

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: March 25, 2004
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. AUDITOR COMMUNICATION
Report on Financial Statement Audit

4. CONSENT AGENDA

4.1 Consideration of Minutes for the March 18, 2004 Metro Council Regular Meeting.

5. ORDINANCES – SECOND READING

5.1 **Ordinance No. 04-1037**, For the Purpose of Amending Metro Code Chapter 7.01 to Repeal the Sunset Date for Additional Excise Tax Dedicated to Regional Parks and Greenspaces Programs. Monroe

5.2 **Ordinance No. 04-1042**, For the Purpose of Amending Metro Code Chapter 5.02 to Amend Disposal Charges and System Fees (PUBLIC HEARING ONLY, NO FINAL ACTION). McLain

5.3 **Ordinance No. 04-1043**, For the Purpose of Amending Metro Code Chapter 5.03 to Amend License and Franchise Fees; and Making related changes to Metro Code Chapter 5.01. (PUBLIC HEARING ONLY, NO FINAL ACTION). McLain

5.4 **Ordinance No. 04-1046**, For the Purpose of Amending Ordinance No. 02-969B in order to Change a Condition on Addition of Study Area 59 (Sherwood) to the Urban Growth Boundary; and Declaring an Emergency. McLain

6. RESOLUTIONS

6.1 **Resolution No. 04-3432, For the Purpose of Authorizing the Chief Operating** Park
to issue a non-system license to Gray and Company for delivery of putrescible
solid waste to the Riverbend Landfill.

7. CONTRACT REVIEW BOARD

7.1 **Resolution No. 04-3437, For the Purpose of Awarding a Sole Source Personal** Burkholder
Services Agreement Contract No. 925542 to Keith Lawton for Model Analysis,
Technical Assistance and Advice in the Calibration Validation and
Implementation of Transims at Metro.

7.2 **Resolution No. 04-3438, For the Purpose of Modifying and Extending the** Monroe
Lease Agreement between Metro and Simex, Inc. Contract No. 924826.

8. CHIEF OPERATING OFFICER COMMUNICATION

9. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for March 25, 2004 Metro Council meeting

<p>Clackamas, Multnomah and Washington counties, Vancouver, Wash. Channel 11 -- Community Access Network www.yourtytv.org -- (503) 629-8534 Thursday, March 25 at 2 p.m. (live)</p>	<p>Washington County Channel 30 -- TVTV www.yourtytv.org -- (503) 629-8534 Saturday, March 27 at 7 p.m. Sunday, March 28 at 7 p.m. Tuesday, March 30 at 6 a.m. Wednesday, March 31 at 4 p.m.</p>
<p>Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.</p>	<p>West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.</p>
<p>Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcatv.org -- (503) 288-1515 Sunday, March 27 at 8:30 p.m. Monday, March 28 at 2 p.m.</p>	

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, 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 797-797-1804 or 797-1540 (Council Office).

**Ordinance No. 04-1037, For the Purpose of Amending Metro Code Chapter
7.01 to Repeal the Sunset Date for Additional Excise Tax Dedicated to
Regional Parks and Greenspaces Programs.**

Second Reading

Metro Council Meeting
Thursday, March 25, 2004
Metro Council Chamber

BEFORE THE METRO COUNCIL.

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 04-1037
METRO CODE CHAPTER 7.01 TO REPEAL)
THE SUNSET DATE FOR ADDITIONAL) Introduced by Council President David Bragdon
EXCISE TAX DEDICATED TO REGIONAL)
PARKS AND GREENSPACES PROGRAMS)

WHEREAS, on March 28, 2002, the Metro Council approved Ordinance No. 02-939A, amending the Metro Excise Tax set forth in Metro Code Chapter 7.01 to provide revenues for Metro's Regional Parks and Greenspaces Programs; and

WHEREAS, the continuation of such funding is necessary to provide financial support for the regional system of parks, natural areas, trails and greenways; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 7.01.024 is repealed.

ADOPTED by the Metro Council this ____ day of _____ 2004.

David Bragdon, Council President

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1037 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.01 TO REPEAL THE SUNSET DATE FOR ADDITIONAL EXCISE TAX DEDICATED TO REGIONAL PARKS AND GREENSPACES PROGRAMS

Date: February 26, 2004

Prepared by Jeff Tucker

BACKGROUND

On March 28th, 2002, the Metro Council passed Ordinance 02-939A ("For the Purpose of Amending Metro Code Chapter 7.01 to Amend the Metro Excise Tax to Provide Revenue for Metro's Regional Parks and Greenspaces Programs"). That ordinance provided for funding for Regional Parks and Greenspaces programs by increasing the Excise Tax on solid waste by \$1 per ton and dedicating that funding to the Regional Parks and Greenspaces Department. The ordinance also provided for the additional excise tax to be repealed June 30, 2004.

The \$1 per ton was implemented to maintain existing service levels for Regional Parks and Greenspaces programs without having to deplete of the Department's limited reserves. Some of these funds were dedicated to the Natural Resources Stewardship program to better manage the open space properties purchased under the 1995 Open Spaces bond measure. Environmental education program resources were redeployed to provide programs and services throughout the region, particularly in Washington and Clackamas counties where such programs were not as widely available. The new resources provided for the continuation of the Regional Trails program beyond the Open Spaces bond measure, and they partially funded the capital renewal and replacement needs of the department.

A permanent funding source for the Regional Parks and Greenspaces programs has not been secured, and continuation of the \$1 per ton will provide necessary support for these programs.

ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents** The Metropolitan Greenspaces Master Plan was adopted by Council through Resolution No 92-1637 ("For the Purpose of Considering Adoption of the Metropolitan Greenspaces Master Plan"). It identified a desired regional greenspaces system. The Regional Framework Plan adopted by Metro through Resolution No. 97-715B ("For the Purpose of Adopting the Regional Framework Plan") stated Metro, in cooperation with local governments, shall pursue the identification and implementation of a long term, stable funding source to support the planning, acquisition, development, management and maintenance of the regional greenspaces system. Ordinance 02-939A established the \$1 per ton excise tax on solid waste and dedicated it to Regional Parks and Greenspaces programs.
3. **Anticipated Effects** This action will eliminate the expiration of the \$1 per ton excise tax on solid waste dedicated to Regional Parks and Greenspaces programs that is scheduled for June 30, 2004.

4. **Budget Impacts** This action does not authorize any budget authority. It provides for revenues to be allocated through the regular budget process, to be used to balance against authorized expenditures. It is estimated that this action will continue to provide approximately \$1.2 million for the Regional Parks and Greenspaces Department in FY 2004-05.

RECOMMENDED ACTION

Metro Council President David Bragdon recommends passage of Ordinance No. 04-1037 for the purpose of amending Metro Code Chapter 7.01 to repeal the sunset date for additional excise tax dedicated to Regional Parks and Greenspaces programs.

Agenda Item Number 5.2

**Ordinance No. 04-1042, For the Purpose of Amending Metro Code Chapter 5.02 to Amend Disposal Changes
and System Fees.**

Second Reading Public Hearing, no final action

Metro Council Meeting
Thursday, March 25, 2004
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 04-1042
METRO CODE CHAPTER 5.02 TO)
AMEND DISPOSAL CHARGES AND) Introduced by: Michael Jordan, Chief Operating
SYSTEM FEES) Officer, with the concurrence of David Bragdon,
) Council President

WHEREAS, Metro Code Chapter 5.02 establishes solid waste charges for disposal at Metro South and Metro Central transfer stations; and,

WHEREAS, Metro Code Chapter 5.02 establishes fees assessed on solid waste generated within the District or delivered to solid waste facilities regulated by or contracting with Metro; and,

WHEREAS, pursuant to its charge under Metro Code Chapter 2.19.170, the Solid Waste Rate Review Committee, has reviewed the Solid Waste & Recycling department's budget and organization, and has recommended methodological changes to the calculation of administrative and overhead costs, and the allocation of these costs to rate bases; and,

WHEREAS, Metro's costs for solid waste programs have increased; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Section 5.02.025 is amended to read:

5.02.025 Disposal Charges at Metro South & Metro Central Station

(a) The fee for disposal of solid waste at the Metro South Station and at the Metro Central Station shall consist of:

- (1) The following charges for each ton of solid waste delivered for disposal:
 - (A) A tonnage charge of ~~\$42.55~~ 47.75 per ton,
 - (B) The Regional System Fee as provided in Section 5.02.045,
 - (C) An enhancement fee of \$.50 per ton, and
 - (D) DEQ fees totaling \$1.24 per ton;
- (2) All applicable solid waste taxes as established in Metro Code Chapter 7.01, which excise taxes shall be stated separately; and
- (3) A Transaction Charge of ~~\$9.506.00~~ for each Solid Waste Disposal Transaction.

(b) Notwithstanding subsection (a) of this section, there shall be a minimum solid waste disposal charge at the Metro South Station and at the Metro Central Station for loads of solid waste weighing ~~220340~~ pounds or less of \$17, which shall consist of a minimum Tonnage Charge of ~~\$7.5041.00~~ plus a Transaction Charge of ~~\$9.506.00~~ per Transaction.

(c) Total fees assessed in cash at the Metro South Station and at the Metro Central Station shall be rounded to the nearest whole dollar amount, with any \$0.50 charge rounded down.

(d) The Director of the Solid Waste & Recycling Department may waive disposal fees created in this section for Non-commercial Customers of the Metro Central Station and of the Metro South Station under extraordinary, emergency conditions or circumstances.

Section 2. Metro Code Section 5.02.045 is amended to read:

5.02.045 System Fees

(a) Regional System Fee: Solid waste system facility operators shall collect and pay to Metro a Regional System Fee of ~~\$13.20~~^{\$6.57} per ton for the disposal of solid waste generated, originating, collected, or disposed of within Metro boundaries, in accordance with Metro Code Section 5.01.150.

(b) Metro Facility Fee: Metro shall collect a Metro Facility Fee of \$1.09 per ton for all solid waste delivered to Metro Central Station or Metro South Station.

(c) System fees described in paragraph (a) shall not apply to exemptions listed in Section 5.01.150(b) of this Code.

Section 3. Effective Date

The provisions of this ordinance shall become effective on July 1, 2004, or 90 days after adoption by Metro Council, whichever is later.

ADOPTED by the Metro Council this _____ day of _____, 2004.

David Bragdon, Council President

ATTEST:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1042 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.02 TO AMEND DISPOSAL CHARGES AND SYSTEM FEES

Date: February 24, 2004

Prepared by: Douglas Anderson

BACKGROUND

Summary

Ordinance No. 04-1042, and a companion Ordinance No. 04-1043, would establish solid waste fees (but not excise tax) for FY 2004-05. The two ordinances are related, and changes to one should be reflected in changes to the other.

Ordinance No. 04-1042 is the basic rate ordinance adopted by Council each year. This ordinance amends Metro Code Chapter 5.02 to set three basic rates: the transaction fee and tonnage charge at Metro transfer stations, and the Regional System Fee charged against all regional solid waste disposal. By setting these rates, the Metro tip fee is established. The ordinance also adjusts the minimum load charge to reflect these changes.

Depending on the Council's decisions on the Solid Waste & Recycling budget, acceptance of the recommendations of the Solid Waste Rate Review Committee, and the FY 2004-05 excise tax, the Metro tip fee would rise from its current \$67.18 per ton to either \$68.44 or \$70.97 per ton—an increase ranging from \$1.26 to \$3.79 per ton. This increase is exaggerated by the fact that the current tip fee is subsidized by \$1, but the FY 2004-05 rates are proposed at their full cost recovery levels. Depending on these same decisions, the transaction fee (an important component of the disposal charge at Metro transfer stations) would remain flat at \$6.00 or rise as much as \$3.50, to \$9.50. This difference is largely a function of the Solid Waste Rate Review Committee recommendations.

The companion Ordinance No. 04-1043 amends Metro Code Chapter 5.03 to establish new license and franchise fees to be charged at privately-owned facilities. These new fees, recommended by the Solid Waste Rate Review Committee, are designed to recover Metro's costs of regulating private facilities. Unlike Metro's other rates, the new license/franchise fees would not be incurred by customers of Metro transfer stations. By absorbing some of the costs currently recovered by the Regional System Fee, these new charges reduce the Regional System Fee. If Ordinance No. 04-1043 is not adopted, the level of the Regional System Fee in Ordinance No. 04-1042 would have to be adjusted.

Because of the budget schedule this year, the numerical values of the FY 2004-05 rates had not been reviewed by the Solid Waste Rate Review Committee as of the filing deadline for the ordinances. This review is expected before mid-March, and should be forwarded to Council prior to March 25, which is the last day to make substantive amendments to the ordinances and remain on track for a July 1 implementation date for the new rates.

Every year, the Council adjusts solid waste rates to account for changes in costs, tonnage, and to remain in compliance with the rate covenant of the bonds. Council must adopt rates by ordinance. The Metro Charter requires at least 90-days between adoption of the rate ordinance and the effective date of the rates. Historically, Metro has targeted July 1 as the effective date for new rates. This date is a matter of

convenience, allowing for business planning and coordination by Metro, local governments and the solid waste industry. However, there is no legal requirement to meet this date.

An additional element this year is a detailed study of the Department's cost structure by the Solid Waste Rate Review Committee ("RRC"). The RRC requested this study after the FY 2003-04 rate process, in order to improve the quality of their professional recommendations.

The cost study has implications for rates, because a basic starting principle in rate-setting (and articulated by the RRC) is that recovery of costs should be related to the causes of those costs. More simply put, users (or beneficiaries) should pay for the goods and services they consume, all else equal. If the cost is generated by a public policy choice—say, the provision of hazardous waste collection—then the beneficiaries should pay. For example, in the case of hazardous waste, all regional ratepayers contribute to paying the costs of Metro's program.

The RRC recognizes that this principle is a starting point, and not the only determinant of rates. However, the RRC felt that they were not in a position to give Council the best advice until they had a firmer empirical grasp on the basic mechanisms that generate Metro's solid waste costs.

As a result of the cost study, the RRC makes 3 general recommendations on allocations and rates, listed below. **Ordinances No. 04-1042 and 04-1043 reflect these recommendations on cost allocations.** As mentioned in the summary, however, the RRC has not yet reviewed the specific numerical FY 2004-05 results of these allocation policies, as the budget was not yet available.

Summary Rate Review Committee Recommendations on Cost Allocations and Rates

1. *Maintain a financial model of the true full cost of programs and services, and allocate fully-loaded programs and services largely according to the current rate model.*
This recommendation is based on the RRC's opinion that the current rate model (1) allocates the direct costs of programs and services appropriately—with the exception of private facility regulatory costs and debt service; and (2) does not work as well for relating the costs of administration and overhead with the activities that cause those costs. See Table 1 (next page) for more details.
2. *Establish a new fee.*
A new fee, to be levied on non-Metro users of the system should be established. This recommendation is consistent with collecting the true and full costs of programs from the persons who cause the cost—in this case, privately-owned and Metro-regulated facilities.
3. *Extend the philosophy above to the recovery of debt service.*
Debt service (amortized capital costs) should be partitioned into two elements, one representing the cost of utilized capital, and the other representing the cost of underutilized, or "stranded" capacity. Users—Metro customers—should pay for the utilized portion, and the entire region should pay for the stranded capacity through the Regional System Fee.

For more background on these points, see Table 1, "Rate Review Committee Preliminary Findings on Cost Allocations," on the following page.

