

A G E N D A

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METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING
DATE: April 1, 2004
DAY: Thursday
TIME: 2:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

3.1 Consideration of Minutes for the March 25, 2004 Metro Council Regular Meeting.

4. ORDINANCES – FIRST READING

4.1 **Ordinance No. 04-1044**, For the Purpose of Adopting the Annual Budget for Fiscal Year 2004-05, Making Appropriations, and Levying Ad Valorem Taxes, and Declaring an Emergency. (*Public Hearing*)

5. ORDINANCES - SECOND READING

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

5.2 **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. McLain

6. CONTRACT REVIEW BOARD

6.1 **Resolution No. 04-3405**, For the Purpose of Authorizing an Exemption From Competitive Bidding Requirements and Authorizing Issuance of RFP #04R-XXXX-SWR For Transportation, Processing and Composting Services For Organic Wastes From the Metro Region. Monroe

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

Monroe

7. **CHIEF OPERATING OFFICER COMMUNICATION**

8. **COUNCILOR COMMUNICATION**

ADJOURN

Television schedule for April 1, 2004 Metro Council meeting

Clackamas, Multnomah and Washington counties, Vancouver, Wash. Channel 11 -- Community Access Network www.yourtv.org -- (503) 629-8534 Thursday, April 1 at 2 p.m. (live)	Washington County Channel 30 -- TVTV www.yourtv.org -- (503) 629-8534 Saturday, April 3 at 11 p.m. Sunday, April 4 at 11 p.m. Tuesday, April 6 at 6 a.m. Wednesday, April 7 at 4 p.m.
Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.	West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.
Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcatv.org -- (503) 288-1515 Call or visit website for program times.	

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 797-1804 or 797-1540 (Council Office).

Consideration of Minutes of the March 25, 2004 Regular Council meetings.

Metro Council Meeting
Thursday, April 1, 2004
Metro Council Chamber

Agenda Item Number 4.1

**Ordinance No. 04-1044, For the Purpose of Adopting the Annual Budget
for Fiscal Year 2004-05, Making Appropriations, and Levying Ad Valorem Taxes,
and Declaring an Emergency.**

First Reading – Public Hearing

Metro Council Meeting
Thursday, April 1, 2004
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADOPTING THE) ANNUAL BUDGET FOR FISCAL YEAR 2004-) 05, MAKING APPROPRIATIONS, AND) LEVYING AD VALOREM TAXES, AND) DECLARING AN EMERGENCY)	ORDINANCE NO 04-1044 Introduced by David Bragdon, Council President
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WHEREAS, the Multnomah County Tax Supervising and Conservation Commission held its public hearing on the annual Metro budget for the fiscal year beginning July 1, 2004, and ending June 30, 2005; and

WHEREAS, recommendations from the Multnomah County Tax Supervising and Conservation Commission have been received by Metro (attached as Exhibit A and made a part of the Ordinance) and considered; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The "Fiscal Year 2004-05 Metro Budget," in the total amount of TWO HUNDRED EIGHT THREE MILLION SIX HUNDRED THIRTEEN THOUSAND FOUR HUNDRED FOURTY SIX (\$283,613,446) DOLLARS, attached hereto as Exhibit B, and the Schedule of Appropriations, attached hereto as Exhibit C, are hereby adopted.

2. The Metro Council does hereby levy ad valorem taxes, as provided in the budget adopted by Section 1 of this Ordinance, at the rate of \$0.0966 per thousand dollars of assessed value for Zoo operations and in the amount of EIGHTEEN MILLION SIXTY FOUR THOUSAND FIVE HUNDRED TWENTY FOUR (\$18,064,524) DOLLARS for general obligation bond debt, said taxes to be levied upon taxable properties within the Metro District for the fiscal year 2004-05. The following allocation and categorization subject to the limits of Section 11b, Article XI of the Oregon Constitution constitute the above aggregate levy.

SUMMARY OF AD VALOREM TAX LEVY

	Subject to the General Government <u>Limitation</u>	Excluded from <u>the Limitation</u>
Zoo Tax Rate Levy	\$0.0966/\$1,000	
General Obligation Bond Levy		\$18,064,524

3. The Regional Parks Fund is hereby renamed the Regional Parks Operating Fund. The purpose of the fund remains the same.

4. The Regional Parks Capital Fund is hereby created for the purpose of accounting for major capital improvement and renewal and replacement reserves for the Regional Parks & Greenspaces Department and facilities. Major revenue sources for the fund include but are not limited to

grants, donations, excise tax contributions from the General Fund, and other revenues or contributions identified for capital purpose. In the event of the elimination of this fund, any fund balance shall revert to any fund designated for similar purpose, or to the Regional Parks Operating Fund.

5. In accordance with Section 2.02.040 of the Metro Code, the Metro Council hereby authorizes positions and expenditures in accordance with the Annual Budget adopted by Section 1 of this Ordinance, and hereby appropriates funds for the fiscal year beginning July 1, 2004, from the funds and for the purposes listed in the Schedule of Appropriations, Exhibit C.

6. The Chief Financial Officer shall make the filings as required by ORS 294.555 and ORS 310.060, or as requested by the Assessor's Office of Clackamas, Multnomah, and Washington Counties.

7. This Ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that the new fiscal year begins July 1, 2004, and Oregon Budget Law requires the adoption of a budget prior to the beginning of the fiscal year, an emergency is declared to exist and the Ordinance takes effect upon passage.

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

David Bragdon, Council President

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper, General Counsel

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STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 04-1044 FOR THE PURPOSE OF ADOPTING THE ANNUAL BUDGET FOR FISCAL YEAR 2004-05, MAKING APPROPRIATIONS AND LEVYING AD VALOREM TAXES, AND DECLARING AN EMERGENCY

Date: March 12, 2004

Presented by: David Bragdon
Council President

BACKGROUND

I am forwarding to the Council for consideration and approval my proposed budget for fiscal year 2004-05.

Council action, through Ordinance No. 04-1044 is the final step in the process for the adoption of Metro's operating financial plan for the forthcoming fiscal year. Final action by the Council to adopt this plan must be completed by June 30, 2004.

Once the budget plan for fiscal year 2004-05 is adopted by the Council, the number of funds and their total dollar amount and the maximum tax levy cannot be amended without review and certification by the Tax Supervising and Conservation Commission. Adjustments, if any, by the Council to increase the level of expenditures in a fund are limited to no more than 10 percent of the total value of any fund's appropriations in the period between Council approval at the end of April and adoption in June.

Exhibits B and C of the Ordinance will be available at the public hearing on April 1, 2004.

ANALYSIS/INFORMATION

1. **Known Opposition** – Council hearings will be held on the Proposed Budget during the month of April 2004. Several opportunities for public comments will be provided. Opposition to any portion of the budget will be identified during that time.
2. **Legal Antecedents** – The preparation, review and adoption of Metro's annual budget is subject to the requirements of Oregon Budget Law, ORS Chapter 294. Oregon Revised Statutes 294.635 requires that Metro prepare and submit its approved budget to the Tax Supervising and Conservation Commission by May 15, 2004. The Commission will conduct a hearing during June 2004 for the purpose of receiving information from the public regarding the Council's approved budget. Following the hearing, the Commission will certify the budget to the Council for adoption and may provide recommendations to the Council regarding any aspect of the budget.
3. **Anticipated Effects** – Adoption of this ordinance will put into effect the annual FY 2004-05 budget, effective July 1, 2004.
4. **Budget Impacts** – The total amount of the proposed FY 2004-05 annual budget is \$283,613,446 and 650.85 FTE.

RECOMMENDED ACTION

The Council President recommends adoption of Ordinance No. 04-1044.

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Agenda Item Number 5.1

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

Second Reading

**Metro Council Meeting
Thursday, April 1, 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	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).	

* 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

Staff employed the RRC’s allocation recommendations to calculate the rates in this ordinance. These rates and the effect on Metro’s tip fee are shown in the following table. The figures in the column under “This Ordinance” are the rates implemented by Ordinance No. 04-1042 as filed.

Although the overall increase in the tip fee is reasonable and in historical range (less than \$2, or 1.9 percent), the changes in the various components are large (over 50 percent increase in the case of the transaction fee). In the past, the RRC has recommended against abrupt “steps” in the rates; and for this

reason, staff expects the RRC to look critically at the implementation path and phasing of its recommendation once the committee has had the opportunity to review these results.

Table 2
Components of the Metro Tip Fee & Change, FY 2003-04 to 2004-05
 Shown for 2 Different Rate Models and 2 Excise Tax Scenarios
 (all figures in dollars per ton)

Rate Component	Current Rates (FY 2003-04)	FY 2004-05 Rates			
		Based on Current Rate Model		This Ordinance	
		Rates	Change	Rates	Change
Transaction Fee	\$6.00	\$6.00	-	\$9.50	\$3.50
Disposal Operations	\$42.55	\$43.79	\$1.24	\$47.45	\$4.90
Regional System Fee	\$16.57 ¹	\$16.30	(\$0.27) ¹	\$13.20	(\$3.37) ¹
Excise Tax	\$6.32	\$6.61 ²	\$0.29	\$6.61 ²	\$0.29
DEQ Fees	\$1.24	\$1.24	-	\$1.24	-
Host Fee	\$0.50	\$0.50	-	\$0.50	-
Tip Fee	\$67.18¹	\$68.44	\$1.26	\$69.00	\$1.82
<i>With new excise tax³</i>	<i>\$67.18</i>	<i>\$70.41</i>	<i>\$3.23</i>	<i>\$70.97</i>	<i>\$3.79</i>

- 1 The FY 03-04 rate is subsidized (“bought down”) by the fund balance. The unit cost is about \$1 higher at \$17.56, making the unsubsidized tip fee \$68.18/ ton. For better comparability, \$1 should be subtracted from the changes. (For example, the 2004-05 tip fee under the current rate model would become an increase of only 26¢ rather than \$1.26.)
- 2 Assumes extension or elimination of the sunset on the tax for Parks. The resulting total rate of \$6.61 is: base excise tax rate of \$5.58, plus \$1.03 for Parks.
- 3 Assumes \$8.58 total rate = base excise tax rate of \$5.58 + \$3.00 additional tax.

Metro also imposes charges on privately-owned facilities and non-system licensees. These charges are added to the private per-ton costs. The fees are shown in Table 3.

Table 3
Components of Metro Charges on Privately-Owned, Metro-Regulated Facilities
 Rates and Changes, FY 2003-04 to 2004-05
 Shown for 2 Different Rate Models and 2 Excise Tax Scenarios
 (all figures in dollars per ton)

Private Facility Charges	Current Rates (FY 2003-04)	FY 2004-05 Rates			
		Based on Current Rate Model		This Ordinance	
		Rates	Change	Rates	Change
Regional System Fee	\$16.57 ¹	\$16.30	(\$0.27)	\$13.20	(\$3.37)
Excise Tax	\$6.32	\$6.61 ²	\$0.29	\$6.61 ²	\$0.29
License/Franchise Fee ³	-	-	-	\$0.88 ³	\$0.88
Total charges	\$22.89	\$22.91	\$0.02	\$20.69	(\$2.20)
<i>With new excise tax⁴</i>	<i>\$22.89</i>	<i>\$24.88</i>	<i>\$1.99</i>	<i>\$22.66</i>	<i>(\$0.23)</i>

—Footnotes to this table may be found at the top of the next page—

- 1 This rate is subsidized (“bought down”) by the fund balance. Unit cost rate is ~\$1 higher at \$17.56. All other rates in this table are unsubsidized rates. The excise tax is calculated by a separate formula set forth in Metro Code Chapter 7.01.
- 2 Assumes extension or elimination of the sunset on the tax for Parks. The resulting total rate of \$6.61 is: base excise tax rate of \$5.58, plus \$1.03 for Parks.
- 3 The License/Franchise Fee shown is the average rate per ton. Rates incurred at individual facilities may be higher or lower than this figure.
- 4 Assumes \$8.58 total rate = base excise tax rate of \$5.58 + \$3.00 additional tax.

INFORMATION/ANALYSIS

1. Known Opposition.

Although no specific opposition has been voiced as of this writing, there is precedent for opposition to solid waste rate increases. The following are historical reactions from various user groups:

Haulers. Haulers’ reactions to rate increases have been mixed. But generally, haulers tend to dislike rate increases because these costs are passed on to their customers, and the haulers are typically the first in line to field the resulting complaints and potential loss of business. In some local jurisdictions that regulate haulers’ service charges, the allowed rate-of-return is based on the cost-of-sales; and in some of these cases, haulers may profit mildly from a rate increase because it increases the base on which their rate of return is calculated. However, historically, the majority of haulers have testified that negative customer relations issues outweigh any other advantages to rate increases, and therefore haulers have generally opposed such increases.

Ratepayers. Ratepayers’ costs will go up. Ratepayers typically oppose rate increases, although increases of \$1 to \$2 per ton have historically not motivated significant opposition. However, the current economic climate may magnify the effect of any rate increase.

Mixed Reaction.

Recycling Interests. Recycling interests have historically supported higher disposal fees, because that makes recycling relatively more attractive. However, because the Regional System Fee is levied on disposal only, it is a powerful region-wide price incentive for recycling—and for this reason, recycling interests would tend to disagree with reductions in the Regional System Fee.

Probable Support.

Private Facility Operators. Private solid waste facility operators have historically supported increases in Metro’s tip fee because their own private tip fees can follow the public lead—so long as the increase is not due primarily to the Regional System Fee, which is a cost to these same operators. Because this ordinance raises the tip fee through an increase in the tonnage charge and transaction fee, and at the same time *reduces* the Regional System Fee (although this reduction is partially offset by the imposition of the new license/franchise fee), facility operators are likely to support this change.

Private Disposal Site Operators. Landfills and private transfer stations simply pass any changes in the Regional System Fee on to their customers. The reduction of the system fee means that private operators have an opportunity to reduce or hold the line on their own tip fees. As all but one local private disposal operation are rate regulated (the exception being Forest Grove Transfer Station), the increase in the Metro tip fee is not likely to confer any relative pricing advantages.

2. **Legal Antecedents.** Metro's solid waste rates are set in Metro Code Chapter 5.02. Any change in these rates requires an ordinance amending Chapter 5.02. Metro reviews solid waste rates annually, and has amended Chapter 5.02 when changes are warranted.
3. **Anticipated Effects:** This ordinance will increase the cost of disposal at Metro transfer stations. Historically, most private facilities have mirrored the Metro increases. The reduction of the Regional System Fee will improve operating margins at private facilities, which provides Metro with an opportunity to examine the level of Regional System Fee credits.
4. **Budget Impacts.** These rates are designed to recover fully the department's budgeted costs. These rates are in full compliance with the rate covenant of the solid waste revenue bonds.

RECOMMENDATION

The Chief Operating Officer generally recommends adjustment of solid waste rates to recover costs and remain in compliance with the bond covenant. 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. 04-1042.

Agenda Item Number 5.2

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

Metro Council Meeting
Thursday, April 1, 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 Fee 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.

Agenda Item Number 6.1

Resolution No. 04-3405, For the Purpose of Authorizing an Exemption from Competitive Bidding Requirements and Authorizing Issuance of RFP #04R-XXXX-SWR for Transportation, Processing and Composting Services for Organics Waste from the Metro Region.

Contract Review Board

**Metro Council Meeting
Thursday, April 1, 2004
Metro Council Chamber**

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 04-3405
EXEMPTION FROM COMPETITIVE BIDDING)
REQUIREMENTS AND AUTHORIZING ISSUANCE OF)
RFP #04R-XXXX-SWR FOR TRANSPORTATION,) Introduced by Chief Operating Officer
PROCESSING AND COMPOSTING SERVICES FOR) Michael J. Jordan, with the concurrence
ORGANIC WASTES FROM THE METRO REGION) of Council President David Bragdon

WHEREAS, on December 2, 1999, the Metro Council adopted Resolution No. 99-2856, "for the Purpose of Approving a FY 1999-2000 Organic Waste Management Work Plan, and Authorizing Release of Budgeted Funds," setting forth the Council's Organic Waste Management Work Plan; and,

WHEREAS, the Organic Waste Management Work Plan required that the ability and capacity to process and compost organic waste be established in the Metro region; and,

WHEREAS, to implement the Organic Waste Management Work Plan, Metro has joined with its local government partners to develop Compostable Organic Waste collection programs to serve the region's businesses; and,

WHEREAS, to further implement Organic Waste Management Work Plan, Metro also has planned to provide transfer and processing of Compostable Organic Wastes collected through such collection programs; and,

WHEREAS, Metro is preparing to receive Compostable Organic Waste from the region's solid waste haulers at the Metro Central Transfer Station and accordingly requires the services of a contractor to transport and process such organic materials into compost; and,

WHEREAS, Metro Code Section 2.04.054(c) authorizes, where appropriate and subject to the requirements of ORS 279.015, the use of alternative contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods which are consistent with the public policy of encouraging competition; and,

WHEREAS, the Metro Contract Review Board finds, as set forth on the attached Exhibit B, that exempting transportation, processing and composting services for organic waste from the Metro region from competitive bidding requirements pursuant to the RFP attached hereto as Exhibit A is unlikely to encourage favoritism in the award of the contract or to substantially diminish competition for the contract, and that the award of the contract pursuant to an exemption from competitive bidding will result in substantial cost savings to Metro; and,

WHEREAS, the Metro Contract Review Board finds, for the reasons stated in the staff report and the findings attached hereto as Exhibit B, that the proposed RFP attached hereto as Exhibit A is appropriate for obtaining such a contract; now, therefore:

BE IT RESOLVED that the Metro Contract Review Board:

1. Adopts as its findings the justifications, information and reasoning set forth in Exhibit B, which is incorporated by reference into this Resolution as if set forth in full;
2. Exempts from competitive bidding requirements the contract to be solicited through RFP #0R-XXXX-SWR, attached as Exhibit A; and
3. Authorizes issuance of RFP #04R-XXXX-SWR, attached as Exhibit A.

