AGENDA

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



Agenda

MEETING: METRO COUNCIL REGULAR MEETING

DATE: October 28, 2004

DAY: Thursday TIME: 2:00 PM

PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

- 1. INTRODUCTIONS
- 2. CITIZEN COMMUNICATIONS
- 3. NORTH PORTLAND ENHANCEMENT FUND 2004-2005 SLATE OF PROJECTS AND REPORT FROM PAST RECIPIENTS.
- 4. CONSENT AGENDA
- 4.1 Consideration of Minutes for the October 21, 2004 Metro Council Regular Meeting.
- 4.2 **Resolution No. 04-3499**, For the Purpose of Confirming the Appointment Of Amy Pepper to the Regional Solid Waste Advisory Committee (SWAC).
- 4.3 **Resolution No. 04-3504**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Non-System License to Willamette Resources, Inc., for Delivery of Solid Waste to the Riverbend Landfill
- 4.4 **Resolution No. 04-3505**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Non-System License to Waste Management of Oregon, Inc. For Delivery of Solid Waste from the Troutdale Transfer Station to the Columbia Ridge Landfill and the Riverbend Landfill.
- 5. ORDINANCES SECOND READING
- 5.1 **Ordinance No. 04-1060**, For the Purpose of Removing \$367,740 in Grants, Donations and Related Expenditures from Regional Parks Capital Fund, and Transferring \$58,500 from Capital Outlay to Contingency in the Regional Parks Capital Fund; and Declaring an Emergency.

5.2 **Ordinance No. 04-1061**, For the Purpose of Recognizing \$367,740 in 1 McLain Grants, Donations and Related Capital Expenditures in the Regional Parks Capital Fund; and Declaring an Emergency.

6. RESOLUTIONS

6.1 **Resolution No. 04-3496**, For the Purpose of Formalizing Budget Burkholder Assumption Guidelines for Departmental Use in Preparing the Fiscal Year 2005-06 Budget and Capital Improvement Plan, and Directing the Chief Operating Officer to Advise Council of any Substantive Changes in the Assumptions Prior to the Submission of the Proposed Budget to Council for Public Review.

7. CONTRACT REVIEW BOARD

- 7.1 **Resolution No. 04-3502**, For the Purpose of Authorizing the Chief Operating Officer to Execute Change Order No. 6 to the Contract For Operation of the Metro South and Metro Central Transfer Stations.
- 7.2 **Resolution No. 04-3503**, For the Purpose of Authorizing the Chief Monroe Operating Officer to Execute Contract No. 926063 for Operation of the Metro South and Metro Central Transfer Stations.

8. CHIEF OPERATING OFFICER COMMUNICATION

9. COUNCILOR COMMUNICATION

ADJOUN

Television schedule for October 28, 2004 Metro Council meeting

Clackamas, Multnomah and Washington counties,	Portland
Vancouver, Wash.	Channel 30 (CityNet 30) Portland
Channel 11 Community Access Network	Community Media
www.yourtvtv.org (503) 629-8534	www.pcatv.org (503) 288-1515
Thursday, October 28 at 2 p.m. (live)	Sunday, October 31 at 8:30 p.m.
	Monday, November 1 at 2 p.m.
Gresham	Washington County
Channel 30 MCTV	Channel 30 TVTV
www.mctv.org (503) 491-7636	www.yourtvtv.org (503) 629-8534
Monday, November 1 at 2 p.m.	Saturday, October 30 at 11 p.m.
	Sunday, October 31 at 11 p.m.
	Tuesday, November 2 at 6 a.m.
	Wednesday, November 3 at 4 p.m.
Oregon City, Gladstone	West Linn
Channel 28 Willamette Falls Television	Channel 30 Willamette Falls Television
<u>www.wftvaccess.com</u> (503) 650-0275	www.wftvaccess.com (503) 650-0275
Call or visit website for program times.	Call or visit website for program times.

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

Consideration of Minutes of the October 21, 2004 Regular Council meeting.

Metro Council Meeting Thursday, October 28, 2004 Metro Council Chamber **Resolution No. 04-3499**, For the Purpose of Confirming the Appointment Of Amy Pepper to the Regional Solid Waste Advisory Committee (SWAC).

Consent Agenda

Metro Council Meeting Thursday, October 28, 2004 Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF ALISON CABLE TO THE REGIONAL SOLID WASTE ADVISORY COMMITTEE (SWAC))))	RESOLUTION NO. 04-3499 Introduced by David Bragdon, Council President
WHEREAS, Metro Code Chapter 2.19.130 esta Committee (SWAC) to evaluate policy recommendatio waste management and planning; and,		
WHEREAS, Metro Code Chapter 2.19.030 star Metro Advisory Committees shall be appointed by the Council; and,		
WHEREAS, Metro Code Chapter 2.19.130 aut SWAC; and,	horizes r	epresentatives and alternates for the
WHEREAS, vacancies have occurred in the SV	WAC me	mbership; and,
WHEREAS, the Council President has appoint Multnomah County and Cities representatives, subject therefore,		
BE IT RESOLVED, that the Metro Council cos SWAC.	nfirms th	e appointment of Ms. Cable to Metro's
ADOPTED by the Metro Council this day of _		, 2004.
	David	Bragdon, Council President
Daniel B. Cooper, Metro Attorney		

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3499 FOR THE PURPOSE OF CONFIRMING THE APPOINTMENT OF ALISON CABLE TO THE REGIONAL SOLID WASTE ADVISORY COMMITTEE (SWAC)

Date: September 27, 2004 Prepared by: Susan Moore

BACKGROUND

The 25-member Regional Solid Waste Advisory Committee (SWAC), representing recyclers, the hauling industry, disposal sites, citizen-ratepayers and local governments, evaluates policy options and presents recommendations to the Metro Council regarding regional solid waste management and planning.

Mr. Matt Korot, the member representing East Multnomah County and Cities Representative, does not currently have an alternate. Mr. Korot has recommended Alison Cable, Recycling Coordinator for the City of Gresham, to serve as the East Multnomah County & Cities alternate representative to Metro's Solid Waste Advisory Committee. (See Attachment 1.)

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition.

2. Legal Antecedents

ORS 192.610 "Governing Public Meetings", Metro Code Chapter 2.19.030, "Membership of the Advisory Committees" and 2.19.130, "Metro Solid Waste Advisory Committee", are the relevant legal documents related to these appointments.

3. Anticipated Effects

This resolution is intended to appoint Ms. Alison Cable as alternate to Mr. Matt Korot, East Multnomah County & Cities Representative, for a two-year term of service on the SWAC.

4. Budget Impacts

None.

RECOMMENDED ACTION

The Council President has reviewed the qualifications of Ms. Alison Cable and finds her qualified to advise Metro in the matters of solid waste management and planning. Therefore, Council confirmation of this appointment by adoption of Resolution No. 04-3499 is recommended.

