days where the ozone levels ~~were~~ are high, and we rely on the strategies in the maintenance plan to protect public health and ensure that we do not violate the standard. The proposed rule is not clear with regard to ~~its effect~~ implications of the standard on areas currently designated as maintenance areas and how the maintenance plan could be modified. It is important that maintenance areas ~~as a category for the former 1-hour standard~~ continue and that strategies included in the maintenance plan for the 1-hour standard that are still needed to maintain ~~clean air~~ the 8-hour standards identified in the maintenance plan continue to be implemented in the future.

Anti-Backsliding Provisions

While we support provisions to prevent backsliding by prohibiting local rollbacks of existing measures that would interfere with meeting Clean Air Act (CAA) requirements₁. However, ~~the intent of the rule is not adequately met with implementation of the 8-hour standard as proposed. This rulemaking does not result in the desired effect stated at the beginning of the proposed rule as follows:~~

"principal objectives for the mechanism that would ensure a smooth transition to implementation of the 8-hour standard are to ensure (1) that there will be no degradation of air quality, (2) that areas continue to make progress toward ozone attainment, and (3) consistency with the intent of Congress when it originally established the implementation structure for ozone in subpart 2 of the CAA."

As proposed, all Air Quality Maintenance Area's (AQMA's) designated "attainment" for the new 8-hour ozone standard would no longer be required to demonstrate conformity of transportation plans and programs with ozone maintenance components of the State Implementation Plan (SIP). It appears EPA is willing to risk loss of a tool to reduce backsliding in exchange for easing the regulatory burden of the conformity process for areas that have achieved the 8-hour ozone standard. Although there are appropriate changes that could streamline the conformity requirement, elimination of the requirements is not the right solution.

The elimination of conformity has significant implications for Oregon's economic recovery and the state and region's long-term land use and transportation planning goals. In our region, emissions budgets for transportation have been deliberately set to preserve a ~~larger~~ portion of the emissions ~~air quality~~ budget for industrial expansion. Conformity evaluations have been a valuable tool to ~~for~~ proactively ensuring that the region's ~~transportation~~ motor vehicle emissions impacts on air quality do not consume the carrying capacity of the Portland area's airshed and prevent desirable economic expansion of our industrial base.

~~For example, Under EPA's proposed rule, if a violation of the 8-hour standard occurs, emission control requirements for new and expanding industries would be increased from allowing the current Best Achievable Control Technology (BACT) to requiring these industries to install the highest level of pollution control equipment regardless of cost to accomplish the Lowest Achievable Emission Rate (LAER). In addition, t~~These industries

Re: Implementation of 8-hour Ozone National Ambient Air Quality Standard

would be required to "offset" their emissions increases with even greater reductions of the same pollutant from other sources.

As proposed, the elimination of transportation conformity requirements for areas designated as maintenance areas for ozone would mean that this region would lose the ability to track-forecast whether a violation could occur based on implementation of local, regional and state plans to address future growth. Actual failure of the standard is the only way to make this determination and would likely result in the region having to reduce the industrial component of the overall emissions budget to accommodate growth in motor vehicle emissions over time, which could in turn inadvertently limit economic development in this region.

It is also unclear how states are to demonstrate that a control measure is needed (or not needed) to meet the 8-hour ozone standard. EPA needs to develop specific guidance on this subject.

Nexus of TEA-21 to the Clean Air Act

The Clean Air Act (CAA) and Title 23 are linked in statute. As proposed, ~~the proposed rule inappropriately denies this legal nexus by stating that air quality actions do not require consideration of the impacts to transportation programs and through elimination of certain sections of the CAA that are tied to CMAQ funding provisions identified in TEA-21. While the U.S. Supreme Court and DC Circuit Court of Appeals upheld the constitutionality of the 8-hour ozone standard, the 1997 action to implement the 8-hour standard was remanded. The reasonableness of this EPA's proposed implementation rule remains in question if the impacts to mobile source emissions, CMAQ funding and state and local plans rule are not reviewed, documented and discussed in coordination with and prior to approval of the proposed 8-hour ozone NAAQS implementation rule. Proposed changes to the air quality designations and classifications in the CAA will have the effect of eliminating or reducing this region's CMAQ funding for ozone, unless these provisions are restored as part of the TEA-21 reauthorization.~~

~~Conformance to statutory and executive orders should not be reviewed narrowly as only applying to the application of the new 8-hour ozone standard. The reasonableness of EPA's proposed implementation rule remains in question if the impacts to CMAQ funding and state and local plans are not reviewed, documented and discussed in coordination with and prior to approval of the proposed 8-hour ozone NAAQS implementation rule. Impacts resulting from the implementation plan rule should also be considered. The statutory connections to Title 23 must also be considered prior to a determination of "consistency" or "no impact" to the executive orders. If all anticipated impacts of the implementation plan rule (not simply the introduction of the new 8-hour standard) are considered, there may be impacts to statutory and executive orders, such as the Regulatory Planning and Review order, the Regulatory Flexibility Act, Unfunded Mandates Reform Act and the Federalism Act.~~

Maintain CMAQ funding with MPO oversight

We are very concerned that the proposed rule will have the effect of penalizing metropolitan areas that have worked diligently to attain the Clean Air Act requirements by eliminating or reducing their Congestion Mitigation Air Quality (CMAQ) funding. Our

Re: Implementation of 8-hour Ozone National Ambient Air Quality Standard

region's ability to implement projects and programs to reduce air pollution is directly linked to the types and amounts of funding we receive.

CMAQ funding is an important federal funding mechanism that this region uses to comply with the federal air quality standards. As we have attained the 1-hour NAAQS for both ozone and carbon monoxide, we are concerned that we may lose future federal funding allocations and ability to spend CMAQ funds, and, therefore, lose this tool to continue to maintain the standard. This funding provided us the opportunity to make significant air quality improvements and to keep pace with the air pollution associated with growth in our region. CMAQ funding has been critical to improving this region's air quality and provides an important resource for maintaining the 1-hour and new 8-hour NAAQS for ozone. This funding source should not be reduced or eliminated for areas like the Portland metropolitan region that have worked long and hard to improve air quality and demonstrated conformity with the Clean Air Act.

~~As proposed, if the 1-hour ozone standard is revoked sometime in 2005, then ozone would no longer be part of the federal funding allocation formula for Portland for the following fiscal year (FY2006). Approximately 90 percent of Oregon's current CMAQ funds are apportioned to the Portland metropolitan region, based upon the population size at risk to ozone exposure. This represents approximately \$9-10 million per year.~~

As proposed, when the 1-hour ozone standard is revoked, it appears the Portland metropolitan region may lose CMAQ funding apportioned to the region for ozone due to the region's 8-hour ozone attainment status (rather than the previous 1-hour ozone maintenance status). Oregon will continue to be allocated CMAQ funding based on the Portland metropolitan region's carbon monoxide area population, and eligible projects can still be funded in the region using these funds. However, the exact amount of funding that could be lost under the proposed rule is unclear and would be determined under reauthorization of TEA-21, scheduled to be completed by October 2003, not through implementation of this rule.

The rationale for extending CMAQ funding eligibility to AQMA's designated attainment for the 1-hour ozone standard in 1997 should not change simply because a new, 8-hour standard was adopted by EPA. Metropolitan planning organizations, such as Metro, will continue to need transportation funding flexibility to assure continued maintenance of the new 8-hour standard.

There should be a "hold harmless" clause in the EPA implementation Planrule as the intent is not to reduce funding levels, but to apply a new 8-hour ozone standard. Therefore, the unintended result of the implementation Planrule should be buffered through addition of a section describing unintentional consequences of the implementation planrule and intent to "hold harmless" for maintenance areas. The "hold harmless" provision should ensure CMAQ apportionment is not below current levels for maintenance areas for the life of SafeTEA reauthorization of TEA-21. Maintenance plans would continue and would not be compromised by reduced funding to air quality programs and projects. We also request that USDOT revisit the CMAQ formula nationally with the intent of increasing funding levels to provide funds for the added metropolitan areas that will become eligible for CMAQ funding under the new standard.