**Table 1
Rate Review Committee Preliminary Findings on Cost Allocations**

Center	Direct Costs	Administrative Support & Overhead
Disposal services	Currently allocated to Metro customers. RRC agrees with status quo	<p>Administration & overhead are currently allocated to all regional ratepayers through the RSF. Therefore, Metro customers as a group pay for administration & overhead in proportion to tonnage—currently 47.5%, or about \$3.1 million. Non-Metro customers pay the balance.</p> <p>The RRC’s preliminary findings on the \$6.45 million in administration, overhead and service transfers in the FY 2003-04 budget, are:*</p> <ul style="list-style-type: none"> ❑ Disposal operations generate administrative and overhead costs of about \$2.10 million. This amount should be paid by the persons who cause those costs; namely, transfer station customers. ❑ Regional programs (such as hazardous waste and waste reduction) are responsible for about \$4.15 million. This amount should be paid by the beneficiaries of those programs; namely, all regional ratepayers. ❑ Private facility regulation generates about \$204,000 of administration and overhead. This amount should be paid by the persons who cause those costs; namely, Metro-regulated facilities.
Programs	<p>Currently allocated to all regional ratepayers through the RSF.</p> <p>RRC recommends that regulatory and auditing functions be allocated to a new fee paid by non-Metro customers, and agrees that the balance should remain allocated to the RSF.</p>	<p>In order to better associate the activities that generate these costs, the RRC recommends that:</p> <ol style="list-style-type: none"> 1. The true administrative costs of programs and services be established; 2. These costs be added to the direct costs of programs and services; 3. These fully-loaded programs and services be allocated to rate bases according to the recommendations on direct costs (column left).
Debt service	<p>Recommend dividing into two parts, representing (1) utilized capacity & (2) underutilized, or “stranded” capacity. Allocate the utilization portion to Metro customers (representing payment for use), and the stranded portion to the RSF (representing policy that all ratepayers should pay for public investments undertaken on the behalf of the region).</p>	

* Observation. A fair allocation of administration & OH costs to Metro customers would be the entire \$2.1 million associated with disposal operations, plus \$2 million (47.5%, the tonnage share) of the costs associated with regional programs, for a total of \$4.1 million. Thus, the “tonnage share” allocation that is implicit within the current rate model collects about \$1 million less from Metro customers than when full costs and cost causation are accounted for.

Comparative Analysis of the Rates

Agenda Item Number 5.3

Ordinance No. 04-1043, For the Purpose of Amending Metro Code Chapter 5.03 to Amend License and Franchise Fees; and Making related changes to Metro Code Chapter 5.01.

Second Reading Public Hearing only, no final action

Metro Council Meeting
Thursday, March 25, 2004
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 04-1043
METRO CODE CHAPTER 5.03 TO)
AMEND LICENSE AND FRANCHISE) Introduced by: Michael Jordan, Chief Operating
FEES, AND MAKING RELATED) Officer, with the concurrence of David Bragdon,
CHANGES TO METRO CODE) Council President
CHAPTER 5.01)

WHEREAS, Metro Code Chapter 5.03 establishes fees for solid waste facilities that are franchised by Metro; and,

WHEREAS, the Solid Waste Rate Review Committee has reviewed the Solid Waste & Recycling Department's budget, and has recommended that certain costs of regulating solid waste facilities, currently recovered from the Regional System Fee, instead be recovered from license or franchise fees; and,

WHEREAS, the FY 2004-05 Regional System Fee set forth in Metro Code section 5.01.045, as amended by Section 2 of Ordinance No. 04-1042, reflects the reallocation of certain regulatory costs to license and franchise fees; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. Metro Code Chapter 5.03 shall be retitled "License and Franchise Fees and Related Fees."

Section 2. Metro Code Section 5.03.010 is amended to read:

5.03.010 Purpose and Authority

It is the purpose of this chapter to establish solid waste disposal license and franchise fees charged to persons regulated pursuant to Metro Code Section Chapter 5.01.140; fees on persons licensed to use a non-system facility pursuant to Metro Code section 5.05.035; and fees collected from users of facilities operating under special agreements with Metro adopted pursuant to Metro Code section 5.05.030, hereafter "Designated Facility Agreements."

Section 3. Metro Code Section 5.03.020 is repealed.

Section 4. Metro Code Section 5.03.030 is amended to read:

5.03.030 Annual License, Franchise and Designated Facility Fees

(a) Licensees, franchisees and parties to Designated Facility Agreements, issued a solid waste disposal franchise, shall pay to Metro an annual franchise fees as set forth in this section. Such fees shall be paid in the manner and at the time required by the Chief Operating Officer or before January 1 of each year for that calendar year.

(b) Annual solid waste disposal franchise fees shall be consist of a fixed charge \$300 per site as set forth in the following table; plus a charge per ton of solid waste, exclusive of source-separated material, accepted by the site, as set forth in the following table.

<u>Entity</u>	<u>Fixed Site Fee</u>	<u>Tonnage Fee</u>
<u>Party to a DFA</u>	<u>\$0</u>	<u>\$0.77</u>
<u>Licensees:</u>		
<u>Tire Processor</u>	<u>\$300</u>	<u>- \$0 -</u>
<u>Yard Debris</u>	<u>\$300</u>	<u>- \$0 -</u>
<u>Roofing Processor</u>	<u>\$300</u>	<u>- \$0 -</u>
<u>Non-System</u>	<u>\$300</u>	<u>\$0.77</u>
<u>Mixed waste/other</u>	<u>\$3,000</u>	<u>\$0.77</u>
<u>Franchisee</u>	<u>\$5,000</u>	<u>\$0.77</u>

(c) Notwithstanding the charges set forth in subsection (b), ; provided, however, that said Fixed Site fFee shall be \$100 per site with no (\$0) Tonnage Fee for each non-system licensee franchised site that only transports/receives waste exclusively from the a licensed or franchised facility, or a company, partnership or corporation in which the franchisee has a financial interest in, and is held in the same name as, the non-system licensee.;

(de) Licensees, Franchisees and parties to Designated Facility Agreements who are issued licenses, franchises or Designated Facility Agreements during a calendar year shall pay a fee computed on a pro-rated quarterly basis such that one quarter the same proportion of the annual fee shall be charged for any quarter or portion of a year quarter that the license, franchise or Designated Facility Agreement is in effect. The franchisee shall thereafter pay the fee annually as required by subsection (a) of this section. Franchise fees shall not for any reason be refundable in whole or in part. Annual franchise fees shall be in addition to franchise application fees.

Section 5. Metro Code Section 5.03.040 is amended to read:

5.03.040 Non-Payment of Franchise Fees

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

(b) Annual franchise fees are due and payable on January 1 of each year. Failure to remit said fee by said date shall constitute a violation of the Metro Code and of the franchise and shall subject the franchisee to enforcement pursuant to Code Section 5.01.180 in addition to any other civil or criminal remedies Metro may have.

Section 6. Metro Code Section 5.03.050 is amended to read:

5.03.050 Transfer and Renewal

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

Section 6. Metro Code Section 5.01.140 is amended to read:

5.01.140 License and Franchise Fees

(a) The annual fee for a solid waste License ~~or shall not exceed three hundred dollars (\$300), and the annual fee for a solid waste Franchise shall be as set forth in Metro Code Chapter 5.03, not exceed five hundred dollars (\$500).~~ The Council may revise these fees upon 90 days written notice to each Licensee or Franchisee and an opportunity to be heard.

(b) The License or Franchise fee shall be in addition to any other fee, tax or charge imposed upon a Licensee or Franchisee.

(c) The Licensee or Franchisee shall pay the License or Franchise fee in the manner and at the time required by the Chief Operating Officer.

Section 7. Effective Date

The provisions of this ordinance shall become effective on July 1, 2004 or 90 days from the date this ordinance is adopted, whichever is later.

ADOPTED by the Metro Council this _____ day of _____, 2004.

David Bragdon, Council President

ATTEST:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1043 FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.03 TO AMEND LICENSE AND FRANCHISE FEES, AND MAKING RELATED CHANGES TO METRO CODE CHAPTER 5.01

Date: February 24, 2004

Prepared by: Douglas Anderson

BACKGROUND

Summary

Ordinance No. 04-1043, and a companion Ordinance No. 04-1042, would establish solid waste fees (but not excise tax) for FY 2004-05. The two ordinances are related, and changes to one should be reflected in changes to the other.

This Ordinance No. 04-1043 amends Metro Code Chapter 5.03 to establish new license and franchise fees to be charged at privately-owned facilities. These new fees, recommended by the Solid Waste Rate Review Committee, are designed to recover Metro's costs of regulating private facilities. Unlike Metro's other rates, the new license/franchise fees would not be incurred by customers of Metro transfer stations. By absorbing some of the costs currently recovered by the Regional System Fee, these new charges reduce the Regional System Fee. If Ordinance No. 04-1043 is not adopted, the level of the Regional System Fee in Ordinance No. 04-1042 would have to be adjusted.

Because of the budget schedule this year, the numerical values of the FY 2004-05 rates had not been reviewed by the Solid Waste Rate Review Committee as of the filing deadline for the ordinances. This review is expected before mid-March, and should be forwarded to Council prior to March 25, which is the last day to make substantive amendments to the ordinances and remain on track for a July 1 implementation date for the new rates.

This ordinance emerged from the detailed study of the Department's cost structure by the Rate Review Committee ("RRC") this year. A basic starting principle in rate-setting (and articulated by the RRC) is that recovery of costs should be related to the causes of those costs, all else equal. Through their work this year, the RRC came to understand that certain of Metro's costs—regulation and auditing—are incurred because of the existence and operation of private solid waste facilities. Therefore, according to the basic principle, the regulated community should bear those costs. The RRC recommended that Metro investigate annual license and franchise fees to recover those costs.

This ordinance amends Metro Code Chapter 5.03, Disposal Site Franchise Fees, to accomplish this task. As Ordinance No. 04-1043 is closely related to the elements of the annual rate ordinance amending Metro Code Chapter 5.02 (Ordinance No. 04-1042), the reader is directed to the staff report for that ordinance for more information on the RRC's findings and recommendation.

INFORMATION/ANALYSIS

1. Known Opposition.

Although no specific opposition has been voiced as of this writing, this ordinance represents a new concept that has not had wide distribution and review.

Because this ordinance would reduce the Regional System Fee by reallocating costs to the new license and franchise fees, in general, persons who currently pay the RSF would be in favor of this ordinance. This is a broad class of persons, as the RSF is levied on all regional waste.

The licensees and franchisees who would be subject to the new fee can generally be assumed to be in opposition. However, two points argue against them being in strong opposition: (1) the license/franchise fee is less than the amount by which the RSF dropped, and so their entire fee burden will drop; (2) facility owners were well represented and participated in the public meetings when this fee was developed.

2. **Legal Antecedents.** Metro's license and franchise fees are set in Metro Code chapters 5.01 and 5.03 (where they currently conflict). Any change in these fees requires an ordinance amending Chapter 5.03 (and by implication, 5.01). This ordinance also corrects the discrepancies between Chapters 5.01 and 5.03.
3. **Anticipated Effects:** This ordinance will decrease the Regional System Fee levied on all regional ratepayers. The separate funding base helps to stabilize revenue.
4. **Budget Impacts.** These rates are designed to recover fully the department's costs of regulating private disposal facilities.

RECOMMENDATION

The Chief Operating Officer agrees with the principles embodied in this ordinance. However, the Chief Operating Officer awaits the final findings and recommendations of the Solid Waste Rate Review Committee before taking a specific position on Ordinance No. 04-1043.

Ordinance No. 04-1046, For the Purpose of Amending Ordinance No. 02-969B in order to change a condition on addition of Study Area 59 (Sherwood) to the Urban Growth Boundary; and Declaring an Emergency.

Second Reading

Metro Council Meeting
Thursday, March 25, 2004
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 04-1046
ORDINANCE NO. 02-969B IN ORDER TO)
CHANGE A CONDITION ON ADDITION OF)
STUDY AREA 59 (SHERWOOD) TO THE) Introduced by Councilor McLain
UGB; AND DECLARING AN EMERGENCY)

WHEREAS, the Metro Council adopted Ordinance No. 02-969B, For The Purpose Of Amending The Metro Urban Growth Boundary, The Regional Framework Plan And The Metro Code In Order To Increase The Capacity Of The Boundary To Accommodate Population Growth To The Year 2022, on December 5, 2002, to add land to the urban growth boundary (“UGB”) as part of Task 2 of periodic review; and

WHEREAS, among the land added to the UGB by Ordinance No. 02-969B was a portion of Study Area 59, adjacent to and west of the City of Sherwood; and

WHEREAS, the Council applied the “Inner Neighborhood” 2040 Growth Concept design type to the added portion of Study Area 59, as show on Exhibit N; and

WHEREAS, in response to a need for land for one or more public schools in the Sherwood School District, the Council placed a condition on the added portion of Study Area 59 that limited development to “public facilities and other development necessary and accessory to public school use ...”; and

WHEREAS, further review of public school needs by the Sherwood School District and further coordination among the district, Washington County, and the City of Sherwood indicate that the District does not need the entire portion of the added part of Study Area 59 for school facilities; now, therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Condition 2 in Section H [Study Area 59 (partial)] of Exhibit M to Ordinance No. 02-969B is amended to read as follows:

The county or the city, in coordination with the Sherwood School District, shall, in the Title 11 plan, determine a location and size for one or more sites for public school facilities in the portion of Study Area 59 included within the UGB by this ordinance, and shall adopt provisions in its comprehensive plan and zoning regulations to provide the opportunity to site one or more public school facilities consistent with the Title 11 plan.

2. The Findings of Fact and Conclusions of Law in Exhibit A, attached and incorporated into this ordinance, explain how this amendment complies with state law and the Regional Framework Plan.
3. This ordinance is necessary for the immediate preservation of public health, safety and welfare because modification of the subject condition is a pre-requisite to adoption of an ordinance by Washington County to place interim limitations on uses of the area while planning pursuant to Title 11, and a county charter provision limits the time for consideration of such ordinances. An emergency is therefore declared to exist, and this ordinance shall take effect upon adoption pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this ____ day of _____ 2004.

David Bragdon, Council President

ATTEST:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

**Exhibit A to Ordinance No. 04-1046
Findings of Fact and Conclusions of Law**

I. Overview

Ordinance No.04-1046 amends Ordinance No. 02-969B (FOR THE PURPOSE OF AMENDING THE URBAN GROWTH BOUNDARY, THE REGIONAL FRAMEWORK PLAN AND THE METRO CODE IN ORDER TO INCREASE THE CAPACITY OF THE BOUNDARY TO ACCOMMODATE POPULATION GROWTH TO THE YEAR 2022) to revise Condition H.2 of Exhibit M of that ordinance, affecting the portion of Study Area 59 added to the UGB, west of the City of Sherwood. The original condition limited development to public school facilities. The revised condition requires the county or city, in coordination with the Sherwood School District, to determine a location for one or more public school facilities in the area, pursuant to Title 11 of the Urban Growth Management Functional Plan. The effect of the change is to allow the portion of the area not needed for public school facilities to urbanize in a manner otherwise allowed by Ordinance No. 02-969B and local law.

II. Statewide Planning Laws

Statewide Planning Goal 1 – Citizen Involvement: The Council followed its customary procedure for enactment of ordinances, including public notification, consideration by the Metropolitan Policy Advisory Committee, and a public hearing before the Council on March 25, 2004. This process complies with Metro’s public involvement policy and with Goal 1

Statewide Planning Goal 2 – Land Use Planning: The Council undertook amendment of Condition H.2 in response to comments from the school district and local governments. This process fulfilled the coordination requirements of Goal 2.

Statewide Planning Goal 3 – Agricultural Lands: Because this ordinance applies only to territory within Metro’s urban growth boundary, Goal 3 does not apply.

Statewide Planning Goal 4 – Forest Lands: Because this ordinance applies only to territory within Metro’s urban growth boundary, Goal 4 does not apply.

Statewide Planning Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces: This ordinance revises a condition on the urbanization of that portion of Study Area 59 included in the UGB on December 5, 2002. The revision expands the uses allowed in the area (from public school facilities only to residential use as well). Washington County or the City of Sherwood will be responsible for comprehensive planning for the area, pursuant to Title 11 of the Urban Growth Management Functional Plan. The city or county will be responsible for applying Goal 5 at the time either amends its comprehensive plan and land use regulations to allow urbanization of the area. For the reasons stated in Exhibit P to Ordinance No. 02-969B, this ordinance complies with Goal 5

Statewide Planning Goal 6 – Air, Land and Water Resources Quality: This ordinance revises a condition on the urbanization of that portion of Study Area 59 included in the UGB on December 5, 2002. The revision expands the uses allowed in the area (from public school facilities only to residential use as well). Washington County or the City of Sherwood will be responsible for comprehensive planning for the area, pursuant to Title 11 of the Urban Growth Management Functional Plan. The city or county will be responsible for applying Goal 6 at the time either amends its comprehensive plan and land use regulations to allow urbanization of the area. For the reasons stated in Exhibit P to Ordinance No. 02-969B, this ordinance complies with Goal 6.