David Bragdon Council President Metro

I'd like to nominate Alison Cable, Recycling Coordinator for the City of Gresham, to serve as the East Multnomah County Cities alternate representative to Metro's Solid Waste Advisory Committee. Although I would prefer to have a representative from one of the cities other than Gresham serve as the alternate, staff members from Troutdale and Fairview have indicated that they are unable to serve in that capacity at this time.

Please let me know if you have any questions or need additional information.

Matt Korot City of Gresham

Agenda Item Number 4.3

Resolution No. 04-3504, For the Purpose of Authorizing the Chief Operating Officer to Issue a Non-System License to Willamette Resources, Inc., for Delivery of Solid Waste to the Riverbend Landfill

Consent Agenda

Metro Council Meeting Thursday, October 28, 2004 Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE TO WILLAMETTE RESOURCES, INC., FOR DELIVERY OF SOLID WASTE TO THE RIVERBEND LANDFILL	 RESOLUTION NO. 04-3504 Introduced by Michael Jordan, Chief Operating Officer, with the concurrence of David Bragdon, Council President
WHEREAS, the Metro Code requires a non-system generated from within the Metro boundary to a non-system	
WHEREAS, Willamette Resources, Inc., has applied provisions of Metro Code Chapter 5.05, "Solid Waste Flow	
WHEREAS, the application is in conformance with Waste Flow Control, of the Code; and,	h the requirements of Chapter 5.05, Solid
WHEREAS, the Chief Operating Officer has analy approval of the applicant's request for a non-system license to this resolution as Exhibit A; now therefore,	
BE IT RESOLVED that the Metro Council authorizes the Clicense to Willamette Resources, Inc., in a form substantial	
ADOPTED by the Metro Council this day of	_, 2004.
D	avid Bragdon, Council President
Approved as to Form:	
Daniel B. Cooper, Metro Attorney	
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600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736



METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

Number N-005-04

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Willamette Resources, Inc. 10295 S.W. Ridder Rd. Wilsonville, Oregon 97070

Willamette Resources, Inc. is a wholly owned subsidiary of:

Allied Waste Industries 15880 N Greenway-Hayden Loop Scottsdale, AZ 85260

CONTACT PERSON:

Mike Huycke, Ray Phelps and Todd Irvine

Phone: (503) 570-0626 (503) 570-0523 Fax:

MAILING ADDRESS:

10295 S.W. Ridder Rd. Wilsonville, Oregon 97070

METRO	Licensee's Acceptance & Acknowledgement of Receipt:			
Signature	Signature of Licensee			
Michael Jordan, Chief Operating Officer Print name and title	Print name and title			
Date	Date			

Resolution No. 04-3504 EXHIBIT A

1 NATURE OF WASTE COVERED BY LICENSE

Municipal solid waste, including putrescible waste and processing residual from material recovery, received at Willamette Resources, Inc. (WRI) from commercial refuse haulers.

2 FISCAL YEAR TONNAGE LIMITATION

Licensee is authorized to deliver to the non-system facility described in section 3 of this license up to a maximum of 23,250 tons per calendar year of the waste described in section 1 of this license. This license does not increase the total tonnage that the Licensee is authorized to accept under its existing Metro Solid Waste Facility Franchise (No. F-005-03).

3 Non-System Facility

The licensee hereunder may deliver the waste described in section 1, above, only to the following non-system facility:

Riverbend Landfill 13469 S.W. Highway 18 McMinnville, OR 87128

4 TERM OF LICENSE

The term of this license will commence on November 1, 2004 and will expire on October 31, 2006, unless terminated sooner under section 6 of this license.

5 MATERIALS RECOVERY

Prior to delivery of residual solid waste for disposal under authority of this license, recovery of non-putrescible waste accepted by the licensee must be performed at no less than the minimum level stipulated in Metro Code chapter 5.01.

6 REPORTING OF ACCIDENTS AND CITATIONS

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

7 ADDITIONAL LICENSE CONDITIONS

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

- (a) The permissive transfer of solid waste to the Riverbend Landfill authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.
- (b) This license shall be subject to amendment, modification or termination by Metro's Chief Operating Officer in the event that the Chief Operating Officer determines that:
 - (i) there has been sufficient change in any circumstances under which Metro issued this license, or in the event that Metro amends or modifies its Regional Solid Waste Management Plan in a manner that justifies modification or termination of this license,
 - (ii) the provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Oregon Waste Systems, or
 - (iii) Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in section 1 of this license be transferred to, and disposed of at, a facility other than the facility described in section 3, above.
- (c) This license shall, in addition to subsections (b)(i) through (iii), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.
- (d) No later than the fifteenth (15th) day of each month, beginning with the next month following the signature date below, Licensee shall:
 - (i) submit to Metro's Solid Waste & Recycling Department a Regional System Fee and Excise Tax Report, that covers the preceding month, and
 - (ii) remit to Metro the requisite Regional System Fees and Excise Taxes in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes.

- (e) Licensee shall make all records from which (d) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) calendar days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in section 3, above.
- (f) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.
- (g) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3.

8 COMPLIANCE WITH LAW

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

9 INDEMNIFICATION

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

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3504 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE TO WILLAMETTE RESOURCES, INC. FOR DELIVERY OF SOLID WASTE TO THE RIVERBEND LANDFILL

September 30, 2004 Prepared by: Steve Kraten

BACKGROUND

Description of the Resolution

In October 2002, Willamette Resources, Inc., (WRI) was granted a non-system license (NSL) to annually deliver a maximum of 20,000 tons per calendar year of solid waste, including putrescible waste, to the Riverbend Landfill. The license commenced on November 1, 2002 and will expire on October 31, 2004. On September 14, 2004, WRI submitted an application to renew this NSL. The new NSL would replicate the existing authority except that the tonnage limitation would be increased to 23,250 tons per calendar year. The requested increase is intended by the applicant to accommodate the 3,250-ton (five percent) increase in WRI's facility cap approved by the Council on September 9, 2004.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to issuance of the proposed non-system license.

2. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Council shall consider the following factors to the extent relevant to such determination.

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

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

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

The Riverbend Landfill is permitted by the DEQ. The DEQ considers the landfill to be a well-run facility that is in compliance with federal, state and local requirements. The facility has a good compliance record with public health, safety and environmental rules and regulations.

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

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

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

The waste that the applicant has applied to deliver under the proposed NSL is a combination of both non-recoverable putrescible waste and residual from non-putrescible waste that has already undergone recovery at WRI. Thus, the waste authorized by the proposed license will have no further recovery potential and is not expected to impact the region's recycling and waste reduction efforts.