Re: Implementation of 8-hour Ozone National Ambient Air Quality Standard

Thank you, in advance, for your consideration of these comments. ~~We would appreciate a written response to our comments.~~ If you have any questions or would like further information, please contact Andy Cotugno, Metro Planning Director, at (503) 797-1916.

We look forward to commenting on future regulatory text related to the 8-hour ozone NAAQS and conformity rulemaking that is expected to occur later this year.

Sincerely,

Rod Park
Deputy Metro Council President
Chair, Joint Policy Advisory Committee on
Transportation

David Bragdon
Metro Council President

cc: A-and-R-Docket@epamail.epa.gov

Preparing for live television

Tips and techniques

Do

- Be yourself. Be natural.
- Keep the real, at-home audience in mind. Direct your remarks to them.
- Maintain your composure at all times.
- Seat yourself comfortably.
- Check your appearance on the TV monitor beforehand, if possible.
- Adjust and test any equipment before the program begins.
- If you are speaking into a microphone, maintain a distance of at least six inches.
- Assume that you will be on the air for each and every second of the broadcast. (Don't make a gesture or say something you don't want broadcast.)
- Assume that anything you say can be heard.

Don't

- Don't look at the monitor while speaking.
- Don't use jargon. Speak in lay terms.

Looking Your Best on Television

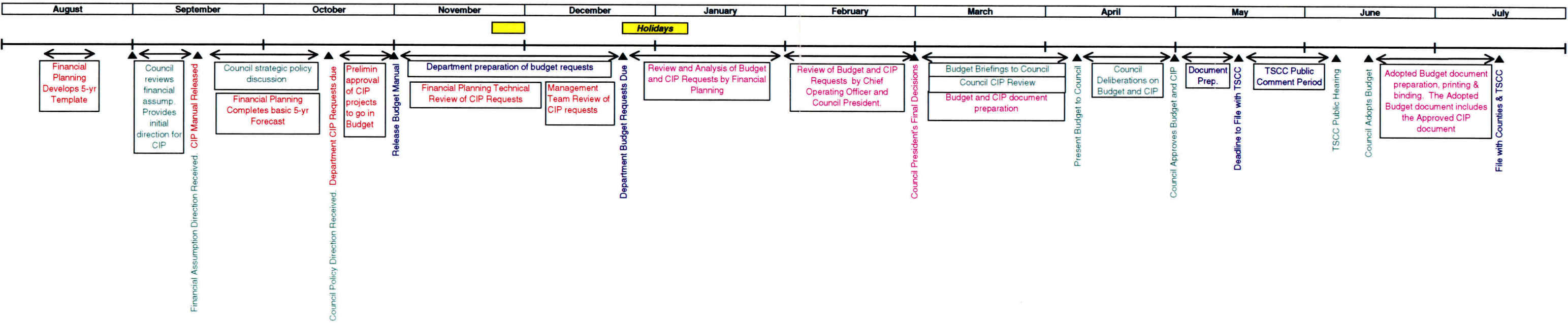
There are a few guidelines that will help you put your best foot forward and ensure that the viewing audience focuses on your message and not on your pocket scarf!

Clothing - What should I wear?

- Bright, solid colors look best on camera. Choose rich colors such as a royal or deep navy blue, hunter or kelly green, deep purple, chestnut brown or maroon.
- Avoid red, white, ivory and light pastel colors in dresses, jackets and suits. These colors, however, are fine for blouses/shirts (under a jacket), ties and scarves.
- Avoid small, busy patterns, such as small plaids, tiny checks, mini-stripes and paisley patterns.
- Don't wear any shiny fabrics.
- Don't wear overpowering scarves or ties.
- Avoid wearing large amounts or large dangling pieces of shiny jewelry, including necklaces, earrings and pins. Choose dull finished jewelry or pearls instead.

Conceptual Financial Management Process for FY 2004-05

- Color Coding Explanation:
- Green - Council involvement
 - Red - Capital Improvement Plan activity
 - Blue - Annual Budget activity
 - Pink - Combined activity for Capital Improvement Plan and Budget
 - Yellow - Major holiday weeks



Regional Fish and Wildlife Habitat Protection Program

ESEE Update
Metro Council Work Session
7/29/03

The ESEE Analysis

- Evaluates the consequences of a decision to allow, limit and prohibit (ALP) conflicting uses on natural resources and impact areas
- Results in an adopted ALP map; followed by program development and adoption
- Is the second step of a three step Goal 5 process, following the Resource Inventory
- Is unique to Goal 5 (not required for Natural Resource Goals 6 and 7)

Metro's ESEE Approach

1. Now completing Regional ESEE analysis
2. Next step, apply ESEE analysis to program options
3. Approve ALP map and program direction (May 04)
4. Develop and adopt final program (by Dec 04)

* Regional ESEE is not at the parcel level

ESEE Analysis Methods

- Define conflicting uses
- Identify and research relevance of economic, social and energy and environmental issues
- Define consequences of ALP decisions for each factor
- Assess trade-offs between factors and summarize findings

Definition of Conflicting Uses

- A land use or other activity that could adversely affect a significant fish and wildlife habitat resource
 - Built structures or other impervious surfaces that increase water run-off
 - Removal of vegetation, including low structure vegetation and tree canopy
 - Other disturbance activities
- Generalized regional zoning used to estimate potential for conflicting use (SFR, MFR, MUC, COMM, IND, RUR, POS)

Zoning Implies Varying Disturbance Activities

- | | |
|--|--|
| • Vegetative clearing | • Herbicides, pesticides, fertilizer use |
| • Grading, filling, soil compaction | • Installation of fences and other wildlife barriers |
| • Installation of impervious surfaces; runoff | • Introduction of toxics, heavy metals, pollutants |
| • Stream modification | • Water useage |
| • Installation and maintenance of utilities | • Livestock grazing |
| • Stormwater piping, water control structures | • Trail construction, maintenance and use |
| • Road construction, bridges, culverts | • Allowing pets, livestock in natural resource areas |
| • Landscaping, introduction of exotic plant species | • Human disturbance (e.g. light, noise) |
| • Introduction of non-native fish and wildlife species | |

Key Economic Issues (5)

1. Development Values
 - Property values, location and use factors
2. Economic Activity/Impacts
 - Jobs, Income
 - Costs to expand UGB or for regulatory compliance
3. Policy values and future goals
 - 2040 Growth Concept hierarchy

Key Economic Issues (cont.)

4. Ecosystem Values
 - Flood management and water quality
 - Salmon habitat
 - Amenities
 - Intrinsic values
5. Dynamic factors
 - Substitutability of land use
 - Ability/need to expand UGB over time
 - Restoring resources opportunities

Economic Consequences of ALP

- Allow
 - Realize development potential
 - Reduce need to expand UGB
 - Jobs and income unaffected
 - Negative impacts on employment/income that depend on quality of riparian and wildlife areas
 - Potentially increases spending on flood, water quality management
 - Forego future uses and benefits of natural areas

Economic Consequences of ALP

- Prohibit
 - Potentially negative impact on property values
 - Potentially negative impacts on jobs and income
 - Greatest protection of ecosystem services
 - Protects resources for future use and benefit
 - Increased spending to expand the UGB
 - Impacts may be mitigated by substituting land from elsewhere
 - Costs of regulatory compliance
- Limit -- depends on program specifics

Key Social Issues (7)

1. Cultural heritage and sense of place
 - Nature & wildlife are part of Region's unique identity
 - Salmon are important to Metro residents and play a key role in Native American culture
2. Public health
 - Recreational opportunities
 - Clean air and water impact public health
 - Sight of natural areas impacts mental health and reduce stress
 - Nature and spiritual values

Key Social Issues (cont.)

3. Educational opportunities
 - Natural areas provide important educational opportunities and a focus for interdisciplinary education
 - Fish and wildlife resources on both public and private lands add educational value
4. Public safety
 - Tree canopy and vegetation reduces likelihood of landslides and floods
 - Additional vegetation may increase wildfires
 - Wildlife habitat may increase nuisance species

Key Social Issues (cont.)