Statewide Planning Goal 7 – Areas Subject to Natural Disasters and Hazards: This ordinance revises a condition on the urbanization of that portion of Study Area 59 included in the UGB on December 5, 2002. The revision expands the uses allowed in the area (from public school facilities only to residential use as well). Washington County or the City of Sherwood will be responsible for comprehensive planning for the area, pursuant to Title 11 of the Urban Growth Management Functional Plan. The city or county will be responsible for applying Goal 7 at the time either amends its comprehensive plan and land use regulations to allow urbanization of the area. For the reasons stated in Exhibit P to Ordinance No. 02-969B, this ordinance complies with Goal 7.

Statewide Planning Goal 8 – Recreational Needs: This ordinance revises a condition on the urbanization of that portion of Study Area 59 included in the UGB on December 5, 2002. The revision expands the uses allowed in the area (from public school facilities only to residential use as well). Washington County or the City of Sherwood will be responsible for comprehensive planning for the area, pursuant to Title 11 of the Urban Growth Management Functional Plan. The city or county will be responsible for applying Goal 8 at the time either amends its comprehensive plan and land use regulations to allow urbanization of the area. For the reasons stated in Exhibit P to Ordinance No. 02-969B, this ordinance complies with Goal 8.

Statewide Planning Goal 9 – Economic Development: This ordinance revises a condition on the urbanization of that portion of Study Area 59 included in the UGB on December 5, 2002. The revision expands the uses allowed in the area (from public school facilities only to residential use as well). Washington County or the City of Sherwood will be responsible for comprehensive planning for the area, pursuant to Title 11 of the Urban Growth Management Functional Plan. The city or county will be responsible for applying Goal 9 at the time either amends its comprehensive plan and land use regulations to allow urbanization of the area. For the reasons stated in Exhibit P to Ordinance No. 02-969B, this ordinance complies with Goal 9.

Statewide Planning Goal 10 – Housing: This ordinance revises a condition on the urbanization of that portion of Study Area 59 included in the UGB on December 5, 2002. The revision expands the uses allowed in the area to include residential use as well public school facilities. The revision, therefore, will make it more likely that the region will meet its housing needs. Washington County or the City of Sherwood will be responsible for comprehensive planning for the area, pursuant to Title 11 of the Urban Growth Management Functional Plan. The city or county will be responsible for applying Goal 10 at the time either amends its comprehensive plan and land use regulations to allow urbanization of the area. For the reasons stated in Exhibit P to

Ordinance No. 02-969B and because the revision to the condition makes the area available for residential use, this ordinance complies with Goal 10.

Statewide Planning Goal 11 – Public Facilities and Services: This ordinance revises a condition on the urbanization of that portion of Study Area 59 included in the UGB on December 5, 2002. The revision expands the uses allowed in the area (from public school facilities only to residential use as well). Washington County or the City of Sherwood will be responsible for comprehensive planning for the area, pursuant to Title 11 of the Urban Growth Management Functional Plan. The city or county will be responsible for applying Goal 11 at the time either amends its comprehensive plan and land use regulations to allow urbanization of the area. For the reasons stated in Exhibit P to Ordinance No. 02-969B, this ordinance complies with Goal 11.

Statewide Planning Goal 12 – Transportation: This ordinance revises a condition on the urbanization of that portion of Study Area 59 included in the UGB on December 5, 2002. The revision expands the uses allowed in the area (from public school facilities only to residential use as well). Washington County or the City of Sherwood will be responsible for comprehensive planning for the area, pursuant to Title 11 of the Urban Growth Management Functional Plan. The city or county will be responsible for applying Goal 12 at the time either amends its comprehensive plan and land use regulations to allow urbanization of the area. For the reasons stated in Exhibit P to Ordinance No. 02-969B, this ordinance complies with Goal 12.

Statewide Planning Goal 13 – Energy Conservation: This ordinance revises a condition on the urbanization of that portion of Study Area 59 included in the UGB on December 5, 2002. The revision expands the uses allowed in the area (from public school facilities only to residential use as well). Washington County or the City of Sherwood will be responsible for comprehensive planning for the area, pursuant to Title 11 of the Urban Growth Management Functional Plan. The city or county will be responsible for applying Goal 13 at the time either amends its comprehensive plan and land use regulations to allow urbanization of the area. For the reasons stated in Exhibit P to Ordinance No. 02-969B, this ordinance complies with Goal 13.

Statewide Planning Goal 14 – Urbanization: This ordinance revises a condition on the urbanization of that portion of Study Area 59 included in the UGB on December 5, 2002. The revision expands the uses allowed in the area to include residential use as well public school facilities. The revision, therefore, will make it more likely that the region will meet its housing needs. Because the revision makes the area available for a wider range of uses, included needed housing, the revision enhances an orderly and efficient transition from rural to urban land use. The ordinance complies with Goal 14.

Statewide Planning Goal 15 – Willamette River Greenway: This does not address or affect uses within the Willamette River Greenway. Hence, Goal 15 does not apply to this ordinance.

III. Regional Framework Plan

Policy 1.1 – Urban Form: This policy calls for a compact urban form and affordable housing choices. Revision of Condition H.2 will allow this area to accommodate residential development that would otherwise have been accommodated elsewhere, perhaps on land added to the UGB.

Policy 1.3 – Affordable Housing: This policy seeks opportunities for a wide range of housing opportunities. Revision of Condition H.2 will allow this area to accommodate residential development, providing housing opportunities that would otherwise not have been available.

Policy 1.6 – Growth Management: This policy calls for efficient management of urban land, among other things. For the same reasons stated under Statewide Planning Goal 14 and RFP Policy 1.1, these revisions will encourage the evolution of an efficient urban growth form, and comply with Policy 1.6.

Policy 1.14 – School Siting: This policy calls for coordination with local governments, including school districts, to ensure that the UGB includes a sufficient supply of sites for school facility needs. The revision to Condition H.2 will improve coordination among these units of local government and still ensure a supply of land for school facilities in Study Area 59.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1046, FOR THE PURPOSE OF AMENDING ORDINANCE 02-969B IN ORDER TO CHANGE A CONDITION ON ADDITION OF STUDY AREA 59 (SHERWOOD) TO THE UGB; AND DECLARING AN EMERGENCY

Date: March 18, 2004

Prepared by: Ray Valone,
Dick Benner

BACKGROUND

In December 2002, the Council adopted Ordinance No. 02-969B to expand the Urban Growth Boundary. This ordinance included an 85-acre portion of former Study Area 59, located northwest of Sherwood. Condition of Addition 2 of the ordinance required the city or county "to limit development in this portion of Study Area 59 to public school facilities and other development necessary and accessory to public school use." As written, this condition would dedicate and limit the entire 85-acre area to public school facilities. Proposed Ordinance 04-1046 would correct this condition to require that the county or city work with the Sherwood School District to determine a location and size for one or more sites for public school facilities within the 85-acre area.

The Washington County Board of Commissioners (BOC) is scheduled to hold a hearing on March 17 to authorize changes to a previous proposed ordinance that would implement a new zoning district within the areas added to the UGB in 2002. This ordinance would codify the restrictions in Title 11 (section 3.07.1110, Interim Protection) and incorporate the Council's conditions of addition for all these areas. If the BOC authorizes the changes, it could vote to approve the ordinance in April. For this reason, Ordinance 04-1046 includes an emergency provision in order to complete the changes for Area 59 before the BOC takes action to adopt its ordinance.

ANALYSIS/INFORMATION

1. Known Opposition

No known opposition.

2. Legal Antecedents

This action would amend existing Ordinance 02-969B.

3. Anticipated Effects

If adopted, Ordinance No. 04-1046 would require Washington County or the city of Sherwood, as part of the Title 11 planning process, to determine a location and size for public school facilities within Area 59, and not dedicate the entire area to school facilities.

4. Budget Impacts

There is no cost to implement the proposed ordinance.

RECOMMENDED ACTION

Staff recommends that the Council adopt Ordinance No. 04-1046.

Agenda Item Number 6.1

Resolution No. 04-3432, For the Purpose of Authorizing the Chief Operating Officer to issue a non-system license to Gray and Company for delivery of putrescible solid waste to the Riverbend Landfill.

Metro Council Meeting
Thursday, March 25, 2004
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 04-3432
CHIEF OPERATING OFFICER TO ISSUE A NON-)
SYSTEM LICENSE TO GRAY & COMPANY FOR) Introduced by Michael Jordan,
DELIVERY OF PUTRESCIBLE SOLID WASTE TO) Chief Operating Officer, with the
THE RIVERBEND LANDFILL) concurrence of David Bragdon,
) Council President

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

WHEREAS, Gray & Company currently has a non-system license to deliver mixed solid waste, including putrescible waste, to the Riverbend Landfill, which license will expire on April 13, 2004; and,

WHEREAS, Gray & Company has applied for a new non-system license under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control"; and,

WHEREAS, the application is in conformance with the requirements of Chapter 5.05 of the Code; and,

WHEREAS, the Chief Operating Officer has analyzed the application and recommended approval of the applicant's request for a non-system license with the conditions and in the form attached to this resolution as Exhibit A; now therefore,

BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to issue a non-system license to Gray & Company in a form substantially similar to the license attached as Exhibit A.

ADOPTED by the Metro Council this ____ day of _____, 2004.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney



METRO

LICENSE NO. N-011-04

SOLID WASTE NON-SYSTEM LICENSE

Issued pursuant to Metro Code § 5.05.035. This license replaces license No. N-011-02.

1. Licensee:

Gray & Company
2331 23rd Ave., P.O. Box 218
Forest Grove, OR 97116

Contact person: Pete Leber, Plant Manager

Phone: (503) 357-3141
Fax: (503) 359-0719

2. Nature of Waste Covered by License:

Putrescible wastes including coconut, cherries, pineapple, and citrus products along with the residual syrups they contain, tote and barrel bags, #10 tins, and miscellaneous refuse from offices, restrooms, and the plant cafeteria.

3. Fiscal Year Tonnage Limitation:

This license grants the licensee the authority to dispose of up to 1,000 tons per fiscal year of the waste described in section 2, above. A fiscal year shall run from July 1 through June 30 of the following year.

4. Non-System Facility:

The licensee hereunder may deliver the waste described in section 2, above, to the following non-system facility:

Riverbend Landfill
13469 S.W. Highway 18
McMinnville, OR 97128

5. Term of License:

The term of this license will commence on April 14, 2004 and expire at midnight on April 13, 2006.

6. Reporting of Accidents and Citations:

Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles of its transportation carrier during the loading and transporting of solid waste on behalf of the licensee.

7. Additional License Conditions:

This non-system license shall be subject to the following conditions:

- (a) The permissive transfer of solid waste to the Riverbend Landfill authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.
- (b) This license shall be subject to amendment, modification or termination by Metro's Chief Operating Officer in the event that the Chief Operating Officer determines that:
 - (i) there has been sufficient change in any circumstances under which Metro issued this license, or in the event that Metro amends or modifies its Regional Solid Waste Management Plan in a manner that justifies modification or termination of this license,
 - (ii) the provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Oregon Waste Systems, or
 - (iii) Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in section 2 of this license be transferred to, and disposed of at, a facility other than the facility described in section 4, above.
- (c) This license shall, in addition to subsections (b)(i) through (iii), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.
- (d) No later than the fifteenth (15th) day of each month, beginning with the next month following the signature date below, Licensee shall:
 - (i) submit to Metro's Solid Waste & Recycling Department a Regional System Fee and Excise Tax Report, that covers the preceding month, and
 - (ii) remit to Metro the requisite Regional System Fees and Excise Taxes in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.
- (e) Licensee shall make all records from which (d) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) calendar days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro

to obtain information or data from a third party, including the non-system facility named in section 4, above.

- (f) Licensee shall remit to Metro the applicable system fees and excise taxes in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and excise taxes.
- (g) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.
- (h) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 4.

8. Compliance with Law:

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

9. Indemnification:

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

Signed:

Acknowledgement & Acceptance of the Terms and Conditions of this License:

Signature

MICHAEL JORDAN, CHIEF OPERATING OFFICER

Print name and title

Date

Signature of Licensee

Print name and title

Date

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3432 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE TO GRAY & COMPANY FOR DELIVERY OF PUTRESCIBLE SOLID WASTE TO THE RIVERBEND LANDFILL

February 23, 2004

Prepared by: Steve Kraten

BACKGROUND

Approval of Resolution No. 04-3432 will authorize the Chief Operating Officer to renew a non-system license (NSL) issued to Gray & Company to annually deliver mixed solid waste, including putrescible waste, to the Riverbend Landfill located in McMinnville, Oregon. The application requests authority for only 1,000 tons per year. Gray & Company reported sending 549 tons of waste to the Riverbend Landfill during the last fiscal year. Such waste was largely comprised of fruit wastes, residual fruit syrups, plastic bags and large tin cans. Gray & Company is a food processing facility located in Forest Grove, Oregon (Metro District 4). The existing license will expire on April 13, 2004. Since the Riverbend Landfill is a Waste Management Facility, granting this license would not count against the ten percent of waste not obligated under Metro's disposal contract.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed license renewal.

2. Legal Antecedents

Changes to Code Chapter 5.05 approved by the Council with an emergency clause on October 9, 2003, made the issuance of NSLs for putrescible waste subject to approval by the Council rather than subject to approval by the Chief Operating Officer as was previously the case. Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Council shall consider the following factors to the extent relevant to such determination.

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

The Riverbend Landfill first came into use during the mid-eighties. When the Riverbend became a Subtitle D landfill in 1993, the original unlined cells were capped. Since 1993, the landfill has been filling only lined cells and operating with the required environmental controls required by the DEQ. The landfill has no known history of landfilling wastes that pose a future risk of environmental contamination.

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

The Riverbend Landfill is permitted by the Oregon Department of Environmental Quality (DEQ). The facility was issued an NON by DEQ in 1997 when an out-of-tune gas flare caused vibrations that were heard in a residential area nearby. The problem was considered to be relatively minor violation and was promptly remedied. The DEQ considers the landfill to be a well-run facility that is in compliance with federal, state and local requirements. The facility has a good compliance record with public health, safety and environmental rules and regulations.

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

The Riverbend Landfill uses operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of health, safety, and the environment.

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

A portion of the material to be covered by the proposed NSL consists of large tin cans and glass jars that are potentially recyclable. However, the cost of adequately cleaning sticky fruit residues from recyclable materials has been too great an obstacle to overcome. The applicant has indicated it will continue to seek recycling opportunities for these materials. The fruit waste itself is not particularly suitable for composting as it is treated with preservatives for the specific purpose of preventing decomposition. There is no reason to believe that recycling efforts would be significantly impacted by the decision regarding this NSL application.

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

The waste subject to the proposed license would be disposed at the Riverbend Landfill which is a Waste Management landfill. Such waste would be included within the 90 percent of general purpose waste obligated to Waste Management under Metro's disposal contract. Approval of the requested license will not conflict with the disposal contract or any other of Metro's existing contractual arrangements.

- (6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations; and*

The requested license is a renewal of the applicant's previous two-year license. During the previous three terms of its license, the applicant submitted its required Metro reports in a timely fashion. The applicant is a food processor and, according to the City of Forest Grove, has a good compliance record with local public health, safety and environmental rules and regulations.

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

Metro's records show that Gray & Company disposed of 549 tons of solid waste under authority of its NSL in calendar 2003. Staff is not aware of any additional factors that are relevant in making a determination regarding the application under consideration.

Conclusion

The Chief Operating Officer finds that the proposed license satisfies the requirements of Metro Code Section 5.05.035 for the requested Non-System License.