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

Metro has committed to deliver 90 percent of the total tons of "acceptable waste" that Metro delivers to general purpose landfills to landfills operated by Metro's waste disposal contract operator, Waste Management of Oregon (WMO). The waste subject to the proposed license is to be delivered to the Riverbend Landfill, which is a WMO facility. Thus, approval of the requested license will not conflict with Metro's disposal contract or any other of its existing contractual arrangements.

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

There have been incidents in past years where the applicant has exceeded its tonnage caps. However, the facility is regarded as well-run and has had a good compliance record with all public health, safety, and environmental rules and regulations.

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

On September 9, 2004, the Council approved Ordinance 04-1058, increasing WRI's putrescible waste facility cap by five percent to a total of 68,250 tons.

3. Anticipated Effects

The effect of Resolution No. 04-3504 will be for WRI to deliver up to 23,250 tons of solid waste per year to the Riverbend Landfill during calendar years 2005 and 2006. This is an increase of 3,250 tons more than is authorized under the existing NSL.

4. Budget Impacts

The regional system fee and excise tax will continue to be collected on in-Metro waste delivered to the Columbia Ridge Landfill and the Riverbend Landfill under authority of the proposed NSL. The budget impact of the additional tonnage authorized under this license was considered by the Council in its approval of a five percent increase in the facility's tonnage cap and is not affected by the proposed NSL.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 04-3504, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and issuance of an NSL substantially similar to the NSL attached to the resolution as Exhibit A.

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Resolution No. 04-3505, For the Purpose of Authorizing the Chief Operating Officer to Issue a Non-System License to Waste Management of Oregon, Inc. For Delivery of Solid Waste from the Troutdale Transfer Station to the Columbia Ridge Landfill and the Riverbend Landfill.

Consent Agenda

Metro Council Meeting Thursday, October 28, 2004 Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE TO WASTE MANAGEMENT OF OREGON, INC. FOR DELIVERY OF SOLID WASTE FROM THE TROUTDALE TRANSFER STATION TO THE COLUMBIA RIDGE LANDFILL AND THE RIVERBEND LANDFILL))))	RESOLUTION NO. 04-3505 Introduced by Michael Jordan, Chief Operating Officer, with the concurrence of David Bragdon, Council President
WHEREAS, the Metro Code requires a non-system solid waste generated from within the Metro boundary to boundary; and,		
WHEREAS, Waste Management of Oregon, Inc. provisions of Metro Code Chapter 5.05, "Solid Waste Flo		
WHEREAS, the application is in conformance w Code; and,	ith the	requirements of Chapter 5.05 of the
WHEREAS, the Chief Operating Officer has ana approval of the applicant's request for a non-system licento this resolution as Exhibit A; now therefore,		
BE IT RESOLVED that the Metro Council authorizes the license to Waste Management of Oregon, Inc., in a form Exhibit A.		
ADOPTED by the Metro Council this day of	, 20	04.
	David	Bragdon, Council President
Approved as to Form:		
Daniel B. Cooper, Metro Attorney		

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600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736 TEL 503 797 1650 | FAX 503 797 1795



METRO SOLID WASTE FACILITY NON-SYSTEM LICENSE

Number N-001-04

LICENSEE:

Waste Management of Oregon, Inc., dba Troutdale Transfer Station 869 NW Eastwind Drive Troutdale, OR 97060

CONTACT PERSON:

Dan Wilson

Phone: (503) 640-9427 Fax: (503) 648-3942 E-mail: Dwuksib@wm.com

PARENT COMPANY:

Waste Management of Oregon, Inc. 7227 NE 55th Ave. Portland, OR 97218

METRO	Licensee's Acceptance & Acknowledgement of Receipt:
Signature	Signature of Licensee
Michael Jordan, Solid Waste & Recycling Director	
Print name and title	Print name and title

Resolution	No. 04-3505
	Exhibit A

Date	Date	

NATURE OF WASTE COVERED BY LICENSE This license authorizes delivery from the Troutdale Transfer.

This license authorizes delivery from the Troutdale Transfer Station to the nonsystem facility listed in section 3, below, of residential and commercial solid waste generated within the Metro region, including putrescible waste collected by the licensee.

2 CALENDAR YEAR TONNAGE LIMITATION

This license grants the licensee the authority to dispose of up to 66,625 tons in calendar year 2005 and 65,000 tons in calendar year 2006 of the waste described in section 1, above.

3 Non-System Facility

The licensee hereunder may deliver the waste described in section 1, above, only to the following non-system facilities:

Columbia Ridge Landfill 18177 Cedar Springs Lane Arlington, OR 97812

Or, in emergency conditions as described in section 7 of this license,

Riverbend Landfill 13469 S.W. Highway 18 McMinnville, OR 87128

4 TERM OF LICENSE

The term of this license will commence on January 1, 2005 and expire at midnight on December 31, 2006.

5 MATERIALS RECOVERY

Prior to delivery of residual solid waste for disposal under authority of this license, recovery of non-putrescible waste accepted by the licensee must be performed at no less than the minimum level stipulated in Metro Code chapter 5.01.

6 REPORTING OF ACCIDENTS AND CITATIONS

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

7 ADDITIONAL LICENSE CONDITIONS

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

- (a) Putrescible waste may be transported to the Riverbend Landfill only in emergency situations, such as the closure of Interstate 84 or the temporary breakdown of a compactor at the Troutdale Transfer Station, which would prevent the licensee from delivering such waste to the Columbia Ridge Landfill.
- (b) The permissive transfer of solid waste to the Riverbend Landfill authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.
- (c) This license shall be subject to amendment, modification or termination by Metro's Chief Operating Officer in the event that the Chief Operating Officer determines that:
 - (i) there has been sufficient change in any circumstances under which Metro issued this license, or in the event that Metro amends or modifies its Regional Solid Waste Management Plan in a manner that justifies modification or termination of this license.
 - (ii) the provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Oregon Waste Systems, or
 - (iii) Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in section 1 of this license be transferred to, and disposed of at, a facility other than the facilities described in section 3, above.
- (d) This license shall, in addition to subsections (c)(i) through (iii), above, be subject to amendment, modification, termination, or suspension pursuant to the Metro Code.
- (e) No later than the fifteenth (15th) day of each month, beginning with the next month following the signature date below, Licensee shall:
 - (i) submit to Metro's Solid Waste & Recycling Department a Regional System Fee and Excise Tax Report, that covers the preceding month, and
 - (ii) remit to Metro the requisite Regional System Fees and Excise Taxes in accordance with the Metro Code provisions applicable to

the collection, payment, and accounting of such fees and taxes.