5. Land supply
 - Affects choices for housing types and and location
 - Affects choices for job types and location
6. Property rights
 - Americans have a history of private property rights
 - Takings (perception or reality)
 - Personal financial security
 - Public property rights (fish, wildlife, water, air)
Distribution of benefits and burdens
7. Intergenerational equity
 - Legacy for future generations

Social Consequences of ALP

- Allow
 - Likely to lose cultural heritage, negatively and positively impact public safety, negatively impact public health, lose educational opportunities
 - No impact on private property rights or takings concerns
- Prohibit
 - Preserves important cultural, spiritual and other social values, including public property values
 - Potential for unequal distribution of burden, negative impact on private property rights, takings concerns
 - Potentially reduces housing and employment choices
- Limit
 - Potential for social values to be maintained while reducing effect on private property rights

Key Energy Issues

1. Transportation

- Regionally, petroleum is second only to hydroelectric in use
- Transportation is primary petroleum user
- Transportation use is affected by urban form –fewer VMT with compact urban form
- Motor vehicles are the single biggest air polluter
- Pollution warms air (local and global), increasing smog
- Transportation infrastructure creation and maintenance require energy and pavement warms air
- Trees, plants support use of bikes and pedestrian modes (adds comfort), potentially reducing VMT

Key Energy Issues

2. Temperature regulation

- Plants reduce air temperature in urban areas prone to Heat Island Effect
 - Cool by shading and discharging water vapor
 - Helps reduce global warming: plants store carbon (CO₂)
- Plants reduce energy use
 - Reduces air conditioning demand
 - Reduces need to use energy for salmon protection, restoration by cooling water

Energy Consequences of ALP

- Allow
 - Supports lower energy use through compact urban form and lower VMT, transportation infrastructure
 - Increases energy use by reducing vegetation available to conserve energy and mitigate air quality, air and water temperatures
- Prohibit:
 - Potential need for UGB expansion, increased transportation infrastructure, more energy used, VMT
 - Preserves forest canopy and vegetation, maximizing vegetation energy benefits (temperature regulation)
- Limit (depends on program):
 - Potential to find middle ground, maximizing vegetation and compact urban form

Key Environmental Issues

1. Hydrology, physical stream condition, flood plain function
2. Water quality
3. Riparian or upland habitat condition
 - Vegetative cover
 - Fragmentation, light and noise
 - Microclimate
 - Woody debris and organic materials
4. Erosion, sedimentation and soil loss
5. Biodiversity; nonnative species invasions

Environmental Consequences of ALP

- Allow
 - Extensive loss of ecological functions in riparian areas, especially for Class I riparian resources and loss of unique habitats (HOC)
 - Degraded water quality
 - Extensive loss of valuable upland wildlife habitat and functional values (size, interior habitat, connectivity, proximity to water)
 - Continued loss of native species and at-risk species, including salmon

Environmental Consequences of ALP

- Limit
 - Potential for restoration, mitigation, and education activities to offset negative impacts of conflicting uses
 - Implementation of BMPs & low impact development standards could reduce negative impacts
 - Less harm to native species and fewer nonnative species invasions than Allow
 - Intrusion in some habitat areas will reduce the quality of other resources, especially if connector habitat is fragmented and interior habitat reduced

Environmental Consequences of a ALP decision

- Prohibit
 - Retains critical ecological functions and best remaining wildlife habitats in the region
 - Most likely to support salmon conservation, retains important aquatic habitat
 - Prevents further habitat fragmentation; preserves restoration opportunities
 - Minimizes hydrologic alterations, flooding, and impacts on water quality
 - Provides key breeding habitat for native species
 - Potentially requires expansion of the UGB which may degrade other natural resource areas

072903c-05



TO: Metro Council

FROM: Teri Dresler, Assistant Director / Operations, Oregon Zoo

DATE: July 29, 2003

SUBJECT: Retail Agreement

Attached is a draft of the Retail Services Agreement between Metro and Aramark Corporation. This is not necessarily the final version of the agreement as we are waiting for a response back from Aramark on our most recent revisions to the agreement. This version is our preferred version, submitted for your review prior to the July 31, 2003 Council meeting.

RETAIL SERVICES OPERATIONS AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736 ("Metro" or "ZOO"), and ARAMARK Sports and Entertainment Services, Inc. referred to herein as "CONTRACTOR," located at ARAMARK Tower, 1101 Market St., Philadelphia, PA 19107.

In exchange for the promises and other consideration set forth below, the parties intending to be legally bound agree as follows:

1. **Scope of Work.**

CONTRACTOR shall have the exclusive right to operate the Oregon Zoo retail services in a competent and professional manner, subject to the requirements of this Agreement.

2. **Use of Retail Services Premises.**

a. **Retail Services Premises.**

The Oregon Zoo retail services premises are the retail shop located near the main entrance to the ZOO ("Cascade Outfitters"); and any existing office space in the ZOO that is currently dedicated to the retail operation; and four (4) retail kiosks in locations to be determined by the ZOO, with CONTRACTOR's advice (collectively, the "Premises," which currently totals approximately 4,000 square feet of space.

b. **Use and Exclusive Rights Granted to CONTRACTOR.**

Zoo, having the right to do so, hereby grants CONTRACTOR the exclusive right to sell the Retail Items (as herein defined) at the Retail Services Premises at the Oregon Zoo, subject to ZOO's rights as described in paragraph 9(p).

The Premises, which shall be the only locations within the ZOO where merchandise is sold, except as herein provided, shall be used for the retail sale of educational and ZOO-related gift items and non-food merchandise including, but not limited to, the sale of books, prints, statuary, jewelry, stuffed animals, posters, paintings, paper products, educational children's gifts, design objects, decorative accessories, design furniture, clothing accessories, and collectibles for adults and children in connection with ZOO promotions and exhibits, and other similar type merchandise (collectively, "Retail Items") and for no other purpose whatsoever. With ZOO's prior consent, CONTRACTOR may sell at the Premises food items that are prepared for off-site consumption, *e.g.* fudge, but CONTRACTOR shall

not have the exclusive right to sell such food items. ZOO shall have the right to require CONTRACTOR to remove from the Premises or prohibit CONTRACTOR from selling in the Premises merchandise that ZOO's Assistant Director, in her sole discretion, determines is inappropriate for display and sale in the Premises or inconsistent with ZOO's mission statement.

Certain coin-operated vending operations -(except for stroller and wagon rentals, postage stamp machines, photo booths, sticker machines and penny machines, which are reserved to CONTRACTOR) are excluded from CONTRACTOR's exclusive rights and shall continue to be operated by the ZOO. ZOO vending operations include (1), telescopes (1), rental lockers (1 location), and food vending machines (multiple locations). The ZOO may increase or decrease its vending operations at any time, so long as such increase does not have a material adverse impact on the retail operations reserved to CONTRACTOR hereunder, as determined by the ZOO in its sole discretion.

c. Internet Sales.

CONTRACTOR's exclusive right to sell Retail Items shall also include all sales of Retail Items on the internet.

3. Term.

This Agreement commences on August 1, 2003 (commencement date) and continuing through July 31, 2008, unless terminated or extended as provided in this Agreement.

Renewal Term.

The Agreement may be extended once, for an additional 5-year term, at Metro's sole discretion.

4. Payments to ZOO.

In further consideration of the rights granted to CONTRACTOR, as set forth in this Agreement, CONTRACTOR shall pay ZOO the following percentage of gross receipts obtained by CONTRACTOR from the Premises:

Gross Receipts	
Up to \$1,500,000.00	30.5%
\$1,500,001.00 - \$2,000,000.00	34.0% (on the increment)
\$2,000,001.00 - \$2,500,000.00	38.0% (on the increment)
\$2,500,001.00	42.0% (on the increment)
Revenue from Discounted sales to members/employees	26%

The revenue from discounted sales to members and employees shall not be counted against gross receipts for the purpose of determining which percentage specified above applies. The percentage of gross receipts shall be paid monthly in arrears no later than the 15th day of each month, the first due date following the commencement date being September 15, 2003.

