

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF ENTERING INTO AN) RESOLUTION NO. 04-3497
AGREEMENT WITH CEDAR GROVE)
COMPOSTING, INC., FOR THE TRANSPORT,)
PROCESSING AND COMPOSTING OF) Introduced by Michael Jordan, Chief
COMPOSTABLE ORGANIC WASTES FROM) Operating Officer, with the concurrence of
METRO TRANSFER STATIONS) David Bragdon, Council President

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, on April 1, 2004 the Metro Council authorized the issuance of a Request for Proposals for Transportation, Processing and Composting Services for Organic Wastes from the Metro Region (RFP #04R-1103-SW&R); and,

WHEREAS, Cedar Grove Composting, Inc., was the successful proposer chosen by a selection committee composed of representatives from Metro, local government, the solid waste hauling industry, the composting industry and the affected business community; and,

WHEREAS, Cedar Grove Composting, Inc. is permitted by the appropriate environmental regulatory agencies to accept the Compostable Organic Waste materials that will be collected and is able to accept such materials in the volumes that Metro anticipates will be delivered through Metro region programs; and,

WHEREAS, this resolution was submitted to the Chief Operating Officer for consideration and was forwarded to the Metro Contract Review Board for approval; now therefore,

BE IT RESOLVED that the Metro Council, sitting as the Metro Contract Review Board authorizes the Chief Operating Officer to execute a contract with Cedar Grove Composting, Inc., substantially similar to the form of the contract attached as Exhibit A.

ADOPTED by the Metro Council this 7th day of October, 2004.


David Bragdon, Council President

Approved as to Form:


for Daniel B. Cooper, Metro Attorney



EXHIBIT A TO RESOLUTION NO. 04-3497

AGREEMENT

This Agreement is made by and between Cedar Grove Composting, Inc., 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 or upon signature, whichever is later, 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.

CEDAR GROVE COMPOSTING, INC.

METRO

By: _____

By: _____

Print Name: _____

Michael Jordan
Chief Operating Officer

Title: _____

Date: _____

Date: _____

PERFORMANCE BOND

(NOTE: CONTRACTOR 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

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 Contractor or 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 16 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 19 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, and 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 18 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 16 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 12B 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 -- Terms and Conditions for Construction of Proposed New Facility

Contractor agrees under the following terms and conditions to make all appropriate good faith efforts to locate a composting facility site in or near the Portland metropolitan area, including, without limitation, undertaking to locate a facility site, to purchase or lease land, to obtain all appropriate governmental permits, including a Metro solid waste franchise, and thereafter to construct and operate such facility utilizing a Gore™ Cover:

- A. Contractor's obligation to make good faith efforts to site a local facility as set forth in section H of this Article shall be contingent upon and shall not arise until the volume of organic waste delivered under this contract exceeds 10,000 tons per year. For purposes of this Article, "organic waste delivered" means compostable organic waste delivered under this contract, plus any additional quantity of organic waste derived from within the Metro region, but not necessarily through Metro's facilities.

For purposes of this contingency, this volume shall be deemed to have been met the first time that a total of 2,500 tons or more of organic waste are delivered in any consecutive 90-day period during the first 36 months of this Agreement.

If the volume of organic waste delivered has not exceeded 10,000 tons per year as defined in this section within 36 months of the initial delivery of organic waste, Metro or Contractor may terminate this Agreement by giving six (6) months' prior written notice of termination to the other party.

- B. Nothing in this agreement shall prohibit Contractor at any time from commencing preparations to acquire a composting facility site including, without limitation, making contractual commitments for acquisition of a facility site and preparing applications for any necessary permits or operating authorities. Contractor may, in its sole discretion, purchase property, obtain appropriate governmental permits, or construct and operate such a facility prior to the volume of commercial food waste delivered under this contract exceeding 10,000 tons per year as calculated in paragraph A,

above. No activities or lack of activities by Contractor before the volume of commercial food waste delivered under this contract exceeds 10,000 tons per year shall be considered to waive this condition or to be a breach of any of Contractor's obligations under this section.

- C. Selection of a location for any facility site shall be solely a matter of Contractor's judgment, provided that any selected facility shall be either within the geographic boundary of Metro or within no more than a 40-mile radius from the Metro Central Transfer Station, unless otherwise approved by Metro.
- D. Metro agrees to cooperate with Contractor in Contractor's attempt to obtain any necessary permits or authorizations, including but not limited to any solid waste franchise required by Metro to construct and operate the facility.
- E. Metro, agrees that during the term of this contract and for a period of ten (10) years after the commencement of Contractor's construction of a composting facility within the geographic boundary of Metro or within no more than a 40-mile radius from the Metro Central Transfer Station, Metro shall not provide any grant or loan of solid waste funds to any other person or entity proposing to site, purchase property for, construct or operate a food waste composting facility for food waste collected within Metro's geographic area.
- F. The local organic waste composting facility may be constructed and operated by a subsidiary of Contractor or an affiliated company owned and controlled by the shareholders of Contractor, provided that the subsidiary or affiliate agrees in writing to be bound by this Agreement and Contractor shall remain responsible for the performance of the subsidiary or affiliate.
- G. Once Contractor commences construction of a local organic waste composting facility, Metro shall no longer be entitled to exercise any right of termination for convenience under Article 12 F of the General Conditions.
- H. For the purposes of this provision, Contractor's good faith efforts to site, construct and operate a local organic waste composting facility, shall be considered to have been met if within 18 months of contract execution Contractor:
 - 1. Identifies at least four suitable potential composting sites within a 40-mile radius of Metro Central Station. A "suitable site" is defined as a parcel of land that is at least 10 acres in size, that is available for lease or purchase, and that is zoned to allow commercial composting or solid waste use.
 - 2. Provides the address and owner contact information to Metro for all four sites.
 - 3. Investigates permitting requirements (including but not limited to local land use authority, permits of the Oregon Department of Environmental Quality and operating authority from Metro) for at least two of the four suitable sites.
 - 4. Provides Metro with copies of documents demonstrating the following:
 - Contractor's clear intent to purchase or lease property (including but not limited to an executed purchase agreement; an agreement providing Contractor with a right of first refusal; contractual option to purchase or lease property with a bona fide and willing seller or lessor; or an outstanding offer to purchase or lease or evidence of ongoing negotiations, or any other executed real estate financing documents);
 - Contractor's application for required permits as made (including but not limited to land use approval, DEQ composting permit and Metro Solid Waste license or franchise) and evidence of ongoing appropriate efforts to secure all required permits.
 - 5. Pursue permitting and siting for a second solid waste facility site if the Contractor's efforts at the first site are not successful.
- I. For the purposes of this provision, "local facility" shall mean a facility located within a 40-mile radius of Metro Central Station located at 6161 NW 61st Avenue, Portland, unless otherwise approved by Metro.

Article 7 -- 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 8 -- 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 26 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 9 -- 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 10 -- 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 16, 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 11 -- 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 12 -- 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 11A 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 12A, 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 12A, Metro is entitled to liquidated damages, as provided in Article 11.
 - 3. Actual Damages: For each event of default under Article 12A 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 27.
 - 4. Immediate Termination or Suspension of Contract: For each default under Article 12A 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 12A: For each default other than a default under Article 12A 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 12B, 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 12B, 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 27. 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 12B 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 12 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 12 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 13 -- 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 through Metro transfer stations. 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 16 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 14 -- Fuel Escalation/De-Escalation Surcharge

Fuel price escalation and de-escalation will be negotiated based upon the following:

- A. "Base price" will be defined as the average rack price for branded #2 diesel at the Willbridge Terminal in Portland for the 30 days immediately preceding June 1, 2004.
- B. Commencing January 1, 2005 and on the first day of each month thereafter a fuel surcharge, if any, will be calculated. The surcharge will be adjusted up or down on a monthly basis and based on the extent the average price over the previous 30-day period exceeds the "Base price".
- C. This fuel surcharge will occur only in the event that fuel prices have fluctuated from the "base price" more than 20% (up or down).
- D. This fuel surcharge shall be in effect only until Contractor has opened a local facility.
- E. The price adjustment shall be for loads transported from Metro's transfer stations to the contractor's facility and empty trailers returned from contractor's facility to Metro's transfer stations. If contractor back-hauls materials in the containers, only 50% of the fuel surcharge shall be paid.
- F. Fuel surcharges shall be based on the following formula:

$$\begin{aligned} & \text{Distance (one way)/miles per gallon} = \text{gallons per load (one way)} \\ & \text{Gallons per load (one way)} \times \text{adjustment over base price} = \text{dollars per load} \end{aligned}$$

Article 15 -- Organics Tip Fee

In the event that Contractor constructs and commences operation at a composting facility site as specified in this Agreement, Contractor shall accept all Compostable Organic Waste that meets Contractor's Material Acceptance Standards and is derived from within the Metro region whether or not such Compostable Organic Waste is first received at Metro-owned transfer stations. Contractor shall not set material acceptance conditions for such Compostable Organic Waste that materially diverge from any such conditions to which the parties have agreed under this Agreement. In addition, Contractor agrees that it shall not charge more than \$39 per ton for receipt of Acceptable Organic Waste derived from within the Metro region.

Article 16 -- 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 13 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 27 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 17 -- 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.
- C. 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.
- D. 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 18 -- 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 19 – 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 27 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 27 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 27 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 20 -- 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 13 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 13 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 21 – 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 22 -- 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 23 -- 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 24 -- 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 25 -- 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 26 -- 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 27 -- 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 28 -- 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 29 -- 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.
- B. 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 30 -- 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 31 -- 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 13D 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.

- C. 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 32 -- 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

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 Contractor or Metro-provided 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.

The Contractor shall not be entitled to any reimbursement, under any provisions of this Scope of Work or the General Conditions, for costs or revenue losses due to changes by Metro in the type of accounts that may use the facility, or in a decrease in the number of hours the facility is open. Metro shall provide the Contractor with 24 hours written notice of any change in hours of operation or types of accounts that may use the facility.

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 Contractor or 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 Contractor or Metro-supplied transport containers. Contractor shall ensure that all transport equipment is compatible with all transport containers used and appropriate for long-haul transportation. Contractor shall ensure that 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 and containers supplied are maintained in a safe working condition, are roadworthy, have appropriate safeguards to avoid leaks and spills, and are in compliance with all appropriate local, state and

federal regulations. Transfer tractors shall be suitably painted and/or refurbished 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 including 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 two empty containers 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 within 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

- Contractor's proposal
- Request for clarifications and Contractor's response

All items included in Appendix A are hereby incorporated into the contract per Article 1: Definitions of the General Conditions.