- (f) Licensee shall make all records from which (e) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) calendar days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facilities named in section 3, above.
- (g) Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.
- (h) This license authorizes delivery of solid waste from the Troutdale Transfer Station to the Columbia Ridge Landfill and the Riverbend Landfill. Transfer of waste generated from within the Metro boundary to any disposal site other than the Columbia Ridge Landfill and the Riverbend Landfill is prohibited unless authorized in writing by Metro.

8 COMPLIANCE WITH LAW

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

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

Troutdale Transfer Station N-001-04 Page 6 of 4

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3505 FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A NON-SYSTEM LICENSE TO WASTE MANAGEMENT OF OREGON, INC. FOR DELIVERY OF SOLID WASTE FROM THE TROUTDALE TRANSFER STATION TO THE COLUMBIA RIDGE LANDFILL AND THE RIVERBEND LANDFILL

September 30, 2004 Prepared by: Steve Kraten

BACKGROUND

Description of the Resolution

On September 5, 2003, Waste Management of Oregon, Inc. (WMO) was granted a non-system license (No. N-001-03) to deliver the full amount of its putrescible waste facility cap at the Troutdale Transfer Station (TTS), 65,000 tons per calendar year, to the Columbia Ridge Landfill (CRLF). WMO needed a non-system license (NSL) to deliver putrescible solid waste from TTS to CRLF because CRLF is a designated facility only for non-putrescible and special waste. The NSL also authorized the delivery of such waste to the Riverbend Landfill in the case of an emergency, such as the closure of I-84, that would prevent the delivery of waste to CRLF. This license will expire on January 1, 2005, and on September 3, 2004, WMO submitted an application to renew this license. Since the Riverbend Landfill is a Waste Management facility, this NSL will not implicate Metro's obligations under its disposal contract. This resolution will authorize the Chief Operating Officer to renew the license, and to increase the tonnage authorization to match the increased tonnage authorization that has been granted to WMO under the terms of the TTS facility franchise.

The term of the proposed license would span two full calendar years, beginning January 1, 2005. Though the term and the tonnage limit of the NSL is based on a calendar year, the tonnage cap set by the facility's franchise is based on a fiscal year. The applicant has applied for authority to deliver 68,250 tons annually under the NSL. However, this tonnage figure is based on a temporary, non-renewable, five percent administrative increase in its 65,000-ton per fiscal year facility cap that was granted by the Chief Operating Officer and will expire on June 30, 2005, the end of FY 04-05. Thus, the 68,250-ton cap will be in effect only for the first six months of the proposed two-year term of the NSL, after which it will return to 65,000 tons per fiscal year. In order to make the NSL cap consistent with the facility cap, the proposed license authorizes the delivery of 66,625 tons in calendar 2005 (the average of 68,250 tons for the first half of the year and 65,000 tons for the second half) and 65,000 tons in calendar 2006.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to issuance of the proposed non-system license.

2. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Council shall consider the following factors to the extent relevant to such determination.

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

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

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

The Columbia Ridge and Riverbend Landfills are permitted by the DEQ. The DEQ considers both landfills to be well run and in compliance with federal, state and local requirements. Both facilities have a good compliance record with public health, safety and environmental rules and regulations.

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

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

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

The only waste that the applicant has proposed to deliver for disposal under the requested license is putrescible waste and residual from waste that has already undergone material recovery. Therefore granting the requested license will not impact the region's recycling and waste reduction efforts.

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

Metro has committed to deliver 90 percent of the total tons of "acceptable waste" that Metro delivers to general purpose landfills to landfills operated by Metro's waste disposal contract operator, Waste Management of Oregon. The waste subject to the proposed license is proposed to be delivered to the Columbia Ridge and Riverbend Landfills, both of which are WMO facilities. Thus, approval of the requested license will not conflict with Metro's disposal contract or any other of its existing contractual arrangements.

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

The applicant has a good record of compliance with Metro, local, state, and federal regulations.

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

Staff did not identify any additional significant factors to be considered in making a determination.

3. Anticipated Effects

The effect of Resolution No. 04-3505 will be to issue an NSL to WMO for delivery of solid waste, including putrescible waste, to the Columbia Ridge Landfill and, in the event such deliveries are disrupted due to an emergency, to the Riverbend Landfill.

4. Budget Impacts

The regional system fee and excise tax will continue to be collected on in-Metro waste delivered to the Columbia Ridge Landfill and the Riverbend Landfill under authority of the proposed NSL. The budget impact of the additional tonnage authorized under this license was considered by the Chief Operating Officer in his approval of a five percent increase in the facility's tonnage cap and is not affected by the proposed NSL.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 04-3505 authorizing the issuance of an NSL substantially similar to the NSL attached to the resolution as Exhibit A.

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Ordinance No. 04-1060, For the Purpose of Removing \$367,740 in Grants, Donations and Related Expenditures from Regional Parks Capital Fund, and Transferring \$58,500 from Capital Outlay to Contingency in the Regional Parks Capital Fund; and Declaring an Emergency.

Second Reading

Metro Council Meeting Thursday, October 28, 2004 Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF REMOVING \$367,740)	ORDINANCE NO. 04-1060
IN GRANTS, DONATIONS AND RELATED)	
EXPENDITURES FROM THE REGIONAL)	Introduced by Mike Jordan, Chief Operating
PARKS CAPITAL FUND, AND)	Officer, with the concurrence of the Council
TRANSFERRING \$58,500 FROM CAPITAL)	President
OUTLAY TO CONTINGENCY IN THE)	
REGIONAL PARKS CAPITAL FUND; AND)	
DECLARING AN EMERGENCY)	

WHEREAS, the Metro Council, through ordinance 04-1044B enacted June 17, 2004, adopted the FY 2004-05 annual budget, making appropriations and levying ad valorem taxes; and

WHEREAS, at the time of budget adoption an action was taken that inadvertently resulted in a violation of Oregon Budget Law; and

WHEREAS, the Tax Supervising and Conservation Commission has identified and requested remedy of this violation; and

WHEREAS, the Metro Attorney has advised on the best course of action to remedy the violation; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- 1. That the FY 2004-05 Budget and Schedule of Appropriations are hereby amended as shown in the column entitled "Revision" of Exhibits A and B to this Ordinance for the purpose of removing \$367,740 in grants, donations and related capital expenditures from the Regional Parks Capital Fund and transferring \$58,500 from capital outlay to Contingency in the Regional Parks Capital Fund. Both actions being necessary to remedy a violation of budget law that occurred at the time of budget adoption in June 2004.
- That the Chief Operating Officer, or his/her designee, shall forward a signed certified copy of
 this action to the Tax Supervising and Conservation Commission as evidence of the remedy
 of the violation of Oregon budget law.
- 3. This Ordinance being necessary for the immediate preservation of the public health, safety or welfare of the Metro area in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this	day of, 2004.
	David Bragdon, Council President
Attest:	Approved as to Form:
Christina Billington, Recording Secretary	Daniel B. Cooper, Metro Attorney