ADOPTED by the Metro Contract Review Board this _____ day of _____, 2004.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

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DRAFT March 12, 2004

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REQUEST FOR PROPOSALS

FOR TRANSPORTATION, PROCESSING AND COMPOSTING SERVICES FOR ORGANIC WASTES FROM THE METRO REGION

RFP #04R-__-SWR

I. INTRODUCTION

The Solid Waste & Recycling Department of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, is requesting proposals for transportation, processing and composting services for up to 50,000 tons of organic wastes from the Metro region for a five year period. Proposals will be due no later than _____ p.m., _____, 2004 in Metro's business offices at 600 NE Grand Avenue, Portland, OR 97232-2736, Attention: Jennifer Erickson. Details concerning the project and proposal are contained in this document. Copies of the RFP may be obtained by contacting the Solid Waste & Recycling Department at (503) 797-1650.

II. BACKGROUND/HISTORY OF PROJECT

The Metro region has established the goal of recovering at least 45,000 tons per year of commercially-generated organic waste (e.g., all types of food waste including but not limited to: pre- and post-consumer vegetative waste, pre- and post-consumer meats, seafood and dairy waste, and non-recyclable or food-soiled paper) from the waste stream. Currently, the region disposes of over 275,000 tons of food waste and soiled non-recyclable paper annually. It is estimated that approximately 60% of this waste is from the commercial sector and 40% from residences.

The Metro region comprises 3 counties and 24 cities with a combined population of 1.5 million people. The City of Portland, the largest city within the region, has a population of roughly 500,000. Within the City of Portland, commercial waste is collected by 65 independent hauling companies that are licensed to provide this service. The City does not set collection rates in the commercial sector, nor does it set service territories. The City does have the authority to require that these haulers collect organic wastes and that the waste be taken to only those facilities that meet certain requirements. State law and City ordinance specifically prohibit the disposal of materials source separated for recycling. Since 1996, the City has required that commercial businesses recycle. The City currently enforces and monitors the recycling ordinance and has the authority to add organics to the materials required for recycling. The City plans to implement a voluntary collection program for a selected group of organic waste generators as soon as a processing facility is available, and proceed to a broader collection subsequently.

Other local governments within the region franchise the collection of commercial solid waste and recycling and set rates for services. None of these jurisdictions requires businesses to recycle. Instead, businesses are provided the opportunity to recycle and

may choose whether or not to participate. Collection rates set by these cities and counties include the costs of recycling services. It is expected that if Metro offers a rate for source-separated organic waste at its transfer stations, local governments will work with their franchised haulers to set a rate for this service.

Metro owns and contracts for the operation of two transfer stations. These transfer stations handle roughly 60% of the putrescible solid waste generated and disposed in the region. Ninety percent of the solid waste generated overall in the region and destined for disposal is sent to the Columbia Ridge Landfill in Gilliam County, Oregon. Metro sets the rates for the delivery of materials to its two transfer stations. In January of 2001, Metro passed an ordinance amending its solid waste code (Chapter 5.02) to create a charge at its transfer stations for the receipt, handling transfer and processing of Compostable Organic Waste. Once a suitable processor for the materials is established, Metro is prepared to post a rate and begin accepting Compostable Organic Waste from the region's solid waste haulers. Proposers are not required to utilize Metro transfer stations. This service is being offered by Metro. Proposers may propose an alternative arrangement for the receipt of Acceptable Organic Waste.

The commercial food business sector will be targeted for this program. Targeted businesses include, but are not limited to: grocery retail and wholesale, restaurants, food service, caterers, institutional cafeterias and kitchens, food processors.

III. PROJECT SUMMARY

The purpose of this RFP is to solicit proposals to accept, transport, process and compost source-separated organic waste from Metro-owned transfer stations. As part of this program, in addition to paying for the services sought under this RFP, Metro will also provide the successful proposer up to \$500,000 in funds ("the Metro Subsidy") for the purpose of enhancing its facility infrastructure and equipment necessary to accommodate the transportation, processing and composting of the region's organic wastes. Metro will also provide four transport containers to the successful proposer. Scoring of proposals will favor proposers who choose to request only portion or none of the offered Metro Subsidy.

This Request for Proposals is not for demonstration or pilot projects nor is it intended for experimental, untested or unproven technologies. Metro reserves the right in its sole discretion to determine what is or is not considered an experimental, untested or unproven technology. This RFP is not limited to aerobic composting technologies. Proposals utilizing other technologies that result in the controlled biological decomposition of organic wastes will also be accepted. For the purposes of this RFP, the term "composting" shall be inclusive of these alternative technologies. Metro intends to enter into a contract with the successful proposer for the receipt, transportation, processing and composting of all source-separated organic wastes delivered to Metro-owned transfer stations.

During the first phase of the agreement, organic waste will be accepted only at Metro Central station in Northwest Portland. As the program matures, Metro may add Metro South Station located in Oregon City. Proposers will be asked to provide prices for both scenarios.

Generally, the work consists of receipt, transport, processing and composting of source-separated organic wastes delivered to Metro transfer stations. The work is detailed in the attached "Scope of Work" section of this document. Metro will also provide access to scales and weighing tickets. Under Metro's guidance, the transfer station operator will provide pre-sorting, load check/quality control, transport container loading services.

Cost

Metro expects the services be provided in a cost-effective manner. Metro will provide a subsidy of up to \$500,000 in funds to offset the initial capital costs incurred by the successful proposer to prepare appropriate and/or upgrade existing infrastructure for receipt of the region's organic wastes. Metro will also provide the Contractor with four transport containers and Contractor shall take ownership and maintenance responsibilities for such containers. Therefore it is expected that proposer's prices will reflect this Metro Subsidy. Scoring of proposals will favor proposers who choose to request only a portion or none of the offered Metro Subsidy.

Prices for services requested are listed on the price schedule. Payments for transport, processing and composting will be made on a per-ton basis. Payments for any Metro Subsidy requested will be made the form of a 50% up-front lump sum payment and the remaining 50% will be made in the form of progress payments.

Contract Length

The length of the negotiated contract with the successful proposer will be for five years.

Deadline

Proposals will not be considered if received after _____ p.m.,
_____, 2004.

IV. PROPOSAL INSTRUCTIONS/CONTENTS

Proposers will submit one printed copy of the proposal and one electronic copy (diskette or CD) of the proposal. Failure to submit the proposal as outlined may result in the rejection of a proposal. Proposals should include the materials in the order noted, and be formatted double-sided, and printed on recycled paper with a minimum of 30% post-consumer content. Any non-recycled or non-reusable bindings, section dividers or covers should be omitted. All proposals must be submitted no later than the time prescribed, at the place, and in the manner set forth in the INTRODUCTION to this RFP. The information submitted in the proposal should describe how the work would be accomplished.

- A. **Transmittal Letter:** The letter should provide an overview of the approach that will be used to accomplish the work and also whether any portion of the funds provided to offset capital costs (Metro Subsidy) will be requested, and if so, what amount. Indicate the person who will be the contact for the project and who in the firm has the authority to sign the agreement with Metro if a contract is awarded to the firm. State that the proposal will be valid for a minimum of 120 days. Include all other firms that would be involved in the project and their respective roles.
- B. **Proposal forms:** The “Price Schedule” and “Proposer’s Questionnaire” are to be filled out and submitted as part of the proposal. Failure to complete the forms fully may result in the rejection of a proposal. Instructions for completing the forms follow.
1. **Price Schedule:** Prices submitted should include all costs necessary to perform the work, and also on the amount of funding/subsidy requested from Metro, and the purposes to which the funds will be put.
 2. **Proposer’s Questionnaire:** The questionnaire is to be filled completely. Attachments may be included as part of the questionnaire.
- The information included in the questionnaire will be used to evaluate proposals and determine whether the proposal is responsive. Information submitted should demonstrate the ability of the proposer to accomplish the work requested in this RFP. Please be thorough and complete.
- C. **Exceptions and Comments:** Firms wishing to take exception to, or comment on, any specified criteria within this RFP are encouraged to document their concerns in this part of their proposal. Exceptions or comments should be succinct, thorough and organized. Please include any exceptions you wish to take with the proposed Contract Documents contained in this RFP. If exceptions are included, indicate whether the firm would be willing to comply with the requirements of the RFP should Metro wish to reject the exception (see item VII.B). Please describe if, and how, the exception would benefit Metro.
- D. **Confidentiality:** This paragraph shall apply to information that the Proposer is submitting to Metro which Proposer considers to be confidential and proprietary and which Proposer does not want Metro to disclose to third parties. Proposer shall submit such confidential information in a separate, sealed envelope, clearly and prominently marked “confidential information,” and bearing the title and number of this RFP, and the sealed envelope shall be attached to the rest of the Proposer’s RFP application. Provided that, in Metro’s sole discretion, such information should reasonably be considered confidential and to the extent otherwise permitted by law, Metro obliges itself in good faith not to disclose such properly identified confidential information to any person outside of Metro. However, Proposers should be aware that Oregon Law (ORS chapter 192)

requires public disclosure of most records deemed to be "public records." Metro cannot, therefore, guarantee to protect the confidentiality of any records submitted to Metro, even if the Proposer believes them to be exempt from disclosure. If properly identified confidential information is requested, and if Metro determines that such information should reasonably be considered confidential, Metro will not disclose it unless ordered to do so by the Multnomah County District Attorney, and, if Metro receives such an order, Metro will provide Proposer with the opportunity to appeal the District Attorney's decision to the State courts.

V. QUALIFICATIONS/EXPERIENCE

Proposers shall have the following qualifications and experience:

- A. Provide, or contract with a fully operational facility that is in compliance with all applicable permits, licenses and regulations of whatever nature required to accept organic wastes as defined in this RFP no later than January 1, 2005.
- B. References from appropriate representatives of communities and regulators demonstrating that a currently operating facility using the proposed technology is meeting expected performance, environmental, health and safety standards and regulations (provided by proposer).
- C. Ability to transport, or contract for the transport, and process and compost up to 50,000 tons per year of organic wastes from the Metro region.
- D. Proven experience in handling and composting of organic materials.

VI. EVALUATION OF PROPOSALS

- A. Evaluation Process: An evaluation team will conduct the evaluation process. Metro will evaluate only those proposals that, in the evaluation team's sole opinion, conform to the proposal instructions. The evaluation will take place using the evaluation criteria identified below. Interviews may be conducted prior to final selection of the successful firm.
- B. Evaluation Criteria: This section provides the criteria and scoring that will be used in the evaluation of the proposals submitted to accomplish the work defined in the RFP.

- 30 points Project Approach
- 1. Demonstration of understanding of the project.
 - 2. Proposed use of Metro funds.
 - 3. Operational approach (as presented in proposal questionnaire):
 - Transport
 - Process
 - Equipment/facility
 - Emissions

4. Feasibility:
 - Probability that proposed approach will produce proposed results based on factors such as proposer's past experience, past success/failure, current end-product markets, risk.

30 points

Qualifications/Experience

1. Proposed process is reliable, based on proven technology currently being used at an operating facility.
2. Facility capacity is at least 50,000 tons per year of compostable organic waste as defined in this RFP.
3. Technology must be proven to manage and minimize odors.
4. Facility must be capable of processing feedstocks that vary seasonally.
5. End product is currently and will continue to be marketable.
6. References from communities where proposer's facilities currently operate. Proposer to provide contact information.

40 points

Cost

1. Overall cost/benefit: The cost provided by the proposer will be evaluated based on both Metro funds requested and proposed tip fee over the life of the agreement.
 - Cost per ton for the transport, processing and composting of up to 50,000 of the region's Organic Waste.
 - Amount of Metro Subsidy requested.

Scoring of proposals will favor proposers who choose to request only a portion or none of the offered Metro Subsidy.

VII. GENERAL PROPOSAL/CONTRACT CONDITIONS

- A. Limitation and Award: This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.
- B. General Conditions/Contract: The attached forms, general conditions, scope of work and agreement are included for your review prior to submitting a proposal. Any changes in these contract provisions should be requested and documented as an "exception" in the appropriate portion of the proposal. Consider the requested exceptions carefully, as they will be considered in the evaluation of proposals. Requested exceptions that cannot be resolved will result in rejection of the proposal.

- C. RFP as Basis for Proposals: This Request for Proposals represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any additional verbal information that is not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be submitted in writing to Jennifer Erickson. Responses to any questions that, in the opinion of Metro, warrant a written interpretation or RFP amendment will be furnished to all parties receiving this RFP. Metro will not respond to questions received after _____, 2004.
- D. Information Release: All proposers are hereby advised that Metro may solicit and secure background information based upon the proposal information, including references provided in response to this RFP. By submission of a proposal all proposers agree to such activity and release Metro from all claims arising from such activity.
- E. Minority and Women-Owned Business Program: Metro and its Contractors will not discriminate against any person or firm based on race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

Metro extends equal opportunity to all persons and specifically encourages disadvantaged, minority and women-owned businesses to access and participate in this and all Metro projects, programs and services.

If any subcontracting is intended, Proposers are directed to Metro Code 2.04.100 through 2.04.380 governing utilization of disadvantaged, minority and women-owned businesses (available on Metro's website www.metro-region.org).

Metro's Minority and Women-Owned Business Program is administered by the Business Services Division. That division may be reached at (503) 797-1814 during regular business hours should you have questions about the program.

- F. Use of Recycled Products: When purchasing products or procuring services, Metro gives preference to materials and supplies manufactured from recycled materials, as described in Metro Code section 2.04.520(b). Vendors shall use recycled and recyclable materials and products to the maximum extent economically feasible in the performance of contract work set forth in this RFP.
- G. Conflict of Interest. A Proposer filing a proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this proposal or has participated in contract negotiations on behalf of Metro; that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

H. Deadline. Proposals will not be considered if received after _____ p.m.,
_____, 2004.

FORMS

- Price Schedule
- Proposal Questionnaire
- Agreement
- Performance Bond

PRICE SCHEDULE

1. Metro Central Station: Total per ton price* for each ton of source-separated organic waste received \$ _____
 (*Includes receipt, transport, processing, composting, and backhaul of containers)

2. Metro South Station: Total per ton price* for each ton of source-separated organic waste received \$ _____
 (*Includes receipt, transport, processing, composting, and backhaul of containers)

3. If you choose not to use either Metro transfer station, how much will you charge per ton to accept organic waste? \$ _____

4. Total amount of Metro Subsidy funding requested: \$ _____
 (Complete Capital Outlay table below)

List all items of equipment, structures and items pertaining to them, to be purchased as part of this project. (Total Metro funds listed below must match total requested in Question #4 above.)

List Capital Outlay Items	Metro Funds	Contractor Funds	Total Cost
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
TOTAL	\$	\$	\$

PROPOSAL QUESTIONNAIRE

The following Questionnaire asks for information concerning the Proposer's organization, approach and operations. The Proposer should submit responses to the Questionnaire (not use the one below) in the exact order as listed below with the same headings and numbering system. Please list the question or information request contained in the Questionnaire prior to your response.

Information submitted in response to this Questionnaire will be considered binding on the successful Proposer, and any substitutions or deviations shall be allowed only if approved by Metro.

Generally, the Proposer shall include information for the specific single business organization or entity, which is submitting a Proposal for the work described in the RFP and which would be the signatory on the Contract. If the information being submitted is not for the specific proposing entity, please note such in the response. If a major portion of the work is being subcontracted, information for that subcontractor should be submitted and specifically referenced.

All answers shall be specific and complete in detail. Metro reserves the right to make independent inquiries concerning the information submitted herein, to conduct any additional investigation necessary to determine the Proposer's qualifications, and to require the Proposer to supply additional information.

Use of Attachments

Schedules, resumes, reports, diagrams, and other forms of information may be used as attachments, provided that the information in response to this Questionnaire clearly references the attachments. The purpose of this Questionnaire and any attachments is to supply information about the Proposer to Metro so that Metro may evaluate each proposal¹.

¹ Confidentiality- See Section IV. D. of the RFP for any materials proposers' desire to remain confidential.

A. Transport System Information

- 1.) Do you currently own the equipment you will use to transport organic waste containers from Metro transfer stations to your facility?
- 2.) Provide a detailed description of the equipment you will be using including year, make and model. (Note: organic waste will be loaded into Metro-purchased 40-yard hard top drop boxes. See Appendix A for container specifications.)
- 3.) Will you subcontract the transportation to another firm? If so, to what company? (Subcontractor must complete Section E. "Disclosure Information" of this Proposal Questionnaire.)
- 4.) Do you have the ability to clean the organic waste containers at your facility once emptied? If not, how will you ensure clean containers are returned to Metro transfer stations?
- 5.) Will you backhaul materials from your facility? If so, how much do you expect to haul on a monthly basis and where will this material be taken?
- 6.) Do you propose to use Metro funds for transport enhancements? If so, explain the amount of funding and specifically how it will be used.
- 7.) If you do not plan to use Metro transfer stations for staging and reload, please describe how you intend to receive materials and ensure quality control.

B. Process/Facility Information:

- 1.) Please describe your company's general skills and qualifications regarding the processing and composting of organic waste.
- 2.) Do you have any currently operating facilities that utilize the technology you propose? Where are they located? How long have they been in operation? Demonstrate the technology's success in handling similar waste streams to those targeted in this RFP. Have any odor complaints been filed against the facility? If yes, explain.
- 3.) Where do you propose to process and compost the organic wastes derived from the Metro region? How many miles is it from Metro central Station? From Metro South Station?
- 4.) What is your current permit status for the location you propose to process and compost the region's organic waste? If the facility is currently in operation for composting organic waste, have you been cited for violating any permit conditions? If yes, explain. Provide copies of all relevant permits.