Cedar Grove Composting



Request for Proposals RFP #04R-1103-SW&R Processing and Composting Services for Organic Wastes from the Metro Region

Due Date: May 13, 2004 3:00 p.m.
Location: Metro Business Office
600 NE Grand Avenue
Portland, OR 97232-2736



May 13, 2004

RE: RFP # 04R-1103-SW&R, Transportation, Processing and Composting

To Whom It May Concern:

Cedar Grove Composting, Inc. (CGC) is privileged to submit this proposal to the *Metro Solid Waste and Recycling Waste Reduction Section* for its Foodwaste Transportation, Processing and Composting Grant. The unique features of Cedar Grove Composting's proposal are:

- ***Immediate capacity for food wastes as described in our proposal (prior to January 1, 2005, if desired)***
- ***A commitment to site, build and operate a Gore™ Cover facility in the Portland area as volumes of feedstocks (predictably) grow;***
- ***Long-term capacity for additional volumes, as needed;***
- ***The highest level of in-vessel composting technology in the region to manage odors and VOC's while producing superior organic products;***
- ***A proven track record in marketing high grade soil amendments within the Pacific Northwest;***
- ***Additional economic benefits to the Metro region for revenue sharing on products sold. As Metro's foodwaste program grows, the revenue potential to Metro from the sale of finished compost becomes significant.***

Cedar Grove Composting's ultimate objective is to site a Gore™ Cover composting facility in the Portland area as state and local initiatives continue to promote the need for viable options to effectively recycle organic wastes. As foodwaste volumes in the Metro region exceed greater than 10,000 tons/year (under this contract), Cedar Grove Composting will proceed with plans to site a facility in the Portland area. In addition, by declining funds from Metro for this contract, Cedar Grove Composting estimates that Metro will save an average of \$5.00/ton over the life of the contract (when factoring in payments and interest) from competitors requesting the full \$500,000 funding offer.

Assumptions (not specified in the RFP document) for this proposal-

Based on the information provided within various sections of Metro's RFP, CGC's response assumes the following:

- *A minimum weight of 9 tons/box will be charged for each transport container picked up for transport at Metro transfer facilities;*
- *Metro will supply a sufficient number of transport containers to ensure pick-ups and drops can be made for the appropriate volumes generated. If Metro cannot provide additional transport boxes for growing volumes, Cedar Grove Composting will supply, at an additional cost, adequate boxes required to optimize logistic and scheduling requirements for growing volumes.*

For volumes less than 10,000 tons/year (which we have assumed for the initial phase of the contract), material will be transported to the current Cedar Grove Composting facility in Maple Valley, Washington. This facility is fully permitted to receive 195,000 tons/year of yard, pre-consumer and post-consumer food waste (*more information on the Gore™ Cover Technology is in the Processing/Facility section of the Proposer's Questionnaire*).

Cedar Grove Composting's experience in marketing high quality, certified "organic" products in the region is unsurpassed. Information on the well-developed product line for gardeners and agriculture are presented in the main *Additional Information* section of this proposal.

I look forward to answering any questions that you may have on our proposal. Please do not hesitate to call me at (206)832-3005.

Sincerely,

Jerry Bartlett
General Manager
Cedar Grove Composting, Inc.
206.832.3005

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Section #4	Confidentiality
Section #5	Additional Information

Section 1: Pricing

1. Metro Central Station: Total per ton price* for each ton of source-separated organic waste received \$39.00
(*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 \$39.00
(*Includes receipt, transport, processing, composting, and backhaul of containers)

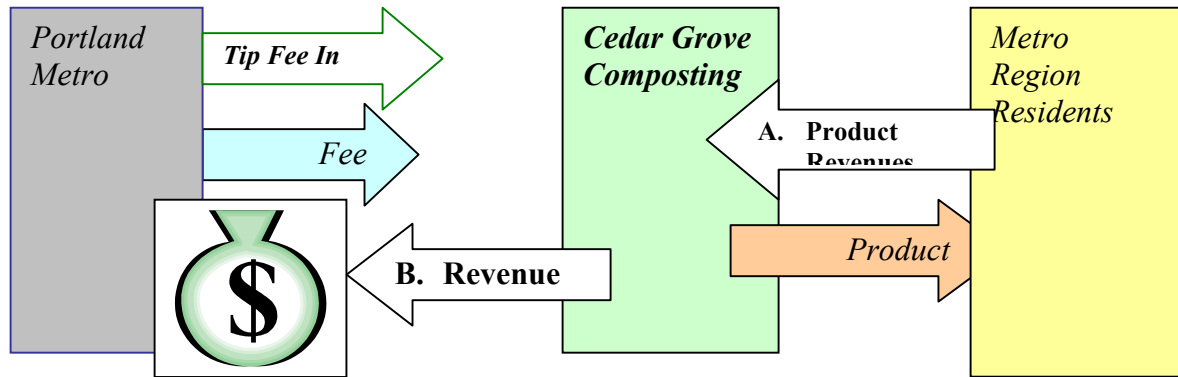
3. If you choose not to use either Metro transfer station, how much will you charge per ton to accept organic waste? \$N/A

4. Total amount of Metro Subsidy funding: \$0

Supplement to Price Schedule

Revenue Sharing Plan, Portland Metro Organic Wastes Composting Contract

This alternate proposal provides an additional economic offering to Metro for the entire term of the contract. The diagram below demonstrates the mechanics and flow of the program.

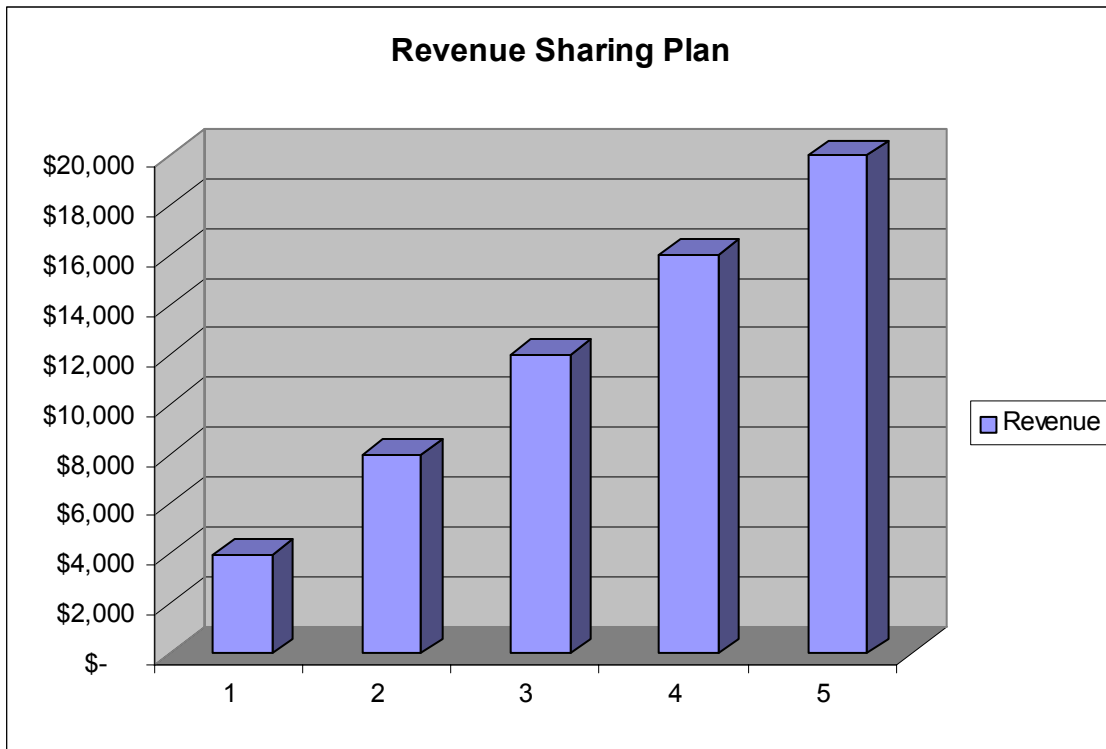


Revenue Sharing Plan

Cedar Grove Composting agrees to share in the revenue for compost sold within the Portland Metro region based on the following :

- Metro will share in a portion of the average bulk sale rate above \$14.00/yard for volume sold from its feedstock in the Metro region area (calculated from actual, wholesale and direct sales made by CGC -not by independent dealers' rates, offered at their own, discretionary pricing)
- Revenue payment will be as follows:
 - \$.50/yard for tonnage sold at or above \$14.00/yard**
(Calculated annually on an average market rate/yard)
- Eligible volumes are described as follows: *One ton feedstock equals 80% of the finished product, which is measured in yards out.* For example, if the contract produces inbound volumes of 25,000 tons in a given year, volume eligible for revenue sharing will be 80% of 25,000 tons = yards OR 20,000 eligible yards);
- Cedar Grove Composting will provide all marketing of materials;
- Revenue sharing will only apply to product price average, and will **exclude** any **delivery fee** revenues or bagged product rates.

<u>Year</u>	<u>Inbound</u>	<u>Outbound</u>	<u>*Ave \$</u>	<u>Rev share</u>	<u>Revenue</u>
2005	10,000	8,000	\$ 14.00	\$ 0.50	\$ 4,000
2006	20,000	16,000	\$ 14.50	\$ 0.50	\$ 8,000
2007	30,000	24,000	\$ 15.00	\$ 0.50	\$ 12,000
2008	40,000	32,000	\$ 15.50	\$ 0.50	\$ 16,000
2009	50,000	40,000	\$ 16.00	\$ 0.50	\$ 20,000
ANTICIPATED REVENUE BACK TO METRO					\$ 60,000



Section 2

- A. Transportation Questionnaire**
- B. Qualifications/Process/Facility Information**
- C. Equipment information**
- D. Emission Reduction**
- E. Disclosure information**
 - 1) Cedar Grove Composting, Inc.
 - 2) Waste Management of Oregon (transportation component)

A. Transport System Information Questionnaire Response

1) Do you currently own the equipment you will use to transport organic waste containers from Metro transfer stations to your facility?

No. Transportation will be subcontracted to companies who own the equipment.

2) Provide a detailed description of the equipment you will be using including year, make and model.

During the initial start-up phase of the contract (as Metro is building its collection volumes of post consumer foodwaste to the 10,000 tons/year level), CGC will subcontract the transportation of foodwaste to Waste Management for delivery to its Maple Valley, Washington facility. Foodwaste will be transported in Metro's 35 yard drop boxes. Three boxes will be transported to the compost site at a time: two will be placed on a 65-foot flatbed truck, and a third box will be loaded onto a 20-yard "pup" flatbed attached to the main truck. This temporary transportation arrangement will be completed by either Waste Management drivers or a Waste Management contracted hauling company.

Once the volumes have reached sufficient levels to support a dedicated facility in the Metro area, transportation of the 35-yard Metro roll-off boxes will be done by roll-off trucks owned by Waste Management of Oregon.

Supplemental information on Waste Management's capabilities and equipment follow within this section.

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)

CGC will subcontract the transportation. Please refer to *Disclosure Information* section for information on our transportation subcontractor, Waste Management of Oregon, Inc.

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?

Yes. CGC will rinse the transport containers upon offloading feedstock at its Maple Valley or new Portland area site. All rinsewater from the process will be collected and treated in the site's leachate wastewater treatment system.

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?

Finished compost will be backhauled. Estimated backhauled amount (when applicable) will be 400-800 tons of finished compost per month.

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.

CGC is not proposing to use any Metro funds for transport enhancements.

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.

Not applicable.