Exhibit A Ordinance No. 04-1060

		Current Budget Revision				Amended <u>Budget</u>		
ACCT	DESCRIPTION	FTE Amount		FTE Amount		FTE	Amount	
ACCI			Capital Fu		Amount	FIL	Amount	
RESOUL		A I GAIRD	Capitalit					
GRANTS								
4100	Federal Grants-Direct		216,872		(216,872)		0	
4110	State Grants-Direct		300,000		0		300,000	
4115	State Grants-Indirect		116,877		(116,877)		0	
DONAT	Contributions from Private Source	S			C 2 2			
4750	Donations and Bequests		33,991		(33,991)		0	
	Fund Equity Transfers							
4970	Transfer of Resources							
	* from Regional Parks		1,489,822		0		1,489,822	
<i>INTSRV</i>	Internal Service Transfers							
4980	Transfer for Direct Costs							
	* from Regional Parks		120,000		0		120,000	
	* from Open Spaces		125,000		0		125,000	
	* from Parks Special Accounts		70,000		0		70,000	
TOTAL	RESOURCES		\$2,472,562		(\$367,740)		\$2,104,822	
Mater	REMENTS i <mark>als & Services</mark> I Capital Maintenance							
5261	Renewal & Replacement - CIP		345,000		0		345,000	
5262	Renewal & Replacement - Non-CI	P	275,000		0		275,000	
Total 1	Materials & Services		\$620,000		\$0		\$620,000	
	<u>l Outlay</u> Capital Outlay (CIP Projects)							
5715	Improve-Oth thn Bldg (CIP)		807,740		(367,740)		440,000	
5725	Buildings & Related (CIP)		280,000		(58,500)		221,500	
	Capital Outlay	-	\$1,087,740		(\$426,240)		\$661,500	
	gency and Ending Balance							
CONT	Contingency							
5999	Contingency		0		58,500		58,500	
UNAPP	Unappropriated Fund Balance							
5990	Unappropriated Fund Balance							
	* Unappropriated Balance		594,822		0		594,822	
	* Renewal & Replacement Reserve	e	170,000		0		170,000	
Total	\$764,822		\$58,500		\$823,322			
TOTAL	REQUIREMENTS	9	\$2,472,562		(\$367,740)		\$2,104,822	

Exhibit B Ordinance No. 04-1060 FY 2004-05 SCHEDULE OF APPROPRIATIONS

REGIONAL PARKS CAPITAL FUND	Current <u>Appropriation</u>	Revision	Amended Appropriation
Operating Expenses (PS & M&S)	\$620,000	\$0	\$620,000
Capital Outlay	1,087,740	(426, 240)	661,500
Contingency	0	58,500	58,500
Unappropriated Balance	764,822	0	764,822
Total Fund Requirements	\$2,472,562	(\$367,740)	\$2,104,822

All Other Appropriations Remain as Previously Adopted

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1060 FOR THE PURPOSE OF REMOVING \$367,740 IN GRANTS, DONATIONS AND RELATED EXPENDITURES FROM THE REGIONAL PARKS CAPITAL FUND, AND TRANSFERRING \$58,500 FROM CAPITAL OUTLAY TO CONTINGENCY IN THE REGIONAL PARKS CAPITAL FUND; AND DECLARING AN EMERGENCY

Date: October 4, 2004 Prepared by: Kathy Rutkowski

BACKGROUND

At the time of budget adoption in June 2004, following budget committee approval on April 29, 2004 and the Tax Supervising and Conservation Commission (TSCC) public hearing on June 9, 2004, two actions were taken to recognize additional appropriation in the Regional Parks Capital Fund. The first action recognized \$367,740 in grants and donations for a specific restoration project and increased capital outlay by a like amount. The second action transferred \$175,000 from the Regional Parks Operating or the Open Spaces Fund and increased appropriation to recognize additional capital projects in the Regional Parks Capital Fund. The total new expenditure recognized at the time of adoption was \$542,740.

Oregon Budget Law includes a provision that following budget committee approval no fund may be increased by more than 10 percent of estimated expenditures. Oregon Budget Law also includes provisions related to the budgeting of grants, gifts, bequests, and other devises received in trust for specific purposes. These provisions would indicate that, following budget committee approval, such resources are exempt from budget law provisions in the year of receipt.

In early September 2004 we received from the TSCC certification of Metro's FY 2004-05 property tax levies and notification that we had violated the 10 percent increase limitation in the Regional Parks Capital Fund. The letter, dated September 1, 2004, requested that Metro amend the adopted budget to bring it into compliance with budget law, and forward a copy of the amending ordinance to the TSCC.

In consultation with Metro Attorney Dan Cooper, it was determined that two steps would be needed to fully comply with Oregon Budget Law. The first step is to remove from the budget the \$367,740 in grants, donations and capital expenditures related to the restoration project that were recognized at the time of adoption. ORS 294.361(3) indicates that grants, gifts, bequests and other devises transferred to a municipal corporation in trust for specific purposes shall not be included in the budget unless the amount can be reasonably estimated by the time the budget committee approves the budget. Since this action occurred after budget committee approval it would have been more appropriate to amend the budget after adoption using the exemption provided in Oregon Budget Law ORS 294.326(3).

The second step is to move \$58,500 from capital outlay to contingency. With the removal of the grant and donation related expenditures, total estimated expenditures increased in the Regional Parks Capital Fund by \$175,000. The maximum increase allowed under budget law was \$116,500. Metro violated the 10 percent increase limitation by \$58,500. Moving this appropriation to contingency will fully remedy this violation. If, during the year, the Regional Parks and Greenspaces department determines it will need this appropriation they will return to the Council with an appropriate budget amendment.

Finally, a companion ordinance to this action will re-recognize the grants, donations and capital expenditures related to the restoration project using the exemption provided in ORS 294.326(3). That section provides an exemption to Oregon Budget Law allowing for the expenditure in the year of receipt of grants, gifts and bequests received by a municipal corporation in trust for a specific purpose. Such expenditures are allowed only after the governing body has enacted the appropriate amendment.

ANALYSIS/INFORMATION

- 1. Known Opposition None known.
- 2. Legal Antecedents ORS 294.435(2) states that following budget committee approval no fund may be increased by more than 10 percent of estimated expenditures unless the amended budget is resubmitted to the tax supervising and conservation commission for another public hearing. ORS 294.361(3) indicates that grants, gifts, bequests and other devises transferred to a municipal corporation in trust for specific purposes shall not be included in the budget unless the amount can be reasonably estimated by the time the budget committee approves the budget. ORS 294.326(3) provides an exemption to Oregon Budget Law allowing for the expenditure in the year of receipt of grants, gifts, bequests, and other devises received by a municipal corporation in trust for a specific purpose.
- 3. Anticipated Effects This action will remedy a budget law violation that occurred at the time the budget was adopted in June 2004, and bring the FY 2004-05 into full compliance with Oregon Budget Law.
- 4. **Budget Impacts** This action will reduce overall resources and requirements by \$367,640 as well as transfer \$58,500 from capital outlay to contingency. These actions will remedy a budget law violation that occurred at the time of budget adoption in June 2004.