The term "gross receipts" shall mean the dollar aggregate of:

- a. The receipts received by CONTRACTOR for all goods, wares and merchandise sold and the charges for all services rendered or performed by CONTRACTOR or otherwise, from all business conducted on, in, at, or from the Premises, whether made for cash, by check, on credit, charge account, exchange or otherwise, without reserve or deduction for inability or failure to collect for the same, and regardless of the amount, if any, of profits realized on any transaction, including, but not limited to, such sales and services (i) where the orders therefore originate at and are accepted by CONTRACTOR in the Premises, but delivery or performance thereof is made from or at any other place; (ii) pursuant to mail, telegraph, internet, telephone or other similar orders received or billed at or from the Premises; (iii) as a result of transactions pertaining to the Premises originating from whatever source, and which CONTRACTOR in the normal and customary course of its operations would credit or attribute to its business at the Premises and; (iv) receipts CONTRACTOR receives from Subcontractors, provided that ZOO has previously approved the contract between CONTRACTOR and its Subcontractor.
- b. All moneys or other things of value received by CONTRACTOR relating to its operations at the Zoo, which are neither included in nor excluded from gross receipts by the other provisions of this definition. Any discounts, rebates or allowances received by CONTRACTOR from merchandise vendors shall not be deemed to be gross receipts. All sales and orders originally made in or at the Premises shall be considered as made and completed therein, even though payment of the account may be transferred to some other office of CONTRACTOR for collection, or although delivery of merchandise sold or the performance of service ordered in or at the Premises be made from or at a place other than the Premises.
- c. The term "gross receipts" shall not include (or if included, there shall be deducted to the extent of such inclusion) the following: (a) the selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made thereon, or the amount of discounts or allowances made in lieu of acceptance thereof, (b) ZOO Member Discounts (as defined in paragraph 14), (c) any sales, use or excise tax required by law to be collected and paid directly by CONTRACTOR, (d) credit card fees, (e) discounted sales to members and employees, and (f) marketing reserve referred to in Section 9(o).

5. Annual Payment Guarantee.

Annual payment guarantees will be based on a July through June year (ZOO fiscal year). From commencement to June 30, 2004, CONTRACTOR guarantees total annual payments – the sum of all minimum guarantees and percentage of gross receipt payments – to ZOO of \$525,000.00. If on June 30, 2004, CONTRACTOR has made total minimum and percentage of gross receipts payments to ZOO during the year of less than \$525,000.00, then CONTRACTOR shall remit to ZOO an amount equal to the difference between \$525,000.00 and the sum of all minimum and percentage gross receipts payments made. CONTRACTOR will be assessed late penalty of 1.5% per month from date payment is due for any late payments.

During each of the ZOO fiscal years in years two through five (2-5) of the Agreement, beginning on July 1, 2004, CONTRACTOR guarantees total annual minimum payments to ZOO of \$575,000.00. Any shortfalls due shall be paid on the 365th day of each ZOO fiscal year. For any year during the term consisting of less than twelve (12) full months, the guaranteed minimum payment amounts set forth in this Section 5 shall be adjusted on a pro rata basis on the basis of the number of months or partial months in such year.

6. Minimum Attendance Guarantee and Reductions to Annual Payment Guarantee.

ZOO guarantees that annual attendance (as defined below) during each contract year (from August 1 to July 31, hereinafter "Contract Year") shall be no less than 1,250,000. Should annual attendance fall below this minimum threshold, CONTRACTOR's annual payment guarantee (as described in section 5) to ZOO shall be reduced by the same percentage as the attendance shortfall. For any Contract Year during the term consisting of less than twelve (12) full months, the guaranteed annual attendance amount set forth in this Section 6 shall be adjusted on a pro rata basis on the basis of the number of months or partial months in such Contract Year. Annual attendance is defined as the number of members of the public counted through the ZOO admission points during periods when the ZOO is open to the public, during each of the Contract Years during the term, but shall not include individuals entering the Zoo for business purposes. A schedule, which shows total annual attendance, as defined herein, at the ZOO for the years 1998 through 2002 is attached to this document as an Exhibit A and the ZOO represents that such attendance figures are true and correct. During the life of this Agreement, daily attendance reports, if available, shall be provided to CONTRACTOR by ZOO. The Zoo shall submit to ARAMARK an attendance report on a weekly basis, certified as accurate by the Budget and Finance Manager of the Zoo, summarizing ticketing system's total turnstile attendance. ARAMARK shall have the right, at its expense, to audit the books and records of the Zoo in connection with the turnstile attendance from time to time during Zoo's normal business hours upon reasonable advance notice. Such books and records shall be retained by Zoo for a period of at least three (3) years.

7. Premises Condition.

a. Surrender.

ZOO hereby delivers the Cascade Outfitters store in its "AS-IS", present condition, including office furnishings. Upon the termination of the Agreement, CONTRACTOR shall surrender the Premises and all keys thereto, including all improvements, apparatus, fixtures (including lighting fixtures), display cases and shelving, furniture, equipment, storefront signage and all signage within the Premises, and all components to the heating, air-conditioning, plumbing and electrical systems (the "ZOO Property"), which were located in or installed in the Premises on the commencement date of this Agreement, in as good condition and repair as on the commencement date, reasonable wear and tear and obsolete items excepted. CONTRACTOR will be permitted to remove from the Premises only CONTRACTOR's personal property, such as computers, point of sale systems and registers as may be installed on the Premises and paid for by CONTRACTOR. At the time that ZOO conducts the inventory of merchandise pursuant to paragraph 10, ZOO will also prepare a schedule of the ZOO Property contained in the Premises, which schedule will be signed by ZOO and CONTRACTOR and will be attached to and become a part of this Agreement.

b. Improvements.

CONTRACTOR shall expend a minimum of \$150,000.00 but not more than \$185,000.00 (the "Investment") to make substantial improvements (as defined below) to the Premises. CONTRACTOR shall comply with all applicable laws when making such improvements. CONTRACTOR and ZOO shall mutually agree upon the terms and conditions for CONTRACTOR, at CONTRACTOR's sole expense, to make said improvements to the Premises for the purpose of enhancing the performance of the retail operation. Upon termination or expiration of the Agreement for any reason, except for breach of contract by CONTRACTOR, ZOO shall be responsible to reimburse CONTRACTOR for the unamortized balance of the Investment not later than ten (10) days after the expiration or termination of this Agreement. The Investment shall be amortized over five years on a straight-line basis from the date the particular improvement is made. As of July 31, 2008, any improvements made will be 100% depreciated, and ZOO shall have no responsibility to reimburse CONTRACTOR and shall have free and unencumbered title to said improvements.

"Substantial improvements" are defined as improvements that require capital expenditures by CONTRACTOR of \$25,000.00 or more.

8. Assignment.

CONTRACTOR shall not sublet or assign its rights under the Agreement.

9. **Operating Covenants.**

a. **Hours of Operation.**

The Premises shall be open for business to the public during the same hours in which the ZOO is open. The Premises shall remain open at least 30 minutes later than ZOO closure during April, May and September or until substantially all visitors have left the ZOO; and at least 1 hour later than ZOO closure from Memorial Day weekend through Labor Day weekend or until substantially all visitors have left the ZOO. ZOO staff shall be permitted to access the Premises during CONTRACTOR's hours of operations. Notwithstanding the foregoing, CONTRACTOR, in the exercise of its reasonable business judgment, may vary on a temporary basis the number and hours of operation of its sales outlets as dictated by changes in business conditions, such as changes in weather and attendance; provided, however, that the Cascade Outfitters store shall be open at all times that the ZOO is open to the public.

b. **Trade Names.**

Initially, CONTRACTOR shall operate the store under its current name Cascade Outfitters, but may propose and implement, with ZOO's consent, a name change for the store.

c. **Noise Control.**

CONTRACTOR shall keep the noise level associated with the Premises to a level acceptable to ZOO, determined at the ZOO's discretion.

d. **Merchandise Controls.**

CONTRACTOR shall purchase and sell only merchandise that is appropriate relative to ZOO's mission statement and in conformance with the permitted uses as provided in paragraph 2. CONTRACTOR will select, order, stock, replenish, insure, and pay for, a sufficient level of merchandise so that there is ample inventory for sale during the term of the Agreement. The ZOO shall have the right to disapprove of any products sold in the retail operations.

e. **Recording of Sales.**

All sales by CONTRACTOR in the Premises shall be recorded in a POS system maintained by CONTRACTOR and approved by ZOO, such approval not to be unreasonably withheld.

f. Gross Receipts and Tax Records and Reporting.