- 5.) If you have a currently operating facility, how will your process change if you accept organic waste from the Metro region?
- 6.) If your facility will not be ready to accept Organic Waste from the Metro region by January 1, 2005, please propose how you intend to handle the material in the interim. When will your facility be ready to accept Organic Waste?
- 7.) Provide a copy of your organic waste material acceptance standards and your threshold for contamination. (Note: material acceptance standards must comply with the goals and objectives of the region's organic waste collection program and the nature of the participating organic waste generators listed in the "Background" section of this document.)
- 8.) Describe all feedstock materials and their relative proportions (including bulking agents or other process additives) that you will accept and/or process. Provide a process flow diagram.
- 9.) From what geographic area and from what types of waste generators will you source material? What percentage of your overall feedstock will be derived from inside the Metro region?
- 10.) What is the tip fee for each of the feedstocks you will accept as part of processing and composting Metro region organic waste?
- 11.) What is your screening/processing procedure for unacceptable materials?
- 12.) Describe the various end-products you will produce from the regions organic waste and your intended markets for the end products. Have any of these markets been secured by binding agreements?
- 13.) Do you propose to use Metro funds for process enhancements? If so, state the amount of funding and specifically how it will be used. (Funds proposed here must match those listed in price schedule.)
- 14.) What is your estimated total operational capacity during your first, second and third year of accepting organic wastes? (List as total for each year and break out each feedstock as a percentage of the total.) On what assumptions are these projections based?
- 15.) What are your odor control procedures?

C. Equipment Information

- 1.) Describe the equipment you already own and how it is currently used in your process. What percentage of each piece of equipment's time will be dedicated to organic waste processing for the duration of this agreement?

- 2.) Do you propose to use Metro funds to purchase equipment to accommodate the inclusion of organic waste at your facility? If so, state the amount of funding and specifically what equipment this money will buy. (Funds proposed here must match those listed in price schedule.)
- 3.) Describe how this new equipment will be used and how it fits in your overall process. Include a schematic drawing or specific product information with the name and address of the equipment manufacturer as an attachment to this application.
- 4.) Explain how the equipment will affect or alter your current system. Include information about your current operational capacity and how this equipment will affect capacity over the next five years.
- 5.) Who will operate and maintain the equipment? What is your contingency plan should you have an equipment failure?

D. Emission Reduction

Metro wishes to minimize the emissions from the use of equipment in conducting the work described in this RFP. Please describe how you propose to meet this objective. Include in your description the following at a minimum:

- 1.) The emission systems proposed for equipment.
- 2.) Fuels to be used in the equipment.
- 3.) Expected emissions as compared to low sulfur diesel fuels in conventional engines in terms of carbon monoxide, diesel particulates and hydrocarbons.
- 4.) List the cost of this program, including unit price premiums for alternative fuels.

E. Disclosure Information:

1. List the names and addresses of all concerns that are parent companies, subsidiaries or affiliates of the company.
2. Year company was established _____

If a corporation, indicate state in which incorporated and year of incorporation.

3. Year present management assumed control of business _____
4. Are the company or its principals presently involved in any pending or threatened litigation which could have a material adverse effect on the company's and/or the principals' financial condition?
No _____ Yes _____ (if Yes, explain)
5. Has the company or its principals ever been involved in bankruptcy, creditor's rights, or receivership proceedings or sought protection from creditors?
No _____ Yes _____ (if Yes, explain)
6. Has management or any principal stockholder of the company been convicted of any felony?
No _____ Yes _____ (if Yes, explain)
7. Has the company or any principal been under indictment or investigation by a public agency for a violation of a state or federal statute?
No _____ Yes _____ (if Yes, explain)
8. Is the company currently in compliance with all applicable local, state and federal requirements (permit, zoning, OSHA, etc.)?
Yes _____ No _____(if No, explain)
9. Are there currently any unpaid liens or judgments filed against the company or its principals?
No _____ Yes _____ (if Yes, explain)

AGREEMENT

This Agreement is made by and between _____, hereinafter called Contractor, and Metro, a regional government organized under the laws of the State of Oregon and the Metro Charter.

Contractor and Metro agree as follows:

1. Contract

The Contract consists of this Agreement, the Performance Bonds (and/or Letter(s) of Credit), the General Conditions, the Scope of Work, any and all Appendices, amendments, change orders, or extensions of the foregoing documents which the parties have agreed to or which Metro has approved in the manner prescribed in the Contract, and Contractor's proposal. No amendment of, or change order made to, this Contract shall be construed to release either party from any obligation contained in the Contract except as specifically provided in any such amendment or change order.

2. Contractor's Performance of Work

In consideration of Metro's payments described in Section 3 of this Agreement, Contractor agrees to perform the Work described in the Contract and to provide all labor, tools, equipment, machinery, supervision, transportation, disposal, permits, and every other item and service necessary to perform the Work described in the Contract. Contractor further agrees to fully comply with each and every term, condition, and provision of the Contract.

3. Metro's Payment of Contract Amount

In consideration of Contractor's performance of the Work described in the Contract, Metro agrees to pay contractor the amount provided, and in the manner described, in the Contract.

4. Additional or Deleted Work

Contractor shall, when so instructed by Metro under the procedures of the Contract, perform additional Work or delete Work in accordance with the Contract. The amount of any increase or decrease in payments by Metro to the Contractor as a result of additional or deleted Work shall be determined pursuant to the applicable provisions of the Contract.

5. Term

The Contract shall take effect on January 1, 2005, and remain in full force and effect through and including December 31, 2009, as more fully described in the Contract. The initial term of the Contract may be extended only by a written change order signed by Metro and Contractor.

6. Remedies for Default

If Contractor fails to perform as specified in the Contract, Metro shall be entitled to all the rights and remedies which this Contract provides, as well as all remedies provided by law. This Contract shall not be construed as limiting or reducing the legal remedies that Metro would have in the absence of any provision of the Contract.

7. Laws of Oregon Apply

The law of Oregon shall govern the interpretation and construction of this Agreement and of the Contract.

8. Entire Agreement

The Contract constitutes the final written expression of all of the terms of this Agreement and is a complete and exclusive statement of those terms. Any and all representations, promises, warranties, or statements by either party that differ in any way from the terms of the written Contract shall be given no force and effect. This Contract shall be changed, amended, or modified only by written instrument signed by both Metro and Contractor. This Contract shall not be modified or altered by any course of performance by either party.

CONTRACTOR

By: _____

Print Name: _____

Title: _____

Date: _____

METRO

By: _____

Michael Jordan
Chief Operating Officer

Date: _____

PERFORMANCE BOND

(NOTE: CONTRACTORS MUST USE THIS FORM, NOT A SURETY COMPANY FORM)

KNOW BY ALL MEN BY THESE PRESENTS:

We the undersigned _____ as PRINCIPAL (hereinafter called CONTRACTOR), and _____, a corporation organized and existing under and by virtue of the laws of the state of _____, duly authorized to do surety business in the state of Oregon and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department and is of the appropriate class for the bond amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, to pay to the Metro as OBLIGEE, the amount of _____ (\$ _____), in lawful money of the United States of America.

WHEREAS, the CONTRACTOR entered into a contract with Metro dated _____, _____, which contract is hereunto annexed and made a part hereof, for accomplishment of the Work described as follows: Transportation, Processing and Composting Services for Organic Wastes from the Metro Region.

NOW, THEREFORE, the condition of this obligation is such that if the CONTRACTOR shall promptly, truly and faithfully perform all the undertakings, covenants, terms, conditions, and agreements of the Work, Metro having performed its obligations thereunder, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever CONTRACTOR shall be declared by Metro to be in default under the Contract Documents for the project described herein, the SURETY may promptly remedy the default, or shall promptly complete the Work in accordance with the Contract Documents and the project Scope of Work. SURETY, for value received, further stipulates and agrees that all changes, extensions of time, alterations, or additions to the terms of the Contract or Scope of Work for the Work are within the scope of the SURETY's undertaking on this bond, and SURETY hereby waives notice of any such change, extension of time, alteration or addition to the terms of the Work or to the Scope of Work. Any such change, extension of time, alteration or addition to the terms of the Work or to the Scope of Work shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that such increase shall not exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the SURETY.

This initial bond shall be in effect for the period beginning _____, _____, through and including _____, _____, and shall be subject to and governed by each and every term and condition of the contract, as defined herein. Thereafter, CONTRACTOR shall obtain and provide to Metro a renewal or replacement of this bond, in like form and in an amount as specified by the Contract, with a qualified SURETY acceptable to Metro, no later than sixty (60) days prior to the expiration of the term of the preceding bond, for the next contract year, in order that a performance bond shall be continuously in effect. This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Metro or its heirs, executors, administrators, successors or assigns.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, _____.

SURETY

By: _____

Title: _____

CONTRACTOR

By: _____

Title: _____

GENERAL CONDITIONS

GENERAL CONDITIONS

Article 1 -- Definitions

For the purposes of this Contract the following terms shall have the meanings hereinafter set forth:

“Acceptable Organic Waste” means source-separated organic waste that meets “Contractor’s Material Acceptance Standards” as provided by Contractor and mutually agreed to by Contractor and Metro.

“Code” means the Metro Code, including any amendments thereto.

“Container” means the Metro-supplied receptacle used to transport organic waste from the transfer station to the compost site that will become the property of the Contractor.

“Compostable Organic Waste” means organic wastes delivered at Metro Central Station or at Metro South Station in a form suitable for making Compost, notwithstanding the presence of incidental amounts or types of non-compostable materials.

“Composting” means the controlled biological decomposition of organic material.

“Contract” and **“Contract Documents”** include the following:

1. The Agreement signed by both parties thereto, and the Performance Bonds, or Letter(s) of Credit,
2. The Scope of Work,
3. The General Conditions,
4. Any and all Addenda to the Contract,
5. Any and all Appendices, Amendments, Change Orders or extensions of the foregoing documents which the parties have agreed to or which Metro has approved in the manner prescribed by the Contract,
6. The Request for Proposals,
7. The Contractor’s proposal, including the Price Schedule, the Proposal Questionnaire, and all other commitments made therein, unless otherwise provided in the Agreement; provided, however, that appendices and attachments to Contractor’s proposal shall not be considered part of the Contract Documents unless specifically agreed to by Metro in the Agreement.

The terms **“Contract,”** **“Contract Documents”** and **“Documents”** shall also mean any and all services, matters and things which the above-described documents require to be done, kept, performed or furnished.

“Contract Change Order” or **“Change Order”** means a document prepared pursuant to applicable provisions of the Metro Code and Article 13 of these General Conditions as a change, amendment or modification to the Contract, incorporating approved Contractor’s proposals for changes in the Contract. Change Orders shall be numbered consecutively in chronological order.

“Contract Manager” means Metro’s representative for all purposes of this Contract, designated as such by Metro. The Contract Manager is also the liaison between Contractor and Metro’s consultants. The Contract Manager has no authority to approve increases in the cost of the Contract; all such changes must

be approved under the procedures in this Contract and by Metro pursuant to applicable provisions of the Metro Code.

“Contractor” means the person, firm, corporation or other entity that executes the Contract with Metro.

“Contractor’s Material Acceptance Standards” means the specifications for Compostable Organic Waste that Contractor will accept for processing and composting including the acceptable maximum level of contaminants or “Unacceptable Organic Waste”.

“Contractor’s Proposal” means all material submitted by Contractor to Metro in response to Metro’s original RFP for the Contract.

“Contractor’s Surety” means the holder(s) of the performance and bond, or the letter(s) of credit, as required by Article 16 of the Contract.

“Days” means calendar days.

“Default” means any failure to perform or breach of any provision of this Contract.

“DEQ” means the Department of Environmental Quality of the State of Oregon.

“Disposal Site” means the landfill to which Unacceptable Organic Waste or Residuals is transported and disposed.

“Force Majeure” means riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics and federal or state government orders, any of which is beyond the reasonable anticipation of the applicable party and which prevents performance of the Contract, but only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time. Both parties agree that no other events, however catastrophic or uncontrollable, including, but not limited to, changes in laws or regulations, strikes, lockouts, other labor disturbances, breakage or accidents to machinery, equipment or plants, or inclement weather, shall be considered forces majeure.

“Metro” means its officers, employees, other Contractors, authorized agents and servants. For purposes of this Contract, “Metro” does not include the Contractor or the Contractor’s officers, employees, subcontractors, agents or servants.

“Metro Central Station” or “MCS” means the solid waste transfer station owned by Metro and located in Northwest Portland, Oregon.

“Metro South Station” or “MSS” means the solid waste transfer station owned by Metro and located in Oregon City, Oregon.

“Organic Waste” means all types of food waste including but not limited to: pre- and post-consumer vegetative waste, pre- and post-consumer meats, seafood and dairy waste, non-recyclable or food-soiled paper products.

“Request for Proposal” or “RFP” means a request by Metro for a proposal to perform work, including Metro’s original request for proposals for the Contract as well as future requests for proposals on contemplated changes in the Contract.

“Residuals” means unacceptable materials delivered to the compost facility and removed prior to or subsequent to composting.

“Scalehouse” means those facilities the purpose of which is to determine and collect charges from public, commercial and industrial users of Metro transfer stations. The term “scalehouse” shall include both the buildings used for this purpose and the weighing system.

“Separate Contract” means a contract between Metro and a party other than the Contractor.

“Staging Area” is the area located at the transfer stations on which containers are staged prior to and after loading.

“Tip Fee” means the dollar amount charged per ton to deposit organic waste at a facility for processing and composting.

“Transfer Station” means a facility primarily designed and operated to accept incoming loads of solid waste from collection vehicles and to transfer such waste to larger vehicles for disposal in an approved, general purpose, sanitary landfill.

“Unacceptable Organic Waste” means any waste that is not Acceptable Organic Waste.

“Waste” means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose.

“Work” shall mean, unless the context requires otherwise, all labor, materials, equipment and services required or necessarily implied by the Contract Documents to be provided by Contractor.

Article 2 -- General Provisions

- A. Contractor shall comply with each and every provision of the Contract Documents.
- B. The Contract shall be deemed to have been made in and shall be construed under the laws of the state of Oregon. Any and all disputes arising under this Contract shall be decided under Oregon law.
- C. Contractor shall address all correspondence for Metro to Metro’s designated Contract Manager.
- D. Contractor and its officers, employees, agents and subcontractors shall perform each and every service to be performed under this Contract in a skillful and competent manner in accordance with the highest standards of the solid waste and transportation industries. Contractor shall be liable to Metro for any and all errors or omissions in the performance of this Contract and for any and all failures to perform this Contract.
- E. Contractor warrants that the personnel and equipment used in the performance of this Contract shall conform with the representations made in Contractor’s proposal and shall otherwise be of the highest quality.
- F. In performing each and every service to be performed under this Contract, Contractor and Contractor’s officers, employees, agents and subcontractors shall comply with all applicable laws, regulations, ordinances, orders and all other requirements of federal, state, regional, county and local government authorities (for purposes of this Article, collectively “applicable legal requirements”) and agencies having jurisdiction over the relevant activities, including all applicable legal requirements concerning minimum wage rates, non-discrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire

protection, permits, fees and similar requirements. Contractor shall also give all notices and obtain all licenses and permits pursuant to all applicable legal requirements.

- G. Contractor and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:
1. The performance of the contractor, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
 2. Any claims arising from or relating to the performance of the contractor or subcontractor under a public contract;
 3. Any cost and pricing data relating to the contract; and
 4. Payments made to all suppliers and subcontractors.
- H. Contractor and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.
- I. Any written notice required or allowed under the Contract shall be deemed to have been duly served if delivered in person to the individual, member of the firm, entity or an officer of the corporation for which or for whom it was intended, or if sent by registered or certified mail to the last business address of the relevant person or party known to the person who gives the notice. The date or time of service for purposes of all notices required or allowed under the Contract shall be the time or date the relevant document was (1) sent by mail in the manner prescribed in this Section, or (2) personally delivered to the proper address if not mailed in the manner prescribed in this Section.
- J. Time limits stated in this Contract are of the essence. No waiver of the Contract time limits or schedule dates may occur by Metro's failure to object to untimely performance under the Contract. In any event, any waiver of such time limits or schedules shall not be construed as a waiver of any future time limits or schedules.
- K. Metro shall have the right to interview any person in Contractor's employ or under Contractor's control, including without limitation, any person in a subcontractor's employ, and to inspect, review and copy all records, documents and evidence in Contractor's custody, possession or control, or in the custody possession or control of any subcontractor, in order to assist Metro in determining whether:
1. Contractor is entitled to reimbursement or increased payment under any applicable provision of this Contract, and, if so, by what amount;
 2. Metro is entitled to credits or to make reduced payments to Contractor under any provision of this Contract, and, if so, by what amount; or
 3. Contractor has performed or is performing its operations consistent with all applicable health and safety laws, regulations and requirements.

- L. Contractor and subcontractors shall make records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Contractor elects to have such records outside these boundaries, the costs paid by the Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.
- M. Contractor and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section M.
- N. Contractor and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.
- O. Contractor and subcontractors agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from Metro.
- P. Failure of the Contractor or subcontractor to keep or disclose records as required by this document or any solicitation document may result in disqualification as a bidder or proposer for future Metro contracts as provided in ORS 279.037 and Metro Code Section 2.04.070(c), or may result in a finding that the Contractor or subcontractor is not a responsible bidder or proposer as provided in ORS 279.029 and Metro Code Section 2.04.052.
- Q. Contractor agrees to promptly pay all subcontractors, material persons, suppliers and laborers engaged for purposes of this Contract in accordance with any and all contracts between any such persons or entities and Contractor, but in no event later than 45 days after such persons or entities have completed the work. Contractor shall immediately remove any liens or encumbrances that, because of any act or default of Contractor or its officers, employees or agents, or of Contractor's subcontractors or material suppliers, (1) are filed against any property, real or personal, of either Metro or Contractor, or (2) interfere with the performance of this Contract. Contractor shall defend, indemnify and hold Metro harmless with respect to any charges, amounts, claims or liens described in or encompassed within this paragraph, as required by Article 15 of these General Conditions.
- R. No provision(s) of this Contract, nor any authority granted by the Contract, is intended to create or result in any personal liability for any public official or employee or agent of Metro, nor shall any provision(s) of the Contract be construed to create any such liability. No approval given by Metro pursuant to this Contract shall be construed to relieve Contractor of any of its obligations to perform this Contract.
- S. In the event any provision or clause of this Contract is held or determined to be void, invalid or unenforceable under any federal, state, regional or local laws, regulations or ordinances, such provision or clause shall be treated as having been excised from the Contract from the Contract's

inception, and in such a manner as to allow the remainder of the Contract to be fully binding and enforceable on the parties hereto.