3. Anticipated Effects

The effect of Resolution No. 04-3432 will be to issue an NSL for delivery of up to 1,000 tons per fiscal year of solid waste, including putrescible waste, to the Riverbend Landfill.

4. Budget Impacts

The regional system fee and excise tax will continue to be collected on waste delivered under authority of the proposed NSL. Since the proposed NSL is a renewal, the budget impact has already been factored into budget projections and approval of the license will maintain the status quo. It does not impact Metro's obligation under the disposal contract.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 04-3432, and issuance of an NSL substantially similar to the NSL attached to the resolution as Exhibit A.

Resolution No. 04-3437, For the Purpose of Awarding a Sole Source Personal Services Agreement, Contract No. 925542, to Keith Lawton for Model Analysis, Technical Assistance and Advice in the Calibration Validation and Implementation of Transims at Metro.

Contract Review Board

Metro Council Meeting
Thursday, March 25, 2004
Metro Council Chamber

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AWARDING A SOLE) RESOLUTION NO. 04-3437
SOURCE PERSONAL SERVICES AGREEMENT)
CONTRACT NO. 925542 TO KEITH LAWTON) Introduced by Michael Jordan with
FOR MODEL ANALYSIS, TECHNICAL) concurrence of Council President David
ASSISTANCE AND ADVICE IN THE) Bragdon
CALIBRATION VALIDATION AND)
IMPLEMENTATION OF TRANSIMS AT)
METRO)

WHEREAS, the Transportation Analysis and SIMulation System (TRANSIMS) transportation model is a major research and development element for the Travel Model Improvement Project (TMIP); and

WHEREAS the Federal Highway Administration (FHWA) contracted with Metro in 1997 to be the first full deployment site for the model; and

WHEREAS, Keith Lawton has led the project from the beginning. He has been involved with the FHWA technical team and their consultants. From that relationship he has been able to advise the Travel Forecasting staff on the very technical details. He has a unique expertise that no one else can duplicate; now therefore

BE IT RESOLVED that the Metro Contract Review Board approves the sole source agreement with Keith Lawton.

ADOPTED by the Metro Contract Review Board this 25th day of March, 2004

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3437, FOR THE PURPOSE OF
AWARDING A SOLE SOURCE PERSONAL SERVICE AGREEMENT CONTRACT NO.
925542 TO KEITH LAWTON FOR MODEL ANALYSIS, TECHNICAL ASSISTANCE AND
ADVICE IN THE CALIBRATION, VALIDATION AND IMPLEMENTATION OF
TRANSIMS AT METRO

Date: March 8, 2004

Prepared by Andrew Cotugno

BACKGROUND

The TRANSIMS (TRansportation ANalysis and SIMulation System) transportation model is a major research and development element for the Travel Model Improvement Project (TMIP) being supported by the USDOT, FTA, FHWA and the EPA. TRANSIMS was developed by the Los Alamos National Laboratory (LANL).

Portland was chosen as the site for the first full deployment of this model in 1997. The project is very technical in nature, and includes new conceptual approaches that are in every way superior to the traditional trip based models that have their origin in 1960's technology.

The project is 12 to 15 months from completion with many technical issues still to be resolved.

Nature of the Contract:

This personal services agreement is for model analysis, technical assistance and technical leadership, and technical advice in the final phases of the project to implement, calibrate and validate TRANSIMS for the Portland-Vancouver region.

Reason for Sole Source:

T. Keith Lawton has been involved in this project since its inception. Besides providing technical leadership to the Metro staff involved in the details of this project, he has been closely involved with LANL, reviewing and advising on their work. He is a member of the team that provides continuing technical leadership as the project emerges. This team includes the FHWA technical staff, representatives from their two consultants, AECOM and PB Consult, Dr. Richard Beckman late of LANL, and IBM consulting, which has supplied the interface to the LANL model.

Mr. Lawton has an intimate familiarity with technical aspects of this project that cannot be replicated easily. He is highly valued by all the members of the technical leadership group.

The project sponsor, FHWA has requested that he be retained to help lead the project in its final phases.

ANALYSIS/INFORMATION

1. Known Opposition None

2. **Legal Antecedents** None
3. **Anticipated Effects** Metro will be able to complete the TranSims project within the contract completion date.
4. **Budget Impacts** Salary savings from the TranSims grant will be used to cover the contract costs. Completion of the contract is contingent upon Metro's continued receipt of the FHWA incremental funding.

RECOMMENDED ACTION

Approve Resolution Number No. 04-3437 to enter into an agreement with Keith Lawton.

PERSONAL/PROFESSIONAL SERVICES CONTRACT

Metro Contract No. 925542

This Contract is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, hereafter called Metro, and Keith Lawton Consulting, hereafter called Contractor. Metro's Contract Administrator for this Contract is Dick Walker, telephone (503) 797-1765, or such other person as Metro may designate in writing to Contractor.

1. Effective Date and Duration. This Contract shall become effective on the date this Contract has been signed by every party hereto. Unless terminated or extended, this Contract shall expire when Metro accepts Contractor's performance, or on June 30, 2005, whichever date occurs first. Expiration shall not extinguish or prejudice Metro's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured.

2. Statement of Work. The statement of work (the "Work"), including the delivery schedule for such Work, is contained in Exhibit A attached and incorporated by reference into this Contract. Contractor agrees to perform the Work in accordance with the terms and conditions of this Contract.

3. Consideration.

- a. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is Eighty-Six Thousand Seven Hundred Fifty Dollars and 00/100ths (\$86,750.00).
- b. Interim payments to Contractor shall be made only in accordance with the schedule and requirements in Exhibit A.

4. Contract Documents. This Contract consists of the following documents, which are listed, in descending order of precedence: this Contract less all exhibits, attached Exhibits A, B, C and D. All attached Exhibits are hereby incorporated by reference.

5. Independent Contractor; Responsibility for Taxes and Withholding.

- a. Contractor shall perform all required Work as an independent contractor. Although Metro reserves the right (i) to determine the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the completed performance, Metro cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- b. If Contractor is currently performing work for Metro or the federal government, Contractor by signature to this Contract declares and certifies that: Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employing agency (Metro or state or federal) would prohibit Contractor's Work under this Contract. Contractor is not an "officer," "employee," or "agent" of the Metro, as those terms are used in ORS 30.265.
- c. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to

backup withholding, Metro will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

6. Subcontracts and Assignment; Successors and Assigns.

- a. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract, except by amendment to this Contract. In addition to any other provisions Metro may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by Sections 6, 10, 11, 15 and 17 of this Contract as if the subcontractor were the Contractor. Metro's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- b. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

7. No Third Party Beneficiaries. Metro and Contractor are the only parties to this Contract and, except for the Federal Highway Administration are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. The Federal Highway Administration is hereby declared to be such a beneficiary, and may enforce the terms of this Contract.

8. Funds Available and Authorized; Payments.

- a. Metro has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract. Contractor understands and agrees that payments are dependent on Metro reimbursement from the Federal Highway Administration, specifically, continued receipt of FHWA incremental funding for the project.
- b. While interim payments will be made in accordance with Exhibit A, payments are contingent upon delivery of the specified work products completed in accordance with the terms of this contract, including the statement of Work in Exhibit A.

9. Representations and Warranties.

- a. **Contractor's Representations and Warranties.** Contractor represents to Metro that (1) Contractor has the power and authority to enter into and perform this Contract, (2) this Contract, when executed and delivered shall be a valid and binding obligation of Contractor, enforceable in accordance with its terms, (3) the Work under this Contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of that profession under similar conditions and circumstances, (4) Contractor shall, at all times during the term of this Contract be duly licensed to perform the Work, and if there is no licensing requirement for the profession or work, be duly qualified and professionally competent, (5) all computer hardware and software delivered under this Contract will, individually and in combination, correctly process, sequence, and calculate all date and date related data for all dates prior to, through and after January 1, 2000, and (6) any software products delivered under this Contract that process date or date related data shall recognize, store and transmit date data in a format which explicitly and unambiguously specifies the correct century.

- b. **Contractor's Limitation of Liability.** Contractor's liability with respect to items (5) and (6) of 9a. above shall not exceed: (1) twice the total contract amount (including any amendments) or (2) \$100,000, whichever is greater.
- c. **Representations and Warranties Cumulative.** The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations and warranties provided.

10. Ownership of Work Product.

- a. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of Metro. Metro and Contractor intend that such Work Product be deemed "work made for hire" of which Metro shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to Metro all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as Metro may reasonably request in order to fully vest such rights in Metro. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- b. In the event Metro alters the work products in any manner, or uses them for a purpose or project other than that specifically identified and intended by this Contract without written verification or adaptation by the Contractor as appropriate, such alteration or use will be at Metro's sole risk, and Contractor shall be released, indemnified and held harmless by Metro, to the extent permitted by applicable Oregon law, including, but not limited to constitutional debt limitation provisions and the Oregon Tort Claims Act.
- c. Contractor, despite other conditions of this provision, shall have the right to utilize the work product on its brochures or other literature that it may utilize for its sales and, in addition, unless specifically otherwise exempted, the Contractor may use standard line drawings, specifications and calculations on other, unrelated projects.

11. Indemnity.

- a. **Claims for Other than Professional Liability.** Contractor shall defend, save and hold harmless Metro, its elected officials, officers, agents and employees, from all claims, suits or actions of whatsoever nature, including intentional acts resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this agreement.
- b. **Claims for Professional Liability.** Contractor shall defend, save and hold harmless Metro, its elected officials, officers, agents and employees from all claims, suits or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and subcontractors, agents or employees in performance of professional services under this agreement.
- c. **Metro's Actions.** This section does not include indemnification by Contractor of the Metro for Metro's activities, whether related to the contract or otherwise.

12. Insurance. Contractor shall provide insurance as indicated on Exhibit B, attached hereto and by this reference made a part hereof.

13. Termination.

- a. Parties' Right to Terminate for Convenience.** This Contract may be terminated at any time by mutual written consent of the parties.
- b. Metro's Right to Terminate for Convenience.** Metro may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Contractor.
- c. Metro's Right to Terminate for Cause.** Metro may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as Metro may establish in such notice, upon the occurrence of any of the following events:
 - (i) Metro fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;
 - (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited or Metro is prohibited from paying for such Work from the planned funding source;
 - (iii) Contractor no longer holds any license or certificate that is required to perform the Work; or
 - (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Metro's notice, or such longer period as Metro may specify in such notice.
- d. Contractor's Right to Terminate for Cause.**
 - (i) If Metro fails to pay Contractor pursuant to the terms of this Contract, Contractor may terminate this Contract by giving notice to Metro, and if Metro fails to cure within 15 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice. Metro shall pay Contractor for all work performed in accordance with the terms of the Contract prior to termination date, if Contractor is not otherwise in default.
 - (ii) Contractor may terminate this Contract, for reasons other than nonpayment, if Metro commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Contractor's performance under this Contract, and such breach, default or failure is not cured within 10 business days after delivery of Contractor's notice, or such longer period as Contractor may specify in such notice.
- e. Remedies.**
 - (i) In the event of termination pursuant to Sections 13.a, 13.b, 13.c (i), 13.c (ii) or 13.d, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by Metro, less previous amounts paid and any claim(s) which State has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to Metro upon demand.
 - (ii) In the event of termination pursuant to Section 13.c (iii) or 13.c (iv), Metro shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Section 13.c (iii) or 13.c (iv), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 13.b.

- f. **Contractor's Tender Upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless Metro expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to Metro all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon Metro's request, Contractor shall surrender to anyone Metro designates, all documents, research or objects or other tangible things needed to complete the Work.

14. Limitation of Liabilities. EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTIONS 9(a), 13(d)(ii), or 13(e)(ii), NEITHER PARTY SHALL BE LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES UNDER THE CONTRACT OR (ii) ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS CONTRACT IN ACCORDANCE WITH ITS TERMS.

15. Records Maintenance; Access. Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Metro, the Oregon Department of Transportation and the Oregon Secretary of State's Office, and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

16. Compliance with Applicable Law. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Metro's performance under this Contract is conditioned upon Contractor's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which are incorporated by reference herein.

17. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform the Work under this Contract in the State of Oregon prior to entering into this Contract.

18. Force Majeure. Neither Metro nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond the reasonable control of Metro or Contractor, respectively. Contractor shall, however, make all reasonable efforts to

remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

19. Survival. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 1, 9, 10, 11, 13, 14, 15, 19 and 26.

20. Time is of the Essence. Contractor agrees that time is of the essence under this Contract.

21. Notice. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Metro at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 21. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Metro, such facsimile transmission must be confirmed by telephone notice to Metro's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

22. Severability. The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

23. Counterparts. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

24. Disclosure of Social Security Number. Contractor must provide Contractor's Social Security number unless Contractor provides a federal tax ID number. This number is requested pursuant to ORS 305.385, OAR 122-80-410(3) and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

25. Governing Law; Venue; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Metro (and/or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of the County for the State of Oregon where the project is located; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

26. Merger Clause; Waiver. This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Metro to enforce any provision of this Contract shall not constitute a waiver by Metro of that or any other provision.

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR DATA AND CERTIFICATION

Name (tax filing): Keith Lawton Consulting
Address: 20990 NE Kings Grade, Newberg, OR 97132
Telephone: 503 538-6509 **Facsimile:** 503 537-7854 **Contact:** Keith Lawton
Citizenship, if applicable: Non-resident alien Yes No
Business Designation (check one):
 Corporation Partnership Limited Partnership Limited Liability Company
 Limited Liability Partnership Sole Proprietorship Other

Federal Tax ID#: ___ or **SSN#:** 239-11-5923

Above payment information must be provided prior to Contract approval. This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer identification submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to 31 percent backup withholding.

Certification: The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws, including those in OAR 150-305.385(6)-(B). For purposes of this certificate, 'Oregon tax laws' means the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue

(Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and Tri-Metropolitan Transit District Self Employment Tax); (d) Contractor is an independent contractor as defined in ORS 670.600; and (e) the above Contractor data is true and accurate.

CONTRACTOR

METRO

By: _____

By: _____

Title _____

Title _____

Date _____

Date _____

Exhibit A

Scope of Work for Model Analysis, Technical Assistance, and Advice in the Calibration, Validation and Implementation of TRANSIMS at Metro

Keith Lawton Consulting

I. Purpose

The purpose of *Model Analysis, Technical Assistance, and Advice in the Calibration, Validation and Implementation of TRANSIMS at Metro* is to provide Metro and the FHWA with the technical assistance, advice and model analysis for specific elements of the implementation of TRANSIMS at Metro, and to provide coordination with FHWA's Consultants (see below) in tasks allotted to them.

II. Scope of Work

Metro has contracted with FHWA to supply staff, transportation modeling skills and its technical expertise in a research project to carry out the first implementation of TRANSIMS, a model developed by the Los Alamos National Laboratory (LANL). This work is being conducted in conjunction with FHWA's Consultants (AECOM and PBConsult), the model interface developer (IBM Consulting), and Dr Richard Beckman.

The tasks and task descriptions herein have been coordinated with those contracted for by both the FHWA Consultants and in the Metro-FHWA agreement.

The Consultant will represent Metro in project outreach, attending meetings of the TRANSIMS Working Group (TWG), a national oversight committee and with the Steering Committee of the federal Transportation Modeling Improvement Program (TMIP) as requested. The Consultant will also attend professional and technical meetings, such as the Transportation Research Board (TRB) for both discussion and presentations as requested.

The Consultant will provide a monthly project report to Metro for transmission to the FHWA.

The proposed schedule and cost estimate associated with the scope of work is attached. The schedule assumes the project will be completed by February 2005.

The task descriptions presented below provide an overview of the activities that will be performed by Metro and FHWA's Consultant team, and the services and products of *the Consultant*.