In accordance with the terms of this Agreement, CONTRACTOR will exercise its best efforts to maximize gross receipts from the retail sales operation during the term of the Agreement. With each monthly percentage of gross receipts payment, CONTRACTOR shall provide ZOO with a monthly summary report that shows the daily sales for each retail location separately for the corresponding period. On a daily basis, ZOO's Assistant Director will be included in the distribution of CONTRACTOR's summary sales reporting via e-mail and, on a weekly basis, will receive the POS system station summary reports and the sales by department report for each retail location.

g. Quality Control Standards.

CONTRACTOR shall provide adequate personnel and shall carry a full and complete stock of merchandise during the term of the Agreement.

h. Signage.

All signage shall be subject to review and approval by ZOO's Assistant Director.

i. Licenses.

CONTRACTOR shall obtain and maintain all business and other licenses as may be required by law in connection with the operation of the Premises for retail purposes.

j. POS System.

ZOO's existing POS hardware (registers and computers) will remain in the Premises. CONTRACTOR shall install and maintain a computer point of sale software system necessary to process transactions and control inventory throughout the term of this Agreement. Maintenance and any upgrade of both POS hardware and software systems will be the responsibility of CONTRACTOR.

k. CONTRACTOR Staff.

- 1) CONTRACTOR shall employ and compensate its own employees at the Premises.
- 2) CONTRACTOR shall employ a highly skilled professional retail sales manager who possesses the necessary experience and expertise to provide the overall management capability for a first-class retail sales operation. The ZOO retains the right to approve or disapprove the retail sales manager at any time during the term of this Agreement, and to require

CONTRACTOR to replace such personnel within thirty (30) days of receipt of written notice by the Oregon Zoo Assistant Director notifying CONTRACTOR of dissatisfaction with the manager's performance; provided, however, CONTRACTOR shall not be required to take any steps which it deems contrary to applicable law.

- 3) CONTRACTOR shall employ and train all employees necessary for the successful operation of the retail sales operation. Training of the employees must encompass the concepts and policies of a first-class retail operation, including superior customer services skills.
- 4) CONTRACTOR shall employ only competent and orderly employees who will keep themselves neat and clean and accord courteous and competent treatment and service to all ZOO guests. Whenever ZOO notifies CONTRACTOR or its retail operations manager that any employee is deemed by ZOO to be incompetent, disorderly or unsatisfactory, CONTRACTOR will investigate the matter thoroughly and if good cause, as determined by CONTRACTOR exists, CONTRACTOR shall discharge such person, provided however that such discharge is not in violation of any outstanding collective bargaining agreements that may be entered into between CONTRACTOR and a union or any Oregon or federal employment law or regulation.
- 5) CONTRACTOR shall design and prepare specifications for the purchase of uniforms for retail operations employees to be worn on ZOO premises at all times. The uniform design must be approved the Zoo Assistant Director, prior to purchase. CONTRACTOR shall ensure that employees' uniforms are neat and clean at all times.
- 6) CONTRACTOR employees shall have free access to the ZOO under the guidelines of the ZOO's access policy, but family and friends of CONTRACTOR employees must pay normal ZOO fees to enter the ZOO.

1. Additional Powers.

The ZOO shall at all times have the following powers reserved to itself:

- 1) The right to final approval of all policies and procedures related to the operation and management of the retail operations, to the extent such policies and procedures pertain to or affect CONTRACTOR's interaction with customers and ZOO personnel.
- 2) Sole discretion to cancel, terminate, or interrupt any ZOO event, and cause the patrons to be dismissed, or to stop the sale of any product by CONTRACTOR. ZOO shall not be liable to CONTRACTOR for any loss

or cost occasioned by any such determination or action by ZOO taken in good faith for the benefit or protection of Metro, Oregon Zoo, or the public generally.

- 3) In the event that any of the retail sales premises are destroyed by an act of God, fire, terrorism, vandalism, or other casualty to the extent that continued operation of the retail sales operations is not feasible, Oregon Zoo is under no obligation to replace the facilities. CONTRACTOR'S Annual Payment

Guarantee under Section (5) shall be proportionately abated during any period the retail sales premises are destroyed or reduced as provided in this section. The abatement shall cease when the destroyed premises are restored or replaced by a comparable facility.

If the entire Zoo must be closed due to fire or other casualty and is not reopened to the public within 180 days from the date of such suspension, CONTRACTOR shall have the right to terminate this Agreement by providing Zoo with 180 days' prior written notice of its intention to do so and Zoo shall pay or cause to be paid to CONTRACTOR the Termination Payment.

m. Applicable Laws.

CONTRACTOR shall comply with all applicable laws and regulations in the operation of the retail sales operations.

n. Taxes.

CONTRACTOR shall pay all sales, business, and occupational taxes, including any property tax ZOO may be assessed as a result of this Agreement, required by law related to the operation of the facilities. Unless Metro excise taxes are imposed as an additional amount to be collected at the time of sale, Metro excise taxes shall be paid by ZOO.

o. Marketing.

At CONTRACTOR'S sole expense, CONTRACTOR shall create a marketing reserve fund in an amount equal to .50% of annual gross receipts to be expended on marketing and advertising under this section ("Reserve Fund"). CONTRACTOR is solely responsible for any marketing or advertising of the store, such marketing or advertising to be expended from those amounts in the Reserve Fund. If CONTRACTOR spends more than what is in the Reserve Fund on such marketing and advertising with ZOO's prior approval, such excess expenditure shall be excluded from gross sales, up to a maximum of 1% of annual gross receipts. Advertising materials on ZOO grounds or in public media

developed by CONTRACTOR must be approved by ZOO. ZOO reserves the right to display materials promoting ZOO programs in the store. At the request of the Zoo Assistant Director, CONTRACTOR shall participate in marketing and advertising-related meetings and provide ZOO with recommendations and assistance related to marketing and advertising. CONTRACTOR acknowledges and agrees to support ZOO's sponsorship sales to the degree that CONTRACTOR is sensitive to any merchandise tie-ins that are contemplated as part of a ZOO sponsorship package. The Reserve Fund need not be deposited into a separate account and may be commingled with other funds of CONTRACTOR. CONTRACTOR, on a quarterly basis, shall provide to Zoo a statement of the Reserve Fund balance and a summary of the Reserve Fund activity. Upon the expiration or sooner termination of the Term, CONTRACTOR and Zoo shall split the then outstanding balance of the Reserve Fund and CONTRACTOR shall remit to Zoo its portion.

p. Non-exclusivity.

ZOO reserves the right to sell from time to time special promotional items and event-related items, or to permit such sales by the Oregon Zoo Foundation, provided, however, that ZOO shall not permit sales that cause an ongoing material adverse impact on CONTRACTOR's sales at the ZOO.

10. Existing Inventory.

At a time to be mutually agreed upon, ZOO and CONTRACTOR will jointly conduct a preliminary physical inventory of the merchandise ZOO currently owns and intends to resell in the ZOO store. CONTRACTOR will have at least one representative present during the time when such inventory is taken. During the period between the time when the preliminary inventory is taken and the commencement date, ZOO shall provide CONTRACTOR with the inventory data from the preliminary inventory and shall permit CONTRACTOR to enter such inventory data into CONTRACTOR's systems, provided that CONTRACTOR's presence at the ZOO or in the ZOO store during such period shall not be interpreted or regarded in any way as a commencement of the Agreement. Immediately prior to the commencement date, ZOO and CONTRACTOR will conduct a final physical inventory of the merchandise. CONTRACTOR will have at least one representative present during the time when such inventory is taken. All damaged and obsolete merchandise to be determined mutually by the parties, not to exceed \$50,000.00 in value, will be removed from stock by ZOO at the time of the final inventory. The removed merchandise will belong exclusively to ZOO. The remaining merchandise will be valued at the time of the final inventory, at the price that ZOO paid for such merchandise, plus freight costs of 1.5%. CONTRACTOR will make cash payments to ZOO for the remaining merchandise – excluding that which is deemed to be damaged or obsolete, up to \$300,000.00 – in accordance with the following schedule:

Commencement date:	25% of value
October 1, 2003:	25% of value
January 1, 2004:	25% of value
April 1, 2004:	25% of value

11. ZOO's Services.

ZOO shall provide the following services to CONTRACTOR:

a. Utilities.