- T. A waiver by either party of any default shall not be taken or held to be a waiver of any succeeding default or as waiver of any provision of this Contract. No payment or acceptance of compensation for any period subsequent to any default shall be deemed a waiver of any right or acceptance of defective performance. Where the condition to be waived is a material part of the Contract such that its waiver would affect the essential bargains of the parties, the waiver must be supported by consideration and take the form of a Change Order as provided for in Article 13 of these General Conditions.
- U. The parties agree that proper and exclusive venue for any and all actions or proceedings to enforce this Contract, or to enforce any subcontracts made pursuant to this Contract, shall be in the county of Multnomah, the state of Oregon, or, if in federal court (and if jurisdiction and venue otherwise obtains), in the United States District Court for the District of Oregon.
- V. Contractor shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.
- W. Contractor and its respective subsidiary corporations, parent corporations, and any corporations owned or operated by its parent or subsidiary corporations, whether in existence at the time of this Contract or later created, agree not to dispute, contest, or challenge in any way the exercise by Metro of any flow control authority as described in its ordinances, regulations, and bond covenants unless the exercise of such flow control authority has been judicially declared or affirmed to be legally invalid by the highest court of law or equity having jurisdiction to consider the legality or illegality of Metro's exercise of flow control authority. Any breach of this provision, as determined by the sole opinion of Metro, shall constitute a default subject to the remedies contained in Article 11B of these General Conditions.

Article 3 -- Intent of the Contract Documents

- A. All services which are necessary to complete the Contract within the limits and in the manner established by these Contract Documents shall be considered as a part of the Contract, and such services shall be executed and performed by Contractor without extra compensation in the same manner and with the same quality of material and services as required by other portions of the Contract.
- B. Unless expressly stipulated or agreed in writing otherwise, Contractor shall provide and pay for all services, labor, overtime labor, standby labor, methods, material, equipment, transportation, necessary maintenance, power, fuel, water, taxes and all other facilities and services (including operating or other necessary costs associated with the testing of equipment), and all other items and facilities of every kind necessary for performance of this Contract.
- C. Words describing material or work which have a well-known technical or trade meaning, unless otherwise specifically defined in this Contract, shall be construed in accordance with such well-known meaning, recognized by solid waste and transportation professionals, engineers and trades.
- D. The Contract and each of the Contract Documents are complementary, and they shall be interpreted so that what is called for by one shall be as binding as if called for by all. Should Contractor observe any conflicts between or duplications of any provisions of the Contract, it shall bring them to Metro's attention for decision and revision immediately after originally observed. In the event of duplications of, or conflicts between, any provisions of the Contract after the Contract has been executed, the following priority of documents shall be used to resolve such duplications or conflicts (from highest to lowest):
 - 1. Agreement;

2. Scope of Work;
3. General Conditions;
4. Contractor's Price Schedule;
5. Contractor's Proposal Questionnaire; and
6. Request for Proposals.

For purposes of the above priority list, any appendices, addenda, amendments or changes to the above documents which are agreed to by the parties hereto shall be given the same priority as the documents to which they apply, unless otherwise provided in the Agreement. Detailed information shall take precedence over general information and words shall take precedence over numbers unless obviously incorrect. A duplication of services or items to be performed is not intended by any provision(s) of the Contract, and any such duplication specified by the Contract shall not become a basis for extra cost to Metro.

- E. Contractor shall secure written instructions from the Contract Manager before proceeding with services affected by omissions, discrepancies, conflicts or duplications in the provisions of the Contract.
- F. It is understood and agreed that, by execution of this Contract, Metro does not waive or surrender any of its governmental powers.

Article 4 -- Metro's Responsibility

It is not incumbent upon Metro to notify Contractor when to begin, suspend, cease or resume services under this Contract, nor to give early notice of rejection of faulty services, nor in any way to superintend so as to relieve Contractor of any liability, responsibility or consequences for neglect, negligence, carelessness, substandard or defective services, or use of substandard or defective material or equipment by Contractor or by Contractor's officers, employees, subcontractors or agents.

Article 5 -- Contractor's Representative and Contractor Spokesperson

- A. Contractor shall provide the services of a competent representative for the term of this Contract. Prior to performing services under this Contract, Contractor shall notify Metro in writing of the name, title, address and telephone number of Contractor's Representative.
- B. Contractor's Representative shall be readily available, shall have authority to furnish estimates on behalf of the Contractor and shall otherwise have full authority to bind the Contractor.
- C. Contractor's Representative shall represent Contractor for all purposes of this Contract and all directions, instructions and notices given to Contractor's Representative by Metro shall be as binding upon Contractor as if delivered directly to Contractor.

Article 6 -- Independent Contractor

- A. Contractor shall perform all work under this Contract as an independent contractor. Contractor is not and shall not be considered an employee, agent or servant of Metro for any purposes, under this Contract or otherwise; nor shall any of Contractor's subcontractors, employees or agents be, nor shall they be considered, employees, agents, subagents or servants of Metro for any purposes under this Contract or otherwise.
- B. Consistent with the provisions of this Contract, Contractor shall have exclusive control of, and the exclusive right to control, the details of the services and work performed hereunder and all persons performing such work. Contractor shall be solely responsible for the acts and omissions of its

officers, agents, employees, contractors and subcontractors, if any. Nothing in this Contract shall be construed as creating a partnership or joint venture between Metro and Contractor.

- C. Nothing in the Contract shall be construed as giving Metro any duty to supervise or control any acts or omissions of any person, entity or party, which acts or omissions are in any way connected with the performance of services under the Contract.

Article 7 -- Subcontractors

- A. Contractor shall submit to Metro the names and addresses of proposed subcontractors and suppliers for each subcontract of the Contract that is for payment of more than \$50,000 per year. Contractor shall provide copies of any subcontracts Contractor enters into to perform this Contract within three (3) business days of receiving a request for such contracts from Metro.
- B. All applicable provisions of the Contract, including, without limitation, Sections F and I of Article 2 and Section C of Article 23 of these General Conditions, and all applicable local, state and federal laws and regulations shall apply to all (1) subcontracts entered into by Contractor in connection with the Contract, and (2) leases, purchase agreements, or finance agreements for equipment or other material used in connection with the Contract.
- C. All subcontracts of whatever nature, including, but not limited to, leases and purchase and finance agreements, shall contain a clause which provides that if Contractor, in Metro's sole opinion, defaults in performance of this Contract and Metro accepts assignment of the subcontract, then subcontractor shall enter into a novation of the subcontract with Metro and, for purposes of interpretation of the subcontract, shall recognize Metro or its assignee as Contractor and shall further recognize that Metro or its assignee shall have all the rights, remedies and responsibilities of the Contractor under the relevant subcontract. Upon written notice from Metro, Contractor agrees to assign all of its rights in all such subcontracts to Metro upon Metro's determination that Contractor has defaulted under the terms of this Contract.
- D. Contractor shall be as fully responsible to Metro for the acts and omissions of the subcontractors and suppliers, and of the subcontractors' and suppliers' employees, firms, agents and servants, as Contractor is for the acts and omissions of its own employees and agents. No provision(s) of this Contract, nor of any contract between the Contractor and its subcontractors, shall be construed as creating any contractual relation between those subcontractors and Metro.

Article 8 -- Separate Contracts

- A. Metro reserves the right to let separate contracts in connection with the transportation, transfer, recovery or disposal of organic waste received, processed or transferred at any facility controlled by Metro, except as limited by Metro's obligations under this Contract.
- B. Contractor shall cooperate with Metro, and with other separate contractors engaged by Metro for the transportation, transfer, recovery or disposal of waste, the operation of transfer stations, resource recovery facilities or compost facilities, or any related projects, so that all portions of the Contract may be completed in the most efficient and timely manner, without any interference with work on related projects and contracts.
- C. Metro shall be the arbitrator of all disputes between the Contractor and separate contractors concerning performance of the work and interpretation of the Contract or other contract(s) and Metro's decisions shall be final. Metro must be notified of any such disputes within ten (10) working days of their occurrence. Metro will not be liable for any damages resulting from or related to disputes between the Contractor and separate contractors, and Contractor hereby waives any claims attendant to, or derived from, Metro's resolution of such disputes.

Article 9 -- Allocation Of Risk/Force Majeure

A. Representations of Parties

1. Prior to submitting any Proposals, Contractor is required to acquaint itself with all sites and all other conditions relevant to the performance of this Contract, and to make all investigations essential to a full understanding of the difficulties that may be encountered in performing the Contract.
2. Contractor represents that prior to submitting its Proposal for the Contract, it has examined carefully the Request for Proposals and related documents, acquainted itself with all other conditions and regulations relevant to the Contract, and made all investigations essential to a full understanding of any and all difficulties which may be encountered in performing the Contract.
3. By awarding the Contract to Contractor, Metro does not warrant or admit the correctness of any investigation, interpretation, deduction or conclusion relative to any condition or conditions of the sites or any other condition related to this Contract. Contractor has made and shall make its own deductions and conclusions as to any and all problems which may arise from such site conditions as they relate to this Contract and any other condition or requirement of this Contract, and shall accept solely for itself full legal responsibility and liability for its deductions and conclusions.

B. Effect of Force Majeure on Obligations

1. Metro's Obligations: In the event that Metro is rendered unable, wholly or in part, by the occurrence of a force majeure to carry out any of its obligations under this Contract, then Metro's obligations, to the extent affected by such occurrence, shall be suspended during the continuance of such inability.
2. Contractor's Obligations: In the event that Contractor is rendered unable, wholly or in part, by the occurrence of a force majeure to carry out any of its obligations under this Contract, then Contractor's obligations, to the extent affected by such occurrence, shall be suspended during the continuance of such inability.
3. Notice of Force Majeure: In the event that either party intends to rely upon the occurrence of a force majeure to suspend or to modify its obligations, such party shall notify the other party in writing immediately, or as soon as reasonably possible, and in no event later than 30 days after the initial occurrence of any force majeure, setting forth the particulars of the circumstances. Notices shall likewise be given after the effect of such occurrence has ceased.
4. Limitations: Nothing in this Article shall limit or preclude Metro's ability, pursuant to Article 13, to request that the Contractor perform work, whether emergency or otherwise, that Metro deems necessary during or following the occurrence of a force majeure in order to prevent damage or to preserve the integrity of the facility.

Article 10 -- Liquidated Damages

- A. In the event of any default of this Contract by Contractor which default, in the sole opinion of Metro, substantially impedes the normal operations of the transfer stations, Contractor shall have 12 hours to remedy the situation such that, in Metro's sole opinion, operations at the transfer stations have returned to normal. If Contractor fails, in Metro's sole opinion, to do that which the previous sentence requires, then Contractor shall pay Metro liquidated damages at the rate of \$500 per hour or portion thereof until Contractor has, in Metro's sole opinion, returned the transfer station operations to normal. For purposes of this Contract, the phrase "substantially impedes the normal operations of MSS or MCS" shall mean the inability of customers to unload organic waste, inability of transfer station operator to inspect and reload organic waste, or Contractor's failure to remove full containers and provide empty containers within four hours.

- B. If a default as described in the preceding paragraph continues for a period in excess of twenty-four (24) consecutive hours, Metro shall not recover liquidated damages for periods beyond the initial twenty-four (24) hour period, but Metro shall be entitled to all other remedies for Contractor's continued default that this Contract or the law provides or permits.
- C. It is expressly understood and agreed that any liquidated damages are not to be considered in the nature of a penalty, but, due to the difficulties of proof of loss, the parties have determined that such amounts represent a reasonable forecast of just compensation in light of the anticipated or actual harm suffered by Metro and caused by a breach or default on Contractor's part. Metro may deduct such damages from any amount due or which may become due, or, if not so deducted, the amount of such liquidated damages shall be due and collectible from the Contractor or the Contractor's Surety, from the variable portion of the compensation due, within fifteen (15) days of service of notice by Metro that liquidated damages have been imposed. This remedy shall be in addition to, and not a waiver or surrender of, any other rights or remedies Metro may have under this Contract or any provision or provisions of law.

Article 11 -- Metro's Rights and Remedies For Defaults In Performance

- A. **Metro's Rights and Remedies for Contractor's Default which results in Liquidated Damages:** For each default by Contractor that results in liquidated damages pursuant to Article 10A of these General Conditions Metro shall have the unconditional right to all of the following remedies, unless within forty-eight (48) hours after written notice of such default has been served upon both Contractor and Contractor's Surety, Contractor or Contractor's Surety, cures or remedies such default or gives Metro reasonable assurances that the default will be promptly cured or remedied and Metro, in its sole discretion, deems such assurances as satisfactory:
 - 1. **Equitable Remedies:** For each default under Article 11A, Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief.
 - 2. **Liquidated Damages:** As an additional remedy for each default under Article 11A, Metro is entitled to liquidated damages, as provided in Article 10.
 - 3. **Actual Damages:** For each event of default under Article 11A which lasts more than forty-eight (48) hours, Metro shall be entitled to recover its actual damages for the period of default extending beyond the forty-eight (48) hour period. Any disputes arising as to the amount of Metro's actual damages shall be resolved by arbitration under Article 24.
 - 4. **Immediate Termination or Suspension of Contract:** For each default under Article 11A that extends beyond ninety-six (96) hours, Metro shall be entitled to terminate or suspend the Contract immediately and without the necessity of further prior notice to Contractor. In such a case, Metro shall provide Contractor and Contractor's Surety with written notice that it has terminated or suspended the Contract pursuant to this Section.
- B. **Metro's Remedies for Defaults Other than Defaults in Article 11A:** For each default other than a default under Article 11A of these General Conditions, Metro shall have the unconditional right to one or more of the following remedies to the extent permitted by law, unless, within thirty (30) days after written notice of such default has been served upon both Contractor and Contractor's Surety, Contractor or Contractor's Surety cures or remedies such default, or gives Metro reasonable assurances that the default will be promptly cured or remedied and Metro, in its sole discretion, deems such assurances as satisfactory:
 - 1. **Equitable Remedies:** For each default under Article 11B, Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief.
 - 2. **Actual Damages:** As an additional remedy for each default under Article 11B, Metro shall be entitled to recover its actual damages during all periods of default. Any disputes arising as to the

amount of Metro's actual damages shall be resolved by arbitration under Article 24. No liquidated damages remedy shall apply to defaults under this Section.

3. Termination or Suspension of Contractor's Performance of the Contract: For each default under Article 11B that extends beyond thirty (30) days, Metro shall be entitled to terminate or suspend Contractor's performance of the Contract in accordance with Section C of this Article.

C. Procedure for Termination or Suspension of the Contract by Metro:

1. To terminate or suspend the Contract other than in the case of immediate termination or suspension pursuant to Section A(4) of Article 11 of these General Conditions, Metro must notify in writing both Contractor and Contractor's Surety of Metro's intent to terminate or suspend the Contract. Within ten (10) days after service upon Contractor and Contractor's Surety of Metro's notice of intent to terminate or suspend the Contract, Contractor or Contractor's Surety shall either:

(a) Cure or remedy any default; or

(b) Discontinue its work on the Contract or such part thereof as Metro shall designate.

2. If Contractor does not cure or remedy each default after it has received Metro's service of notice of intent to terminate or suspend the Contract, Contractor's Surety may, at its option, assume full and complete performance of the Contract or the portion thereof that Metro has ordered Contractor to discontinue, and Contractor's Surety may perform the same or may subcontract such work to a contractor or contractors acting on behalf of Surety; provided, however, that Contractor's Surety shall exercise its option and begin performance of the work, if at all, within ten (10) days after Contractor's Surety is served with a copy of the written notice of termination or suspension. Contractor's Surety shall be paid by Metro for all work performed in accordance with and subject to each and every term of the Contract and Contractor's Surety shall be subject to each and every term and condition of the Contract.
3. If Contractor does not cure or remedy each default within the time allowed herein, and if Contractor either does not have a surety or the Contractor's Surety elects not to exercise its option under this Section C of this Article, then this Contract shall terminate at the point in time that Contractor's Surety fails to begin performance pursuant to this Section C of this Article.

- D. Metro's Remedies If Contractor Becomes Insolvent, Dissolved, Bankrupt, Files For Bankruptcy Or Makes A General Assignment For Creditors: The parties agree that if Contractor becomes insolvent, is dissolved, files for bankruptcy, is adjudged bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such an event could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Metro shall be entitled to make written request of Contractor, Contractor's successor in interest and Contractor's Surety for adequate assurance of future performance in accordance with the terms and conditions hereof. Failure of Contractor, Contractor's Surety or Contractor's successor in interest to comply with such request within ten (10) calendar days of its service shall entitle Metro to terminate or suspend Contractor's performance of the Contract pursuant to Section C of Article 11 of these General Conditions. This Contract shall not survive, but instead shall be immediately terminated by, the appointment of any trustee or receiver for Contractor, which appointment rests upon the insolvency of Contractor.

E. Procedures and Remedies for Termination Under Force Majeure:

1. In the event that any force majeure event results in the closure of the facility for more than thirty (30) consecutive days, Metro shall have the right, in its sole discretion, to immediately terminate this Contract. In the event that Metro chooses to terminate the Contract under this Section, Metro

shall serve Contractor with written notice of such intent and shall reimburse Contractor for all actual costs which Metro determines Contractor has incurred in performing the Contract prior to service upon Contractor of the notice to terminate plus an amount equal to ten percent (10%) of such costs less the total payments which Metro has paid Contractor prior to service of the notice of termination upon Contractor.