B. Process/Facility Information Questionnaire

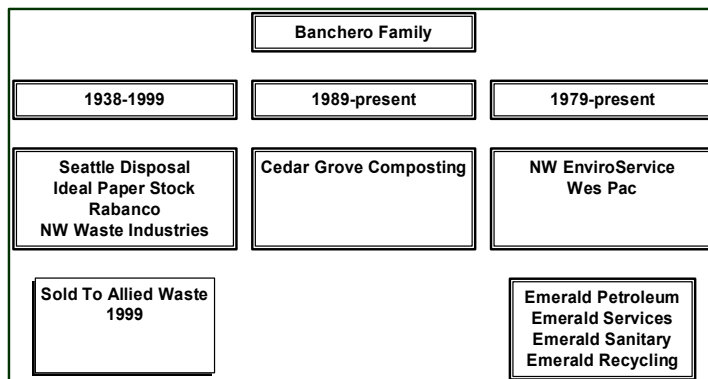
1) Please describe your company’s general skills and qualifications regarding processing and composting of organic waste.

Company History

Cedar Grove Composting is a recognized solid waste leader, with renowned expertise in yard and food waste composting. Cedar Grove has evolved as a leading performer in product development and brand name marketing of its various quality products. Cedar Grove Composting’s Maple Valley, Washington facility processes 195,000 tons of yard and food waste annually, while distributing 150,000 bulk cubic yards and 500,000 retail bagged products each year. Since opening its doors in 1989, Cedar Grove has processed 2.4 billion pounds of yard waste, and successfully sold a volume equivalent of 32 million bags of premium, quality products.

Cedar Grove Composting is an affiliate of Emerald Services, Inc. and Northwest Waste Industries, Inc. (NWWI). These companies have provided comprehensive solid waste services to residential and commercial customers in Washington State since 1938.

Originally founded by a partnership between three Seattle families, the roots of CGC reside with the Rabanco Companies. Eventually, Rabanco separated assets to form two, individual private corporations. Northwest Waste Industries, Inc. (inclusive of Cedar Grove Composting, Inc.), was eventually split and 100% owned by the Banchero family. Two additional, minority ownership shares were allocated to key executives, Jerry Bartlett and Clue Westmoreland in the year 2000. A summary of the evolution of ownership is shown here.



Collection Experience

In the 1940's, Seattle Disposal (a Rabanco Company) led the region in efficiency by purchasing a fleet of gas-powered, hydraulic tilt, international side-load collection vehicles. In the 1950's, Seattle Disposal purchased the first fleet of side-load compactor trucks to be used in Seattle. The detachable container and roll off services were implemented in the 1960's. In the 1970's and 1980's, modern, rear-load, front-load, lugger and roll-off collection containers were introduced to the fleet, along with advances in technology for efficient cleaning, repair, maintenance and safety. The experience in solid waste collection and safe, efficient handling spans seven decades.

Emerald Services, Inc. (Affiliated Companies)

The corporate vision at Cedar Grove Composting and its affiliated companies is simple-

Divert wastes from traditional disposal methods and use them to manufacture quality products.

In addition to Cedar Grove Composting, the Banchero family and its partners own Emerald Services, Inc. Emerald Recycling (a division of Emerald Services) owns and operates industrial waste recycling facilities in Tacoma, Seattle, and Vancouver, Washington. Service facilities are also managed in Spokane and Salt Lake City, Utah. Emerald Alaska, Inc. has a recycling facility in Anchorage, and a service center in Fairbanks.

Cedar Grove and Emerald Services companies ***recycle annually:***

- 195,000 tons of yard and food waste
- 12 million gallons of off spec used oil
- 1 million gallons of spent anti-freeze
- 500,000 gallons spent solvents

Cedar Grove Composting's Evolution and Experience

Cedar Grove Composting began accepting residential yard waste from the City of Seattle in the spring of 1989. From that time, Cedar Grove has expanded its permit to enhance its volume and feedstock capabilities to match growing, regional demands. *As the largest privately owned yard waste composting facility in North America*, Cedar Grove continues to invest in the best technologies, practices and product development in the nation. A summary of Cedar Grove's evolution is shown below.

YEAR	<i>I. Accomplishment</i>
1989	<i>J. Opened, Cedar Grove Composting, as windrow system</i>
1989	<i>K. City of Seattle yard waste contract started</i>
1989	Pre consumer food waste program started
1994	Researched European technologies to deal with high volumes
1995	Invested in negative air+biofilter
1998	Initiated EMS system
1999	Built Zone 7 (indoor building) for post consumer food pilot
2002	Researched Gore™ Cover Technology System in Europe
2003	Installed Gore™ Cover Technology at Maple Valley
2004	Sited and building Gore™ Cover Technology system, Everett, Washington
2004	Received post consumer food waste permit (permanent feedstock)

Key Contact

Jerry Bartlett, General Manager of Cedar Grove Composting, will act as key contact to ensure the scope of work and all interface between the Metro, its affiliated contract users, and the staff at Cedar Grove Composting facilities is managed efficiently and effectively. Jerry Bartlett has been the acting General Manager for Cedar Grove Composting since 1998. He has also maintained the position of Vice President of Regulatory Affairs for all Cedar Grove and Emerald facilities. From 1995-1998, Jerry worked as a private consultant for Cedar Grove and Emerald Services facilities. Jerry has led Cedar Grove in:

- ✓ Researching technologies and “best practices” worldwide to
 - *Manage VOC emissions and odor control*
 - *Expand flexibility for emerging feedstocks (pre-consumer, post consumer food waste, biosolids, etc.)*
- ✓ Managing all operational units of multiple composting facilities
- ✓ **Operating to ISO 14000 standards under EMS programs**
- ✓ Initiate, maintain and update
- ✓ Successfully working with local state, county and city agencies to cooperatively set standards and meet regional waste reduction and solid waste recycling goals
- ✓ Oversee business development and product marketing
- ✓ Manage regulatory compliance issues from local, state and federal authorities
- ✓ Conducting environmental audits

Individual and Company Associations and Accomplishments

- ✓ **Board Member**, U.S. Composting Council
- ✓ **President**, Washington State Organic Recycling Council
- ✓ **Facility Manager of the Year**, 2001, Washington Organic Recycling Council
- ✓ Washington State Solid Waste Advisory Committee
- ✓ Washington State Department of Ecology Beyond Waste Initiative Committee
- ✓ Solid Waste Advisory Committee (SWAC)
- ✓ Metro Industrial Waste Advisory Committee
- ✓ Approved material under Washington State Department of Agriculture Organic Food Program, 1998, 1999, 2000, 2001
- ✓ King County Department of Natural Resources Industrial Waste Program, **Gold Award**, 1997, 1998, 1999, 2000, 2001
- ✓ U.S. Composting Council product quality guidelines, 2001, 2002
- ✓ **Certification of Stewardship/Rainier Valley Rose Project**, 1998
- ✓ Northwest Flower and Garden Show, **Chelsea Award**, 1997
- ✓ **Recognition Award**, Washington Organic Recycling Council compost Quality guidelines, 1996
- ✓ Association of Washington Business **Environmental Excellence Award**, 1994
- ✓ **Honorable Mention**, King County Recycling Week, 1993, 1994
- ✓ Meeting Grade AA Compost as specified in the Washington State Department of Ecology’s Interim Guidelines for Compost Quality

Current and Historic Cedar Grove Composting Facilities

Cedar Grove Composting-Maple Valley

17825 Cedar Grove Road
Maple Valley Washington
1998-present

Experience: *Yard and food wastes*

Cedar Grove Composting-Arlington

Arlington, Washington

1998-2002

Experience: *Yard wastes*

Cedar Grove Composting-Everett

Everett facility

In construction for summer 2004 opening

Yard and food wastes

Cedar Grove Composting-Soos Creek Organics

Covington, Washington

January 2004

Experience: *Diverted City of Tacoma yard waste feedstock in January 2003 from this site to Maple Valley; current closure of composting operation , maintaining bulk sale facility at site)*

South Sound Soils

Tenino, Washington

1997-2001

Experience-*biosolids processing*

References

The following references can be contacted for additional information on Cedar Grove Composting.

Hans VanDusen

Solid Waste Contracts Manager

City of Seattle

Phone: 206-683-4657

(Letter of recommendation provided at end of this section)

Gabriella Uhlar-Heffner

Recycling Coordinator

City of Seattle

All foodwaste pilot testing at Cedar Grove Composting was conducted with her supervision.

Phone: 206-386-9772

e-mail: Gabriella Uhlar-Heffner@Seattle.Gov

Jill Trohimovich

Health and Environmental Investigator II

Public Health Seattle, King County

Oversight for solid waste permit

Phone: 206-296-4807

e-mail: jill.trohimovich@metrokc.gov

Claude Williams
Air Quality Engineer
Puget Sound Clean Air Agency
Oversight for air permit
Phone: 206-689-4066
e-mail: ClaudeW@psc Clean Air.org

Handling and Processing Methods

Primary Site Location (to accept initial tonnage)

Cedar Grove Composting, Inc. operates a composting facility in King County, located in Maple Valley, Washington. The facility is located approximately 160 miles from the Portland area.

Proposed Site Location (Portland area facility)

Cedar Grove Composting is currently pursuing siting a Gore™ Cover facility in the Portland, Oregon area. Property has been located for this site. Cedar Grove's commitment, if awarded this contract, is to acquire the property, obtain permits, and begin construction as soon as Metro region generates annual tonnage in excess of 10,000 tons. In the interim, all tonnage can be successfully handled at Cedar Grove Composting's current facility until construction is complete. Estimated time frame for new facility (permitting to construction) would run 3-6 months.

Environmental Management Systems (EMS)

Cedar Grove Composting's Maple Valley site operates under an Environmental Management System (EMS) which is derived from principles set forth in ISO14000 standards.

The Environmental Management System (EMS) provides a framework for the operations structure and personnel management, encouraging employee participation in the continuous improvement process. Under the EMS, there are five areas of concentration: *policies, planning, implementation, corrective monitoring, and review*. The EMS foundation works toward improving ongoing operational procedures and research while minimizing potential adverse impacts on the environment. Proposed procedural changes are addressed systematically, and the potential impact of those proposed changes are discussed with relevant staff before setting procedural policy. The primary objective of operating under the EMS is to prevent pollution, reduce waste and consume resources wisely.

The EMS system has been used at Cedar Grove Composting, Inc. for the past six years. The EMS system is backed by Senior management, and focuses all levels of the organization on accountability and action.

Cedar Grove's commitment to this policy is demonstrated in the stated goals and objectives written in its EMS Policy (*see end of this section for EMS goals*).

2) Do you have any currently operating facilities that utilize the technology you propose?

Yes- Cedar Grove Composting in Maple Valley, Washington has been operating utilizing the Gore™ Cover Technology since May of 2003. In addition, Cedar Grove is also siting a new facility that will be exclusively Gore™ Cover in Everett, Washington, scheduled to open in July, 2004. This proposal offers to site a facility in the Portland area if and when inbound volumes from this contract are ensured at a minimum of 10,000 tons/year. (*See proposed Portland area site plan at end of this section*).

Where are they located?