RECOMMENDED ACTION

The Chief Operating Officer, in concurrence with the Council President, recommends adoption of this Ordinance.

Ordinance No. 04-1061, For the Purpose of Recognizing \$367,740 in Grants, Donations and Related Capital Expenditures in the Regional Parks Capital Fund; and Declaring an Emergency

Second Reading

Metro Council Meeting Thursday, October 28, 2004 Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF RECOGNIZING	ORDINANCE NO. 04-1061
\$367,740 IN GRANTS, DONATIONS AND RELATED CAPTIAL EXPENDITURES IN THE) Introduced by Mike Jordan, Chief Operating
REGIONAL PARKS CAPITAL FUND; AND) Officer, with the concurrence of the Council
DECLARING AN EMERGENCY) President
within the FY 2004-05 Budget; and	ed and considered the need to transfer appropriations 4.326(3) allows for the expenditure in the year of received by a municipal corporation in trust for a
specific purpose; and	
WHEREAS, the need for the transfer of ap	propriation has been justified; and
WHEREAS, adequate funds exist for other	identified needs; now, therefore,
THE METRO COUNCIL ORDAINS AS F	FOLLOWS:
in the column entitled "Revision" of Ex	dule of Appropriations are hereby amended as shown whibits A and B to this Ordinance for the purpose of nations from various sources and increasing capital arks Capital Fund by a like amount.
welfare of the Metro area in order to m	immediate preservation of the public health, safety or eet obligations and comply with Oregon Budget Law, this Ordinance takes effect upon passage.
ADOPTED by the Metro Council this day	of, 2004.
	David Bragdon, Council President
Attest:	Approved as to Form:
Christina Billington, Recording Secretary	Daniel B. Cooper, Metro Attorney

Exhibit A Ordinance No. 04-1061

		Current		Amended			
		Bu	dget	<u>R</u>	evision]	<u>Budget</u>
ACCT	DESCRIPTION	FTE .	Amount	FTE	Amount	FTE	Amount
	Regional	l Parks (Capital Fu	und			Paramerica.
RESOUL	RCES						
GRANTS	Grants						
4100	Federal Grants-Direct		0		216,872		216,872
4110	State Grants-Direct		300,000		0		300,000
4115	State Grants-Indirect		0		116,877		116,877
DONAT	Contributions from Private Source.	S					
4750	Donations and Bequests		0		33,991		33,991
EQTREV	Fund Equity Transfers						
4970	Transfer of Resources						
	* from Regional Parks		1,489,822		0		1,489,822
INTSRV	Internal Service Transfers						
4980	Transfer for Direct Costs						
	* from Regional Parks		120,000		0		120,000
	* from Open Spaces		125,000		0		125,000
	* from Parks Special Accounts		70,000		0		70,000
TOTAL	RESOURCES	\$2	2,104,822		\$367,740		\$2,472,562
REQUIR	REMENTS						
Materi	ials & Services						
CAPMN	I Capital Maintenance						
5261	Renewal & Replacement - CIP		345,000		0		345,000
5262	Renewal & Replacement - Non-CI	P	275,000		0		275,000
Total 1	Materials & Services		\$620,000		\$0		\$620,000
Capita	l Outlay						
	Capital Outlay (CIP Projects)						
5715	Improve-Oth thn Bldg (CIP)		440,000		367,740		807,740
5725	Buildings & Related (CIP)		221,500		0		221,500
	Capital Outlay		\$661,500		\$367,740		\$1,029,240
					400111110		,,
	gency and Ending Balance						
CONT	Contingency		50.500		0		50 500
5999	Contingency		58,500		0		58,500
UNAPP	Unappropriated Fund Balance						
5990	Unappropriated Fund Balance		504.000		^		504.933
	* Unappropriated Balance		594,822		0		594,822
	* Renewal & Replacement Reserve		170,000		0		170,000
Total (Contingency and Ending Balance		\$823,322		\$0		\$823,322
TOTAL	REQUIREMENTS	\$2	2,104,822		\$367,740		\$2,472,562

Exhibit B Ordinance No. 04-1061 FY 2004-05 SCHEDULE OF APPROPRIATIONS

REGIONAL PARKS CAPITAL FUND	Current <u>Appropriation</u>	Revision	Amended Appropriation
Operating Expenses (PS & M&S)	\$620,000	\$0	\$620,000
Capital Outlay	661,500	367,740	1,029,240
Contingency	58,500	0	58,500
Unappropriated Balance	764,822	0	764,822
Total Fund Requirements	\$2,104,822	\$367,740	\$2,472,562

All Other Appropriations Remain as Previously Adopted

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1061 FOR THE PURPOSE OF RECOGNIZING \$367,740 IN GRANTS, DONATIONS AND RELATED CAPTIAL EXPENDITURES IN THE REGIONAL PARKS CAPITAL FUND; AND DECLARING AN EMERGENCY

Date: October 4, 2004 Prepared by: Kathy Rutkowski

BACKGROUND

This action is the companion ordinance to Ord. 04-1060, which remedied a violation of budget law that occurred at the time of budget adoption. Both ordinances have been submitted for simultaneous consideration and approval.

Ordinance No. 04-1060, remedied a violation of Oregon budget law, in part, by removing \$367,740 in grants, donations, and related capital expenditures that were received for a specific restoration project and recognized in the budget after budget committee approval on April 29, 2004. ORS 294.361(3) indicates that grants, gifts, bequests and other devises transferred to a municipal corporation in trust for specific purposes shall not be included in the budget unless the amount can be reasonably estimated by the time the budget committee approves the budget. Since the recognition of these grants and donations occurred after budget committee approval it would have been more appropriate to amend the budget after adoption using the exemption provided in Oregon Budget Law ORS 294.326(3). That section provides an exemption to Oregon Budget Law allowing for the expenditure in the year of receipt of grants, gifts and bequests received by a municipal corporation in trust for a specific purpose. Such expenditures are allowed only after the governing body has enacted the appropriate amendment.

This action requests the Council re-recognize \$367,740 in grants, donations and related capital expenditures as shown in Exhibit A to this ordinance. The grants and donations support the Gales Creek/Tualatin River Confluence Habitat Restoration Project approved by the Council on May 27, 2004. They are to be received from the US Department of Agriculture (Wetland Reserve Program), the Oregon Watershed Enhancement Board, and Ducks Unlimited. Ducks Unlimited is a partner with Metro on the project.