HVAC and electrical power "AS-IS" to site. ZOO will pay monthly for electric and natural gas utilities. Telephone hook-ups and point of sale network cable lines in the store will be "AS-IS", present condition. CONTRACTOR shall be responsible for procuring telephone service to and point of sale network cable lines within the store. Electrical power to the store will be "AS-IS", present condition. Electrical power lines, telephone lines and point of sale network cable lines, as may be required by CONTRACTOR to the retail kiosks will be installed at CONTRACTOR's expense. ZOO will be responsible for the supervision of the installation of telephone lines and electrical power lines and will bill CONTRACTOR for the reasonable cost thereof.

b. Security.

ZOO will provide security service to the Premises at levels consistent with levels of security currently being provided by ZOO at the ZOO. ZOO shall not be responsible for any losses that CONTRACTOR may suffer due to shrinkage. ZOO security staff shall have reasonable access to the store to patrol and shall provide emergency response as necessary during operating and non-operating hours.

c. Janitorial/Trash and Pest Control Services.

ZOO shall provide the following janitorial services to the Premises: daily trash removal and recycling pickup from holding area, quarterly cleaning of office and shop entryway carpet, and annual scrub and top coat of sales floor. The ZOO will provide no janitorial services at kiosk locations. CONTRACTOR shall pay ZOO for the costs of any additional janitorial services requested by CONTRACTOR or required as a result of CONTRACTOR's operations in the Premises. CONTRACTOR will be responsible for cleaning the Premises. ZOO shall provide pest control and extermination services in the Premises.

d. Maintenance and Repairs.

CONTRACTOR shall be responsible for maintenance, repair and replacement of fixtures, personal property and computer point of sale systems. CONTRACTOR shall clean up all trash and rubbish in and around delivery areas, loading platforms and docks and service corridors that occur in connection with the delivery of merchandise to the ZOO and the Premises. CONTRACTOR will utilize ZOO's maintenance personnel CONTRACTOR's maintenance, repair and cleanup obligations and will be billed by ZOO on a monthly basis for such work. Maintenance and repair functions may be performed outside of the Premises' normal operating hours with prior arrangement by CONTRACTOR.

12. Parking.

The use and occupation by CONTRACTOR of the Premises shall include the non-exclusive use in common with others entitled thereto the parking area designated for ZOO employees, subject to the terms and conditions of this Agreement and reasonable rules and regulations for the use thereof as prescribed from time to time by ZOO. The parking area shall be subject to the exclusive control of ZOO, and ZOO shall have the right to make changes, additions, deletions, alterations or improvements to the parking area. ZOO may designate certain portions of the parking area as reserved for use by certain designated parties. CONTRACTOR and CONTRACTOR's employees and agents will park their vehicles only in those portions of the parking area designated for that purpose by ZOO. CONTRACTOR's employees will participate in ZOO employee programs to limit parking usage in peak visitor periods.

13. Website.

CONTRACTOR shall develop, host and operate ZOO's online store at www.oregonzoo.org through third party vendors and suppliers chosen by CONTRACTOR, subject to ZOO's approval, in ZOO's sole and absolute discretion. The cost of hosting, software and maintenance of the website shall be borne solely by CONTRACTOR. CONTRACTOR shall obtain written approval by ZOO for text, logo use, and website design. Upon expiration or sooner termination of the term hereof, CONTRACTOR, at ZOO's request, shall assign its interests in such website to ZOO.

14. ZOO Member Discounts.

CONTRACTOR agrees to participate in ZOO's program which offers discounts on merchandise to ZOO members as a benefit of membership ("Zoo Member Discounts"), as may be determined by ZOO, and approved by CONTRACTOR, from time to time. Zoo Members, ZOO and Metro employees, to the extent that discounts are provided to Metro employees as part of Metro's employment compensation and benefit program, shall be entitled to a 10% discount off the ticketed or otherwise listed price of each item in the Premises for the life of the Agreement. Verification of membership or ZOO or Metro employment must be made at the time of the purchase.

15. CONTRACTOR Inventory.

At the expiration (or earlier termination) of the Agreement, provided that CONTRACTOR is not then in default, ZOO will pay CONTRACTOR for the merchandise then in the Premises per paragraph 10 above – i.e., in the same manner and with the exactly the same terms that CONTRACTOR buys the existing inventory (as of the commencement date) from ZOO.

16. Annual Meetings.

Commencing in the year 2004, during the month of January of each calendar year during the term of the Agreement, ZOO and CONTRACTOR will meet to discuss CONTRACTOR's operations in the Premises, including, but not limited to, the nature and type of merchandise being marketed in the Premises, CONTRACTOR's success in meeting targeted gross receipts, capital improvements to the premises which may be necessary, staffing issues and any other matters which ZOO and CONTRACTOR consider appropriate to enhance operations in the Premises. At least 90 days in advance of the annual meeting, CONTRACTOR will develop a survey of the ZOO visitor shopping experience that will be administered by ZOO. The results from the survey will be discussed at the annual meeting.

17. Financial Statements.

Commencing in the year 2004, during the month of January of each calendar year during the term of the Agreement, CONTRACTOR shall provide ZOO with a copy of CONTRACTOR's most recent audited financial statement, or, if no such audited statement has been prepared, such other financial statement as may have been prepared and certified by the CONTRACTOR's chief financial officer and/or CONTRACTOR's income tax returns. CONTRACTOR shall also provide monthly, during the term of the Agreement, financial reports accompanying the monthly payments, in a format reasonably acceptable to ZOO.

18. Construction in the Premises.

All construction, renovation and alterations in the Premises during the term of the Agreement must be approved by and supervised by ZOO's Assistant Director.

19. Indemnity and Insurance.

CONTRACTOR shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of CONTRACTOR's designs or other materials by Metro and for any claims or disputes involving Subcontractors. ZOO shall cooperate with CONTRACTOR in the investigation, defense, and settlement of all claims.

CONTRACTOR shall procure and maintain at CONTRACTOR's sole cost and expense, throughout the term of the Agreement, the following insurance policies, written by companies licensed in the State of Oregon and acceptable to Metro:

- a. Commercial General Liability Insurance in combination with excess covering the Premises with combined single limits of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and property damage with automatic coverage for premises operations and product liability; and
- b. Contractual liability insurance sufficient to cover CONTRACTOR's indemnity obligations under the Agreement; and
- c. Automobile bodily injury and property damage liability insurance in a minimum of One Million Dollars (\$1,000,000.00) per occurrence; and
- d. All risk or special form insurance coverage for inventory, CONTRACTOR's contents, or any real or personal property, or its agents, employees, and waives all rights of subrogation. Business Interruption Insurance to assure continued payments in amounts consistent with the contract and all other payments historically received; and
- e. Money and security insurance coverage and employee dishonesty coverage to cover loss or theft of money and property by employees, each to have a minimum limit of \$100,000.00.
- f. A performance bond in the attached form in the amount of not less than \$500,000 to Metro to assure compliance with all provisions of this Agreement, including all financial obligations. The performance bond shall be conditioned on the faithful performance of CONTRACTOR's payment of moneys due or obligations owing to Metro, all suppliers, material men, Subcontractors, and employees.

CONTRACTOR, its Subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers.

CONTRACTOR shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If CONTRACTOR has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation; and

Metro will provide property insurance on all real and personal property owned by Metro and waives subrogation for all losses except such waiver of subrogation shall not be applied toward deductibles or any amounts not reimbursed by Metro's property insurance; and

All insurance policies required by the Agreement shall be in form and content reasonably satisfactory to ZOO and General, Excess and Automobile Liability insurance policies shall include **Metro, Oregon Zoo, its elected officials, employees, and agents as an ADDITIONAL INSURED.** CONTRACTOR shall make no modifications to its insurance without the authorization of Metro. Notice of any policy cancellation shall be provided to Metro 30 days prior to the cancellation.

Upon request, CONTRACTOR shall provide Metro with certificates of insurance complying with this section and naming Metro as an additional insured within fifteen (15) days of execution of this Agreement or twenty-four (24) hours before services under this Agreement commence, whichever date is earlier.