Cedar Grove Composting-Maple Valley
17825 Cedar Grove Road Southeast
Maple Valley, Washington 98038

Cedar Grove Composting-Everett

3600 Frontage Road
Everett, Washington

How long have they been in operation?

Maple Valley Facility, fifteen (15) years.
The Everett Facility to open July 2004.

Demonstrate the technology's success in handling similar waste streams to those targeted in this proposal.***Experience With Post-Consumer Foodwaste***

Since 1994, Cedar Grove Composting, Inc. has successfully worked on six different pilot post-consumer food waste programs with the City of Seattle (see letter of recommendation) and selected suburbs of King County. Through the ten years of pilot studies and significant financial, developmental and technological investment, Cedar Grove Composting in Maple Valley has received its permanent permit to process post-consumer foodwaste using the Gore™ Cover System. This system has been in use at CGC Maple Valley since May of 2003. Gore™ Cover Technology will be the technology for all current and future Cedar Grove Composting sites planned in the region in the foreseeable future.

Gore™ Cover Laminate Membrane Technology

Since May of 2003, the CGC Maple Valley facility has operated a 41,000 ton capacity Gore™ Cover Membrane Laminate Technology. In July of 2004, a second Cedar Grove Composting facility with a 82,000 ton capacity will open in Everett, Washington that is exclusively a Gore™ Cover facility. This technology has been used successfully throughout Europe since 1994 to successfully compost green waste, post and pre-consumer foodwaste, and biosolids. It is an in-vessel, low energy use system with a proven track record. Additional technical information (published by Gore™) is included at the end of this section. As one of only three (3) Gore™ Cover Systems in North America, Cedar Grove Composting is leading the way in upgrading its systems to further improve upon odor and VOC control while improving the quality of its products.

Features of the Gore™ Cover System include:**Gore™ Cover Membrane Laminate heap covers with winders that have been proven to:**

Control VOC's

Provide maximum odor control

Prevent pile loss through wind and rain

Accelerate thermophilic phase, reaching temperatures as high as 190 degrees Fahrenheit inside cover

2.5 HP positive aeration blowers providing intermittent oxygen supply

Oxygen and Temperature probes for 24 hour heap monitoring

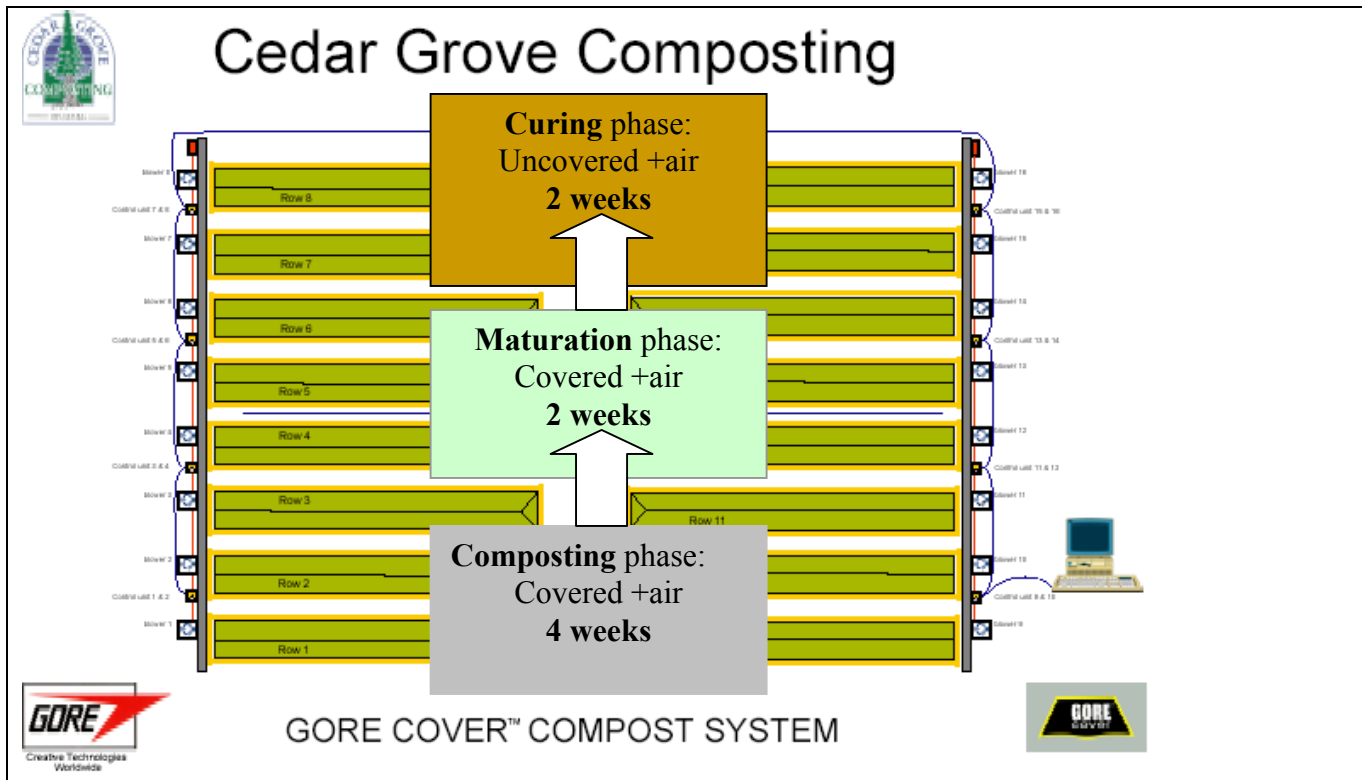
Trenches under each heap allow for air introduction and leachate collection

Gore™ Cover Technology Composting Process

Feedstock is placed into the Gore™ Cover heaps for initial composting. Once covered, the heaps in stage one are placed on positive aeration (as needed) during the active **composting** process, which lasts four weeks. In stage two, the **maturation** stage, compost is moved to the middle rows on the Gore™ pad, covered, and positively aerated for another two (2) weeks. Finally, material is moved into new pad placements, left uncovered on positive air for two (2) more weeks. This phase is the **curing** phase of the Gore™ Cover system. Overall, this process takes eight (8) weeks from initiation to finished compost. Although it meets the standards set for marketable compost at the end of the eight (8) week period, Cedar Grove ages it for an additional four (4) to six (6) weeks.



Overview of Gore™ Cover Technology

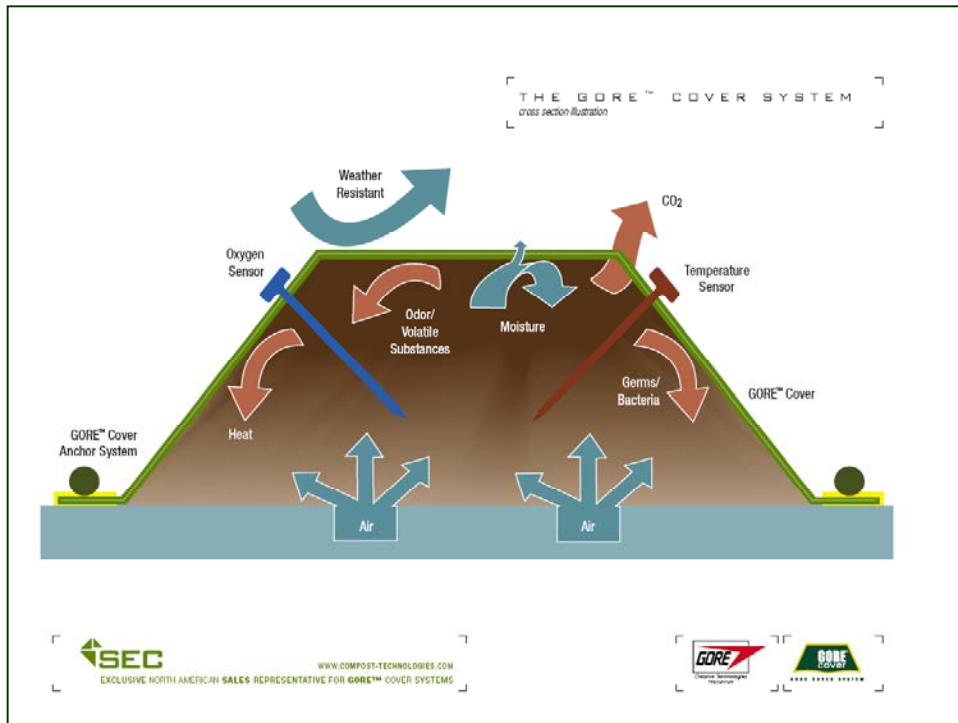


The advanced and highly adaptable Gore™ Cover Technology adopted by Cedar Grove Composting offers a superior process for composting a wide range of organic feedstocks. With over 100 Gore™ Cover facilities operating in Europe, it

has a proven track record of providing a superior system over customary windrow, indoor or other bag technology used by composting facilities in the U.S. As the cutting edge option, the key to Gore™ Cover Technology is the membrane laminate material which is widely used in recreational outerwear (Goretex™) throughout the world.

Under the patented Gore™ Cover system, the unique membrane is placed over 9 foot high compost heaps, creating a kind of biosphere to facilitate moisture and oxygen control which enhance microbial population dynamics. Under this cover, moisture is retained and ammonia converted to beneficial nitrogen that improves the quality of finished compost. CO₂ and excess moisture is respired through the breathing membrane. Temperature sensors are placed into the heaps, measuring the temperature at five different levels and recording the information electronically. Moisture levels are initiated at >60%. Oxygen probes also monitor for aerobic conditions. Temperatures are recorded to ensure system sustains a level of heat required for PFRP (Process to Further Reduce Pathogens) and weed seed kill.

Gore™ Cover System Schematic



Pile Dimensions

The design capacity of each primary aerated static pile is 144 feet wide, 160 feet long, and 8 to 10 feet high. The height of a pile may vary depending on the porosity (density), and moisture of any given batch.

Current Foodwaste Operation

Cedar Grove Composting in Maple Valley, Washington is currently receiving 10,000-15,000 tons per year of pre-consumer foodwaste. With the new permit for post-consumer food waste, Maple Valley now has capacity to receive 81,000 tons per year from commercial and residential collection programs.

Collection and Transport

Trucks entering the facility with food waste are identified and logged on a foodwaste account frequency log to verify weekly collection. If the load cannot be verified to be in compliance with King County Board of Health Regulation 10.28.040 then the load is identified as unacceptable and turned away from the facility. This regulation requires that waste containers “be removed from the premises

(of the waste generator, not composter) no less than once per week, unless a different frequency is approved by the health officer.”

Have any odor complaints been filed against the facility? If yes, explain.

No odor complaints have been attributable to the Gore™ Cover System.

3) Where do you propose to process and compost organic wastes derived from the Metro region?

For anticipated annual volumes less than 10,000 tons per year, CGC will process and compost Metro wastes at the CGC facility in Maple Valley, Washington. Once annual volumes exceed or are assured at greater than 10,000 tons/year, it is the intention of Cedar Grove Composting to site a facility in the Portland area. CGC will begin permitting its Metro-based site immediately, and will begin construction of the site once the 10,000 tons/year threshold has been reached.