2. It shall also be a condition precedent to any payments under this paragraph that Contractor fully demonstrate and document to Metro's satisfaction the costs Contractor actually incurred prior to receiving service of the notice of termination. Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) that it will make to Contractor, which payment(s) may include installment payments over an extended period of time that may extend beyond the termination or completion of the Contract. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.
- F. Procedures and Remedies for Metro Termination for the Convenience of the Government: Metro shall have the option, exercisable in its sole discretion, to terminate this Contract without cause on the third anniversary of the start of this Contract upon sixty (60) days prior written notice. Upon such termination, Metro shall only be obligated for payments due under this Contract for work performed up to the effective date of such termination.
- G. No Waiver: Nothing in this Article, and no actions taken pursuant to this Article, shall constitute a waiver or surrender of any rights, remedies, claims or causes of action Metro may have against Contractor or Contractor's Surety under any other provision of this Contract or any provision(s) of law.

Article 12 -- Basis and Method of Payment

A. Payments:

1. On a monthly basis, Contractor will submit to Metro a billing that indicates the number of tons of Acceptable Organic Waste received, processed and composted pursuant to the Contract in the previous month. For each calendar month just completed, the number of tons of Acceptable Organic Waste accepted at the transfer station and received by Contractor shall be determined by the Metro scalehouses and calculated pursuant to the Contract Documents. Based on such calculations and the provisions of this Article, Metro shall adjust Contractor's billing, as appropriate, prior to making payment to Contractor.
 2. The Contractor shall furnish to Metro such additional detailed information as set forth in these Contract Documents (including records from the Contractor) and as Metro may request to aid in the preparation of monthly payments. No later than the 25th day of each month, Metro will pay Contractor for the Metro-approved value of the work.
 3. Metro shall not be responsible for any repair or equipment replacement costs resulting from Contractor's negligence, misuse or abuse of the equipment and facilities provided by Metro, including but not limited to any damage caused by Unacceptable Organic Waste being received at the facility.
- B. Submittal of documentation: Contractor shall submit its invoices with a detailed cost breakdown in accordance with procedures approved by Metro.

C. Petition for Increased Costs Due to Change in Law:

1. For purposes of this Article and Article 13 of these General Conditions, the term “change in law” means any new or revised laws, statutes, rules, regulations and ordinances, including, without limitation, a final judicial determination of any law, statute, rule, regulation or ordinance rendered by a court of competent jurisdiction in the state of Oregon.
2. Upon petition of Contractor and subject to approval of Metro as described in this Section, Metro shall pay, subject to the limitations, conditions and procedures stated below, one hundred percent (100%) of Contractor’s reasonable, actual increased costs of performing the Contract if such increased costs are directly attributable to a change in law which increases the cost of Contractor’s performance of the Contract, and if such change in law becomes effective at any time after the deadline for submission of Proposals.
 - (a) Local and County Law — Limitations: Metro shall reimburse Contractor, subject to the terms and conditions of this Section C of this Article, for reasonable, actual increased costs due to changes in local and county laws if and only if such changes are applicable to all businesses in the relevant county or local area. Metro shall not compensate Contractor for any increased costs due to changes in local or county laws to the extent that such laws are applicable only to Contractor, Contractor’s activities in connection with this Contract or persons or entities engaged in the waste management or transportation industries.
 - (b) Federal, State or Local Taxes, Fees or Surcharges: Metro shall not be obligated to reimburse Contractor for any cost increases or expenses Contractor may incur due to any increase in the rates of federal, state or local taxes, fees or surcharges of whatever nature. Metro shall not reimburse Contractor for any increases in state weight and mile taxes or fees.
3. General Conditions and Limitations on Reimbursement: Reimbursement shall be allowed under this Section C of this Article only for any costs incurred which are the least costly means of ensuring full compliance with, and which are directly necessitated by, the relevant change in law. Contractor must fully demonstrate and document the need for the requested reimbursement to Metro’s satisfaction and approval as a condition precedent to Contractor’s right to any payment under this Section.
4. Cancellation of Reimbursement: Metro may at any time cancel any reimbursement made under this Section C of this Article that was made in error. Contractor shall at all times keep Metro informed as to whether any reimbursement remains necessary. Also, upon Metro’s request, Contractor shall immediately provide Metro with all documents or information or other evidence in Contractor’s possession or control which Metro requests to determine whether there is a continuing need for any and all reimbursements made under this Section.
5. Schedule of Payment of Reimbursement: Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s), which may include installment payments over an extended period of time that may extend beyond the termination or completion of the Contract. Any such determination with regard to payments shall take into consideration Contractor’s reasonable and actual financing costs.

D. Deductions from Payments for Reduced Costs due to Changes in Law:

1. Subject to the conditions stated below, Metro shall be entitled to reduce payments to Contractor to reflect one hundred percent (100%) of the reduced costs of Contractor’s performance under the Contract attributable to any change in law for which Contractor would be entitled to reimbursement of increased costs under Section C of this Article if such a change in law resulted in increased costs.
2. Metro may at any time serve Contractor with notice and explanation of Metro’s intent to reduce payments pursuant to this Section D of this Article. Within thirty (30) days of service of such

notice, Contractor shall respond in writing to such notice and such written response shall state whether or not Contractor believes that any deductions from payments due Contractor are justified by the change in law and shall specify any reductions in the costs of performing the Contract as a result of the relevant change in law. Contractor shall fully document and otherwise support its response to Metro's notice under this Section.

3. Upon written petition of Contractor, Metro may at any time cancel reductions made under this Section D of this Article if Metro determines that the need for the reduction has expired or that a reduction was made in error. Contractor shall at all times keep Metro informed as to both when any reduction due to a change in law is appropriate, and as to when any reduction is no longer appropriate.
- E. No waiver: Partial payments shall not constitute acceptance by Metro of Contractor's work nor be construed as a waiver or surrender of any right or claim by Metro in connection with the work.

Article 13 -- Change Orders and Additional or Deleted Work

A. Change Orders and Payment or Credit for Additional Work:

1. For purposes of this Article, the term "additional work" means work that is in addition to the work required under the original Contract or any Change Orders thereto, but does not include any work required to comply with any change in law or any change in a permit or permit condition.
2. All requests for payment for additional work shall be made under the conditions and procedures of this Article, except to the extent that the Contract Manager finds that such work is reimbursable pursuant to Article 12 of these General Conditions.
3. No Change Order to this Contract shall be enforceable unless made in writing and signed by Contractor and Metro. All Change Orders shall be numbered consecutively in chronological order.
4. Nothing in this Article is intended to negate or lessen any other preconditions or procedures for payment or reimbursement as provided by any other provisions of the Contract.

B. Request for Proposal for Additional Work:

1. Within fourteen (14) calendar days after receipt of a RFP for additional work from Metro, Contractor shall submit to Metro an itemized proposal stating the actual and reasonable costs to Contractor for performing such additional work, a schedule for performing such work, and the effect, if any, on Contractor's performance of the existing Contract work by reason of the additional work. Contractor's proposal shall be based on the least costly method for performing the additional work in accordance with all provisions of the Contract.
2. No RFP by Metro shall be construed as authorization for Contractor to perform the additional work covered by such RFP. To obtain authorization to perform any additional work, Contractor must be notified in writing by Metro that Contractor is ordered to proceed with the relevant additional work. In any such written notification Metro shall indicate whether it accepts or rejects Contractor's proposal. If Metro accepts Contractor's proposal then the parties shall enter into a written Change Order signed by both parties to document the amendment or modification of the Contract. If Metro rejects Contractor's proposal to perform the relevant work, Contractor shall not be entitled to any reimbursement for the work in Contractor's proposal.
3. Except in an emergency that endangers life or property, no extra or additional work shall be performed by the Contractor unless the parties have agreed to a written and properly executed Change Order.

C. Deductions from Payments for Deleted Work:

1. All deductions from payment for deleted work shall be made under the conditions and procedures of this Article.
2. For purposes of this Article, the term "deleted work" means work which is deleted from the work required to be performed under the original Contract or any Change Order thereto, but does not include any work which need not be performed due to any change in law or change in a permit condition.

D. Request for Proposal for Deleted Work:

1. Within fourteen (14) calendar days after receipt of a RFP for deleted work from Metro, Contractor shall submit to Metro an itemized proposal stating the actual and reasonable costs which would be avoided by deleting work called for in the Contract, a schedule for deleting the relevant work and the effect, if any, on Contractor's performance of the remaining Contract work by reason of the deleted work. Contractor's proposal shall be based on all current and future avoided costs to Contractor for deleting the work and any profit margins or markups that Contractor's proposal includes for such work.
2. No RFP by Metro shall be construed as authorization for Contractor to delete the work covered by such RFP. Contractor shall not delete any work unless and until a written order from Metro authorizing such deletion is served upon Contractor. In any such written notification Metro shall indicate whether it accepts or rejects Contractor's proposal. If Metro accepts Contractor's proposal then the parties shall enter into a written Change Order signed by both parties to document the amendment or modification of the Contract. If Metro rejects Contractor's proposal but orders the work to be deleted, Contractor shall delete the work and Metro may make all appropriate deductions from payments according to the formula below regardless of whether Contractor has complied with Metro's order.

E. Amount of Deductions for Deleted Work:

1. The amount of any deductions from payments for deleted work shall be equal to all current and future avoided costs resulting from the deleted work plus any profit margin or markups which Contractor's proposal includes for such work. If the latter profit margin or markup figures are unavailable, the parties hereby agree that Contractor's profit margin on all work shall be deemed to be ten percent (10%) of the actual cost of performing the work.
2. At Metro's request, Contractor shall submit to Metro for review complete records of material and labor usage prior to and following Metro's order that work be deleted. If Contractor and Metro cannot agree on the amount of the deduction for the relevant deleted work, that matter shall be submitted to arbitration pursuant to Article 24 of these General Conditions.

F. Schedule of Payments: Metro shall make any payments due to the Contractor under this Article as soon as reasonably possible after the work is performed.

Article 14 -- Metro's Right To Withhold Payment

- A. Metro shall have the right to withhold payments due Contractor such sums as necessary to protect Metro against, and compensate Metro for, any loss or damage which may result from (1) negligence or unsatisfactory work by Contractor, (2) the failure by Contractor to perform or abide by any of Contractor's obligations under this Contract, or (3) claims against Contractor or Metro relating to Contractor's performance or work.
- B. Metro shall further have the right to withhold payments due Contractor for (1) damages caused by Contractor that have yet to be adjusted or resolved, (2) the failure of Contractor to make proper

payment to Contractor's employees, material suppliers and subcontractors, or (3) the filing of any claim against Metro or Contractor.

- D. Metro shall provide at least ten (10) days' written notice of its intent to withhold payments under this Article, and Contractor shall have the right to dispute such actions as provided in these Contract Documents.
- E. No action taken by Metro under this Article shall affect any of the other rights or remedies of Metro granted by any other provision or provisions of this Contract or by law, nor shall it relieve Contractor from any consequences or liabilities arising from Contractor's acts or omissions.

Article 15 -- Indemnification

- A. Contractor agrees that for purposes of the Oregon Tort Claims Act (ORS 30.260 through 30.300) neither Contractor nor Contractor's officers, agents and employees, nor any of Contractor's subcontractors of any tier or their officers, agents and employees, are agents of Metro. Contractor for itself and its officers, agents, employees and its subcontractors of any tier and their officers, agents and employees will make no claim whatsoever against Metro for indemnification pursuant to ORS 30.260 to 30.300 and Contractor agrees to hold Metro harmless and indemnify Metro from any such claims.
- B. Contractor shall indemnify and hold Metro harmless from and against any and all claims, causes of action, demands, suits, damages, penalties, charges, judgments, liabilities and losses of whatsoever character or kind (all hereinafter referred to as "claims") and all expenses arising from such claims including, but not limited to, attorneys' fees upon trial and upon appeal and any and all costs, if such claims or expenses allegedly or actually arise or result from, directly or indirectly, or are in any way connected with:
 - 1. The performance or nonperformance of any provision or requirement of this Contract by Contractor, its officers, employees, subcontractors of any tier, agents or servants;
 - 2. Any of the acts or omissions of Contractor, its officers, employees, subcontractors of any tier, agents or servants; or
 - 3. The failure of Contractor, its officers, employees, subcontractors of any tier, agents or servants to comply in any respect with the provisions and requirements of all applicable permits, licenses, laws, statutes, regulations, ordinances, codes, orders and all other legal requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities as is required by Article 2F of the General Conditions.
- C. Contractor shall, upon demand of Metro and at Contractor's sole cost and expense, defend and provide qualified attorneys approved by Metro under service contracts acceptable to Metro to defend Metro, its officers, employees, agents and servants against any and all claims, causes of actions, suits, demands, damages, penalties, charges, liabilities, losses, awards of damages or judgments of whatsoever character or kind, arising or resulting from, directly or indirectly, or in any way connected with:
 - 1. The performance or nonperformance of any provision or requirement of this Contract by Contractor, its officers, employees, subcontractors of any tier, agents or servants;
 - 2. Any of the acts or omissions of Contractor, its officers, employees, subcontractors of any tier, agents or servants at or in connection with the Work; or

3. The failure of Contractor, its officers, employees, subcontractors of any tier, agents or servants to comply in any respect with the provisions and requirements of all applicable permits, licenses, laws, statutes, regulations, ordinances, codes, orders and all other legal requirements of federal, state, regional, county and local government authorities and agencies having jurisdiction over the relevant activities as is required by Article 2F of the General Conditions.
- D. In any and all claims against Metro, these indemnification obligations shall not be limited in any way by any limitation in the amount or type of insurance obtained by Contractor.

Article 16 – Performance Bonds, or Letter(s) of Credit

- A. The initial term of the Performance Bonds or Letter(s) of Credit shall commence upon the execution of the Contract. The amount of the Performance and Labor and Materials Bonds or Letter of Credit(s) shall be in the amount of \$500,000.
- B. Not later than sixty (60) days prior to each irrevocable Letter of Credit or Performance Bonds expiration, Contractor shall execute and deliver to Metro Performance Bonds on the forms bound herewith, or an equivalent irrevocable Letter(s) of Credit acceptable to Metro, which shall secure and be conditioned upon the full, faithful and complete performance of the Contract and prompt payment of all persons supplying labor and material for the performance of the Contract and other protection to Metro, as provided in such Bonds or Letter(s) of Credit.
- C. The surety or banking institution furnishing these Bonds or Letter(s) of Credit shall have a sound financial standing and a record of service satisfactory to Metro and shall have a rating of at least A and be of the appropriate class for the relevant bond amount under Best's Rating System and shall be authorized to do business in the state of Oregon. The Attorney-in-Fact (Resident Agent) who executes these Bonds on behalf of the Surety must attach a notarized copy of her or his Power of Attorney as evidence of her or his authority to bind the Surety on the date of execution of each Bond.
- D. Pursuant to the Contractor's commitments under Article 24 of these General Conditions, Contractor shall also enter into an agreement with its surety, and shall provide Metro with a copy of such agreement at any time that it must provide Metro with any bonds or letter(s) of credit pursuant to Section B of this Article, in which Contractor's Surety shall consent:
 1. To accept jurisdiction of the courts of the state of Oregon for the purposes of commencing, conducting and enforcing arbitration proceeding pursuant to Article 24 of these General Conditions.
 2. To accept service of notice of the other party's intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party and Contractor's Surety, and such notice shall have the same effect as if the party had been personally served within the state of Oregon.
 3. That any decision of an arbitrator pursuant to Article 24 of these General Conditions shall be final, binding and enforceable upon the Contractor's Surety and that proper venue for any judicial proceeding to enforce any decision or award made by such an arbitrator shall be exclusively in the county of Multnomah in the state of Oregon.
- E. Contractor shall from time to time take such additional actions and furnish to Metro such additional documents and instruments which Metro reasonably requests to secure performance of Contractor's obligations under this Agreement. None of the requirements contained in this Article are intended to, nor shall they in any manner, limit or qualify the liabilities and obligations assumed by Contractor under this Agreement.

Article 17 -- Contractor's and Metro's Liability Insurance

- A. The Contractor shall provide and pay all costs for insurance coverage by insurers subject to the approval of Metro. Insurance requirements may be met in whole by a qualified self-insurance plan. If Contractor is self insured, Metro shall enjoy all the rights and privileges of an additional insured.
- B. Before commencing work under this Contract, Contractor shall furnish Metro with certificates of insurance specified herein naming Metro as an additional named insured and showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and each such policy shall contain substantially the following statements:
1. This policy shall be considered as primary insurance and exclusive of any insurance carried by Metro and the insurance endorsed by this certificate shall be exhausted first, notwithstanding the fact that Metro may have other valid and collectible insurance covering the same risk;
 2. This policy shall not be canceled, reduced in coverage nor materially altered until after sixty (60) days' written notice of such cancellation, reduction or alteration in coverage shall have been received by Metro;
 3. No act on the part of the insured shall affect the coverage afforded to Metro under the insurance covered by this certificate; and
 4. This policy consists only of insurance on an occurrence basis, not on a claims made basis.
 5. Additional insured status and 60 day cancellation must be physically endorsed to respective policies.
- C. Contractor shall immediately increase the amounts of insurance required by this Article to reflect any changes in Oregon Law so as to ensure that the insurance provided shall cover, at a minimum, the designated insurance requirements listed below, the maximum limits under the Oregon Tort Claims Act and any other applicable tort claims act.
- D. In case of any breach of any provision of this Article, Metro, at its option, may obtain and maintain, at the expense of the Contractor, such insurance as Metro may deem proper and may deduct the cost of such insurance from any monies that may be due or become due to the Contractor under this Contract.
- E. Contractor shall maintain the above insurance at all times until completion of the Contract or until the termination date of the Contract, whichever is later.
- F. Maintenance of insurance by Contractor as specified in this Article shall constitute the minimum coverage required and shall in no way lessen or limit the liability or responsibility of Contractor under this Contract and Contractor may carry, at its own expense, such additional insurance as it deems necessary.
- G. Pursuant to Article 12 of these General Conditions, and to the extent allowed by that Article, Metro shall reimburse Contractor only for the actual increased cost of premiums that Contractor must pay to comply with insurance requirements not specified above which become effective after the deadline for submission of proposals. No other reimbursement for costs associated with increased insurance requirements will be allowed under Article 12 of these General Conditions.
- H. The Contractor shall purchase and maintain at his expense the following types of insurance covering the Contractor, and his employees and agents.
1. Broad form comprehensive general liability covering bodily injury, property damage, and personal injury with automatic coverage for premises/completed operations and product liability. The policy must be endorsed with contractual liability coverage.