Track 1 – Network Simulation

Task 1.1 Software Testing

The microsimulator has been losing 30 percent of the trips assigned to it; METRO will evaluate the off-plan problems and test a variety of stabilization methods designed to make the traffic assignment results more realistic. *The Consultant will advise on this investigation and participate in strategic decisions, such as the appropriate level of network granularity that will yield a practical solution.*

Products: *Memoranda detailing the analysis in support of this task as required.*

Task 1.5 Stabilization

Very little work has been done on the specific details of the stabilization process. Metro has done some preliminary tests and the Consultant has proposed an initial strategy. This task will formalize the feedback strategy and execute the sequence of model runs required within TRANSIMS to implement the procedure. The Metro will help design the procedure, and execute and evaluate the procedure with advice from the Consultant in designing the feedback strategy and developing the methods used to update the activity patterns. *The Consultant will advise on this investigation and participate in strategic decisions, leading to a successful stabilization.*

Products: Analytical memoranda detailing issues and solutions as required.

Task 1.6 Sensitivity Tests

In order to have any confidence that the network simulation approach is appropriate as a substitute for equilibrium assignment procedures, a series of sensitivity tests are critical. These tests will demonstrate the models responsiveness to both small and large changes in the input assumptions. If the impacts on the results are reasonable, the Consultant will have a reasonable basis for recommending the process to other urban areas. The FHWA Consultant will be primarily responsible for developing the test plan and reviewing the results of the model runs. Metro will be responsible for conducting the runs. *The Consultant will advise in development of these tests.*

Products: Analytical memoranda detailing issues and solutions as required.

Track 2 – GEN2 Model

FHWA accepted the GEN2 Design and requested a detailed work plan for its implementation. Completing these tasks will require extending the period of performance from October 2003 to April 2005.

Task 2.2 Model Development

The major efforts in estimating, calibrating, and validating the GEN2 modeling procedures within the TRANSIMS architecture will be performed under this task. The GEN2 design specifies adapting the Metro location choice and mode choice procedures as the starting point for activity generation within TRANSIMS. The FHWA Consultant and LANL staff will be extensively involved in designing the model algorithms, developing mode preference software tools, evaluating the results, and documenting the procedures. It is envisioned that the FHWA Consultant team will actively participate and provide technical direction and assistance to Metro as part of this task. Metro will participate in the development of the procedures and will implement them within the Portland model set. *The Consultant will play a significant role in this task, being involved in the detailed design, and will participate in strategic decisions, such as the model structure to be used.*

Products: Reports and technical memoranda as required.

Task 2.3 Year 2000 Validation

Once the GEN2 model is developed, it is critical that the process be validated against observed behavior in response to real world changes in the transportation system. A

year 2000 validation will test the model's responsiveness to a major new light rail line in the Western suburbs of the Portland region. Metro will be responsible for developing the new networks, updating employment and population, and running the models for this task. *The Consultant will advise on, and provide analytical support for, this task.*

Products: Reports and technical memoranda as required.

Task 2.4 Long Range Plan Test

In addition to validating the model against year 2000 conditions, a logical process for applying the model to future conditions must be established before the tool can be recommended for general use. Since the Microsimulator will not overload roadways the way traditional assignment software does, the whole approach to forecasts needs to be redefined. This work plan proposes to implement the Portland region's long-range plan as a series of five-year forecasts. This will enable the TRANSIMS model to adjust to changes in demographics and network conditions incrementally rather than as one massive change. The model will have a chance to stabilize at each intermediate year before attempting to absorb more development. It will also provide the analyst with a much better sense of the types of regional dynamics that are likely to influence growth, and therefore provide an opportunity to refine or fine-tune the growth estimates or network facilities during the forecasting process. Throughout this process, the FHWA Consultant will be providing advice, monitoring and documenting progress, evaluating results, and assessing the model's performance. Metro will be responsible for developing the new networks, updating employment and population, and running the models for this task. *The Consultant will advise on this task, provide analytical support, and participate in strategic decisions.*

Products: Reports and technical memoranda as required.

Task 2.5 Documentation

The FHWA Consultant will have primary responsibility for documenting the Track 2 process and the GEN2 model. This includes a record of the step-by-step activities undertaken by Metro to implement the procedures, documentation of the process that could be used by other agencies interested in implementing similar procedures, and a report assessing the overall results and providing Consultant recommendations. Metro will cooperate with the Consultant in the preparation of the documentation and will provide other assistance as needed. *The Consultant will provide assistance with this task as requested.*

Products: Report elements and technical memoranda as required.

Track 3 – Strategic Vision

A number of strategic topics have been identified and considered. Some research has been conducted on a few of the topics. Most of this work will be done by the FHWA Consultants and requires the single-user version of TRANSIMS installed and operational at the FHWA Consultant offices. Two topics have been identified that might best be implemented by IBM and/or Virginia Tech. These tasks are identified. Metro will assist as needed.

Task 3.4 Document Findings

The FHWA Consultant will prepare a report documenting the Track 3 findings. The document will include an evaluation of the potential impacts of the findings on the Portland case study. It will also provide recommendations about what course of action that should be taken, if any. Metro will provide comments and other assistance as needed. *The Consultant will review and comment on this documentation.*

Products: Review mark-ups and review memoranda as required.

4. Technical Working Group

The original scope of work called for the organization of a peer panel to review finding and help with the dissemination of information. The Technical Working Group was organized and one meeting was held in June of 2002. Four additional meetings are planned during the period of performance covered by this scope of work. Two of these are completed.

Task 4.3 Calibration/Validation Results

This meeting will focus on the results of the GEN2 calibration and the year 2000 validation. Metro and the FHWA Consultant team will provide the technical presentations and document the discussions. *The Consultant will assist and advise with this task.*

Products: Technical memoranda and presentation materials as required.

Task 4.4 Application Results

This meeting will focus on the application of the GEN2 model to the Metro long-range plan. Metro and the FHWA Consultants will provide the technical presentations and document the discussions. *The Consultant will assist and advise with this task.*

Products: Technical memoranda and presentation materials as required.

5. Outreach

The original scope of work called for outreach activities at major industry meetings such as TRB. This scope of work includes the TRB meetings in 2003, 2004, and 2005. It also includes the Planning Applications Conference and support for outreach to the industry through websites and report distribution.

Task 5.5 TRB Presentations (2005)

METRO, *the Consultant* and the FHWA Consultant will prepare and present the results of the Track 2 efforts in developing and applying the GEN2 model during sessions at the 2005 TRB Annual Meeting in Washington D.C.

Products: Technical memoranda and presentation materials as required.

6. Project Reports

Documenting the findings of the study and keeping FHWA informed about project status are the primary objectives of this task. The FHWA Consultant team will lead all of these efforts. Metro will provide assistance as needed. *The Consultant will provide assistance as requested.*

Task 6.2 Progress Reports

Metro will prepare monthly progress reports to support each invoice. *The Consultant will prepare these reports for Metro after March 1st 2004.*

Products: Monthly progress reports.

Task 6.3 Management Teleconferences

Metro, *the Consultant* and the FHWA Consultant will organize and participate in regular teleconferences with FHWA to discuss progress. Minutes will be generated and distributed for each teleconference by the FHWA Consultant. The cost estimate assumes two teleconferences each month.

Products: Teleconference notes as required.

Task 6.4 Draft Final Report

In addition to documenting each major task and the model results, the Consultant will prepare an overall summary report for the project that highlights key findings and provides recommendations and advice for future users of the TRANSIMS software. METRO *and the Consultant* will support the FHWA Consultant in the preparation of the Draft Final Report. This task will prepare the draft final report for review and comments by FHWA and others.

Products: Document review mark-ups and memoranda as required.

Task 6.5 Review and Comment

FHWA will be the primary reviewer of the draft final report. A number of the technical staff from the Metro will provide their comments to FHWA for their consideration. *The Consultant will provide review and comment on the final report.*

Products: Document review mark-ups and memoranda as required.

**Budget Summary for Model Analysis, Technical Assistance, and Advice in the
Calibration, Validation and Implementation of TRANSIMS at Metro**

Keith Lawton Consulting

ESTIMATE of Hours and Costs	T. Keith Lawton			Schedule Estimate	
Rate	\$125	per Hour		From	To
TASK	Comment	Hours	Cost Dollars		
<i>Track 1: Network Simulation</i>					
1.1 Software Testing	In Progress	8	1,000.00	Mar-04	May-04
1.5 Stabilization	Not Started	16	2,000.00	Mar-04	Apr-04
1.6 Sensitivity Tests	Not Started	8	1,000.00	May-04	Jun-04
Subtotal: Track 1			4,000.00		
<i>Track 2: GEN 2 Model Development</i>					
2.2 Model Development	In Progress	160	20,000.00	Mar-04	Jun-04
2.3 Year 2000 Validation	Not Started	80	10,000.00	Jul-04	Oct-04
2.4 Long Range Plan Test	Not Started	80	10,000.00	Nov-04	Feb-05
2.5 Documentation	In Progress	24	3,000.00	Mar-04	Feb-05
Subtotal: Track 2			43,000.00		
<i>Track 3: Strategic Vision</i>					
3.4 Document Findings	Not Started	10	1,250.00	Mar-04	Feb-05
Subtotal: Track 3			1,250.00		
<i>Technical Working Group Review</i>					
4.3 Calibration/Validation Results	Not Done	24	3,000.00	Sep-04	Sep-04
4.4 Application Results	Not Done	24	<u>3,000.00</u>	Feb-05	Feb-05
Subtotal: TWG Reviews			6,000.00		
<i>Outreach</i>					
5.5 TRB presentations 2005	Not Done	24	3,000.00	Dec-04	Mar-05
Subtotal: Outreach			3,000.00		
<i>Project Reports</i>					
6.2 Progress Reports	Ongoing	48	6,000.00	Mar-04	Mar-05
6.3 Management Teleconferences	Ongoing	36	4,500.00	Mar-04	Mar-05
6.4 Draft Final Report	Not Started	40	5,000.00	Apr-04	Feb-05
6.5 Review and Comment	Not Started	40	5,000.00	Mar-05	Mar-05
Subtotal: Reports			20,500.00		
Total Hourly	Hours	622	77,750.00		
Travel -- Assume 6 trips	6	\$1,500	9,000.00		
Total over 13 months			86,750.00		

EXHIBIT B

INSURANCE

During the term of this Contract, Contractor shall maintain in force at its own expense, each insurance noted below:

1. **Required by Metro of contractors with one or more workers, as defined by ORS 656.027.**

Workers' Compensation All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

2. **Required by Metro** **Not required by Metro.**

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$200,000, \$500,000, \$1,000,000, or \$2,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

3. **Required by Metro** **Not required by Metro.**

General Liability insurance with a combined single limit, or the equivalent, of not less than \$200,000, \$500,000, \$1,000,000, or \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide the Local Government (Metro) and its elected officials, the Local Government Metro (Metro) and its officers and employees are Additional Insureds but only with respect to the Contractor's services to be provided under this Contract.

4. **Required by Metro** **Not required by Metro.**

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than Oregon Financial Responsibility Law (ORS 806.060), \$200,000, \$500,000, or \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. It shall provide that Metro, its elected officials, and its officers and employees are Additional Insureds but only with respect to the Contractor's services to be provided under this Contract.

5. **Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Contractor or its insurer(s) to Metro.

6. **Certificates of insurance.** As evidence of the insurance coverage required by this Contract, the Contractor shall furnish acceptable insurance certificates to Metro prior to commencing the work. The certificate will specify "**Metro its officers and employees** " and "**The State of Oregon, The Transportation Commission and its members, and the Department of Transportation, its officers and employees**" as Additional Insureds for Automobile and General Liability. It need not reference a specific contract name or number. Insuring companies or entities are subject to Metro acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the Metro. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

EXHIBIT C

CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

(This does not apply if Contractor is a regular corporation. However, Contractor must sign if a professional corporation or any other business entity.)

A. CONTRACTOR IS INDEPENDENT CONTRACTOR.

Contractor certifies he/she meets the following standards:

1. I am registered under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
3. I will furnish the tools or equipment necessary for the Contracted labor or services.
4. I have the authority to hire and fire employees who perform the labor or services.
5. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. **(Please check four or more of the following:)**
 - A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
 - B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership;
 - C. Telephone listing is used for the business that is separate from the personal residence listing .
 - D. Labor or services are performed only pursuant to written Contracts.
 - E. Labor or services are performed for two or more different persons within a period of one year.
 - F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature _____ Date _____

(Agency completes B below when Contractor completes Section A above.)

B. METRO APPROVAL.

ORS. 670.600. Independent Contractor standards. As used in various provisions of ORS chapters 316, 656, 657 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent Contractor" if the standards of this section are met. Metro certifies the contracted Services meet the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. The Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. The Contractor furnishes the tools or equipment necessary for the Contracted labor or services.
4. The Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.

Metro Signature _____ Date _____

(Metro's certification is solely for the State's benefit and internal use.)

EXHIBIT D
Federal Provisions
Metro

I. CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this contract that to the best of its knowledge and belief, it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS PRIMARY COVERED TRANSACTIONS

1. By signing this contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he

or she cannot provide the certification set out below. This explanation will be considered in connection with the Oregon Department of Transportation determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when Metro determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or Metro may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to Metro to whom this proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact Metro's Contracts Section (503)797-1590 to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by Metro entering into this transaction.
7. The Contractor further agrees by submitting this proposal that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," provided by Metro entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered

transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or Metro, Metro may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or Metro with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by Metro with which this transaction originated.
6. The prospective lower tier participant further agree by submitting this contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification require by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or Metro with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, Metro shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the contract, any professional or technical personnel who are or have been at any time during the period of this contract, in the employ of Metro, except regularly retired employees, without written consent of the public employer of such person.

1. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Metro shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. **Compliance with Regulations.** Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract. Contractor, with regard to the work performed after award and prior to completion of the contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contract covers a program set forth in Appendix B of the Regulations.
2. **Solicitation for Subcontractors, including Procurement of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. **Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act).** During the performance of this contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
 - b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.

4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Metro or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the contract, Metro shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Metro or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Metro may, at its option, enter into such litigation to protect the interests of Metro, and, in addition, Contractor may request Metro to enter into such litigation to protect the interests of the State of Oregon.

VI. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Attachment 1 of Staff Report to Resolution No. 04-3437

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Agenda Item Number 7.2

Resolution No. 04-3438, For the Purpose of Modifying and Extending the Lease Agreement between Metro and Simex, Inc. Contract No. 924826.

Contract Review Board

Metro Council Meeting
Thursday, March 25, 2004
Metro Council Chamber

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF MODIFYING AND
EXTENDING THE LEASE AGREEMENT
BETWEEN METRO AND SIMEX, INC.,
CONTRACT NO. 924826

RESOLUTION NO. 04-3438

Introduced by Michael Jordan, Chief
Operating Officer in concurrence with
Council President David Bragdon

WHEREAS, the Oregon Zoo is dependent on enterprise income for over 60% of its operating budget;
and

WHEREAS, in 2003, SimEx, Inc. and Metro, acting through the Oregon Zoo entered into an equipment
lease agreement, by which SimEx leased a portable simulation theater for use at the Oregon Zoo; and

WHEREAS, simulator sales have increased enterprise income by over \$300,000 since 2003; and

WHEREAS, the parties desire to amend certain terms and payment provisions of the lease agreement
and to incorporate other mutually-agreed provisions; and

WHEREAS, the parties desire to enter into a revenue share contract which will generate substantial
revenue for the Oregon Zoo through April 2006; now therefore,

BE IT RESOLVED,

That the Metro Council, acting as the Contract Review Board,

1. Authorizes the Chief Operating Officer to execute the modification and extension of the lease agreement
substantially similar to the attached as Exhibit "A" with SimEx, Inc.

ADOPTED by the Metro Council this _____ day of _____, 2004

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**MODIFICATION TO THE LEASE AGREEMENT
BETWEEN METRO AND SIMEX, INC.**

This Contract Amendment No. 1, dated as of the last signature date below, amends Metro Contract No. 924826, entitled Lease Agreement, dated March 24, 2003.