20. Inspection and Audit of Records.

- a. CONTRACTOR shall keep within the Metro regional boundary true and complete records and accounts of all revenues, including daily bank deposits, with respect to Gross Receipts. CONTRACTOR agrees to establish and maintain a system of bookkeeping, which is consistent with generally accepted accounting principles and satisfactory to ZOO and to give the ZOO's authorized representatives access during reasonable hours to such books and records upon reasonable advance written notice to CONTRACTOR. CONTRACTOR agrees that it will keep and preserve for at least three (3) years all cash register tapes, credit card invoices, bank books, or duplicate deposit slips, and other evidence of Gross Receipts and business transacted for such period, and upon ten (10) business days written notice, CONTRACTOR shall make available to ZOO all documents required to be kept and maintained pursuant to the Agreement.
- b. ZOO shall have the right at any time, and from time to time at ZOO's expense, to engage auditors to conduct an audit of all of the books of account, bank statements, documents, records, returns, papers, and files of CONTRACTOR relating to Gross Receipts, and CONTRACTOR, upon reasonable advance written request, shall make all such matters available for such examination. If such audit shows a deficiency in reporting Percentage of gross receipts for the period covered, and a deficiency in the payment of such fees shall be finally determined to exist, the amount thereof shall be paid promptly by CONTRACTOR to ZOO plus a service charge of 1% of said sum per month for each month from the date payment was due until the date payment is made. Further, in the event any audit or inspection discloses a single or cumulative deficiency in excess of 1% of the amount previously paid by CONTRACTOR to ZOO on account of any month, CONTRACTOR shall forthwith pay to ZOO the cost of the audit and/or inspection and such cost shall include all direct and indirect salary costs of ZOO, any charges made by any auditor or consultant of ZOO, and materials, supplies, and administrative overhead (as shall be determined by ZOO's Assistant Director from time to time).

- c. Nothing contained in this paragraph shall preclude ZOO from terminating in the event any inspection or audit discloses a material deficiency or deficiencies as indicated in this paragraph. In the event the ZOO uses counsel to collect any sums ultimately determined to be due to it from CONTRACTOR, CONTRACTOR agrees to pay ZOO its costs and reasonable attorney's fees, including the reasonable value of any services provided by in-house counsel.
- d. CONTRACTOR will record each individual sale by cash register tape and will not permit any of its employees to make change for customers from boxes or containers, or from pockets of clothing, but will, instead, furnish lockable cash registers and cash drawers for its employees.

21. Inspection and Testing by ZOO.

ZOO shall have the right to observe a transaction or transactions between CONTRACTOR and the public to determine the quality and quantity of merchandise offered to the public, the prices charged for merchandise, and the accountability of the revenue received from the sale of merchandise.

22. Termination by Mutual Consent.

This Agreement may be terminated by mutual consent of the parties.

23. Termination by ZOO.

- a. The ZOO may terminate at its option and without prior notice if any one or more of the following events shall occur:
 - 1) CONTRACTOR shall become insolvent, or shall take the benefit of any present or future insolvency statute; or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or
 - 2) By order or decree of a court CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or any state thereof; or

- 3) A petition under any part of the Federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against CONTRACTOR and shall not be dismissed within ninety (90) days after the filing thereof; or
 - 4) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or government board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of CONTRACTOR and such possession or control shall continue in effect for a period of thirty (30) days; or
 - 5) CONTRACTOR shall become a corporation in dissolution; or
 - 6) The interests of or rights of CONTRACTOR hereunder shall be transferred to, passed to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceeding or occurrence described in sub-paragraph 1, 2, 3, 4 or 5 of this paragraph; or
 - 7) Labor Disputes: In the event CONTRACTOR cannot perform its obligations under this Agreement because of labor disputes, ZOO may terminate the contract, in part or in whole, and take control of the operations.
 - 8) CONTRACTOR shall abandon its operations on the Premises, or, after exhausting or abandoning any further appeals, CONTRACTOR shall be prevented for a period of thirty (30) days by action of any governmental agency from conducting its full operation on the Premises regardless of the fault of CONTRACTOR.
- b. If, in the opinion of the ZOO, a change in ownership or control of the CONTRACTOR occurs, then such change shall not be grounds for termination of CONTRACTOR's rights hereunder if the successor corporation shall acknowledge in writing to ZOO that it has all the obligations of CONTRACTOR under the Agreement and the ZOO provides written consent. The ZOO reserves the right to change terms and conditions as it sees appropriate. If the successor corporation shall fail to satisfy the foregoing condition, ZOO may, at its option, terminate this Agreement by sending written notice of termination, by registered or certified mail, at its address set forth herein, which notice shall be deemed given when mailed.

- c. If CONTRACTOR shall fail duly and punctually to pay the Percentage of gross receipts, or shall fail to pay when due any other sum required to be made to ZOO pursuant to the Agreement, or if CONTRACTOR shall be in default of any payment required to be made to ZOO pursuant to any other agreement between CONTRACTOR and ZOO, or if CONTRACTOR violates any of the terms of the Agreement with respect to the items sold, their quality, or price, then fifteen (15) business days after receipt by CONTRACTOR of notice of default sent by ZOO by registered or certified mail return receipt requested, ZOO may, at its option, terminate the Agreement by sending written notice of termination, by registered or certified mail, to CONTRACTOR at its address specified herein; provided, however, that ZOO may, at its option, include notice of termination in its notice of default. It is understood and agreed that CONTRACTOR may avoid termination by curing all such defaults within the fifteen-(15) day period described herein.
- d. Upon the occurrence of any of the following events or at any time thereafter during the continuance thereof, ZOO may, at its option, terminate the Agreement by sending ten-(10) business days' written notice of termination by registered or certified mail to CONTRACTOR at its address specified herein:
- 1) Any lien shall be filed against the Premises or any portion thereof because of any act or omission of CONTRACTOR and not discharged within twenty (20) business days, unless CONTRACTOR within the aforesaid twenty (20) business days furnishes to ZOO such bond as ZOO in its discretion determines to be adequate to protect the interests of ZOO; or
 - 2) CONTRACTOR fails to keep, perform and observe any promise, covenant, or other provision of the Agreement (other than a default as described in sub-paragraph c. hereof), or fails to keep, perform, and observe any promise, covenant, or other provision of any other agreement between CONTRACTOR and ZOO, within twenty (20) business days after receipt by CONTRACTOR of written notice of default by registered or certified mail, return receipt requested, from ZOO; or if fulfillment of the obligation in question requires activity over a longer period of time, CONTRACTOR fails to begin such activity within twenty (20) business days after receipt by CONTRACTOR of notice of default as aforesaid, or in the opinion of ZOO fails diligently to pursue such activity.
- e. CONTRACTOR will be allowed only one (1) notice of material default under sub-sections c. or d. above in any ZOO fiscal year which it may cure within the time specified therein. The second such notice in any ZOO fiscal year shall, at the option of ZOO, be final and shall cancel and terminate all of CONTRACTOR's rights hereunder without any right on the part of CONTRACTOR to cure such default after receiving such notice.

f. Additional Remedies upon Termination by ZOO.

1) Right of Re-entry.

ZOO shall, as an additional remedy, have the right to re-enter the Premises and every part thereof upon the effective date of any termination provided herein, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter, or diminish any of the obligations of CONTRACTOR under the Agreement, and shall in no event constitute an acceptance of surrender.

2) In the event of termination, ZOO shall be entitled to use all equipment, supplies, and inventory of CONTRACTOR until all parts of this Agreement are complete.