2. Business or Truckers automobile including bodily injury and property damage liability, endorsed with MCS-90 and CA9948 or an equivalent coverage.
3. Insurance coverage for general liability shall be a minimum of \$1,000,000. The aggregate amount for automobile liability insurance coverage shall be in the amount of \$1,000,000.
4. Metro, its elected officials, departments, employees and agents shall be named as an additional insured. Notice of any material change or policy cancellation shall be provided 30 days prior to the change. Contractor shall provide Metro with a certificate or certificates of insurance prior to execution of the contract, showing that all contract requirements have been satisfied.
5. This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover Contractor's operations under this Contract, whether such operations be by Contractor or by any subcontractor or anyone directly or indirectly employed by either of them.
6. The Contractor, and all subsequent subcontractors and suppliers performing work pursuant to this contract shall provide Workers' Compensation benefits as required by ORS 656.017 and in accordance with all applicable state and federal laws.
7. Contractor shall maintain Environmental Impairment Liability in the amount of \$1,000,000 per occurrence.
8. Contractor will provide Metro with a certificate of insurance complying this requirement within (15) days of execution of this Contract or twenty-four (24 hours) before services under this contract commence, whichever date is earlier.

Article 18 – Contractor's Right to Terminate

Should Contractor be unable to perform this Contract for a period of sixty (60) days or more by 1) a public authority other than Metro; or 2) by Metro (if Metro is acting in violation of Contractor's rights under the Contract) and either inability is through no fault of Contractor, then Contractor, upon seven (7) days' written notice to Metro may stop the work or terminate the Contract and recover from Metro that portion of the Contract payments, less the aggregate of previous payments, allowable to the Contract completed as of the date of termination, plus his/her demonstrated actual damages; however, in such event, Metro will make no payments to Contractor for any work done on the Contract after the date of termination.

Article 19 -- Permits and Regulations

- A. Contractor shall obtain, maintain and pay for all permits, licenses, certificates, inspection fees and surcharges and other approvals required by law, both temporary and permanent. Any such fees shall be included in the prices proposed in Contractor's Proposal. The Contractor shall obtain any necessary business license required by law. Metro will cooperate fully in securing all permits that by law may be secured in the name of the property owner.
- B. Contractor shall be liable for all fines or civil penalties imposed by any regulatory agency for violations of permits, laws or regulations caused or allowed by Contractor. Metro shall not be liable for and shall not reimburse Contractor for payment of any such fines or civil penalties.

Article 20 -- Royalties and Patents

- A. Contractor shall pay all royalties and license fees related to the performance of this Contract.
- B. Contractor shall defend all suits or claims for any and all infringements of any patents which may occur in the performance of this Contract and shall save and hold Metro harmless from loss on account thereof; provided, however, that Metro shall be responsible for all such loss related to a particular process or product that is particularly specified for use by Metro unless Contractor had knowledge or information that such particular process or product might infringe a patent, in which event Contractor shall be responsible for loss on account thereof unless Contractor promptly and immediately provided such information to Metro.

Article 21 -- Taxes and Fees

As between Metro and Contractor, Contractor shall be responsible and liable for payment of all federal, state, regional, county and local taxes, fees and surcharges of every form that apply to any and all persons, entities, property, income, equipment, material, supplies, structures or activities related to performance of the Contract including, but not limited to, any and all income taxes, real property taxes, excise taxes, sales and use taxes and highway reconstruction fees arising from or connected with the Contract. Any such taxes and fees, or any increases in such taxes and fees, shall be the responsibility of the Contractor with no increase in compensation from Metro.

Article 22 -- Title To Organic Waste

Title to organic waste shall immediately pass to the Contractor once it has been accepted pursuant to the procedures contained in the Scope of Work. Upon discovery of Unacceptable Organic Waste, title to such waste shall immediately revert to the original generator/transporter, if identifiable.

Article 23 -- Material, Workmanship, and Employees

- A. All workmanship and material provided by Contractor shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. Contractor shall furnish evidence of the skill of their employees, subcontractors and agents upon the request of Metro.
- B. Contractor shall at all times enforce strict discipline and good order among its employees and all subcontractors. Contractor shall ensure that none of its employees, subcontractors or agents, nor any of its subcontractors' employees or agents, are permitted to participate in the performance of the work required under this Contract if any such person has recently consumed or is under the influence of alcohol or other drugs, nor shall Contractor's employees, subcontractors or agents, nor any of its subcontractors' employees or agents, be permitted to bring alcohol, drugs or firearms onto the premises of a transfer station.
- C. Contractor shall use recycled and recyclable materials and products to the maximum extent economically feasible in the performance of contract work set forth in this document. Contractor shall comply with Section 2.04.520 of the Metro Code regarding the use of recycled materials and products, particularly in the purchase of motor oil, antifreeze, and tires.

Article 24 -- Arbitration

- A. Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Contract.
- B. Subject to the conditions and limitations of this paragraph, any controversy or claim arising out of or relating to this Contract which remains unresolved after negotiations under Section A of this Article

shall be exclusively settled by arbitration under the laws of the state of Oregon, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. All disputes shall be heard and decided by one arbitrator and all arbitration proceedings shall be held in Portland, Oregon. However, all disputes concerning Metro's right to the equitable remedy of specific performance shall not be subject to arbitration, but shall be decided exclusively by a court of competent jurisdiction in Multnomah County, Oregon, under the laws of the state of Oregon.

- C. Contractor agrees to consolidation of any arbitration between Metro and Contractor with any other arbitration involving, arising from or relating to this Contract. In the event that Metro determines, in its sole opinion, that the public interest requires a speedy resolution of any controversy or claim regardless of the amount, Metro shall have the option of electing resolution of the controversy or claim by the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association (Rules E-1 through E-10).
- D. Each party hereto and the Contractor's Surety accept jurisdiction of the courts of the state of Oregon for the purposes of commencing, conducting and enforcing an arbitration proceeding pursuant to this Article. Each party hereto and the Contractor's Surety further agree to accept service of notice of the other party's intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party and Contractor's Surety, and such notice shall have the same effect as if the party had been personally served within the state of Oregon.
- E. Any decision of an arbitrator engaged under this Article shall be final, binding and enforceable upon both parties and the Contractor's Surety. The parties agree that proper venue for any judicial proceeding to enforce any decision or award made by an arbitrator under this Section shall be exclusively in the county of Multnomah in the state of Oregon.

Article 25 -- Attorneys' Fees

In the event suit, action or arbitration is instituted to enforce any right granted herein or to interpret any provision of this Contract, the prevailing party shall be entitled to, in addition to the statutory costs and disbursements, reasonable attorneys' fees to be fixed by the trial court or in the arbitration. In the event of any appeal, the prevailing party shall, to the extent permitted by law, be entitled to attorneys' fees on appeal in like manner.

Article 26 -- Assignment

- A. Contractor shall not assign any rights or obligations under or arising from this Contract without the prior written consent of Metro. Contractor shall not assign any amounts due or to become due under this Contract without prior written notice to Metro.
- C. This Contract is executed with a certain qualified party to perform the Contract. The delegation of any Contract duties will require the prior written consent of Metro and of Contractor's Surety. Any such delegation of duties will not relieve the Contractor or Contractor's Surety of any liability and/or obligation to perform. In the event of any delegation of a duty, the delegate shall assume full responsibility for performance of that duty without affecting Contractor's liability.

Article 27 -- Change Of Ownership

- A. Any change in control of Contractor or the transfer of a controlling interest of Contractor shall require the prior written consent of Metro.
- B. For purposes of this Article, the phrase "transfer of a controlling interest of Contractor" shall be interpreted to include, but not be limited to, the transfer of ten percent (10%) or more of the beneficial

ownership of Contractor to or from a single entity. However, intracompany transfers, such as transfers between different subsidiaries or branches of the parent corporation of Contractor, shall not be construed as transfers of a controlling interest in Contractor, nor shall transfers required by operation of law be so construed.

- C. If Metro approves a change in control of Contractor or a transfer of a controlling interest of Contractor, then Metro and the new ownership of Contractor shall execute a novation, requiring the new ownership of Contractor to assume all of the rights and duties of this Contract and releasing the previous ownership of Contractor of all obligation and liability.

Article 28 -- Public contracts

- A. The provisions set out in Oregon Revised Statutes ("ORS"), Chapters 187 and 279, as amended or superseded, including the latest additions and revisions, and all applicable provisions of the Metro Code, are incorporated by reference as part of this Contract. In addition, the specific requirements of certain of these ORS Sections are set out below. These provisions are applicable to this Contract unless or until they are superseded by federal law. If any of the specific State law requirements set out below in this Article are amended or superseded, then Metro may, at its option, notify Contractor that such a change has occurred and that the new or amended provision is thereafter applicable to all work performed pursuant to this Agreement. In such event, Metro may, to the extent applicable, reduce payments to Contractor as provided Article 12D of these General Conditions.
- B. Pursuant to ORS 279.312, Contractor shall make payment promptly, as due, to all persons supplying Contractor labor or material for the prosecution of the work as provided in this Contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund (IAF) from Contractor or any subcontractor incurred in the performance of the Contract. Contractor shall not permit any lien or claim to be filed or prosecuted against Metro on account of any labor or material furnished. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- C. Pursuant to ORS 279.314, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, Metro may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor by reason of this Contract. Metro's payment of such a claim in the manner authorized by ORS 279.314 shall not relieve Contractor or Contractor's Surety from obligation with respect to any unpaid claims.
- D. Pursuant to ORS 279.316(4) and ORS 279.334(8), Contractor must give written notice to employees who perform work under this Contract of the number of hours per day and per week that employees may be required to work, as specified in this Section D of this Article. Such notice must be provided either at the time of hire, before commencement of work, or by posting a notice in a location frequented by employees. Except as permitted by federal law or other state statutes or regulations:
 - 1. No person shall be employed under this Contract for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases the employee shall be paid at least time and a half pay for all time worked in excess of ten (10) hours a day or in excess of forty (40) hours in any one week, whichever is greater; and
 - 2. All persons shall be paid at least time and a half pay for all work performed under this Contract on the legal holidays specified in a collective bargaining agreement, if applicable, or on the following annual legal holidays: New Year's Day on January 1, Memorial Day on the last Monday in May, Independence Day on July 4, Labor Day on the first Monday in September, Thanksgiving Day on the fourth Thursday in November, and Christmas Day on December 25.

For purposes of this provision, each time a holiday falls on a Sunday, the succeeding Monday shall be recognized as a legal holiday, and each time a holiday falls on a Saturday, the preceding Friday shall be recognized as a legal holiday.

- E. Pursuant to ORS 279.320, Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agrees to pay for such services and all monies and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. Contractor shall ensure that all subject employers working under this Contract shall either comply with ORS 656.017 or be exempt employers under ORS 656.126.

Article 29 -- Start of Contract, Contract Completion and Contract Extensions

The Contractor agrees to begin services on January 1, 2005 and to terminate such services on December 31, 2009. Metro may, in its sole discretion and upon written notice to Contractor, extend the term of this contract for a period not to exceed 24 months. During such extended term all terms and conditions of this contract shall continue in full force and effect.

SCOPE OF WORK

SCOPE OF WORK

A. Introduction

The purpose of the SCOPE OF WORK is to provide the Contractor with its responsibilities for the transport, processing and composting of source-separated organic waste delivered to Metro transfer stations. These responsibilities are detailed in the sections below. An overview is provided in this introduction.

The Metro Central Station, located at 6161 NW 61st Avenue, Portland, receives mixed solid waste and some source separated recyclables from both commercial haulers and the general public. Customers enter the facility through the northeast entrance of the site. Customers proceed to scalehouses for weighing. Scalehouses are run and managed by Metro staff. After leaving the scalehouses they are under the direction of Metro's contracted transfer station operator, which is responsible for ensuring the waste is properly unloaded and inspected for unacceptable materials.

Source separated organic waste will be delivered to and unloaded in a specially designated and segregated area of the transfer station where it will be inspected for contaminants. Loads that do not meet the Contractor's Material Acceptance Standards and which cannot be made to meet standards with selective sorting of gross contaminants (larger than 5 gallons in size) by the transfer station operator, will be rejected, treated as solid waste at the transfer station and sent to landfill. Loads that meet standards will be reloaded by the transfer station operator into two Metro-provided 40-yard auger-sealed, hard-top drop boxes located in the organic waste staging area. Metro's transfer station operator will take steps to minimize odors and keep the staging area clean. The transfer station operator will prepare containers for transport when full. It is the Contractor's ultimate responsibility to inspect transport containers to ensure they are properly sealed and readied for transport.

Contractor shall coordinate its activities with the transfer station operator as well as with any other Metro staff and contractors to maximize transfer efficiencies. Full containers will be transported by Contractor to the processing/composting facility where they will be unloaded according to applicable permit requirements. Containers must be cleaned before they are returned to Metro transfer stations.

The facility will be open for the public from 7:00 a.m. to 7:00 p.m. during PDT and from 7:00 a.m. to 6:00 p.m. during PST, seven days a week. The facility will be open for commercial and industrial accounts with automation tags seven hours earlier, except on Sundays when it will open at 7:00 a.m. for all customers. The facility will be closed for all business on Christmas and New Year's Days. Metro reserves the right to prohibit or limit the type or types of accounts which may use the facility. Metro reserves the right to increase or decrease the hours and days that the facility is open.

Waste volumes will fluctuate daily, weekly, monthly and annually. The Contractor must be capable of handling these variations such that the operations at the transfer station are not impeded.

Metro employees, operating the scalehouse, shall make all determinations regarding fees to be paid by haulers using the facility. Metro and the transfer station operator will determine what waste shall be categorized as Acceptable Organic Waste in compliance with Contractor's Material Acceptance Standards when delivered to Metro transfer stations. All Organic Waste shall be weighed by Metro prior to removal from the Facility. This data will provide checks on the quantities for Acceptable Organic Waste and Unacceptable Organic Waste for disposal. The Contractor shall be paid based on the outgoing weights established at Metro scalehouses.

The empty or tare weight of organic waste transport vehicles will be established by Metro and recorded. After loading, the vehicle shall be reweighed to determine the net weight of the load. Metro's transfer station operator has responsibility for controlling the movement of traffic on-site. Contractor will follow all directions and traffic flow instructions given by transfer station operator while on-site. The operator will direct Contractor to the appropriate load-out area and load weighing area.

B. Scheduling and Receipt of Materials

- 1.) Contractor shall receive and transport all Acceptable Organic Waste that have been loaded by Metro's transfer station operator into Metro-supplied transport containers and prepared for transport at least once per week. The term "Acceptable Organic Waste" means all source-separated organic wastes received at Metro transfer stations that comply with Contractor's Material Acceptance Standards. Material acceptance standards must comply with the goals and objectives of the region's organic waste collection program and the nature of the participating generators.
- 2.) Contractor shall inform Metro within 24 hours of receipt of loads that do not meet material acceptance standards. Contractor shall take all steps necessary to monitor and remedy material quality issues.
- 3.) Contractor shall schedule all pickups with Metro's transfer station operator 24 hours prior to arrival at the transfer station and shall be responsible for transporting organic wastes as often as necessary to avoid impeding normal transfer station operations.
- 4.) Contractor shall follow transfer station operator's scheduling parameters and protocols and shall arrive within one hour of agreed time.

C. Transport Protocols

- 1.) Contractor shall provide all transportation services for Acceptable Organic Waste received and reloaded into Metro-supplied transport containers. Contractor shall ensure that all transport equipment is compatible with Metro's transport containers and appropriate for long-haul transportation. Contractor shall ensure that Metro-supplied transport containers are appropriately secured for safe transport.

- 2.) Contractor shall transport all loads directly from Metro's transfer station to Contractor's permitted facility in a responsible and environmentally sound manner and in compliance with conditions set forth in Metro Code 5.01.127(c) (2), (3), (5), (6), (7), (8), (9) and (10).
- 3.) Contractor shall ensure that all Contractor-furnished transport equipment supplied is maintained in a safe working condition, is roadworthy, has appropriate safeguards to avoid leaks and spills, and is in compliance with all appropriate local, state and federal regulations. Transfer tractors shall be suitably painted and/or furbished so that they present an acceptable appearance in the opinion of Metro.
- 4.) Contractor shall assume ownership and full responsibility for any and all damage and subsequent repairs above and beyond normal wear and tear to transport containers while containers are in the possession of Contractor. Possession begins when full containers are received by Contractor at the transfer station and ends after empty containers are delivered back to the transfer station and removed from Contractor's transport vehicle. It is the responsibility of Contractor to attach and remove transport containers from the vehicle at the transfer station and shall follow all instructions given by Metro's transfer station operator.
- 5.) Contractor shall assume title to and all responsibility for the acceptable organics wastes once the materials are in the possession of Contractor as defined above. Any spills, leaks, etc. while materials are in the possession of Contractor are the sole responsibility of Contractor to remedy.
- 6.) Contractor shall provide a minimum of one empty container in the organics staging area at Metro's transfer station at all times. If no empty containers are available in the staging area the Contractor has six hours to remedy the situation.
- 7.) Contractor shall clean all transport containers immediately upon unloading at the composting facility to prevent malodor, unsightliness and/or attraction of vectors.