How many miles is it from Metro Central Station?

- 1) Maple Valley: 166 miles each way.
- 2) Portland area option: less than 30 miles each way.

From Metro South Station?

- 1) Maple Valley: 179 miles each way.
- 2) Portland area option: less than 30 miles each way

4) What is your current permit status for the location you propose to process and compost the region’s organic waste?

Cedar Grove Composting’s Maple Valley facility has all of the required permits for composting post-consumer foodwaste:

- 1) Public Health, Seattle-King County Solid Waste Permit;
- 2) Puget Sound Clean Air Agency Permit;
- 3) King County Industrial Waste Discharge Permit.

Cedar Grove Composting would obtain all necessary and comparable permits for a future site in the Portland area.

If the facility is currently in operation for composting organic waste, have you been cited for violating any permit conditions. If yes, explain.

Minor air violations with negative air system; no violations with Gore™ Cover systems.

Provide copies of all relevant permits

See end of section for permit copies.

5) If you have a currently operating facility, how will your process change if you accept organic waste from the Metro region?

There will be no change in our current Gore™ Cover processes at our current facility or future sites if awarded this contract. In fact, CGC’s proposed Portland Area Facility would be developed using the same site plan as our new, all Gore™ facility in Everett, Washington. *(See end of this section for proposed site plan and process pictogram).*

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?

Cedar Grove Composting’s Maple Valley facility will immediately be able to accept (before January 1, 2005, if desired) all organic waste from this contract. During this time, our Portland area facility will be in development.

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 “background” section of this document).*

Acceptance and Measurement of Compostable Materials

Compostable materials accepted at the facility and weighed in on scales immediately upon entrance to Cedar Grove Composting are:

Waste Type	Yes	Comments
Biodegradable bags (no plastic bags)	X	Approved only for BioBag and Eco Film
Coffee grounds, filters, tea bags	X	
Eggshells, cheese and dairy scraps	X	
Food leftovers (all, non-liquid)	X	
Food soiled cardboard/paper packaging	X	
Fruit and vegetable scraps	X	
Grain	X	
Meats and fish bones and scraps	X	
Paper bags and cartons	X	Wax coated bags, milk cartons, juice boxes, ice cream cartons, paper food “take out” containers
Paper napkins and boxes	X	Includes paper towels, napkins, tissues, cardboard food boxes (without plastic or aluminum coatings)
Produce	X	
Sod	X	Comingled with green waste in <i>de minimus</i> amounts
Wood Waste	X	Stumps accepted on CY basis
Yard Waste	X	

Prohibited Materials

Reasonable care must be taken to exclude prohibited materials, which are:

Waste Type	No!	Comments
Aluminum foil	X	
Animal manure	X	
Biosolids	X	Includes biosolids derived products
Chemically contaminated wood	X	Stained wood, painted wood, preserved wood, water-proofed wood
Contaminated soils	X	Soils that include pollutants in concentrations in excess of maximum limits set forth in Table 2, Method Level A cleanup levels – soil, Washington State Model Toxics Control Act.
Creosote treated wood	X	
Demolition debris	X	
Foil lined bags	X	
Glass	X	
Gypsum waste	X	
Gypsum waste paper	X	
Hazardous wastes	X	
Liquids (all)	X	
Plastic (all types)	X	Bags, containers, laminate, wrapping, etc.
Sewage and septage	X	
Styrofoam	X	
Vector wastes	X	

The procedure for acceptance or rejection of waste shall be according to the Receiving Decision Tree, Figure 3.4. (See diagram provided in response to question #11).

8) Describe all feedstock materials and their relative proportions (including bulking agents or other process additives) that you will accept and/or process.

The amount of food waste in any one batch currently varies from 2% to 20%. Physical separation occurs between this material and other feedstocks. Liquid is pre-treated before discharge to the treatment ponds by either addition of sodium hypochlorite, ozone treatment or heat as part of the initial enclosed composting process. The material is mixed with other feedstocks inside of the building. The addition of supplemental yard waste, bulking agent or pre-consumer foodwaste focuses on the moisture content, carbon to nitrogen ratio, and porosity.

Feedstock percentages will vary, and are not necessarily of a fixed type in the Gore™ Cover System. As is standard, recipes for composting primarily focus more on ratios of moisture, C:N, and porosity are the targets for blending as feedstocks can vary significantly between contracts and facilities. Gore™ Cover Technology is capable of feeding 100% food waste (with 25% bulking agents). Our experience with feedstocks cover the use of all materials as listed in the list of acceptable materials. Targets for recipe are as follows:

Parameters at start of heap on Gore primary stage

Moisture content: 47%-62%
Mass Material: 500 tons
Pile Height: 9.75 ft

Parameters during processing on Gore primary stage

Oxygen Content: >8%
Temperature: 150°F to 200°F

9) From what geographic area and from what types of waste generators will you source material?

Materials into the Maple Valley facility currently originate from Puget Sound area haulers, King County, Pierce County, the City of Seattle, and local landscapers. Upon completion of the Portland area facility, feedstocks will be received from various sources throughout the Portland Metro region.

What percentage of your overall feedstock will be derived from inside the Metro region?

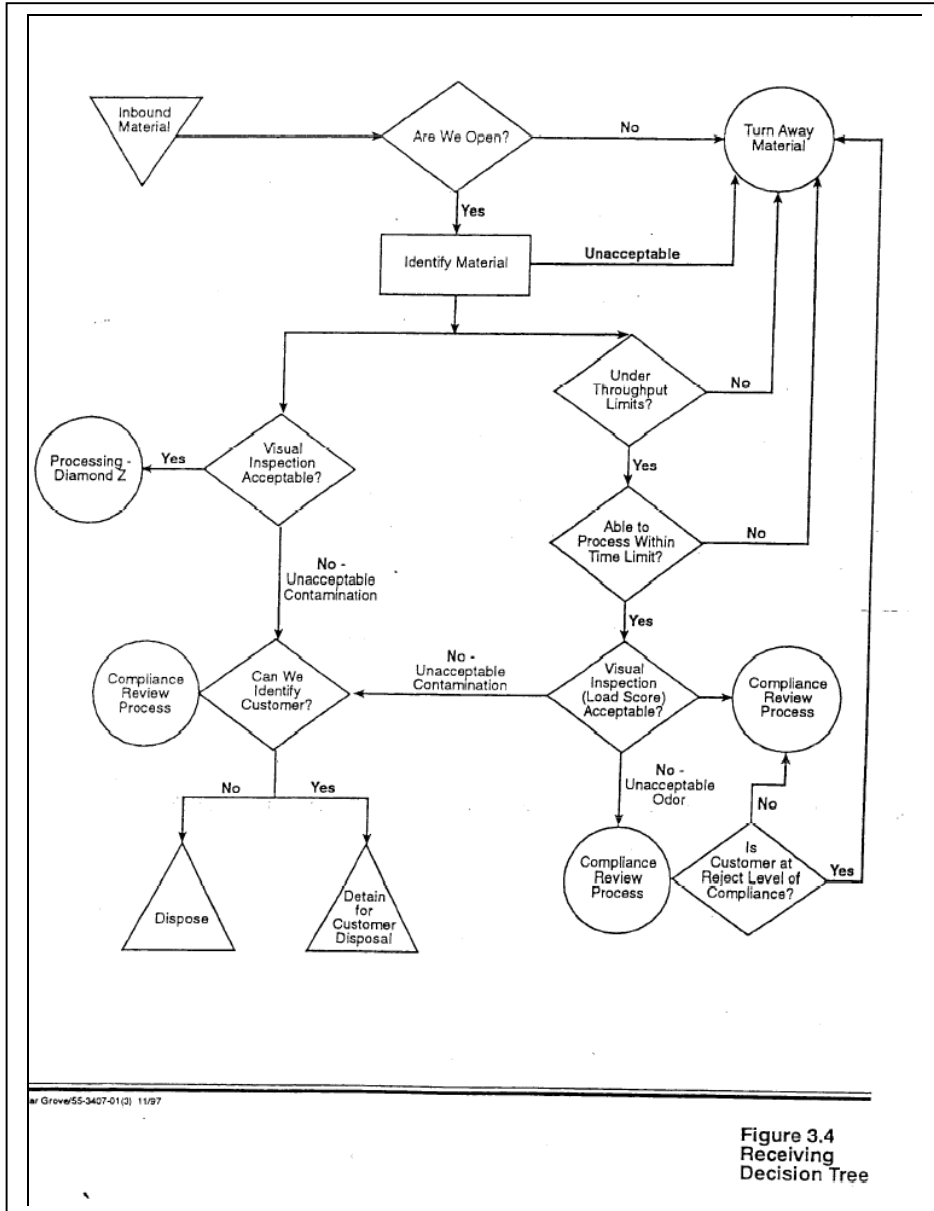
- At the Cedar Grove Maple Valley facility: Less than 10% of the total volume processed will be from the Metro region
- At the Portland area (proposed) facility: 60-80% of the total volume will be from this Metro region

10) What is the tip fee for each of the feedstocks you will accept as part of the processing and composting Metro region organic waste?

All feedstocks picked up at Metro transfer facilities will be charged at the rates indicated on the Price Schedule in Section #1.

11) What is your screening/processing procedure for unacceptable materials?

To follow is the EMS decision tree excerpt for accepting materials. This diagram shows criteria for: receiving hours, material identification, sorting, timely processing, inspection, and non-compliance actions.



12) Describe 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?

Cedar Grove Composting has developed and successfully marketing a line of products that are certifiably “organic”, including:

- Compost
- Potting soil
- Topsoil
- Vegetable garden mix
- Custom blends as requested.
- Products are sold in bulk (screened to 7/16” or 1”) or in bags (screened to 3/8”).

(See *Additional Information* section on products, services and marketing pieces developed by Cedar Grove Composting, Inc.)

13) Do you propose to use Metro funds for process enhancements?

Cedar Grove Composting is not proposing to use of any funds from Metro for this contract. If so, state the amount of funding and specifically how it will be used. (Funds proposed here must match those listed in the price schedule.)

Not applicable.

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).

YEAR	*CAPACITY	YARD	FOOD
2005 (Maple Valley)	82,000 tons	85%	15%
2006 (Portland)	60,000 tons	25%	75%
2007 (Portland)	60,000 tons	25%	75%
2008 (Portland)	60,000 tons	25%	75%
2009 (Portland)	60,000 tons	25%	75%

* Additional capacity will be available if needed.

On what assumptions are these projections based?

Assumptions are that if awarded contract by July 1, 2004, Cedar Grove Composting will initiate the process to site, permit and construct a Gore™ Cover composting facility in the Portland area (with estimated volumes from Metro by 2006 at greater than 10,000 tons annually). During this time, Cedar Grove Composting will begin to secure other yardwaste and foodwaste feedstocks through contractors in the area to supplement the anticipated volume from Metro. Year One (2005) reflects the annual capacity for foodwaste at the Cedar Grove Composting plant in Maple Valley, Washington.

15) What are your odor control procedures?