ANALYSIS/INFORMATION

- 1. Known Opposition None known.
- 2. Legal Antecedents ORS 294.326(3) provides an exemption to Oregon Budget Law allowing for the expenditure in the year of receipt of grants, gifts, bequests, and other devises received by a municipal corporation in trust for a specific purpose.
- 3. Anticipated Effects This action will re-recognize \$367,740 in grants, donations and capital expenditures that were removed from the budget in Ord. 04-1060 to remedy a budget law violation that occurred at the time of adoption.
- 4. Budget Impacts This action increases overall resources and requirements by \$367,640.

RECOMMENDED ACTION

The Chief Operating Officer, in concurrence with the Council President, recommends adoption of this Ordinance.

Resolution No. 04-3496, For the Purpose of Formalizing Budget Assumption Guidelines for Departmental Use in Preparing the Fiscal Year 2005-06 Budget and Capital Improvement Plan, and Directing the Chief Operating Officer to Advise Council of any Substantive Changes in the Assumptions Prior to the Submission of the Proposed Budget to Council for Public Review.

Metro Council Meeting Thursday, October 28, 2004 Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF FORMALIZING BUDGET ASSUMPTION GUIDELINES FOR DEPARTMENTAL USE IN PREPARING THE FISCAL YEAR 2005-06 BUDGET AND CAPITAL IMPROVEMENT PLAN, AND DIRECTING THE CHIEF OPERATING OFFICER) RESOLUTION NO 04-3496) Introduced by Michael Jordan, Chief) Operating Office with the concurrence of the Council President)
TO ADVISE COUNCIL OF ANY SUBSTANTIVE CHANGES IN THE ASSUMPTIONS PRIOR TO THE SUBMISSION OF THE PROPOSED BUDGET TO COUNCIL FOR PUBLIC REVIEW	
Exhibit A to: better understand the factors that are unassumptions; discuss questions, issues, or concerns re	
WHEREAS, The Metro Council has agreed by departments in the preparation of the Fiscal Year	upon the need for this set of assumptions to be used 2005-06 budget; and
WHEREAS, The Metro Council wishes to f dissemination of the Budget Preparation Manual; no	formalize these assumptions as guidelines prior to the w therefore
BE IT RESOLVED that the Metro Council a guidelines for departmental use in preparing the Fisc Operating Officer to advise the Council of any subst submission of the budget to Council for public revie	antive changes in these assumptions prior to the
ADOPTED by the Metro Council this day of	, 2004
	David Bragdon, Council President
APROVED AS TO FORM:	
Daniel B. Cooper, Metro Attorney	

EXHIBIT A

Resolution No. 04-3496

SUMMARY OF FINANCIAL ASSUMPTIONS FOR FY 2005-06 BUDGET

	FY 2005-06 Assumption	FY 2005-06 Cost Estimate
Salary Adjustments:		
✓ Elected Officials	0% increase	\$0
✓ Cost of Living Adjustment – <i>Represented Only</i>	2.5% COLA	\$501,996
✓ Other Salary Adjustments		
AFSCME (step adjustment)	2.5% pool	\$282,527
 Non-Represented (Metro & MERC) 	4.5% pool	\$682,076
o All Other Groups (i.e. LIU 483, AFSCME 3580-1, etc.)	0.0% pool	\$0
Fringe Benefits:		
✓ FICA	7.65% of salaries/wages with exceptions for Elected Officials	\$3,225,850
✓ TriMet Payroll Tax	0.6218% of salaries/wages	\$264,035
✓ Worker Comp Tax	\$0.017 per hour worked	\$32,166
✓ Long Term Disability	0.55% of eligible salaries/wages	\$203,864
✓ Life Insurance	\$0.15 per \$1,000 of annual salary (to a maximum of \$50,000) per month	\$58,701
✓ Accidental Death Insurance	\$0.03 per \$1,000 of annual salary (to a maximum of \$50,000) per month	\$11,749
✓ Dependent Life Insurance	\$0.35 per employee per month	\$2,698
✓ Employee Assistance Program	\$1.78 per employee per month	\$13,918
✓ TriMet Passport Program	Regular Employees Only Metro Regional Center - \$166/emp. Oregon Zoo - \$164/emp. Solid Waste Offsite - \$46/emp. (average) Regional Parks Offsite Facilities - \$20/emp	\$74,949
✓ Health & Welfare Program	\$692.50 per employee per month	\$5,438,915
✓ PERS	6.00% Employee Pick-Up (where applicable)	\$1,995,234
	7.14% Employer Contribution	\$2,646,639
	4.70% Estimated average increase due to investment loss	\$1,742,180
	<u>6.65%</u> Additional to Reserve	\$2,465,006
	24.49% Total estimated PERS Rate for FY 2005-06	

Exhibit A to Resolution No. 04-3496 m:\council\projects\legislation\2004\04-3496exha.doc

EXHIBIT A

Resolution No. 04-3496

SUMMARY OF FINANCIAL ASSUMPTIONS FOR FY 2005-06 BUDGET

	FY 2005-06 Assumption	FY 2005-06 Estimate
General Revenue Estimates:		
✓ Interest Rate	2.5% of cash balances	Varies
✓ Excise Tax Forecast		
Base solid waste excise tax	2.0% above FY 2004-05 base	\$6,338,740
 All other facilities 	Estimate based on existing 5-year forecasts	\$2,721,338
o \$2.50 per ton to Parks	2.0% above FY 2004-05 rate - \$2.55/ton for FY 2005-06	\$3,181,038
o \$0.50 per ton to Tourism Account	2.0% above FY 2004-05 rate - \$0.51/ton for FY 2005-06	\$636,208
Other Global Assumptions:		10 3 4 5 0 A 5 0
✓ Excise Tax Allocations		
 Planning Fund (general allocation) 	FY 2004-05 allocation plus 2%	\$4,147,943
 Regional Parks Fund (general allocation) 	FY 2004-05 allocation plus 2%	\$486,384
Regional Parks Fund (landbanking)	FY 2004-05 allocation plus 2%	\$235,628
o Regional Parks Fund (1% on SW)	Tied to formula – 11.75% of base SW excise tax	\$744,802
o Regional Parks Fund (\$2.50 per ton)	\$2.50 per ton amount based on current estimate of SW tonnage	\$3,181,038
 MERC Operating Fund (Tourism Account) 	\$0.50 per ton amount based on current estimate of SW tonnage	\$636,208
 MERC - OCC VDI Compliance 	Same as FY 2004-05	\$182,129
✓ Inflation factor for other costs	2.5% where no other factors exist	Varies
✓ Contingency	4% of operating expenses with variances based on volatility of activity	Varies
✓ Special Appropriations	activity	
o Elections Expenses	Primary elections for Council President, Auditor, and three Council seats	\$300,000
Contribution to RACC	Contribute same amount as in current year	\$25,000
 Water Consortium Dues 	Provide for inflation over 5-year period	\$15,750
 Public Notifications 	Fund amount estimated by Public Affairs & Planning staff	\$150,000
✓ Central Service Transfers/Overhead Rates	Central service estimates to be provided in the budget manual based on a preliminary run of the FY 2005-06 cost allocation	TBD
	Increase minimum capital cost criteria of a CIP project from \$50,000 to \$100,000	n/a