D. Pre-Processing and Composting

- 1.) Contractor shall deliver Compostable Organic Waste to Contractor's facility and treat the materials in the manner required to be in compliance with all applicable permits, licenses and regulations of whatever nature.
- 2.) Contractor shall compost the organic waste on-site in an environmentally-sound manner in compliance with all applicable permits, licenses and regulations of whatever nature.
- 3.) In conjunction with the reports requested in section F. below, Contractor shall provide to Metro on a monthly or more frequent basis as needed, updates on the types and amounts of unacceptable materials present in the organic waste received by Contractor as follows: amount of plastic, metal, glass and other contaminants based on weight or volume estimates.

E. End Product Testing

- 1.) Contractor shall test finished compost derived from Metro region organic wastes on a monthly basis for the first six months beginning at the time the first batch of compost has matured. Testing will then shift to a quarterly basis for the duration of this Contract. At a minimum testing and sampling methods shall be conducted in accordance with the US Composting

Council's Seal of Testing Assurance. Testing results shall be provided to Metro within 15 calendar days of receipt by Contractor.

F. Reporting

1.) Provide to Metro monthly reports due no later than 10 days after the end of the month. Monthly reports will be reduced to quarterly after receipt of the first 12 monthly reports by Metro. Reporting will include but not be limited to:

- Tons of organic wastes received and processed.
- Amount and type of contaminants removed.
- Any disruptions or malfunctions in composting equipment and methods.
- Composting time, technique and monitoring methods.
- Amount of finished compost produced.
- Test results of finished compost.
- Any changes in facility permit status.

Reporting forms will be provided by Metro prior to contract execution.

G. General

- 1.) Contractor shall permit inspection of all facets of work by Metro, its representatives, and governmental authorities having jurisdiction over any parts of the work during normal operating hours. The inspectors for Metro have all rights and duties granted to Metro.
- 2.) Contractor shall assume responsibility for obtaining all necessary approvals and permits for the services rendered under this Contract including but not limited to complying with all applicable regulations. Copies of all current permits and conditions shall be available for Metro inspection.
- 3.) Contractor shall develop a new or supply to Metro the facility's existing emergency plan designed to minimize hazards to human health and the environment in the event of a work stoppage, inclement weather conditions, breakdown or accident of any of the major equipment components directly involved in the transport, pre-processing and composting of Compostable Organic Waste from the Metro region. The emergency plan in no way lessens the Contractor's full responsibility to comply with all applicable regulatory provisions related to this Contract.
- 4.) Contractor shall assume responsibility for any damage attributed to his/her operations caused to Metro-owned or privately-owned facilities, including but not limited to, equipment used in the loading and unloading of the Compostable Organic Waste. Contractor shall repair or replace any such damage at no additional charge to Metro in a timely manner.
- 5.) Contractor shall assume responsibility for all costs incurred from any release of Compostable Organic Waste or liquids during transport, pre-processing and composting.
- 6.) Contractor shall dispose of any residuals or unacceptable materials in accordance with all permit, land use or franchise requirements and shall report to Metro on a monthly basis the amount in weight of residuals disposed and where. Contractor is responsible for all costs of whatever nature relating to the disposal of residuals.

- 7.) Contractor may temporarily suspend transport and acceptance of Organic Waste as part of this contract with 24 hours notice to Metro if Organic Waste consistently does not meet Contractor's acceptance standards. Contractor shall make a good faith effort to work with Metro to resolve all material standards issues prior to suspending acceptance of Organic Waste.
- 8.) As a condition of this Contract, Contractor shall accept all Compostable Organic Waste that meets Contractor's Material Acceptance Standards and is derived from within the Metro region but not necessarily received at Metro-owned transfer stations. Contractor may not set material acceptance conditions that diverge from those agreed to with Metro in order to effectively prohibit the acceptance, processing and composting of otherwise Acceptable Organic Waste from facilities or collectors other than those owned by Metro. Contractor may set differential pricing for receipt of materials from non-Metro facilities, but may not use pricing strategies to effectively prohibit the acceptance of otherwise acceptable materials and/or put Metro at an economic or market disadvantage.
- 9.) Contractor is not prohibited from receiving and processing Acceptable Organic Waste derived from outside the region, but contractor may not engage in practices that result in a decrease of processing and composting capacity for organic waste derived from the Metro region.

H. Organic Materials Flow

- 1.) Metro shall ensure that all loads of source-separated organic waste delivered to its transfer stations that meet Contractor's material acceptance standards shall be provided solely to Contractor for transport, processing and composting for the duration of this contract.
- 2.) Metro reserves the right to immediately suspend flow of materials to Contractor if in Metro's sole opinion, materials delivered to Metro's transfer station do not meet Contractor's acceptance standards, Contractor fails to meet any of its obligations to Metro, or Contractor is not in compliance with any applicable rules, regulations, licenses, permits, conditions of whatever nature. Material flow shall resume only after problems have been remedied to Metro's satisfaction.

APPENDIX A
Transport Container Specifications

QTY.	ITEM NO.	DESCRIPTION
4	D3520GAKD0	35 yard drop box with rubber coated wheels Length: 20' Wall height: 77" ID Wall: 12 GA Floor: 10 GA 1 piece side hinge door with seal Endless chain RO system 20' crank up solid lid

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EXHIBIT B
Resolution No. 04-3405

**FINDINGS SUPPORTING AN EXEMPTION FROM THE
COMPETITIVE BIDDING PROCESS FOR A REQUEST FOR PROPOSALS
FOR TRANSPORTATION, PROCESSING AND COMPOSTING SERVICES FOR
ORGANIC WASTES FROM THE METRO REGION**

1. BACKGROUND

The Metro region has established the goal of recovering at least 45,000 tons per year of commercially-generated organic waste (e.g., all types of food waste including but not limited to: pre- and post-consumer vegetative waste, pre- and post-consumer meats, seafood and dairy waste, and non-recyclable or food-soiled paper) from the waste stream. Currently, the region disposes of over 275,000 tons of food waste and soiled non-recyclable paper annually. It is estimated that approximately 60% of this waste is from the commercial sector and 40% from residences.

In December 1999, the Metro Council adopted a three-year Organic Waste Management Work Plan that was developed by an intergovernmental team (Resolution No. 99-2856, "for the Purpose of Approving a FY 1999-2000 Organic Waste Management Work Plan, and Authorizing Release of Budgeted Funds.") This Plan provides for a three-track approach to the recovery and diversion of the region's organic wastes. The region has spent the past four years developing strong and successful food recovery programs in partnership with food banks and is now transitioning into the next phase of the Plan: the collection and composting of food wastes not suitable for human or animal consumption. Recovery and processing of this material in to a beneficial end product is critical if the region is to meet its state-mandated solid waste recovery goals.

The collection and processing of organics and the development and enhancement of infrastructure to handle such materials are key elements of the Organics Plan. The ability of the region to send these compostable organic wastes from our transfer stations to a fully-permitted facility at a reasonable cost is critical to the success of the organic waste collection and processing system under development. On January 20, 2004, the Metro Council directed staff to proceed towards securing the necessary processing infrastructure for the region.

Initially, Metro and the City of Portland were working together on a grant program to provide up to \$500,000 in grant funding for the development of infrastructure to accommodate the region's organic waste. Twelve applications from 10 different companies were received and evaluated by a seven-member committee. As a result of that grant process, staff developed legislation to establish a rate at Metro's transfer stations for the acceptance of source-separated organic waste, a change order for transfer station operations at Metro Central Station, and a sole-source contract for the transportation, processing and composting of organic waste delivered to Metro transfer stations.

Since that time staff was advised by the Office of the Metro Attorney that although the grant program was an open and competitive process, it was not sufficient according to law to be used as the basis for a public procurement. To ensure that open and fair competition is preserved, and procurement follows public contracting law, staff has withdrawn the grant program, the rate and the sole source contract legislation. The funds originally designated for the grant program and the procurement for all necessary services have now been included into this RFP process.

2. FINDINGS

2.1. **Findings supporting exemption from competitive bid process regarding discouraging favoritism**

The Metro Contract Review Board finds that exempting the contract for transportation, processing and composting services for organic wastes from the metro region from competitive bidding requirements is unlikely to encourage favoritism in the award of a contract. This finding is supported by the following:

2.1.1. Solicitation Advertisement: Pursuant to ORS 279.025, the solicitation will be advertised as appropriate. In addition, solicitation documents will be available both through Metro's website. The release will also be announced publicly at meetings of the Metro Council, and the Metro Contract Review Board. Additionally, firms providing such services will be contacted directly by staff. Accordingly, this solicitation process is designed to discourage favoritism.

2.1.2. Full Disclosure: To avoid favoritism and ensure full disclosure of all project requirements, the RFP solicitation package will include:

- A detailed description of the project;
- Performance specifications;
- Contractual terms and conditions;
- Selection process description; and
- Evaluation criteria.

2.1.4. Selection Process: To avoid favoritism the selection process will include the following elements:

2.1.4.1. The evaluation process will include the following steps:

- Proposals will be evaluated by a multi-jurisdictional team for completeness and compliance with the requirements listed in the RFP;
- References regarding experience, qualifications and operating history will be investigated and evaluated;
- The information regarding other aspects of the proposal such as technical characteristics and cost will be discussed and evaluated;
- Firms submitting proposals considered complete and responsive will be interviewed regarding their proposal; and

- The selection committee will score complete proposals using predetermined criteria stated in the RFP.

2.1.4.3. Metro will enter into negotiations with the highest ranked firm to attempt to negotiate a contract. If negotiations are unsuccessful, negotiations will be conducted with the next highest ranked firm.

2.2. Findings supporting exemption from competitive bid process regarding fostering competition

The Metro Contract Review Board finds that exempting the contract for transportation, processing and composting services for organic wastes from the region from competitive bidding requirements is unlikely to substantially diminish competition for such a contract. To the contrary, this RFP is likely to foster competition among the existing suppliers in a relatively limited marketplace. This finding is supported by the following:

- 2.2.1. Preparation of RFP Documents: The RFP has been written in a simple, easy to read format given the complexity of the tasks for which proposals are being requested. In addition, proposers will have an opportunity to ask clarifying questions after this RFP is released. All of these steps, in combination, will make this process fair and unbiased to all potential proposers, such that parties are not likely to be discouraged from submitting proposals due to a misunderstanding of the RFP documents.
- 2.2.2. Solicitation Advertisement: As described in section 2.1.2 of these findings, the solicitation will be advertised in print, via Metro's website, through direct contact with potential proposers, and with announcements at several public meetings. Thus, this RFP will be advertised widely to encourage the greatest number of competitive proposals.
- 2.2.3. Partnership opportunities: The suite of services being solicited by this RFP encourages the formation of partnerships within the marketplace. Firms will compete with each other to form partnerships and then will compete again to be awarded the contract.

2.3. Findings supporting exemption from the competitive bid process regarding cost savings

The Metro Contract Review Board finds that exempting the procurement of the contract for transportation, processing and composting services for organic wastes from the metro region from competitive bidding requirements will result in cost savings to Metro. This finding is based on consideration of the type of contract, its

cost, the amount of the contract, the number of available proposers, and other appropriate factors as follows:

- 2.2.4. Savings Due to Increased Competition: As described in section 2.2, above, this RFP process will encourage greater competition. The suite of services being solicited by this RFP encourages the formation of partnerships within the marketplace. Firms will compete with each other to form partnerships and then will compete again to be awarded the contract, which should result in cost savings to Metro while achieving its goals and purposes.

2.4. Additional factors regarding exemption from competitive bidding requirements

The RFP for transportation, processing and composting services for organic wastes from the metro region represents a unique project in which special expertise is required to perform a complete suite of services from transportation to composting. These varied needs provided in one contract are best balanced by examining both quantitative and qualitative approaches and responses, and are not easily measured only in pricing mechanisms. Therefore, Metro will be best served by soliciting services via an RFP rather than and RFB.

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3405 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING ISSUANCE OF RFP #04R-XXXX-SWR FOR TRANSPORTATION, PROCESSING AND COMPOSTING SERVICES FOR ORGANIC WASTES FROM THE METRO REGION

Date: March 8, 2004

Prepared by: Jennifer Erickson

BACKGROUND

The Metro region has established the goal of recovering at least 45,000 tons per year of commercially-generated organic waste (e.g., all types of food waste including but not limited to: pre- and post-consumer vegetative waste, pre- and post-consumer meats, seafood and dairy waste, and non-recyclable or food-soiled paper) from the waste stream. Currently, the region disposes of over 275,000 tons of food waste and soiled non-recyclable paper annually. It is estimated that approximately 60% of this waste is from the commercial sector and 40% from residences.

In December 1999, the Metro Council adopted a three-year Organic Waste Management Work Plan that was developed by an intergovernmental team (Resolution No. 99-2856, "for the Purpose of Approving a FY 1999-2000 Organic Waste Management Work Plan, and Authorizing Release of Budgeted Funds.") This Plan provides for a three-track approach to the recovery and diversion of the region's organic wastes. The Plan emphasizes waste prevention and recovery of food for human use, diversion of food for animal feed and the development of processing infrastructure for organic materials not suitable for other uses. The region has spent the past four years developing strong and successful food recovery programs in partnership with food banks and is now transitioning into the next phase of the Plan: the collection and composting of food wastes not suitable for human or animal consumption. Recovery and processing of this material into a beneficial end product is critical if the region is to meet its state-mandated solid waste recovery goals.

The collection and processing of organics and the development and enhancement of infrastructure to handle such materials are key elements of the Organics Plan. The ability of the region to send these compostable organic wastes from our transfer stations to a fully-permitted facility at a reasonable cost is critical to the success of the organic waste collection and processing system under development. On January 20, 2004, the Metro Council directed staff to proceed towards securing the necessary processing infrastructure for the region.

Initially, Metro and the City of Portland were working together on a grant program to provide up to \$500,000 in grant funding for the development of infrastructure to accommodate the region's organic waste. Twelve applications from 10 different companies were received and evaluated by a seven-member committee. Three finalists were identified (two composters—Threemile

Canyon Farm, Boardman, OR, and Columbia Resource Company, Vancouver, WA; and one reload—Forest Grove Transfer Station, Forest Grove, OR). As of August 2003, only one composter remained in the grant pool: Threemile Canyon Farm. As a result of that grant process, staff developed legislation to establish a rate at Metro's transfer stations for the acceptance of source-separated organic waste, a change order for transfer station operations at Metro Central Station, and a sole-source contract with Threemile Canyon Farm for the transportation, processing and composting of organic waste delivered to Metro transfer stations.

Since that time, staff was advised by the Office of the Metro Attorney that although the grant program was an open and competitive process, it was not sufficient according to law to be used as the basis for a public procurement. To ensure that open and fair competition is preserved, and procurement follows public contracting law, staff has withdrawn the grant program, the rate and the sole source contract legislation. The funds originally designated for the grant program and the procurement for all necessary services have now been included into this RFP process.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition.

2. Legal Antecedents

Metro Code Section 2.04.054(c) authorizes, where appropriate and subject to the requirements of ORS 279.015, the use of alternative contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods which are consistent with the public policy of encouraging competition.

3. Anticipated Effects

The Solid Waste & Recycling Department (SW&R) is recommending use of a request for proposals process (specifically RFP#04R-XXXX-SWR attached to the resolution as Exhibit A) as the most appropriate method to accomplish the goals of the procurement. These goals include a program that provides a full suite of services (transportation, processing and composting), by a fully permitted and experienced contractor in a cost-effective and environmentally sound manner.

Achieving these multiple goals requires that firms be given the flexibility to propose provision of these services using a range of technologies and approaches, and for Metro to utilize multiple criteria to evaluate these approaches. A bid process does not allow for such flexibility.

Detailed findings to exempt the procurement from the competitive bid process are attached as Exhibit B to the resolution.

The initial term of the contract is for a period of five years. To ensure that future competition is not diminished, Metro intends to enter into a short-term contract while the organics system and collection programs around the region ramp-up and mature. Metro will hold another competitive procurement process after five years and prior to contract renewal in the event

that additional competing facilities and markets become available to serve the region. Metro staff expects additional competition to develop only after this contract is awarded and a consistent and reliable organics collection system is developed and actual tonnage levels are determined. Five years is also considered the minimum length of time for a private contractor to reasonably amortize any equipment or capital improvements that must be purchased and also ensures that Metro gets the maximum protection and benefit from the financial assistance and incentives offered by Metro and the City of Portland.

4. Budget Impacts

None. As directed in Metro Code, the tip fee that will be posted at the transfer station for Compostable Organic Waste once system component costs are determined will cover all direct and variable costs of managing such waste from the transfer stations to the composting facility.* Any additional management, such as for outreach and education programs are budgeted as part of the Organic Waste Management Work Plan. Metro Council has already approved both the Organics Plan and its budget, so there is no additional fiscal impact. The funding assistance for infrastructure improvements is in existing fund balance and therefore the only financial impact of expending these dollars is foregone interest earnings.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 04-3405.

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* The cost has been subsidized to an extent, because Metro's one-time infrastructure development support will cover some costs of capital acquisition that the processor does not have to recover in his gate rate and a transaction fee will not be charged pursuant to Metro code provisions.

Agenda Item Number 6.2

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, April 1, 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
Expenses:													
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.

040104c-01

MINUTES OF THE METRO COUNCIL MEETING

Thursday, March 25, 2004
Metro Council Chamber

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

Councilors Absent: Brian Newman (excused)

Council President Bragdon convened the Regular Council Meeting at 2:02 p.m.

1. INTRODUCTIONS

There were none.