Tipping Area/Gore™ Cover

The tipping building will be used to enclose and contain both the foodwaste and its free liquid. Floor drainage slopes to a sump area. The leachate will be returned to the active composting piles or returned to the pond system for disposal via the force main connection. The tipping building has roof ventilation to collect exhaust and will be directed to the tipping building biofilter. All tipping areas at CGC's current Maple Valley facility operate as a fully enclosed system with negative air ventilation to a biofilter. Gore™ Cover Membrane Technology acts as biosphere over the pile, respirating excess moisture (membrane breathes) and CO₂, while keeping conditions ideal to avoid anaerobic conditions that cause the odors in most systems.

General Odor Controls

Odors will be managed by a prevention strategy followed by a collection strategy during delivery, mixing, and processing. The prevention strategy involves insuring the feedstock meets Health Code requirements regarding its age, then immediately sorting and blending the feedstocks prior to shredding. Priority will be given to the shredding and placing of foodwaste within each primary batch quickly. The collection strategy involves moving as much of this activity into the tipping building as possible. The tipping building has a collection system for air in the roof gable. This will add a second level of odor management. Liquids will be managed by a collection system. Free liquids will be captured within the building in a grated sump area. Housekeeping on the outside of the primary batches will be managed by periodic removal of visible foodwaste at the perimeter of the zones.

The post-consumer foodwaste has special operational requirements regarding a) how it is collected and transported; b) how it is shredded and blended; c) how odors will be managed during delivery, mixing and processing.

Shredding and Blending Systems to Minimize Odors/Leachate Collection

All material is segregated from other yard waste within the tipping building or in a secondary covered area. Foodwaste loads are delivered throughout the week. Each load is announced to the front-end loader at the tipping building in order to ensure quick processing and zone construction. As mentioned earlier, the amount of food waste in any one batch varies currently varies from 2% to 20%. Physical separation occurs between this material and other feedstocks. The east side of the building has a sump for collection of any excess liquid. This liquid is pre-treated before discharge to the treatment ponds by either addition of sodium hypochlorite, ozone treatment or heat as part of the initial enclosed composting process. The material is mixed with other feedstocks inside of the building. The addition of supplemental yard waste, bulking agent or pre-consumer foodwaste focuses on the moisture content, carbon to nitrogen ratio, and porosity. Once the material has been premixed, the material is moved by front-end loader to the Diamond Z tub grinder. The material is then completely blended and sized. Once ground, the material moves on a covered conveyor line to the Gore™ Cover system area.

The material is pre-blended and mixed before loading on the Gore™ Cover system pad, where the initial composting step is performed. The Gore™ Cover system process provides for the material to be covered through most of the composting process. During the composting process, variables such as oxygen content, porosity, temperature, moisture percent and time are maintained within specific levels to effectively compost the feedstock. The Gore Cover system is comprised of 16 heaps, where each heap is supplied with a "positive aeration system" which forces make-up air through the composting feedstock to supply oxygen. Each heap is also supplied with a Gore™ Cover system membrane laminate cover. This membrane laminate, when properly secured to the ground, provides multiple

functions to include odor reduction, bio-aerosol reduction, protection from the environment and process regulation over a 4-week detention period. Batches will be only uncovered and moved after specific timeframes that are designed and proven to take the material to a state of decomposition where odors are no longer generated. Material is then moved to a second covered phase for two more weeks followed by two weeks uncovered for drying before screening.

Material in the Gore™ Cover System Area will obtain a pathogen reduction temperature of at least 131 degrees for 3-day period of time. The Gore™ Cover system obtains and remains at a pathogen reduction temperature (160-180 degrees) through all three phases of the process (4 weeks, 2 weeks, and 2 weeks). Anaerobic conditions are minimized in this process, which is the source for most odors in composting. The material off the Gore™ Cover system is transported via front-end loader directly to the screens after it has finished the three phases of the process.

C. Equipment Information Questionnaire

1) Describe the equipment you already own and how it is currently used in your process.

The following lists current equipment at the Cedar Grove Composting Maple Valley facility.

Equipment and Manpower Description

Shredding, Blending and Primary Batch Construction*		
<u>Equipment</u>	<u>Manpower</u>	<u>Backup Equipment</u>
Hammermill	2	Tubgrinder, bulk feeder
Tubgrinder	1	Subcontractor
Bulk Feeder	1	Hammermill
Conveyor	1	Transfer trucks (2)

Transfer to Secondary System		
<u>Equipment</u>	<u>Manpower</u>	<u>Backup Equipment</u>
Reclaim hopper	2	Transfer trucks (2)
Conveyor	0	Transfer trucks (2)

Screening		
<u>Equipment</u>	<u>Manpower</u>	<u>Backup Equipment</u>
Screen	2	Portable screen (1)

*Shredding, Blending and Gore Batch constructions uses same equipment minus the conveyor.

Note: All unit operations listed above require the use of one or more front loaders. The facility maintains a fleet of the following front loaders at the time this Plan was prepared:

Front loaders	Approximate Bucket Capacity <i>(Cubic Yards)</i>
Bobcat	0.33
Cat 988	18
Case 580	0.5
Cat 988F	20
Cat 950-94	3.5

Cat 980-49	10
Cat 966	4
Cat 980-19	8
Cat 980-23	8
JD 344	3
Cat 980 -27	10
JD 644	6
Cat 980-30	10
JD 744	6
Cat 980-80	10
JCB Load All	1
350 Kamatsu	4
450 Kamatsu	6

What percentage of each piece of equipment’s time will be dedicated to organic waste processing for the duration of this agreement?

This equipment will be used 100% of the time for organic waste processing activities.

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 the money will buy. (Funds proposed must match those listed in price schedule).

No funds will be requested by Cedar Grove Composting for equipment to be used under this contract.

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.

Not applicable.

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.

Not applicable.

5) Who will operate and maintain the equipment? What is your contingency plan should you have an equipment failure?

Not applicable.

D. Emission Reduction Questionnaire

Metro wishes to minimize the emissions from the use of equipment in conducting the work described in the proposal. 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.

Operational Equipment

Equipment used on site runs from standard diesel, but will be supplemented with self-made biodiesel (food-based fuel).

Less Handling and Heavy Equipment Usage with Gore™

In the Gore™ Cover system, heaps require movement by heavy equipment only three times throughout to composting process. Traditional, open windrow systems require turning and moving as many as 10 times throughout the composting process. Thus, the Gore™ Cover system in and of itself minimizes emissions from handling by as much as 70%.

Transportation Equipment

By building a facility in the Portland area (anticipated to be accepting Metro food waste by January, 2006), the comparative mileage savings and relative emissions reductions are significant, as seen on this analysis (*emissions estimates calculated from recent emissions studies published in the region*).

Without building a facility in the Portland area (RT = 332 miles for this analysis)-

Year	Estimated Volume/Year	Tons/Trip	Metric Tons CO ₂ /Year (t)	Trips/Year	Miles Total
2005	10,000 tons	27	227.5	371	123,172
2006	20,000 tons	27	454.39	741	246,012
2007	30,000 tons	27	681.9	1112	369,184
2008	40,000 tons	27	908.78	1482	492,024
2009	50,000 tons	27	1135.68	1852	614,864
Total:			3408.25	Total:	1,845,256

(By building a facility in the Portland area-(RT=332 miles, Maple Valley in 2005 only; RT <1 Portland)

Year	Estimated Volume/Year	Tons/Trip	Metric Tons CO ₂ /Year (t)	Trips/Year	Miles Total
2005	10,000 tons	27	227.50	371	123,172
2006	20,000 tons	9	4.11	2223	2223
2007	30,000 tons	9	6.16	3333	3333
2008	40,000 tons	9	8.21	4444	4444
2009	50,000 tons	9	10.26	5555	5555
Total:			256.24	Total:	138,727

By accepting Cedar Grove Composting's option for a local facility, *emissions* reductions from trucking **can be reduced by 3152 metric tons of CO₂** over the life of the contract.

By building a facility in the Portland area (under this scenario, where Cedar Grove Composting accepts food waste in the Portland area), the minimized **transport** of feedstock from Metro transfer stations means **emissions are reduced by over 90%**.

Compost Manufacturing

The Gore™ Cover laminate membrane material, while acting as a biosphere over respirating heaps, minimizes VOC emissions by 98% over open, windrow systems. Composting operations’ emissions are a relatively new field of study and evaluation. However, we can extrapolate information from recent testing completed in California concerning VOC emissions and Ammonia emissions from composting facilities (*see California South Coast Air Quality Management District Rule 1133*).

Current emission factors from uncontrolled air composting processes can produce 3.84 lb of VOC per ton processed. Ammonia release .85 lb per ton of processed release. There are many ways to control these compounds either by composting inside a building, negative aeration, or in-vessel technology. Two points of interest for this PROPOSAL are:

- 1) *Cedar Grove Composting operates Gore™Cover in-vessel technology that is 98 to 99 percent more efficient at controlling VOC emissions than open-air systems.*
- 2) *Reviewing release data and volume calculations by Portland Metro, the following formula gives a very different picture for emissions based upon composting technology.*

Uncontrolled windrow operations releasing 3.84 lb/ton of VOC would release over the life of the five year contract the following tons, given a ramped up volume assumption.

<u>Year</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>Total</u>
Tonnage	10,000	20,000	30,000	40,000	50,000	150,000

150,000 tons X 3.84 lb= 576,000 lb divided by 2,000 lbs= 288 tons of VOC

150000 tons x .85 lb= 127,500 lb divided by 2,000 lbs= 63.75 tons of Ammonia


	<u>VOC</u>	<u>Ammonia</u>
Uncontrolled Windrow System	288 tons	63.75 tons
Gore Cover In-vessel System	5.76 tons	1.02 tons

The comparative emission rates are quite substantial between the two technologies. Not only are ammonia volumes substantial in an open air system, nitrogen (a beneficial component of ammonia when converted in the Gore™ process) is lost in the windrow system. By using the Gore™ Cover, a much higher percentage is fixed into beneficial nitrogen compounds, which end up in the final compost product being sold. To summarize, beneficial nitrogen is not lost into the atmosphere.

2) Fuels to be used in the equipment.

Currently Cedar Grove Composting’s sister company, Emerald Recycling, is developing biodiesel production capability. The feedstock for this will be from restaurant cooking grease. Each of the Cedar Grove facilities will run grinding equipment and front end loaders on biodiesel fuel. Product delivery trucks will subsequently be brought into the program (by spring of

2005). Emission studies show the following results in this article published by the National Biodiesel Board (see website at www.biodiesel.org):



BIODIESEL EMISSIONS

Biodiesel is the first and only alternative fuel to have a complete evaluation of emission results and potential health effects submitted to the U.S. Environmental Protection Agency (EPA) under the Clean Air Act Section 211(b). These programs include the most stringent emissions testing protocols ever required by EPA for certification of fuels or fuel additives. The data gathered complete the most thorough inventory of the environmental and human health effects attributes that current technology will allow.

EPA has surveyed the large body of biodiesel emissions studies and averaged the Health Effects testing results with other major studies. The results are seen in the table below.