RECITALS

1. In 2003, SimEx, Inc. ("SimEx") and Metro, acting through the Oregon Zoo ("Zoo") entered into an equipment lease agreement, by which SimEx leased a portable simulation theater for use at the Oregon Zoo.
2. The parties desire to amend certain terms and payment provisions of the lease agreement and to incorporate other mutually-agreed provisions.

PROVISIONS OF CONTRACT AMENDMENT

1. Extension of Contract Term. The provisions of Lease Agreement, paragraph 1, Term, are amended to read as follows:

"Unless sooner terminated in accordance with Section 7 hereof, this Agreement shall continue until April 30, 2006, at which time Oregon Zoo agrees to return to SimEx one portable simulation theater and related software."

2. The provisions of paragraph 2(C) are amended to read as follows:

"SimEx shall provide the film software to be utilized in conjunction with the portable simulation theater from all titles available from the SimEx film library."

3. The provisions of paragraph 4, Upgrades and Retrofits, are amended to include the following:

"Metro shall bear one-half the cost of upgrading the portable simulation theater to provide three-dimensional display capability ('3D operation') up to a maximum expenditure of \$25,000."

4. The provisions of paragraph 6 of the Lease Agreement are amended to provide as follows:

"In consideration of the lease of the theater to be provided by SimEx and the rights to be granted hereunder, the Oregon Zoo will pay to SimEx 65% of the net revenue derived from

the sale of admissions to the portable simulation theater. For the purposes of this paragraph, "net revenue" means the total amount of revenue derived from sales for admissions to the portable simulation theater, less the following expenses: the Metro Excise Tax, expenses associated with marketing the portable simulation theater as an attraction at the Oregon Zoo, operating facilities expenses, including utilities, and operations staff expenses.

5. Except as modified herein, all other terms and conditions of the original Lease Agreement shall remain in full force and effect. Any material conflict between the provisions of the original Lease Agreement and this Amendment No. 1 shall be resolved by reference to and reliance upon this Lease Agreement Amendment No. 1.

OREGON ZOO

SIMEX, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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OMA/MDF/kaj (03/10/2004)

**Resolution No. 04-3438
Exhibit B
Metro Contract No. 924826**

Oregon Zoo - SimEx Revenue Share ProForma Year 1

	FY 04 April	FY 04 May	FY 04 June	FY 05 July	FY 05 August	FY 05 Sept	FY 05 Oct	FY 05 Nov	FY 05 Dec	FY 05 Jan	FY 05 Feb	FY 05 March	Totals
Simulator Attendance	8,000	10,850	15,732	18,573	22,706	9,796	5,070	2,654	7,882	562	1,922	5,000	108,747
Average Ticket Cost	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	
Revenue (US\$)	\$28,000	\$37,975	\$55,062	\$65,006	\$79,471	\$34,286	\$17,745	\$9,289	\$27,587	\$1,967	\$6,727	\$17,500	\$380,615
<u>Expenses:</u>													
Excise Tax 7.5%	2,100	2,649	3,842	4,535	5,544	2,392	1,238	648	1,925	137	469	1,221	26,701
Marketing	0	5,000	0	0	4,000	0	0	1,000	0	0	0	4,470	14,470
Operating Facilities	200	200	200	200	200	200	200	200	200	200	200	200	41,171
Operations Staff	2,000	2,784	5,007	5,185	4,811	3,825	2,106	612	3,060	350	850	1,500	32,090
Expenditures (US\$)	\$4,300	\$10,633	\$9,049	\$9,920	\$14,555	\$6,417	\$3,544	\$2,460	\$5,185	\$687	\$1,519	\$7,391	\$75,661
Revenue Minus Expense	\$23,700	\$27,342	\$46,013	\$55,085	\$64,916	\$27,869	\$14,201	\$6,829	\$22,402	\$1,280	\$5,208	\$10,109	\$304,953
Zoo Share:	35%	35%	35%	35%	35%	35%	35%	35%	35%	35%	35%	35%	
	8,295	9,570	16,105	19,280	22,720	9,754	4,970	2,390	7,841	448	1,823	3,538	\$106,734

Reflects actual sales from FY 03/04
Marketing, labor, operations expenses based on actual in FY 03/04

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3438, FOR THE PURPOSE OF
MODIFYING AND EXTENDING THE LEASE AGREEMENT BETWEEN METRO AND
SIMEX, INC., CONTRACT NO. 924826

Date: March 15, 2004

Prepared by: Teri Dresler

BACKGROUND

In 2003, Metro entered into an equipment lease agreement with SimEx, Inc., by which SimEx leased a portable simulation theater for use at the Oregon Zoo. Since 2003, simulator sales have increased enterprise income to the Zoo by \$330,000. In an effort to continue to increase enterprise revenue at the Zoo, the two parties are interested in modifying the existing agreement to create a revenue share agreement extending over the next two years.

The revenue share is based on net revenues; after excise tax, operations labor & expenses, and promotions. The share realized by the Oregon Zoo is 35% of the net revenue. Conservatively projected, the Zoo expects to generate over \$100,000 in net revenue the first year of the extension, and over \$150,000 in net revenue the second year of the extension. These projections are based on minimal increases to current ridership levels. Industry standards and experience indicate significantly higher ridership in the second and third year of operation.

The simulator has added an additional value for families visiting the Oregon Zoo. Many positive comments have been received from guests who noted a pleasant surprise at the Zoo having such an entertaining feature. Comments have continued to come in requesting additional shows and questions about the future plans for the simulator. It is due to the positive reception from our guests, and the potential to increase enterprise revenue that the Oregon Zoo wishes to continue operating the simulator, and the relationship with SimEx, Inc.

ANALYSIS/INFORMATION

1. **Known Opposition** None
2. **Legal Antecedents** None
3. **Anticipated Effects** With the modification and extension of the existing lease agreement, it is expected that the projected net revenues help support the Zoo operating budget. In addition, we anticipate receiving many more positive comments from Zoo guests who have not yet experienced the simulator shows.
4. **Budget Impacts** The Zoo expects to receive at a minimum of \$100,000 in net revenues in the first year of this extension, and a minimum of \$150,000 in net revenues in the second year of this extension. Please see attached Exhibit B.

RECOMMENDED ACTION

Approval of Resolution No. 04-3438.

032504c-01

Metro

***Financial Statement Audit
Management Recommendations***

March 2004

A Report by the Office of the Auditor



METRO

PEOPLE PLACES
OPEN SPACES

**Alexis Dow, CPA
Metro Auditor**



METRO
OFFICE OF THE AUDITOR

March 18, 2004

To the Metro Council and Chief Operating Officer:

As a by-product of their audit of Metro's financial statements, Grant Thornton LLP noted certain significant deficiencies involving internal control. The accompanying report describes their observations and recommendations.

Grant Thornton LLP recommends the following actions related to the Metropolitan Exposition-Recreation Commission (MERC):

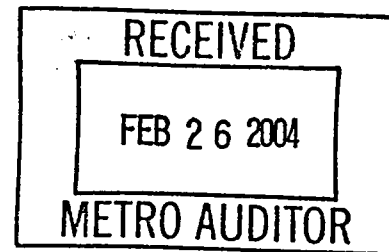
- All cash accounts should be reconciled monthly as soon as the monthly bank statement is available.
- Detailed reconciliation policies and procedures should be drafted.

The MERC Commission Chair agreed with these recommendations. The Chair's full written response is included at the end of this report.

We appreciate the cooperation and assistance provided to Grant Thornton LLP by staff in the Finance Department.

Very truly yours,

Alexis Dow, CPA
Metro Auditor



January 16, 2004

Councilors, Council President and Auditor
Metro
600 Northeast Grand Avenue
Portland, Oregon 97232-2736

Ladies and Gentlemen:

In planning and performing our audit of the financial statements of Metro for the year ended June 30, 2003, we considered its internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on internal control. Our consideration of internal control would not necessarily disclose all deficiencies in internal control that might be significant deficiencies or material weaknesses. However, as discussed below, we noted certain deficiencies involving internal control that we consider to be significant deficiencies under standards established by the American Institute of Certified Public Accountants. A significant deficiency is an internal control deficiency that could adversely affect the entity's ability to initiate, record, process, and report financial data consistent with the assertions of management in the financial statements.

Cash and Other Reconciliations

Observation:

In performing audit procedures related to the Metropolitan Exposition and Recreation Commission (MERC) we noted cash accounts that contained significant unreconciled differences between the amount of cash available according to the bank and the amount available according to MERC.

We also noted that the reconciliations of these accounts, as well as the reconciliations of related account receivables and deferred revenue accounts, were not done on a timely basis throughout the year or at year-end, June 30, 2003.

MERC staff researched and resolved the unreconciled differences in the cash accounts as of year-end, June 30, 2003, but this was accomplished just prior to the issuance of the financial statements in December 2003. We delayed the progress of our audit procedures to allow MERC time to research and resolve the discrepancies.

Timely reconciliation of bank accounts is a primary control procedure to identify and correct errors in the accounting records, bank errors, or other discrepancies between the Organization's records and the amounts reported by the Organization's banks. Failure to enforce such controls exposes the Organization to risks that errors, unintentional or otherwise, may occur and go undetected for an unnecessarily long period of time. Also, delays in reconciling cash accounts may result in decisions based upon inaccurate information.

Recommendation:

We recommend all cash accounts be reconciled monthly as soon as the monthly bank statement is available. The reconciliations should be reviewed and approved by a supervisor. The supervisor's approval should be documented on the reconciliation. This will help ensure that all differences are identified and accounted for in a timely manner. Similarly, accounts receivable and deferred revenue general ledger balances and supporting detail should be reconciled monthly.

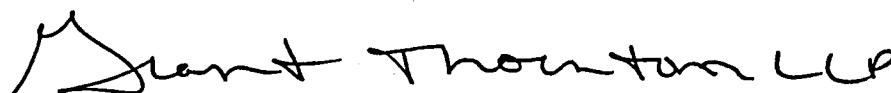
We also recommend that detailed reconciliation policies and procedures be drafted. This policy should include the following:

- Statement of policy and purpose
- General description of each cash account including the unique aspects of each
- Specified procedures including:
 - Require reconciliations monthly
 - State a due date for the reconciliations
 - Require investigation of all significant differences
 - Require supervisory review of all reconciliations
 - Require all proposed adjustments resulting from the reconciliations to be approved by a supervisor

A written reconciliation policy and the related procedures will provide guidance to existing personnel as well as future personnel.

Should you desire further information concerning these matters, we will be happy to meet with you at your convenience.

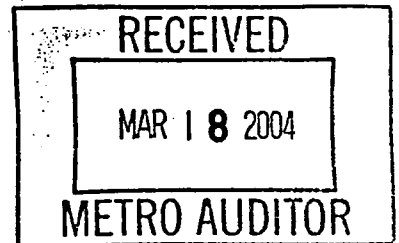
Very truly yours,



Response to the Report



arts. sports. conventions. shows.



METROPOLITAN EXPOSITION-RECREATION COMMISSION

March 12, 2004


Alexis Dow, CPA
Metro Auditor
600 NE Grand Avenue
Portland, OR 97232-2736

Re: Management Letter Response

Dear Ms. Dow:

Our formal responses on your forms are attached per your request.

Sincerely,



Gary Conkling, Chair
MERC Commission



Audit: Financial Statement Audit Management Recommendations
Date: March 2004

Audit Response

Recommendation 1 — All cash accounts should be reconciled monthly as soon as the monthly bank statement is available.

Agree Yes

What Action will be taken?

MERC agrees that cash reconciliations should be completed on a timely basis, and has taken the following steps to make sure that occurs:

1. The MERC Accounting Supervisor position which was vacant has since been filled. Currently, all reconciliation activity is up to date.
2. The MERC Commission has proposed an additional Accountant position in order to ensure that we do not fall behind in accounting and reconciliation activity in the future.
3. MERC has retained KPMG to examine its cash reconciliation policies and will be implementing their recommendations.
4. MERC will be working closely with the Metro Chief Financial Officer to implement any additional cash handling policy requirements.

It should be emphasized that at no time were any funds missing. All funds were secured in a vault or deposited in the bank. MERC performed the necessary bank reconciliations that resulted in routine adjustments to properly account for the transactions. With more timely reconciliations, these adjustments would have been made earlier, but the nature of the adjustments would not have changed.

- One deposit transaction was properly deposited in the bank, but recording of the transactions was delayed because the paperwork was not timely submitted. With more timely reconciliations, the missing details would have been noted earlier.
- Undeposited cash is held in our vault until it is deposited with the bank. In the normal course of business, cash was deposited in July for events that were held in June. The deposit was correctly recorded as a July transaction. The reconciliation revealed that June revenue was understated. Generally accepted accounting principles require that revenue be recorded in the period it is earned.

Who will take the action?

Mark B. Williams, General Manager
Kathy Taylor, Director of Administration/Finance Officer
Julia Fennell, Accounting Supervisor

When will action be accomplished? All bank account reconciliations are current.

Follow-up necessary to correct or prevent reoccurrence.

The MERC Commission has proposed an additional Accountant position in order to ensure that we do not fall behind in accounting and reconciliation activity in the future.

Audit: Financial Statement Audit Management Recommendations
Date: March 2004

Audit Response

Recommendation 2 — Detailed reconciliation policies and procedures should be drafted.

Agree Yes

What Action will be taken?

Banking services are currently being evaluated which will consolidate and simplify our banking arrangements. This will reduce the number and complexity of accounts. Once banking arrangements are determined, cash accounting will be documented including approval, authority and processes. Reconciliation activity will be part of the larger documentation project.

Who will take the action?

Kathy Taylor, Director of Administration/Finance Officer
Julia Fennell, Accounting Supervisor

When will action be accomplished?

The goal is to make a bank relationship selection by June 30, 2004. Documentation will be completed within 90 days of bank selection.

Follow-up necessary to correct or prevent reoccurrence.

n/a

Metro

People places • open spaces

Clean air and clean water do not stop at city limits or county lines. Neither does the need for jobs, a thriving economy and good transportation choices for people and businesses in our region. Voters have asked Metro to help with the challenges that cross those lines and affect the 24 cities and three counties in the Portland metropolitan area.

A regional approach simply makes sense when it comes to protecting open space, caring for parks, planning for the best use of land, managing garbage disposal and increasing recycling. Metro oversees world-class facilities such as the Oregon Zoo, which contributes to conservation and education, and the Oregon Convention Center, which benefits the region's economy.

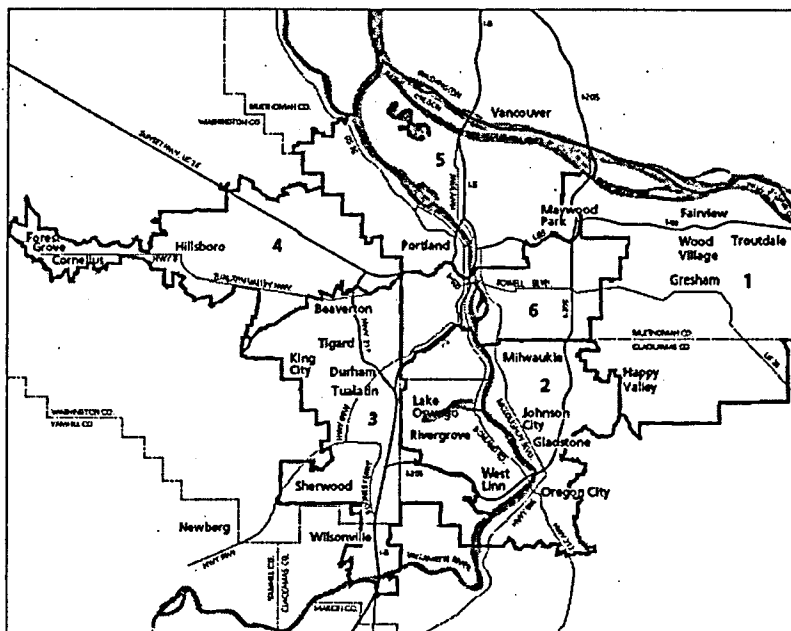
Your Metro representatives

Metro Council President – David Bragdon

Metro Councilors – Rod Park, deputy council president, District 1; Brian Newman, District 2; Carl Hosticka, District 3; Susan McLain, District 4; Rex Burkholder, District 5; Rod Monroe, District 6.