24. Intellectual Property. Neither party shall have any right to use the other party's trademarks, service marks and copyrighted materials without first obtaining the prior written consent of the other party, except as follows: All logos, trade names or other proprietary information or materials used by CONTRACTOR in its business shall remain the sole property of CONTRACTOR. Any marketing, public relations, advertising, sponsorship, and promotional materials used or created specifically in connection with the Retail Services at the Zoo (excluding any such materials used or created by CONTRACTOR in the conduct of its business at operating locations other than the Zoo), whether prepared by Zoo or otherwise, including but not limited to logos, radio ads, television ads, billboards, letterhead, ticket stock, on-site signs, banners, programs, coupons, print ads and like printed materials of any kind (collectively, the "Property") shall be owned exclusively by Zoo and may not be used by CONTRACTOR, its employees, Subcontractors and/or agents for any other purpose except in the conduct of the Retail Services. Without limiting the foregoing, Zoo specifically acknowledges that CONTRACTOR routinely develops proprietary products and systems for use in its business, which proprietary products and systems include trademarks, logos, trade names and marketing and promotional materials and that all such materials, unless pertaining solely to the Zoo and specifically created solely for use at the Zoo, shall remain the property of CONTRACTOR and shall not be deemed to be "Property" for purposes of this Agreement. CONTRACTOR hereby assigns to Zoo all rights, title and interests in such Property and shall enter into agreements with each of its employees, Subcontractors and/or agents which shall likewise provide for assignment to Zoo of all rights, title and interest in the Property. Any and all Property, and material containing Property, shall be forthwith delivered by CONTRACTOR to Zoo on request by Zoo. Zoo may alter any such work, add to it, or combine it with any other work or works, in its sole discretion.

25. Notices.

- a. All notices required to be given by CONTRACTOR to ZOO pursuant to the Agreement shall be in writing and sent by registered mail to:

Oregon Zoo
Attn: Teri Dresler, Assistant Director
4001 SW Canyon Road
Portland, Oregon 97221-2705

Or such other place as ZOO may from time to time designate in writing to CONTRACTOR.

- b. All notices required to be given by ZOO to CONTRACTOR pursuant to the Agreement shall be in writing and sent by registered mail to:

ARAMARK Sports and Entertainment Services, Inc.
1101 Market Street
Philadelphia, PA 19107-2934

Or such other place as CONTRACTOR may from time to time designate in writing to ZOO.

26. Assistant Director.

The ZOO may designate another ZOO employee to perform any or all of the duties of the Assistant Director under this Agreement.

27. Equal Employment Opportunity.

During the performance of the Agreement, CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual preference or national origin.

28. Project Information.

CONTRACTOR shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. CONTRACTOR shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

29. Independent CONTRACTOR Status.

CONTRACTOR shall be an independent CONTRACTOR for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall CONTRACTOR be considered an employee of Metro. CONTRACTOR is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Agreement; and for meeting all other requirements of law in carrying out this Agreement. CONTRACTOR shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro. Nothing in this Agreement shall be construed as creating a partnership or joint venture between ZOO and CONTRACTOR.

30. Right to Withhold Payments.

Metro shall have the right to withhold from payments due to CONTRACTOR such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from CONTRACTOR's performance or failure to perform under this Agreement or the failure of CONTRACTOR to make proper payment to any suppliers or Subcontractor Subcontractors.

31. State and Federal Law Constraints.

Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. CONTRACTOR shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

32. Situs.

The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

33. No Waiver of Claims.

The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

34. Modification.

Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

**ARAMARK SPORTS AND
ENTERTAINMENT SERVICES, INC.**

METRO

By: _____

By: _____

Title: _____

Michael J. Jordan
Chief Operating Officer

Date: _____

Date: _____

TO: Metro Council
Mike Jordan, COO
Chris Billington, Council Operations Manager

FROM: Roy Soards, Director Business Support

DATE: July 24, 2003

SUBJECT: 10-Day Letter for moving grant funds to Killin Wetlands project

Action Requested: Authorize the Chief Operating Officer to sign a contract amendment with Ducks Unlimited, moving North American Wetlands Conservation Act (NAWCA) grant funds from the Coffee Lakes Restoration project to the Killin Wetlands Restoration project (Banks).

Background Information: Metro entered into a contract with Ducks Unlimited (DU), allowing them to receive grant funds from NAWCA on our behalf and to manage and implement the wetland restoration project at Coffee Lakes, north of Wilsonville. Because of delays in obtaining the necessary FEMA permits from the city of Wilsonville for that project (additional studies by the US Army Corp of Engineers are required), the NAWCA funds cannot be spent on this project this year.

In an effort not to lose the grant funds, DU is proposing that the NAWCA grant be spent on Phase II of the Killin Wetlands Restoration project (Phase I is currently being implemented).

This contract amendment does not change any other clauses or conditions in the contract between Ducks Unlimited and Metro. The contract does not obligate Metro to expend any of its own funds.

Recommendation: In accordance with Metro Code section 2.04.026(b), we are recommending that this contract amendment be signed by the Chief Operating Officer.

Please advise if further Council action is recommended.

Please do not hesitate to contact Jim Desmond, Jim Morgan or me if you have any questions.

cc. Jim Desmond, Jim Morgan

A G E N D A

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1542 | FAX 503 797 1793

**METRO****Agenda**

MEETING: METRO COUNCIL REGULAR MEETING
DATE: July 31, 2003
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL**1. INTRODUCTIONS****2. CITIZEN COMMUNICATIONS****3. TRANSIT MALL AND SOUTH CORRIDOR UPDATE VIDEO** Brandman**4. CONSENT AGENDA**

4.1 Consideration of Minutes for the July 17, 2003 Metro Council Regular Meeting.

4.2 **Resolution No. 03-3350**, For the Purpose of Approving the Selection of Hearings Officers for Contested Case Hearings Pursuant to Metro Code Chapter 2.05 for the Period Commencing August 2003.

4.3 **Resolution No. 03-3354**, For the Purpose of Confirming Julie Reed to the Metro 401K Employee Salary Savings Plan Advisory Committee.

5. ORDINANCES – FIRST READING

5.1 **Ordinance No. 03-999**, For the Purpose of Amending Metro Code Chapter 5.05 To include the Wasco County Landfill on the list of designated facilities.

6. CONTRACT REVIEW BOARD

6.1 **Resolution No. 03-3346**, For the Purpose of Authorizing the Chief Operating Officer to Execute a Contract No. 925081 for Management of Retail Operations at the Oregon Zoo. Park

**7. EXECUTIVE SESSION HELD PURSUANT TO ORS 192.660 (1) (d)
FOR THE PURPOSE OF DELIBERATING WITH PERSONS
DESIGNATED TO CONDUCT LABOR NEGOTIATIONS.**

**7.1 Resolution No. 03-3355, For the Purpose of Ratifying the Collective
Bargaining Agreement between Laborers International Union (LIU)
Local 483 and Metro from July 1, 2003 to June 30, 2006.**

Burkholder

8. COUNCILOR COMMUNICATION

ADJOURN

Cable Schedule for Week of July 31, 2003 (PCA)

	Sunday (8/3)	Monday (8/4)	Tuesday (8/5)	Wednesday (8/6)	Thursday (7/31)	Friday (8/1)	Saturday (8/2)
CHANNEL 11 (Community Access Network) (most of Portland area)					2:00 PM (previous meeting)		
CHANNEL 30 (TVTV) (Washington County, Lake Oswego)	12:00 PM (previous meeting)			11:00 PM (previous meeting)		6:30 AM 7:00 PM 11:00 PM (previous meeting)	3:30 PM (previous meeting)
CHANNEL 30 (CityNet 30) (most of City of Portland)		2:00 PM					
CHANNEL 30 Willamette Falls Television (West Linn, Rivergrove, Lake Oswego)	5:30 AM 2:30 PM	12:30 AM 3:30 PM 10:31 PM		12:30 AM 3:00 PM 10:30 PM		12:30 AM 3:30 PM 10:31 PM	5:30 AM 2:30 PM
CHANNEL 23/18 Willamette Falls Television (23- Oregon City, West Linn, Gladstone; 18- Clear Creek)							
CHANNEL 23 Milwaukie Public Television (Milwaukie)			10:00 AM 9:00 PM				

**PLEASE NOTE THAT ALL SHOWING TIMES ARE TENTATIVE BASED ON THE INDIVIDUAL CABLE COMPANIES'
SCHEDULES. PLEASE CALL THEM OR CHECK THEIR WEB SITES TO CONFIRM SHOWING TIMES.**

**Portland Cable Access
Tualatin Valley Television
Willamette Falls Television
Milwaukie Public Television**

www.pcatv.org
www.yourtv.org
www.wftvaccess.com

**(503) 288-1515
(503) 629-8534
(503) 650-0275
(503) 652-4408**

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 797-1542. Public Hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by email, fax or mail or in person to the Clerk of the Council. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).