AVERAGE BIODIESEL EMISSIONS COMPARED TO CONVENTIONAL DIESEL, ACCORDING TO EPA		
Emission Type	B100	B20
Regulated		
Total Unburned Hydrocarbons	-67%	-20%
Carbon Monoxide	-48%	-12%
Particulate Matter	-47%	-12%
Nox	+10%	+2%
Non-Regulated		
Sulfates	-100%	-20%*
PAH (Polycyclic Aromatic Hydrocarbons)**	-80%	-13%
nPAH (nitrated PAH's)**	-90%	-50%***
Ozone potential of speciated HC	-50%	-10%

* Estimated from B100 result
** Average reduction across all compounds measured
*** 2-nitrofluorine results were within test method variability
(more)

In addition (not related to emissions, but notable to pollution prevention activities), Cedar Grove Composting owns and operates the region's largest, fully permitted anti-freeze recycling facility, supplementing Cedar Grove transportation vehicles with its own, recycled product.

3) Expected emissions as compared to low sulfur diesel fuels in conventional engines in terms of carbon monoxide, diesel particulates and hydrocarbons.

The mixing of biodiesel (as noted) with standard diesel in CGC engines will lower the emissions levels to those of low sulfur fuels. Measurements will be comparable to low sulfur fuels' levels of carbon monoxide, diesel particulates and hydrocarbons.

4) List the cost of this program, including unit price premiums for alternative fuels.

Cost of biodiesel in the market runs at an approximate rate of 20% above daily market rates for standard diesel fuel. Since this will be produced in-house (by Cedar Grove affiliate Emerald Recycling), the use of these fuels will not impact fuel costs.

Cedar Grove's EMS Management Philosophy



Cedar Grove is committed to:

- *Practice environmentally sensitive manufacturing.*
- *Develop products from recovered organic waste material with economically sustainable local markets.*
- *Design operational units to minimize impact to the environment.*
- *Apply the best available control technology to product manufacturing areas, and to continual improvement.*
- *Find the highest and best use for the amount of material that has not been incorporated into a salable product.*
- *Recognize impacts from the processing facility concerning the community and participate in open discussions with local citizens to work through issues.*
- *Continuously strive to reduce air emissions to levels below the nuisance threshold.*
- *Maintain a leadership role nationally in the development of innovative methods in the composting process, including odor management, and marketing of recycled products.*
- *Design products that take life-cycle thinking into account and minimize environmental impacts in production, use and disposal.*

*Excerpt from Cedar Grove Composting, Inc.
EMS
Section 1: Environmental Policy, introduction*

Disclosure Questionnaire #1

Disclosure Information for Cedar Grove Composting, Inc.

1. **List the names and addresses of all concerns that are parent companies, subsidiaries or affiliates of the company.**

Cedar Grove Composting, Inc. is a privately held corporation. Affiliated companies include:

Emerald Services, Inc.

9010 E. Marginal Way South, Suite 200

Seattle, WA 98108

206-832-3000

(With divisions dba Emerald Recycling and Emerald Petroleum Services)

2. **Year company was established:**

Cedar Grove Composting was incorporated in 1989.

3. **Year present management assumed control of business:**

1989

4. **Are the company or its principals involved in any ending or threatening litigation which could have a material adverse effect of the company's and/or the principals' financial condition?**

No.

5. **Has the company or its principals ever been involved in bankruptcy, creditor's rights, or receivership proceedings or sought protection from creditors?**

No.

6. **Has management or any principal stockholder of the company been convicted of any felony?**

No X 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 X Yes (if Yes, explain)

8. Is the company currently in compliance with all applicable local, state and federal requirements (permit, zoning, OSHA, etc.)?

Yes X No (if No, explain)

9. Are there currently any unpaid liens or judgments filed against the company or its principals?

No X Yes (if Yes, explain)

Disclosure Questionnaire #2

Disclosure Information for *Waste Management of Oregon, Inc.*

1) List the names and addresses of all concerns that are parent companies, subsidiaries or affiliates of the company.

Waste Management of Oregon, Inc. is a wholly owned subsidiary of Waste Management Holdings, Inc., a Delaware corporation, who is its sole shareholder. Waste Management Holdings, Inc., in turn, is wholly owned by Waste Management, Inc. Waste Management subsidiaries serving the Pacific Northwest include:

- Chemical Waste Management of the Northwest, Inc.
- Hillsboro Landfill, Inc.
- Recycle America Alliance, LLC
- Riverbend Landfill, Inc.
- Wastech, Inc.
- Waste Management of Oregon, Inc.
- Waste Management of Washington, Inc
- Waste Management Disposal Services of Oregon, Inc.
- Waste Management National Services, Inc.

The corporate address for each of these companies is 1001 Fannin #4000, Houston TX 77002.

2) Year company was established:

Waste Management of Oregon, Inc. was incorporated in 1971.

3) Year present management assumed control of business:

1996

4) Are the company or its principals involved in any pending or threatening litigation which could have a material adverse effect of the company's and/or the principals' financial condition?

No.

5) Has the company or its principals ever been involved in bankruptcy, creditor's rights, or receivership proceedings or sought protection from creditors?

No.

6) Has management or any principal stockholder of the company been convicted of any felony?

No X 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 X (if Yes, explain)

From time to time, regulators have investigated alleged violations of state or federal statutes. In the past five year period, Waste Management of Oregon, Inc. received notices of violation for the following environmental matters:

Facility	Date	Issuing Agency	Nature of Alleged Violation
WM of Oregon, Portland	04/29/99	Federal Aviation Administration	HW mistakenly shipped to a Utah facility without required hazardous material labeling on the package exterior. Training provided to prevent reoccurrence.
WM of Oregon, Portland	08/13/01	US EPA Region X	Failure to implement SPCC requirements for diesel fuel delivery area. Secondary containment increased and plan updated.
Forest Grove Disposal, Forest Grove	09/17/01	Oregon DEQ	Failure to submit the annual stormwater report and updated plan in a timely manner. Report submitted and issue resolved.
Columbia County, St Helens	09/27/01	Oregon DEQ	Failure to submit the annual stormwater report and updated plan in a timely manner. Report submitted and issue resolved.
WM of Oregon, Portland	10/24/02	City of Portland	Exceedence of pH limit from industrial wastewater discharge. Report submitted to ODEQ and issue resolved.
Forest Grove Disposal, Forest Grove	08/28/03	Clean Water Services	Exceeded permitted monthly wastewater discharge limit. Compliance plan prepared and approved by the agency.

8) Is the company currently in compliance with all applicable local, state and federal requirements (permit, zoning, OSHA, etc.)?

Yes X No (if No, explain)

9) Are there currently any unpaid liens or judgments filed against the company or its principals?

No X Yes (if Yes, explain)

If Metro requires additional information that it believes is relevant to the Proposer's qualifications or ability to perform the services under the Grant, we would be happy to provide further information upon request. Any additional inquiries can be directed to:

Duane C. Woods
 General Counsel, Western Group
 Waste Management
 7025 N. Scottsdale Road, #200
 Scottsdale, Arizona 85253
 (480) 624-8400

Section 3: Exceptions and Comments

(Nothing further to note that is not already contained within the transmittal letter and RFP response)

Section 4: Confidentiality

(Nothing to note for this section)



METRO

May 21, 2004

Mr. Jerry Bartlett
 General Manager
 Cedar Grove Composting, Inc.
 9010 E. Marginal Way South, Suite 200
 Seattle, WA 98108

Via facsimile: (206) 832-3030

Dear Mr. Bartlett:

Thank you for your proposal in response to Metro RFP #04R-1103-SW&R Transportation, Processing and Composting Services for Organic Wastes from the Metro Region. The review committee met yesterday to begin the evaluation process and has the following questions regarding your proposal. Please provide a response, to my attention, no later than 3:00 p.m., Wednesday, May 26, 2004.

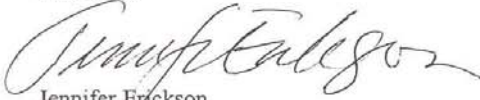
1. In your cover letter you state, "A minimum weight of 9 tons/box will be charged for each transport container picked up for transport at Metro transfer facilities." And in your response to question A.2, you state that three boxes will be transported at once, which equates to a minimum 27-ton payload. Metro's containers are rated at a total payload capacity of 26.4 tons utilizing only 2 boxes (10.72 tons and 15.72 tons with extra drop axel respectively). Currently Metro only owns four boxes total. Considering the payload capacity of these containers, and the number currently available, will Cedar Grove still require three containers per load transported? If so, how do you envision the logistics of loading at the transfer station considering the availability of only one empty box on site to be filled prior to your arrival? What is the additional cost for "adequate boxes" supplied by Cedar Grove as mentioned in your proposal cover letter, what are the container specifications and how many would you supply?
2. Your responses to questions B.8 and B.9 (feedstock sourcing and type) pertained only to your current operations at Maple Valley. Please provide responses to these questions for the planned Portland area facility.
3. The response and receiving decision tree diagram provided in response to question B.10 is confusing (especially in the lower right quadrant). Please provide a narrative version of this decision tree/procedure.
4. You have stated that your Maple Valley facility currently processes 195,000 tons per year and has the capacity for 80,000 tons per year of food waste. Considering that you are operating at near capacity now and considering the growth of food waste programs in the Seattle area, what assurances will you provide to ensure adequate capacity will be reserved for the Metro region's food waste?
5. Can you provide any additional information about the locations you are considering for a Portland area facility?

Jerry Bartlett, Cedar Grove Composting
May 21, 2004
Page two

6. What kind of serious commitment or assurance is Cedar Grove willing to provide to Metro at this juncture to guarantee that a local facility will be built if organics collected meets the 10,000 ton mark?
7. How many odor complaints did your facility receive in the 6 months prior to the Gore system installation and how many were received in the 6 months following its installation?
8. Please provide references and contacts for community representatives in Maple Valley specifically.

Please feel free to call me at (503) 797-1647 if you have any questions. We look forward to reviewing your responses.

Sincerely,



Jennifer Erickson
Senior Planner

JE:gbc

cc: Lee Barrett, Waste Reduction & Outreach Division Manager

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Queue



May 25, 2004

Portland Metro
Attn: Jennifer Erickson
600 NE Grand Ave.
Portland, OR 97232-2236

04 MAY 28 AM 10:33
METRO
R.E.H. DEPT.

Dear Jennifer Erickson:

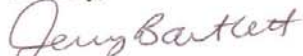
In response to your letter dated May 21, 2004 Cedar Grove Composting has the following answers for the questions concerning our proposal for RFP # 04R-1103-SW&R.