Auditor – Alexis Dow, CPA

Web site: www.metro-region.org



Council districts

You are welcome to keep this copy if it is useful to you.
If you no longer need this copy, you are encouraged to return it to:

Metro Auditor
Metro Regional Center
600 NE Grand Avenue
Portland, OR 97232-2736


If you would like more information about the Office of the Auditor
or copies of past reports, please call
Metro Auditor Alexis Dow, CPA
(503) 797-1891

Metro Auditor Suggestion Hotline:
(503) 230-0600 • MetroAuditor@metro.dst.or.us

Schedule of Expenditures of Federal
Awards and Reports of Independent
Certified Public Accountants

Metro

Year ended June 30, 2003

Grant Thornton 

Schedule of Expenditures of Federal
Awards and Reports of Independent
Certified Public Accountants

Metro

Year ended June 30, 2003

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Report of Independent Certified Public Accountants
on Metro's Compliance and Internal Control Over
Financial Reporting Based on an Audit of Basic Financial Statements
Performed in Accordance with *Government Auditing Standards*

The Council President, Council and Auditor of Metro
Portland, Oregon

We have audited the basic financial statements of Metro as of and for the year ended June 30, 2003, and have issued our report thereon dated November 24, 2003. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Compliance

As part of obtaining reasonable assurance about whether Metro's basic financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered Metro's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the basic financial statements and not to provide assurance on the internal control over financial reporting. In planning and performing our audit, we considered Metro's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control over financial reporting. However, we noted certain matters involving the internal control over financial reporting and its operation that we consider to be reportable conditions. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control over financial reporting that, in our judgment, could adversely affect Metro's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses. However, we believe that none of the reportable conditions described above is a material weakness.

This report is intended solely for the information and use of the Council President, Council and Auditor of Metro, management and the federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Portland, Oregon
November 24, 2003

A handwritten signature in black ink that reads "Grant Thornton LLP". The signature is written in a cursive, flowing style.

Report of Independent Certified Public Accountants
on Metro's Compliance with Requirements Applicable to Each Major
Program and Internal Control Over Compliance in Accordance with
OMB Circular A-133

The Council President, Council and Auditor of Metro
Portland, Oregon

Compliance

We have audited the compliance of Metro with the types of compliance requirements described in the *U.S. Office of Management and Budget (OMB) Circular A-133, Compliance Supplement*, that are applicable to each of its major federal programs for the year ended June 30, 2003. Metro's major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs. Compliance with the requirements of laws, regulations, contracts and grants applicable to each of its major federal programs is the responsibility of Metro's management. Our responsibility is to express an opinion on Metro's compliance based on our audit.

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program occurred. An audit includes examining, on a test basis, evidence about Metro's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination on Metro's compliance with those requirements.

In our opinion, Metro complied, in all material respects, with the requirements referred to above that are applicable to each of its major federal programs for the year ended June 30, 2003.

Internal Control Over Compliance

The management of Metro is responsible for establishing and maintaining effective internal control over the compliance with requirements of laws, regulations, contracts and grants applicable to federal programs. In planning and performing our audit, we considered Metro's internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133.

Our consideration of the internal control over compliance would not necessarily disclose all matters in the internal control that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that noncompliance with applicable requirements of laws, regulations, contracts and grants that would be material in relation to a major federal program being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over compliance and its operation that we consider to be material weaknesses.

We have audited the financial statements of the governmental activities, the business-type activities, the discretely presented component units, each major fund, and the aggregate remaining fund information of Metro as of and for the year ended June 30, 2003, and have issued our report thereon dated November 24, 2003. Our audit was performed for the purpose of forming opinions on the financial statements that collectively comprise Metro's basic financial statements. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by OMB Circular A-133 and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated, in all material respects, in relation to the basic financial statements taken as a whole.

This report is intended solely for the information and use of the Council President, Council, Auditor of Metro, management and the federal awarding agencies and pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.



Portland, Oregon
November 24, 2003

METRO
Schedule of Expenditures of Federal Awards
For the year ended June 30, 2003

Federal Grantor/Pass-Through Grantor/Program Title	Federal CFDA Number	Grant number	Federal Expenditures
<u>U. S. Department of Transportation</u>			
Federal Transit Administration:			
Direct program -			
Federal Highway Administration			
Transportation Equity Act (TEA-21)			
Advanced Travel Forecasting Procedures Program:			
TRANSIMS II	*	20.205	DTFH61-02-X-00006 \$ 397,449
Passed through Oregon Department of Transportation -			
Highway, Research, Planning and Construction:			
2003 Planning	*	20.205	SPR-PL-STP-001(39) 778,441
2003 Federal Surface Transportation Program			
METRO Surface Transportation Program	*	20.205	SPR-PR03(001) 686,092
Oregon Public Broadcasting Pilot Program	*	20.205	SPR-PL-STP-0101 (38) 13,074
Federal Highway Administration			
National Corridor Planning and Development			
I-5 Trade Corridor Study	*	20.205	SPR-PL-STP-001(39) 8,143
Value Pricing Program			
Highway 217 Corridor Planning Study	*	20.205	VP-S000(165) 39,602
Transportation and Growth Management Program			
Transportation Equity Act (TEA-21)			
Powell/Foster Corridor TGM	*	20.205	STP0000(149) 181,300
Direct programs -			
Transit Oriented Development			
Wilsonville/Beaverton Transit Corridor PE	20.500	OR-90-X073-00	4,665
	20.500	OR-03-0080-00	359,493
Passed through Oregon Department of Transportation -			
Highway, Research, Planning and Construction:			
2002 Technical Studies (Sec 5303)	*	20.505	OR-80-2011 11,660
2003 Technical Studies (Sec 5303)	*	20.505	OR-80-2012 241,687
Passed through Tri-County Metropolitan Transportation District of Oregon (TRI-MET)-			
Congestion Mitigation & Air Quality Improvement Program			
North Interstate MAX Light Rail Project	*	20.505	OR-90-X088 1,610
Direct programs -			
South Corridor Transit Alternatives			
	20.507	OR-90-X083-00	1,959,913
Transit Oriented Development			
	20.507	OR-90-X070-02	90,950
Passed through Tri-County Metropolitan Transportation District of Oregon (TRI-MET)-			
Congestion Mitigation & Air Quality Improvement Program			
Transportation Demand Management(TDM)	20.507	OR-90-X087	75,000
Total U. S. Department of Transportation			<u>\$ 4,849,079</u>

* - Indicates a major program

METRO
Schedule of Expenditures of Federal Awards
For the year ended June 30, 2003

Federal Grantor/Pass-Through Grantor/Program Title	Federal CFDA Number	Grant number	Federal Expenditures
<u>U. S. Department of Agriculture</u>			
Natural Resources Conservation Service- Wetlands Reserve Program	10.072	66-0436-2-103	\$ 61,147
Forest Service- Participating Agreement - Northwest Forest Plan	-	NFS 01-PA-11060000-066	60,000
Total U. S. Department of Agriculture			<u>\$ 121,147</u>
<u>U. S. Department of the Interior</u>			
Bureau of Land Management- Federal Land Policy and Management Act (FLPMA)	-	1422H952-A97-3005	\$ 40,682
U. S. Fish and Wildlife Service - Wildlife Conservation and Appreciation	15.617	14-48-13420-97-J002	217,769
Wildlife Conservation and Appreciation	15.617	14-48-13420-02-J207	7,632
Wildlife Conservation and Appreciation	15.617	14-48-13420-02-J241	6,406
Passed through Department of Oregon Fish and Wildlife - 2001 Field Study	15.617	1448-13420-01-J141	4,864
Passed through Ducks Unlimited - North American Wetlands Conservation Fund	* 15.623	98210-1-G812	15,000
North American Wetlands Conservation Fund	* 15.623	98210-1-G812	141,000
Passed through Oregon Department of Fish and Wildlife - Sport Fish Restoration	15.605	F111D-207	45,000
Passed through The Nature Conservancy - Fish and Wildlife Management Assistance	15.608	14-48-13420-02-J251	3,000
Passed through Oregon State Marine Board - Clean Vessel Act Program	15.616	N/A	225
Total U. S. Department of the Interior			<u>\$ 481,578</u>
<u>U. S. Department of Education</u>			
Institute of Museum and Library Services - General Operating Support	45.301	IG-10764-01	\$ 56,250
Total Department of Education			<u>\$ 56,250</u>
National Fish and Wildlife Foundation	N/A	N/A	\$ 68,069
Total Federal Expenditures			<u>\$ 5,576,123</u>

* - Indicates a major program

Metro

NOTES TO SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS

Year ended June 30, 2003

NOTE A – GENERAL

The accompanying Schedule of Expenditures of Federal Awards includes all federal monies received by Metro. Metro's reporting entity is defined in Note 1 to Metro's basic financial statements. Financial assistance received directly from federal agencies, as well as financial assistance passed through other government agencies, is included on the schedule.

NOTE B – BASIS OF ACCOUNTING

The accompanying Schedule of Expenditures of Federal Awards is presented using the modified accrual basis of accounting, which is described in Note 3 to Metro's basic financial statements.

NOTE C – RELATIONSHIP TO BASIC FINANCIAL STATEMENTS

Federal awards reported in Metro's basic financial statements are included with intergovernmental and federal grants revenues.

NOTE D – SUBRECIPIENTS

Of the federal expenditures presented in the schedule, Metro provided federal awards to subrecipients as follows:

<u>Program Title</u>	<u>Federal CFDA Number</u>	<u>Amount Provided to Subrecipients</u>
Wilsonville/Beaverton Transit Corridor PE	20.500	\$ 76,305
South Corridor Transit Alternatives	20.507	65,481

SCHEDULE OF FINDINGS AND QUESTIONED COSTS

Year ended June 30, 2003

SECTION I – SUMMARY OF AUDITOR’S RESULTS

Financial Statements

Type of auditor’s report issued: Unqualified

Internal control over financial reporting:

- Material weakness(es) identified? yes no
- Reportable condition(s) identified that are not considered to be material weaknesses? yes none reported

Noncompliance material to financial statements noted? yes no

Federal Awards

Internal control over major programs:

- Material weakness(es) identified? yes no
- Reportable condition(s) identified that are not considered to be material weaknesses? yes none reported

Type of auditor’s report issued on compliance for major programs: Unqualified

Any audit findings disclosed that are required to be reported in accordance with section 510(a) of Circular A-133? yes no

Identification of major programs:

CFDA Number	Name of Federal Program
15.623	Department of the Interior, U.S. Fish & Wildlife, North American Wetlands Conservation Fund
20.205	Department of Transportation, Federal Transit Administration, Highway Planning and Construction (Federal Aid Highway Program)
20.505	Department of Transportation, Federal Transit Administration, Highway Planning and Construction (Federal Aid Highway Program)

Dollar threshold used to distinguish between type A and type B programs: \$ 300,000

Auditee qualified as low-risk auditee? yes no

Metro

SCHEDULE OF FINDINGS AND QUESTIONED COSTS

Year ended June 30, 2003

SECTION II – FINANCIAL STATEMENT FINDINGS

There were no financial statement findings.

SECTION III – FEDERAL AWARD FINDINGS AND QUESTIONED COSTS

There were no federal award findings or questioned costs.

Grant Thornton

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Metro Council
600 NE Grand Ave
Portland Oregon
Dear Councilors,

March 25, 2004
2732 NE 15 Av
Portland Oregon 97212

The Oregonian Newspaper story, February, 2004, "Metro invites public views on protecting wildlife habitat," Dick Shook tells of native vegetation attracting a variety of wildlife. Unfortunately, Dick's property is doomed as neighbors plant or allow invasive non-native plants to overtake their yards. Unfortunately, the neighbors think English ivy (one of many plants quarantined by the state of Oregon, and on Portland's "List of Prohibited and Nuisance Plants") is an asset. Neighbors think it is pretty coating the bark and limbs of trees. Neighbors think it "holds" the dirt bank next to their lawn.

What if ivy is assessed as a liability that must be eliminated before land is sold? One, land owners would not plant it because property value depreciates as noxious plant grows. Two, land owners would urge and beg someone with ivy to kill it. Three, neighborhood Associations would improve regional property values by urging and helping neighbors to guard against all invasive non-native vegetations.

"Ivy anywhere is ivy everywhere. Kill ivy!" would be a saying printed in newsletters across the region. Wildlife habitat will increase.

We're All In This Alone, Together

Zephyr Thoreau Moore

Zephyr Thoreau Moore salmonneedshade@
hotmail.com

over
3/2004

Andrew C. Cotugno, & Strivers for thriving Greenspace and Salmon
METRO, Transportation and Growth Management Departments
600 NE Grand Ave
Portland, Oregon

April 13, 2001

* Please email this letter to your cohorts.
Spread information about a ubiquitous parasite--ivy.
No habitat is sacred to ivy. Wilderness is doomed.

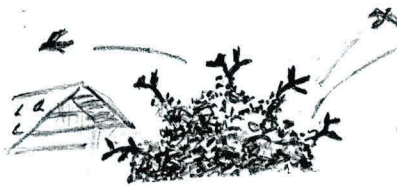
Dear Andrew and Cohorts,

Concerning your letter on Goal 5 Inventory Maps. Paragraph one requests my detailed comments about map accuracy and completeness. Letter paragraph two, ". . . nor have we proposed a program to protect and restore these regionally significant resources." Locations of ivy infestations--from which ivy propagates exponentially in all directions across the landscape--are not included on Maps. All regionally significant natural resources are doomed to a slow smothering death as ivy fruit-seed--carried in the gut of birds--leaps from greenspaces of our yards to propagate in Greenspaces, on wetlands and across riparian zones and forests.



What will Greenspace(s) look like in 50 years?
See forest understory and canopy west of Vista Bridge Tunnel on Highway US 26. Here, ivy has mummified open forest duff and extinguished diverse understory vegetation with a 30-60cm deep woven tangle of vines topped with an unpalatable layer of dense waxy leaves. No native creation which gets food from or nests on open forest floor can live here. Ivy coats tree trunks from bottom to top, tendrils extend to all limbs and branches. All epiphytic plants on tree bark are shaded to death. All bugs and birds who live on or gain food from epiphytes, or on-under tree bark, can not live in this forest ever again. *Silent Spring*. Ivy slithers to the ends of limbs and apex of trees, filling the canopy. Draped vines catch wind like a sail--levering a tree on its root wad. The ivy wrapped canopy catches rain and snow. Precipitation clinging to vines plus weight of draped vines lug then break a tree to earth. Greenspace is extinguished as ivy fruit-seed leaps across the planet in hungry birds' guts.

STARLING, ROBIN-BIRDS PICK IVY FRUIT



YOUR NEIGHBORHOOD

"Ivy anywhere is ivy everywhere."



OXBOW REGIONAL PARK

To protect and restore regionally significant natural resources, the locations of English ivy--and all plants on the Portland Plant List of Prohibited Plants--must be mapped. Locating ivy infestations on Goal 5 Maps is the first step to eradicating ivy regionally.

We're All In This Alone, Together,

Zephyr Thoreau Moore

Zephyr Thoreau Moore
2732 NE 15th
Portland, Oregon 97212-3302 503/ 287-1124

P.S. Ivy classified, "noxious weed" by State of Oregon. Yet, buy ivy @ any Nursery. No warning of ivy's threat to plants, wildlife.

* I've snail mail & phone, only. So, please email letter to your cohorts .