2. CITIZEN COMMUNICATIONS

Charles Hegele, 10818 NW St. Helens, Portland, OR 97231 said he was a contractor who had done projects for Metro before. His company were hired a subcontractor for the Oregon City Transfer Station to work on the sprinkler system. They had requested information from Metro and had to wait along time to receive the information. They had done an additional \$6000 of work. The contractor had not paid them for that additional work. He was very concerned about the contractor and how he was operating in relationship to Metro. He felt that the issue needed to be looked in to, as this was not a good reflection of Metro. Council President Bragdon directed Bill Stringer, Chief Financial Officer, to look into the matter.

Zephyr Thoreau Moore, 2732 NE 15th Ave., Portland OR 97212 talked about protecting wildlife habitat and native vegetation. He said English ivy was an invasive plant. He urged Metro Council that before a property could be sold, that the invasive non-native plants must be removed. He talked about what would happen if this regulation were in place. He asked how we could proceed. Councilor Hosticka said he had invasive ivy on his land, he asked for suggestions on how to get rid of this. Mr. Moore suggested some techniques to get rid of the ivy. Councilor McLain said Mr. Moore had helped Metro clean up our own environment. She appreciated Mr. Moore's reminder. Councilor Burkholder asked if ivy was declared a noxious plant. Mr. Moore said yes it had been.

3. AUDITOR COMMUNICATION

Alexis Dow, Auditor, presented the Report on the Financial Statement Audit (a copy of which is included in the meeting record). She said each year an outside auditing firm must audit government entities. She noted Don Cox's group prepared the financial statements. Mr. Cox, Accounting Manager, spoke to the preparation of the financial statement. He highlighted what was different from last year's report. He recognized Karla Lenox, Financial Reporting and Control Supervisor, as the one who put the figures together. He also acknowledged other Metro staff that had contributed to the work. He said, for the first time the Oregon Zoo's financial statements were included in the report. He noted that the audit firm had acknowledged Metro's good work. Gary Homesly, Grant Thornton partner, prepared and discussed the audit. They had been pleased with the work of the Metro's Auditor as well as Finance/Accounting staff. He noted the statements that were issued. Ray Barlow, Grant Thornton Audit Senior Manager, gave an overview of the audit. He spoke to what was required in the audit. They were able to issue their

audit statement with a clean opinion. The only issue they had was related to budget over expenditures, which were disclosed in their report. He noted a significant deficiency involving internal controls. He explained further that deficiency and spoke to their recommendation (a copy of which is included in the report) to address this deficiency.

Councilor Burkholder asked about the insurance coverage. When they look at coverage did they compare it to risk? Mr. Barlow said Oregon Law required that they look to make sure insurance was in place but they did not evaluate whether it was too much or too little. He asked about the Metropolitan Exposition-Recreation Commission (MERC) reconciliation issue. Mr. Barlow said the nature of the business wouldn't create uniqueness nor should impact the reporting time. Councilor McLain asked about the recommendations and had the problem been repaired? Ms. Dow said, consistent with the Metro Code, management needed to respond to financial issues. MERC was now in the process of implementing Grant Thornton's recommendations. Council President Bragdon asked about previous audits. Ms. Dow said, with regards to the issue of bank reconciliation, this issue had come up a number of times throughout the last nine-year's that she had served as the Metro Auditor. Council President Bragdon asked if MERC had put procedures in place so this was not a reoccurring problem. Ms. Dow responded that they had put on additional staff to take care of this problem. She ventured a guess that this would not be a problem next year. Mr. Cox said they were currently receiving reports from MERC to watch to make sure the issue was taken care of. Ms. Dow summarized that the financial statements were prepared by Metro and audited by Grant Thornton. Grant Thornton said the financial statement audit represented a lot of work on both parts.

4. CONSENT AGENDA

4.1 Consideration of minutes of the March 18, 2004 Regular Council Meetings.

Motion:	Councilor McLain moved to adopt the meeting minutes of the March 18, 2004, Regular Metro Council.
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Vote:	Councilors Burkholder, McLain, Monroe, Park, Hosticka and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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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.

Motion:	Councilor Monroe moved to adopt Ordinance No. 04-1037.
Seconded:	Councilor Burkholder seconded the motion

Councilor Monroe said on March 28, 2002, the Metro Council passed an ordinance that provided 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 additional excise tax is set to expire on June 30, 2004. The funding was used for the following: maintain existing service levels for programs, Natural Resources Stewardship program to better manage the open space properties, environmental education programs, continuation of the Regional Trails program, and partially funding the capital renewal and replacement needs of the

department. A permanent funding source has not been secured and continuation of the \$1 per ton will provide necessary support for these programs. It is estimated that this action will provide approximately \$1.2 million for the Regional Parks and Greenspaces Department in FY 2004-05.

Council President Bragdon opened a public hearing on Ordinance No. 04-1037

David White, representing Tri-County Council and Oregon Refuse and Recycling Association, 1739 NW 156th Avenue, Beaverton, OR 97006 said he had handed out a newspaper article from the Oregonian (a copy of which is included in the meeting record). Two years ago Metro had voted on a dollar a ton for parks. Metro Council determined that they only wanted to do this for two years. This was a stopgap measure to enable them to find other funding. He said two years ago the solid waste industry was not in support of this measure. They didn't believe that the \$1.00 increase would be temporary. Council was here today to eliminate the sunset. He spoke to the proposed parks and solid waste budget and the plan to use solid waste money to fund not only parks but also other non-Metro operations. He noted Councilor Monroe's comment that they had not found any additional funding sources. He hadn't heard of any discussions about other funding sources. If you pass along this rate increase it was difficult for the haulers to remain competitive. He didn't believe that the public had bought off on the money that was dedicated to parks. He had suggested itemizing the bill. Lastly, local jurisdictions set rates representing taxes. It became increasing difficult for the solid waste industry to go to local jurisdictions for additional funding. He felt if Council eliminated the sunset date, more solid waste money would be applied to non-solid waste areas. Council President Bragdon said they had delayed the ratemaking ordinance until they had received input from the Rate Review Committee. Councilor Monroe spoke to what they had done to find additional funding for parks.

Council President Bragdon closed the public hearing.

Councilor Park talked about his original vote and his concerns about their current structure. The eastern portion of the region ended up paying more than they should. They were talking about rates issues and this might help the balance.

Councilor McLain said she had been working with the Rate Review Committee. They had been working with a model to have more efficiencies in the system. She spoke to their limitations of funding. There were times were Metro was trying to maintain all of their commitments. The public had told them that the acquisition of over 8000 acres was an important regional asset. They had not been successful in finding a new source of revenue. She believed that garbage was a universal service. It seemed to her that this was a universal fee that could pay for other public services that the Council was told by the public were important.

Councilor Burkholder talked about a tax being tied to a use. He had a personal problem with this. He felt this had led to a lot of poor decisions. Philosophically, restricting the use of dollars from a source to a certain purpose wasn't a good idea. They needed to have the flexibility to allocate those funds. The other issue concerning eliminating the sunset was the current economic conditions in Oregon. Oregon was still facing financial problems. He was comfortable with relying on the current resources they had to fund all Metro services. This was a prudent measure to take. He would be voting for this ordinance.

Councilor Park asked about the budget impact, did this ordinance continue funds being dedicated to the parks department? Was there a conflict? Dan Cooper, Metro Attorney, said the way the ordinance was structured it eliminated the sunset but did not allocate funds.

Motion to amend:	Councilor Park moved to amend Ordinance No. 04-1037 to extend the sunset date to 2006.
Seconded:	Councilor Hosticka seconded the motion

Councilor Park explained that by extending the sunset date to 2006, it would allow Metro to continue to look for funds. Councilor Monroe said he would be opposing the amendment and explained why. He had asked for this extension early on. He felt it was appropriate to have certainty. Council President Bragdon said he would be voting no on the motion as well.

Vote to amend:	Councilors Park, Hosticka, and Burkholder voted in support of the amendment, Councilors McLain, Monroe and Council President Bragdon voted no on the motion. The vote was 3 aye/3 nay, the motion failed.
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Vote on the Main Motion:	Councilors Park, Hosticka, Burkholder, McLain, Monroe and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.
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5.2 Ordinance No. 04-1042, For the Purpose of Amending Metro Code Chapter 5.02 to Amend Disposal Charges and System Fees

Motion:	Councilor McLain moved to adopt Ordinance No. 04-1042.
Seconded:	Councilor Monroe seconded the motion

Councilor McLain gave an overview of both Ordinance No. 04-1042 and 04-1043. She said the new ordinances were the work of the Rate Review Committee. They had scheduled a work session for April 6th. They would have a full discussion of the Rate Review Committee's recommendation. Staff had worked very hard with the committee and she felt they had good thoughts on how to improve the rate review model. Council President Bragdon said they were trying to link the rate with the budget making.

Council President Bragdon opened a public hearing on Ordinance No. 04-1042.

Ray Phelps, Willamette Resource Industry, complimented the leadership of Councilor McLain and further complimented Mike Hogle, Solid Waste and Recycling Director, and his staff for their efforts. He was supporting this ordinance because it provided for full cost recovery. As a result there was an increased in the transaction fee and an increase in the disposal charge that may seem substantial. In fact it was not substantial. He talked about the history of the disposal fee. In order to continue to mirror Metro's tip fee they had to reduce cost and service. They would now be able to continue Metro's tip fee and improve their services as well as keep costs reasonable. WRI's tip fee would not go up as much as Metro's. He suggested that there was a rate increase that would kick in July 1 and that was the excise tax.

David White, representing Tri-County Council and Oregon Refuse and Recycling Association, 1739 NW 156th Avenue, Beaverton, OR 97006 said he also complimented the staff and Councilor McLain. He had in the passed raised some concerns and opposition to the ordinance. After talking to others, the industry could now support the ordinance.

Council President Bragdon closed the public hearing. He announced that there would be no final action at this meeting and that final action was scheduled for April 15th.

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.

Motion:	Councilor McLain moved to adopt Ordinance No. 04-1043.
Seconded:	Councilor Monroe seconded the motion

Council President Bragdon opened a public hearing on Ordinance No. 04-1043

Ray Phelps, WRI, complimented Councilor McLain and staff on their work. He supported the policy. As private operators they should pay their fair share. He was opposed to this ordinance in its current form. He supported the policy but he thought a lot of work had to be done on how to collect the money. He offered his assistance in rewriting the ordinance.

Council President Bragdon closed the public hearing. He announced that there would be no final action at this meeting.

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.

Motion:	Councilor McLain moved to adopt Ordinance No. 04-1046.
Seconded:	Councilor Hosticka seconded the motion

Councilor McLain talked about the Urban Growth Boundary (UGB) decision made in 2002. They had made conditions on certain areas. They had brought this area in to use as a school site. The City of Sherwood and the school district recognized that they didn't need as much land as had been allocated. They were trying to correct this allocation. They were working through Washington County to carry out their plan changes.

Council President Bragdon opened a public hearing on Ordinance No. 04-1046 No one came forward. Council President Bragdon closed the public hearing.

Councilor Burkholder asked what was in Title 11 in terms of given guidance for size and location of schools. Mr. Cooper responded that when the Council did the UGB ordinance they attached commitments to connectivity between neighborhoods and schools. They didn't have guidance on "size". Councilor Burkholder said his concern was the use of the school site rather than the size. He was concerned that there was an artificial inflation of how much land schools needed. Councilor Park asked about the remaining area that would no longer be used for a school site. What was the plan for the remaining area? Ray Valone, Planning Department, said they had planned for a number of dwelling units for that remaining area, 314 units. Councilor Park asked about the use of the land for the school site versus the net units. Mr. Valone responded that after the net take-outs for roads, natural resources, etc., the net was 314 units. Councilor Park asked about the school plan and locational factors. Mr. Valone said they didn't have a location for the school yet. Council President Bragdon added that MPAC met and approved this ordinance without objection.

Councilor McLain said they tried hard to make conditions specific to each area. She urged support.

Vote:

Councilors Park, Hosticka, Burkholder, McLain, Monroe and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.

6. RESOLUTIONS

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

Motion:	Councilor Park moved to adopt Resolution No. 04-3432.
Seconded:	Councilor McLain seconded the motion

Councilor Park said this was a food processing facility. He spoke to the license. The putrescible waste was what was left from cherries and other fruit. This allowed for more efficient use of fuel. He recommended approval. Councilor Burkholder added his comments about the product.

Vote:

Councilors Park, Hosticka, Burkholder, McLain, Monroe, and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.

7. CONTRACT REVIEW BOARD

7.1 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.

Motion:	Councilor Burkholder moved to adopt Resolution No. 04-3437.
Seconded:	Councilor Park seconded the motion

Councilor Burkholder explained what was TRANSIMS. It was computer modeling. Twelve to fifteen months of work had yet to be done. Mr. Lawton had retired. This would allow Mr. Lawton to come back as a contractor. He spoke to Mr. Lawton's knowledge and the reason why we would be bringing him back. Metro had very particular needs for this project. He urged support.

Vote:

Councilors Park, Hosticka, Burkholder, McLain, Monroe and Council President Bragdon voted in support of the motion. The vote was 6 aye, the motion passed.

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

Council President Bragdon announced that this resolution was held over until the April 1, 2004 Council meeting.

8. CHIEF OPERATING OFFICER COMMUNICATION

Michael Jordan, COO, said he had nothing to share.

9. COUNCILOR COMMUNICATION

Councilor Park said that they received an update that the transportation-funding package was moving through the federal legislature. It looked like good news. He spoke to some of the proposed specific projects. Councilor Burkholder talked about the \$10 million allocated for I-5 widening and \$12 million for freight improvements. He talked about additional projects. He also updated the Council on the Bi-State Committee recommendations and coordination efforts. There was bylaws set to be adopted, which would formalize the committee to a forum that responded to signatory agencies. Progress was coming along. Councilor Hosticka said MPAC had met last night and recommended that the Council approve Ordinance No. 04-1041 which had to do with setting agricultural policy.

10. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 3:36 p.m.

Prepared by

Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF MARCH 25,
2004

Item	Topic	Doc Date	Document Description	Doc. Number
3	Audit Recommendation	March 2004	To: Metro Council From: Alexis Dow, Metro Auditor Re: Financial Statement Audit Management Recommendations	032504c-01
3	Year End Report June 30, 2003	June 30, 2003	To: Metro Council From: Grant Thornton Re: Schedule of Expenditures of Federal Awards and Reports of Independent Certified Public Accountants	032504c-02
2	Letter and flyer	3/25/04	To: Metro Council From: Zephyr Moore: Re: Invasive English ivy	032504c-03
4.1	Minutes	3/18/04	Metro Council Meeting Minutes of March 18, 2004	032504c-04
5.1	Oregonian article	3/22/02	To: Metro Council From: David White Re: Oregonian article "Metro panels OK fee hike to help parks"	032504c-05

04 0109c-02

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF CONSIDERING THE ASSIGNMENT AND MODIFICATION OF METRO CONTRACT NO. 924826 CONCERNING A LEASE AGREEMENT FOR A PORTABLE SIMULATION THEATRE AT THE OREGON ZOO,

RESOLUTION NO. 04-3438A

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

That the Metro Council, acting as the Metro Contract Review Board authorizes the Chief Operating Officer to execute a Consent to Assignment and Modification of Lease Agreement in a form substantially similar to that attached hereto 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

CONSENT TO ASSIGNMENT AND MODIFICATION OF LEASE AGREEMENT

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, and is made by, between and among Metro, an Oregon metropolitan service district ("Metro"), Simex, Inc., a Canadian corporation, and Iwerks Entertainment, Inc, a California corporation ("Iwerks").

RECITALS

1. In March 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. In addition, to facilitate these desired contract amendments, SimEx has requested the Zoo's consent under the lease agreement to the assignment of the agreement to Iwerks, a California corporation wholly owned by SimEx, and the Zoo is amenable to the request of Simex

Accordingly, in exchange for the promises and other considerations set forth in the lease agreement and in this Amendment No. 1, the parties hereby agree as follows:

CONSENT TO ASSIGNMENT OF LEASE

Zoo hereby provides its consent to the assignment by Simex to Iwerks of the obligations and duties of performance, without exception, owed to the Zoo under and pursuant to the lease agreement and this Amendment No. 1.

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 Iwerks one portable simulation theater and related software."

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

“Iwerks shall provide the film software to be utilized in conjunction with the portable simulation theater from all titles that have been programmed for the portable simulation theater. The license fees for such titles shall be deemed to be \$30,000 per year, which sum shall further be deemed to be included in the consideration calculated under Paragraph 4 of this Contract Amendment.”

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 Iwerks and the rights to be granted hereunder, the Oregon Zoo will pay to Iwerks 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 up to the amount of \$15,000 per year; operating facilities expenses, including utilities; and operations staff expenses. The consideration for the lease of the portable simulation theatre shall be payable within twenty one (21) calendar days following the close of each calendar month for sales during such period, beginning with the period in which the first sale or disposition of tickets occurs.

5. The following provisions are added to and made a part of the lease agreement:

- (a.) Zoo shall develop a ticketing strategy for groups of adults, children, seniors or schools with the intention of attracting more than 108,747 paying visitors per year and generating an average contribution of \$3.50 per visitor to the portable simulation theatre. Such ticketing strategy shall include sales of tickets for the portable simulation theatre alone or in combination with any admission to any or all of the Oregon Zoo, the Oregon Zoo Train or the Winged Wonders Butterfly Exhibit.

- (b.) The parties agree that in the event of the sale of any discounted combination admission tickets, the same discount percentage shall be applied both to the admission price to the portable simulation theatre and to any other admission price combined with the theatre admission. All ticket combinations shall be sold at various locations, which may include Zoo ticket booths and group sales locations.

- (c.) The parties agree that the Zoo shall make all ticket sales by use of Zoo staff and shall collect and account for all ticket revenues received on a periodic accounting basis.
 - (d.) Financial statements and any supporting documents such as, without limitation, ticket audits statements, invoices, timesheets, shall be prepared each period for review by the parties and included with payment to Iwerks.
6. 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: _____

IWERKS ENTERTAINMENT, INC.

By: _____

Name: _____

Title: _____

Date: _____