1. It was anticipated in the three container transportation model that we would provide our own boxes to meet the performance standards, which are lighter in weight than the Portland Metro boxes. We currently have 8 x 25 CY boxes available with sealable tailgates and fixed hard surface covers. In light of your question regarding additional costs for use of our own boxes, we would offer the eight boxes at no additional charge to Metro, and any subsequent boxes that may be required at a cost + 10% basis. We anticipate 9 tons in each box, hauling up to 30 tons total per load. If awarded the contract, we will work with Metro to establish a loading protocol. Our intent is to utilize Portland Metro boxes as a back up. Should Portland Metro boxes be used as a back up, we would ask that they be filled to capacity for each load (26.4 tons) to ensure maximum payload per trip.
2. The Portland area facility would accept a variety of feedstocks in addition to source separated, commercial post-consumer foodwaste from the Metro contract. Cedar Grove Composting's intent is to contract with haulers in the area for yardwaste, foodwaste and woodwaste to add as bulking agents and allow yardwaste mixed with foodwaste from residential collections. Also, self-haulers would be allowed to bring yardwaste and woodwaste to the facility.
3. Question to B.10 is not related to the decision tree diagram. That diagram is responding to question B.11. *A narrative description summarizing the information on the decision tree diagram is attached.*
4. The Everett facility is opening in July-August 2004 and will have 82,000 tons of immediate capacity and is permitted for 123,000 tons. A substantial volume of the foodwaste currently going to Maple Valley will be diverted to the Everett site upon completion, thus opening up the capacity as stated in our response. In addition, we are not currently operating at full capacity for foodwaste at Maple Valley. Currently, 10,000 tons of the 80,000 ton foodwaste capacity is being utilized. The 195,000 tons as stated in our response is the overall permitted capacity (not operational capacity) for green and food waste combined.

5. Cedar Grove Composting has selected a site in the industrial area of Portland near the Metro Central Transfer Station. We have met with property owners, Oregon Department of Environmental Quality, and are selecting an environmental engineering firm to perform the environmental due diligence. We have identified a back up site in the McMinnville area for the project.
6. Cedar Grove Composting would present Metro with binding, contractual language that would obligate Cedar Grove to build a facility once the foodwaste collection volume could be assured and permits were obtained.
7. We are currently transitioning to a fully Gore System, which most accurately reflects our expectations for future odors at Maple Valley or Portland respectively. Thus, our original response was limited to the Gore portion of our current system. To reiterate our original response, odor complaints at Cedar Grove Composting for the Gore Cover System have been zero since the unit became fully operational. Consequently, odor complaints for the overall existing system decreased by 41% during the 8 months after Gore became fully operational. With 25% of the current volume now treated in Gore, the overall odor impacts are significant overall. Operating under a continuous improvement philosophy, we have studied odor complaints over a long period and maintain a meteorological station at the facility that tracks wind direction and wind speed. This allows us to scientifically validate odor complaints and address source or operational issues promptly and effectively. In our studies at Maple Valley, we have determined that between 25% to 40% of the complaints are meteorologically impossible. In other words, the wind is blowing in the wrong direction from the reporting complainant. Even if the complaint was meteorologically possible, it does not necessarily relate to activity at Cedar Grove Composting- several other odor-generating facilities exist in the immediate area. In summary, in the eight months after Gore was installed (from June 2003 to January 2004), complaints decreased from an average of 24 per month to 14 per month for the same months the previous year. Adjusting for the meteorological discrepancies as noted (deducting the 25% which are scientifically invalid), the adjusted number of 18 per month in the 8 month timeframe was reduced to an average of 11.5 per month with the Gore and existing system in place. We would expect to have no complaints from a 100% Gore Cover Facility.
7. The references from the local community were given as King County and City of Seattle representatives (see page 15 of our response). Cedar Grove Composting is in unincorporated King County and only has a Maple Valley address. The actual City of Maple Valley is 10 miles away and does not control any of the permits, and has not historically had odor issues with the facility. During our last public notice process, a public meeting was held on February 19, 2004 with only 4 citizens from the local area appearing for comment. Cedar Grove sent out letters to the 500 households most closely aligned with the facility, informing them of the new Gore Cover process and the permanent addition of post-consumer foodwaste to our permit. As we do on an annual basis, facility update letters are sent to the community to inform them of what we are doing (*see attached for reference*). Portland Metro can contact the agency that conducted the last public process for a review of community reaction to our facility. In the public meeting, everyone was supportive of the new Gore Cover System and had noticed a positive difference. Please contact Claude Williams at the Puget Sound Clean Air Agency for the public notice results. His number is in the reference section of our proposal (p.15).

Please contact me at 206-713-5673 if you have any additional questions.

Sincerely,



Jerry Bartlett, General Manager

Cedar Grove Composting

Receiving Decision Tree

Inbound material is only accepted during operational hours posted. The Cedar Grove Composting facility keeps track of volumes received to ensure the volume is acceptable within permit limits, and that the volume can be processed within reasonable time limits

The material type must be identifiable as an acceptable feedstock. If the material is not an acceptable feedstock (see tables on pages 22 and 23 of RFP response), the material is turned away.

Acceptable feedstock is visually inspected for possible contamination. If approved, it is sent to the tipping building and/or grinder area. Once unloaded, material is viewed again. If material is contaminated with material from the prohibited list and cannot be processed further, the load is tracked back to the customer and the material is detained for their disposal. If the load cannot be tracked to the customer, CGC proceeds to dispose of the material at a permitted solid waste facility.

Material is sorted into blending or grinding areas according to feedstock.

Woodwaste is stocked pile for bulking agent. (Looking for painted or treated wood)

Over's (large chunks of wood waste from previous compost cycles) from screening process are stockpiled for bulking agent and inoculants.

Foodwaste is unloaded in tipping building and separated allowing for excess moisture to drain. (View material for contamination of prohibited material)
Excess of 5% plastics (or other contaminants) by volume results in notification to customer. If material continues to contain greater than 5% contamination on an ongoing basis after notification to the customer, then material may be rejected.

Yardwaste is unloaded in tipping building and blended with foodwaste bulking agent is added in the building and directly outside during grinding.

Material with expected odor such as foodwaste and grass clippings are unloaded in the tipping building under negative air and mixed as soon as possible. Material with unexpected or unusual odor for the type of feedstock may be rejected.

Material is sorted and contaminants are pulled out at the tipping building, grinder, compost zone loading and screening area.



Cedar Grove Annual Update Letter

January 26, 2004

Dear Neighbor:

Cedar Grove Composting Inc. is committed to keeping our neighbors informed about ongoing operations and improvements to the Maple Valley facility.

Food Waste Recycling Pilot Project Continues

Cedar Grove and several local communities including Issaquah, Redmond, Kirkland and Lake Forest Park are continuing a pilot program to demonstrate the feasibility of composting food wastes. This program was highly successful in 2003 and 2002 and has the potential to contribute significantly to statewide recycling efforts. This part of our composting program is done undercover with a new Gore Cover System.



Gore Cover System

We implemented this new cover system in May of 2003. This has improved process efficiency and further reduced odor emissions. We are fully covering piles of incoming material with Gore fabric as it goes through the first two stages of composting. This will allow us to control odors at the piles rather than pulling air to a biofilter process. Initially, we will be able to cover one fourth of the composting volume. This cover system will be used for all types of incoming materials, including those in the food waste recycling pilot project.

Puget Sound Clean Air Agency will be holding a public hearing on a draft Order of Approval for Cedar Grove Compost. This draft Order of Approval would convert the current experimental approval for the In-Vessel Gore Cover Technology Composting System to a permanent approval. The public hearing will be held on Wednesday, February 18, 2004 at 7:00 PM at the Maple Valley Library, part of the King County Library System, located at 21844 SE 248th Street, Maple Valley, Washington. Comments will also be taken in writing on the draft Order of Approval, with the comment period to open prior to the hearing for a period of 30 days. Interested parties can contact Claude Williams at the Puget Sound Clean Air Agency at (206) 689-4066 for more information. The draft order will be posted to the Agency website (www.pscleanair.org) at the start of the public comment period.

If you would like more information on any of the above issues, please do not hesitate to call me at (206) 832-3005 or visit our web site at www.cedar-grove.com for additional information about the Gore Cover System.

Sincerely,


Jerry Bartlett
General Manager

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3497 FOR THE PURPOSE OF ENTERING INTO AN AGREEMENT WITH CEDAR GROVE COMPOSTING, INC., FOR THE TRANSPORT, PROCESSING AND COMPOSTING OF COMPOSTABLE ORGANIC WASTES FROM METRO TRANSFER STATIONS

Date: September 15, 2004

Prepared by: Jennifer Erickson

BACKGROUND

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. The region currently disposes of over 275,000 tons of food and non-recyclable paper annually; the goal of the program is to recover 45,000 tons of compostable organic waste per year. 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 of infrastructure to handle such materials are primary 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 key 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 and on April 1, 2004 the Metro Council authorized the issuance of a Request for Proposals for transportation, processing and composting services for organic wastes from the Metro region (RFP #04R-1103-SW&R).

Three firms responded to the RFP. An evaluation team composed of representatives from Metro, local government, the solid waste hauling industry, the composting industry and the affected business community reviewed and scored the proposals and chose to enter into negotiations with Cedar Grove Composting, Inc.

This Resolution authorizes Metro to enter into a five-year contract with Cedar Grove Composting for the transportation, processing and composting of the Compostable Organic Waste received at Metro’s transfer stations that is substantially similar to the draft contract listed as Exhibit A to the resolution. While in no event will the price noted in the contract increase, some minor modifications to the draft Scope of Work may occur as negotiations with the contractor are finalized. 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. The organics waste management work plan calls for another competitive procurement process after five years. This would happen prior to contract renewal and 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.

Cedar Grove has committed to making a good faith effort to site, construct, own and operate a local organic waste composting facility once the region has reached a 10,000 ton per year threshold. Cedar Grove is confident that the region will meet this mark and is already actively pursuing the acquisition of a site and all necessary permits and approvals. Cedar Grove has also declined the \$500,000 in potential grant funding offered by Metro in the original procurement process and, in addition, has offered Metro a revenue-sharing program of \$0.50 per cubic yard for all compost derived from the Metro region organics and sold at or above \$14.00 per yard.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition.

2. Legal Antecedents

Resolution No. 99-2856 approved the Organic Waste Management Work Plan which includes the procurement of organic waste processing services for the region.

Resolution No. 04-3405 authorized the issuance of the procurement RFP and Metro Code Section 2.04.054(c), "Competitive Bidding Exemptions," 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.

Ordinance No. 03-1004, "For the purpose of amending the Regional Solid Waste Management Plan regarding recovery goals and recommended waste reduction strategies for the management of business, building industries and commercially generated organic wastes," amended the Regional Solid Waste Management Plan to include recommended waste reduction strategies for the management of business, building industries and commercially-generated organic waste.

3. Anticipated Effects

This Resolution allows Metro to enter into a five-year agreement with Cedar Grove Composting to transport, process and compost the Compostable Organic Waste received at Metro's transfer stations. Cedar Grove Composting was the successful proposer in response to RFP #04R-1103-SW&R and is a fully-permitted and operational facility capable of providing this service to the region. Cedar Grove has also committed to build, own and operate a local facility to serve the region once collection tonnages reach 10,000 tons per year.

4. Budget Impacts

None. The Compostable Organic Waste Disposal Charge covers 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

* The processing cost has been subsidized to an extent as a transaction fee will not be charged pursuant to Metro code provisions.

its budget, so there is no additional fiscal impact and future tonnage and revenue forecasts account for anticipated organics recovery.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 04-3497.

JKE:sm

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