LETTERS TO THE EDITOR

LETTERS TO THE EDITOR

Native plants attract wildlife

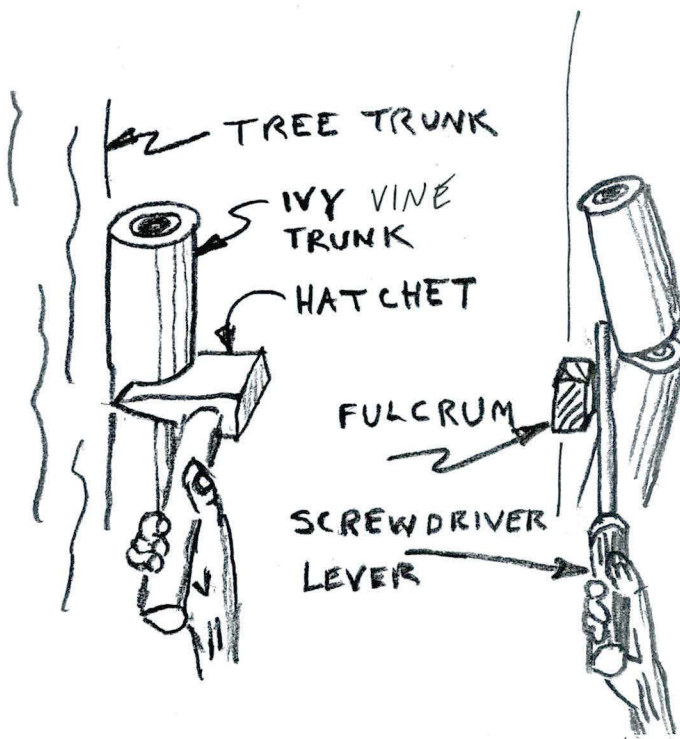
1 25 99
Regarding "Save animals' habitat, too," (Letters, Jan. 11), English ivy coats the earth, along with bark and limbs of trees where wildlife normally gather food and seek shelter — habitat. Ivy is a favorite of many gardeners but is death to wildlife.

If chipmunks and bird songs are your desire, kill ivy and the other invasive non-native plants on the Portland Planning Bureau's "List of Prohibited and Nuisance Plants." Attract wildlife by installing native vegetation on every square inch of land. This is wildlife's restaurant.

Use native plants that have a variety of shapes, colors, flowers and fruit: Oregon white oak, Oregon grape, snowberry, ferns, trailing blackberry and so on.

Bark dust is not habitat. A lawn is not habitat. If the only time you walk on your lawn is to mow it, you don't need a lawn. If your uninformed neighbors have ivy climbing trees, inform them of the evils of ivy, then help them kill it.

287-1124 ZEPHYR THOREAU MOORE
(503) Northeast Portland



6-1399
Clip! Snip! Fight the green menace

Crawling on all fours, I pulled and tugged at the English ivy. It had taken over the beds, entangled like a pile of extension cords, and was working up the side of the house. This year my assault at the green menace brought me to my senses and a first public admission of guilt. I also have a plan to rid our city of this nuisance:

Like field-burning and no-return bottles, English ivy has become synonymous with what's wrong with the environment. Just two weeks earlier, my daughter and a group from her school were clear-cutting the evergreen predator in Forest Park.

Anyway, feeling like a complete fool — for I had planted this menace at home some years before — I thought up an idea that Portlanders ought to consider.

Here's the plan: Like gasoline prices, if English ivy sold for, say, \$10 per pot, the demand would drop and the supply would be reduced. Henceforth, no more new plantings of the pest. In time, perhaps, ivy would disappear, or at least be reduced to a manageable amount.

I apologize to my fellow Portlanders for planting English ivy. I now serve my penance at home and in Forest Park, armed with clippers.

JOHN A. NELSON
Landscape architect
Southwest Portland

KILL IVY BY CHOPPING THEN LEVERING VINE FROM TREE TRUNK. VINE ABOVE CUT DIES.

IVY ANYWHERE IS IVY EVERYWHERE. KILL IVY THEN WILDLIFE HABITAT IS RESTORED.

IVY ON YOUR NEIGHBORS "PROPERTY" WILL BE ON YOUR PROPERTY SOON. IVY OWNS THE LANDSCAPE IF IT IS ALIVE. KILL IVY!

MINUTES OF THE METRO COUNCIL MEETING

Thursday, March 18, 2004
Metro Council Chamber

Councilors Present: David Bragdon (Council President), Rod Monroe, Rex Burkholder, Carl Hosticka, Rod Park

Councilors Absent: Brian Newman (excused), Susan McLain (excused)

Council President Bragdon convened the Regular Council Meeting at 2:04 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

There were none.

3. CONSENT AGENDA

3.1 Consideration of minutes of the March 11, 2004 Regular Council Meetings.

Motion:

Councilor Hosticka moved to adopt the meeting minutes of the March 11, 2004, Regular Metro Council.

Vote:

Councilors Burkholder, Monroe, Park, Hosticka, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.

4. ORDINANCES – FIRST READING

4.1 Ordinance No. 04-1042, For the Purpose of Amending Metro Code Chapter 5.02 to Amend Disposal Charges and System Fees.

Council President Bragdon assigned Ordinance No. 04-1042 to Council.

4.2 Ordinance No. 04-1046, For the Purpose of Amending Ordinance No. 02-969B In order to Change a Condition on Addition of Study Area 59 (Sherwood) to the Urban Growth Boundary; and Declaring an Emergency.

Council President Bragdon assigned Ordinance No. 04-1046 to Council.

5. RESOLUTIONS

5.1 Resolution No. 04-3429, For the Purpose of Approving the FY 2005 Unified Work Program.

Motion:

Councilor Park moved to adopt Resolution No. 04-3429
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Seconded:	Councilor Monroe seconded the motion
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Councilor Park said the Federal Transit Administration and the Federal Highway Administration required that Metro have a Unified Work Program in order to receive funding. He further explained the resolution. The study was conducted by Metro. He noted the partners involved in the program and detailed some of the specifics of the program. He urged adoption of the resolution.

Vote:	Councilors Park, Hosticka, Burkholder, Monroe, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.
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5.2 Resolution No. 04-3430, For the Purpose of Certifying that the Portland Metropolitan Area is in compliance with Federal Transportation Planning Requirements.

Motion:	Councilor Monroe moved to adopt Resolution No. 04-3430.
Seconded:	Councilor Hosticka seconded the motion

Councilor Monroe said Metro was required to self-certify and this certification was a prerequisite to receiving federal funds. He spoke to the areas of self-certification. He detailed some of the public involvement compliance. Metro was complying with all federal requirements. He urged support for the resolution.

Vote:	Councilors Park, Hosticka, Burkholder, Monroe, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.
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5.3 Resolution No. 04-3431, For the Purpose of Adopting the Policy Direction, Program Objectives, Procedures and Criteria for the Transportation Priorities 2006-09 Allocation Process and Metropolitan Transportation Improvement Program (MTIP).

Motion:	Councilor Burkholder moved to adopt Resolution No. 04-3431.
Seconded:	Councilor Monroe seconded the motion

Councilor Burkholder spoke to the resolution and spoke to the potential use of the MTIP dollars. This allocation process occurred every two-year requirement. He talked about the process and refinements.

Motion to substitute:	Councilor Burkholder moved to substitute Resolution No. 04-3431A for 04-3431
Seconded:	Councilor Monroe seconded the motion

Councilor Burkholder spoke to the change made at Joint Policy Advisory Committee on Transportation (JPACT), which made it an "A" version.

Vote to Substitute:	Councilors Park, Hosticka, Burkholder, Monroe, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.
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Councilor Burkholder talked about the criteria in the guidelines and that the refinement of the criteria was an effort to make sure the money was spent in the most efficient way possible. He talked about the percentages of projects that might be submitted by local jurisdictions. The vote at JPACT was to have all parts of the region submit a variety of projects. He urged support.

Councilor Park talked about the project choices that jurisdictions could submit. He felt this would give us a better choices.

Councilor Monroe said this was an important step that he had seen occurring over the past four years where the Metro Council had taken a more active approach. These transportation dollars can be used for a wide variety of programs; at least 40% must be used for alternative modes of transportation. The Council decided to weigh in and instructed its delegation to vote in support of allowing model balance across the region. It would also allow for better geographic balance across the region. Councilor Park said these funds were only 4% of the total monies available for transportation.

Councilor Burkholder closed by thanking the staff for the work they had done. Ted Leybold, Planning Department, had looked at spending these monies more strategically. He felt the process had worked very well with a wide variety of creative projects. He was hopeful for better projects and a better mix. He was hopeful for additional federal dollars. He also thanked all of the advisory groups for their efforts.

Vote on the Main
Motion:

Councilors Park, Hosticka, Burkholder, Monroe, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.

5.4 Resolution No. 04-3435, For the Purpose of Council Approval of the Trolley Trail Master Plan.

Motion:	Councilor Monroe moved to adopt Resolution No. 04-3435.
Seconded:	Councilor Park seconded the motion

Councilor Monroe said this project was near and dear to both he and Councilor Newman's heart. He explained where the Trolley Trail went and talked about the intergovernmental agreement with the North Clackamas Parks and Recreation District. He spoke to the public involvement process. He urged support for the Master Plan

Council President Bragdon opened a public hearing.

Thelma Haggemiller, Friends of the Trolley Trail, 3405 SE Westview Ave Oak Grove, Oregon, said she was here as one of the spokesperson for the Friends of the Trolley Trail. They urged support for the plan. This corridor would provide health and fitness benefits. She spoke to the philosophy of the group and the number of hours that the group had put into creating a true multi-use path. They thanked the Metro Parks and Greenspaces Department, the consultant, the Master Plan working group and the North Clackamas Parks and Recreation District for this collaborative effort.

Council President Bragdon closed the public hearing.

Heather Nelson Kent, Parks and Greenspaces Department, spoke to the project and the Master Plan. She noted the successful work with a variety of partners. She acknowledged that this project had been partly funded by last year's MTIP funding. She thanked Charlie Ciecko, Director of the North Clackamas Parks and Recreation District. She acknowledged other project partners as well as the Metro staff; Jane Hart, Mel Huie, Mary West, Joel Morton, and Janelle Geddes. They had really enjoyed this project. She acknowledged George Hudson and Mia Burke who were primary consultants for the project.

Mia Burke gave a power point presentation on the Trolley Trail and the connections it made within the region (a copy of the presentation is included in the meeting record). She noted what was special about this project. It had been a bottom up project. She then spoke to the design, environmental sensitivity of the trail, trail amenities, public safety plan, maintenance and management, estimated costs and funding. The most exciting part of the project was getting the trail open as well as getting the blessing of the elected officials. She thanked all of the partners.

Councilor Burkholder said in the changes to the MTIP criteria there was a change to the trails portion of the funding. This trail raised the issue of 90% match. Councilor Monroe said this was not a six-mile stand along facility. It was a logical extension of an interconnect network of trails that Metro had been building. He detailed some of that network of trails. With the completion of the Springwater bridges this trail would connect to the Springwater Trail. These trails were used by thousands of people. This type of trail provided a safety net from using streets to bicycle. Connecting these trails all together was a wonderful thing. He urged support.

Vote:

Councilors Park, Hosticka, Burkholder, Monroe, and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed.

6. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordan, Chief Operating Officer, said March Madness continued tonight at the Middleman Jewish Center. They would be finishing the industrial lands workshops. He thanked all of the staff for all of their efforts at the Wilsonville workshop last week.

Last Friday morning he had the opportunity to tour Metro's Pioneer Cemetery assets that Metro managed. He talked about the cultural and historical assets of the cemeteries. He spoke to the resourceful of the staff to keep these assets in good condition. He encouraged Council to see some of these sites.

7. COUNCILOR COMMUNICATION

Councilor Park said yesterday he and Mr. Jordan had opportunity to be in Gresham to receive a award recognizing Metro's partnership in the Springwater Trail. He also had the opportunities to attend the opening of Merix, a hi-tech industry, which will provide employment for the east side.

Councilor Hosticka mentioned that they had done such a good job of getting the public involvement that they were having an open house to discuss the alignment of the west side connector.

Metro Council Meeting

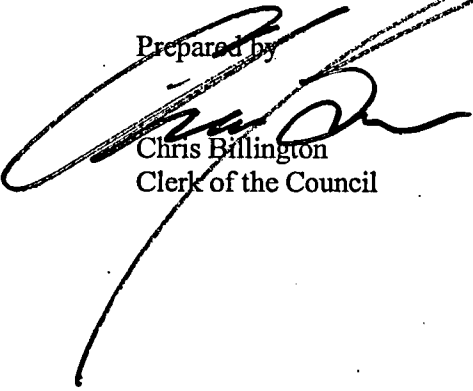
03/18/04

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8. **ADJOURN**

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 2:48 p.m.

Prepared by



Chris Billington
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF MARCH 18,
2004**

Item	Topic	Doc Date	Document Description	Doc. Number
3.1	Minutes	3/11/04	Minutes of the March 11, 2004 Metro Council Meeting	031804c-01
5.3	Resolution No. 04-3431A	3/18/04	Resolution No. 04-3431A, For the Purpose of Adopting the Policy Direction, Program Objectives, Procedures and Criteria for the Transportation Priorities 2006-09 Allocation Process and Metropolitan Transportation Improvement Program (MTIP)	031804c-02
5.4	Power Point Presentation	3/18/04	To: Metro Council From: Jane Hart, Parks and Greenspaces Department Re: Trolley Trail Master Plan Milwaukie to Gladstone Power Point Presentation	031804c-03

Metro panels OK fee hike to help parks

The proposal would increase charges, until June 2004, on solid waste haulers and raise \$1.2 million a year

By LAURA OPPENHEIMER
 THE OREGONIAN

Financial rescue appears likely — but temporary — for more than 11,000 acres of open space managed by the Portland area's regional government.

The Metro Council took preliminary steps Wednesday toward increasing the fee charged to solid waste haulers, which would bring in an extra \$1.2 million a year for Metro's struggling parks department.

Councilors in two key committees voted to approve the extra money only until June 2004, adding pressure to find a long-term solution. The government's executive officer, Mike Burton, had proposed that councilors boost the fee until they resolved the budget problems, whenever that happened.

If the new money is formally approved at a council meeting Thursday, it will keep all Metro parks and programs open, pay for basic fixes and provide the salary for an extra park ranger. One ranger now cares for the 7,000 acres of open space the government has purchased since 1995 with a \$136 million bond measure approved by voters.

The bond measure didn't include money for upkeep, so Metro's list of properties grew while its

budget and staff remained stagnant. Without extra money, the parks department would exhaust its savings within three years.

Councilors said a specific deadline will help draw attention to the issue and encourage a quick decision.

Haulers' reaction

It also pleases some members of the solid waste community, who have said they resent being the money source for parks. Unlike most other governments, Metro doesn't have a general fund tax base and relies on the haulers' fee.

The proposal calls for garbage haulers who use Metro's system to pay an extra \$1 for every ton of waste processed. Haulers will pass the increase along to customers, adding about 75 cents a year to the typical household bill.

"Really, we're not the ones who pay for it," said David White, leader of the Tri-County Council haulers group. "We're certainly not against parks. We would just like to make sure people buy into this and understand that it's not us doing it."

White said some haulers wish money would go to valid programs in their own industry, such as encouraging customers to recycle. Also, although the increase sounds minor, it will have a bigger impact on large businesses, he said.

Councilors Rod Park and David Bragdon abstained from voting on the proposal Wednesday. Park said he wants more discussion on overarching problems with the system of charging solid waste haulers.

Not all parks needs covered

Although Wednesday's decision comes as good news to the parks department, it doesn't secure the future of new Metro open spaces. Last fall, a group dubbed the Green Ribbon Committee recommended \$60 million in improvements to pay for clean-up, trails and public access to properties across the region.

Completing the recommendations in five years would have required a public vote to allow Metro to exceed its spending cap from the haulers' fee. Councilors dropped the idea of a ballot measure this year.

The Green Ribbon Committee presented a scaled-back proposal Wednesday, asking for \$720,000 in each of the next two years. That

would require boosting the haulers' fee by another 61 cents per ton, something none of the councilors was willing to suggest. But Councilor Susan McLain promised to scour Metro's proposed budget for ways to get a start on the Green Ribbon recommendations.

Committee members will be happy with any means of paying for the projects, said former Sherwood Mayor Walt Hitchcock, who led the Green Ribbon group. "We felt it was important to get the program started and get momentum going," Hitchcock said.

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