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3496 FOR THE PURPOSE OF FORMALIZING BUDGET ASSUMPTION GUIDELINES FOR DEPARTMENTAL USE IN PREPARING THE FISCALYEAR 2005-06 BUDGET, AND DIRECTING THE CHIEF OPERATING OFFICER TO ADVISE COUNCIL OF ANY SUBSTANTIVE CHANGES IN THE ASSUMPTIONS PRIOR TO THE SUBMISSION OF THE PROPOSED BUDGET TO COUNCIL FOR PUBLIC REVIEW

Date: October 7, 2004 Prepared by: Kathy Rutkowski

BACKGROUND

At the September 21, 2004 Council work session, Financial Planning staff presented for discussion a series of financial assumptions to guide the development of the FY 2005-06 budget. The assumptions included estimates for salary adjustments for various employee groups, fringe benefit costs such as health & welfare and PERS, and a variety of general revenue or global assumptions such as excise tax forecast and allocations for FY 2005-06 and elections expense. This year's assumptions also included a request to increase the threshold level for a capital project to be included in the Capital Improvement Plan (CIP) from \$50,000 to \$100,000 per project.

Councilors identified three areas where they wished to see additional information:

- ✓ Cost estimates for a range of cost-of-living options
- ✓ The estimated excise tax/general fund impact of the salary adjustment options
- ✓ Listing of capital projects that fall within the \$50,000 to \$100,000 range

Staff followed up with this information at the Council work session on September 28, 2004. There was considerable discussion on some of the assumptions and staff was asked to return to Council with a resolution to formalize the assumptions.

Exhibit A to the resolution summarizes the assumptions that were presented to Council at work session on September 21st and September 28th. There are two changes to the assumptions from those presented to the Council.

- We have withdrawn the request to increase the capital project threshold from \$50,000 to \$100,000. There was considerable discussion on this request at both work sessions. It seems clear that Councilors are indeed interested in all projects currently shown in the CIP and were uncomfortable with increasing the project threshold.
- 2. We have made a preliminary allocation to departments of non-dedicated excise tax to be received in FY 2005-06. This allocation is based on current year allocations increased by the CPI factor allowed against the solid waste per ton rate. For FY 2005-06 that CPI rate is 2 percent. The original presentation made no assumption on the allocation formula pending Council discussion with departments on programs. By the time this resolution is presented to Council on October 28, 2004, the Council will have had a series of discussions with departments. Councilors may wish to amend this allocation formula based on those discussions.

This resolution is presented for approval at the October 28, 2004 Council meeting. Assumptions included in this resolution will be incorporated in the budget manual guidelines to be distributed to departments in early November. Departments are to begin formal budget development in November.

ANALYSIS/INFORMATION

- 1. **Known Opposition:** None known.
- 2. Legal Antecedents: None.
- 3. Anticipated Effects: Approval of this resolution will formalize the assumptions to be used in the FY 2005-06 budget. It provides that any significant changes to these assumptions will be brought back to Council prior to submission of the Proposed Budget.
- 4. **Budget Impacts:** The estimated cost impact of each assumption has been calculated where appropriate, and is shown in Exhibit A to the Resolution, Summary of Financial Assumptions.

RECOMMENDED ACTION

The Chief Operating Officer, in concurrence with the Council President, recommends approval of Resolution No. 04-3496.

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Resolution No. 04-3502, For the Purpose of Authorizing the Chief Operating Officer to Execute Change Order No. 6 to the Contract For Operation of the Metro South and Metro Central Transfer Stations

Contract Review Board

Metro Council Meeting Thursday, October 28, 2004 Metro Council Chamber

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 04-3502
CHIEF OPERATING OFFICER TO EXECUTE)
CHANGE ORDER NO. 6 TO THE CONTRACT	,
FOR OPERATION OF THE METRO SOUTH	Michael J. Jordan, with the concurrence of
AND METRO CENTRAL TRANSFER) Council President David Bragdon"
STATIONS)
WWWDDDAG MAN I A LA A A A A A	
	a new contract for the operation of Metro's transfer
station; and,	
WHEREAS In order to provide the new	v Contractor with sufficient time for mobilization, and i
	k, an extension of the existing contract is required; and,
particular for the acquisition of the maching stock	in, an entension of the emissing commute is required, and,
WHEREAS, As described in the accom-	panying staff report, Metro and BFI Waste Systems of
	Contract for the Operation of the Metro South and Metro
	05690 (the "Contract"), to provide for the reloading of
	o Central Station, to implement recent changes in law
	ide for the maintenance of existing equipment during the
extension; now therefore,	
DE IT DESOLVED that the Matre Cour	ncil, sitting as the Metro Contract Review Board,
	te Change Order No. 6 to Contract No. 905690, in a for
substantially similar to that set forth as the attacl	
5 to	
ADOPTED by the Metro Council this	day of, 2004.
	David Dunadan Caunail Dunaidant
Approved as to Form:	David Bragdon, Council President
Approved as to rotti.	
	_
Daniel B. Cooper, Metro Attorney	
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EXHIBIT A TO RESOLUTION NO. 04-3502

METRO CONTRACT NO. 905690

CHANGE ORDER NO. 6

This Contract Change Order No. 6, effective upon full execution, hereby amends Metro Contract No. 905690 between Metro and BFI Waste Systems of North America, Inc. (formerly Browning-Ferris Industries of Oregon, Inc.) "Contractor", dated July 18, 1997, including prior change orders, which contract and change orders are collectively referred to herein as the "Contract".

Purpose

The purpose of this change order is to extend the term of the Contract, change the provision related to payment of overtime wages to reflect a change in law, require the provision of organic waste recovery services and reimburse contractor for equipment maintenance and overhaul during the transition to a replacement contract.

Provisions of Contract Change Order

In exchange for the promises and other valuable consideration described in the Contract and in this Change Order, the parties agree as follows:

- 1. The provisions of Paragraph No. 5 of the Contract Documents entitled "Agreement" are amended to delete the date "November 30, 2004" and to replace such date with "March 31, 2005." In addition the provisions of Article 31 of the General Conditions of the Contract are amended to delete the date "November 30, 2004" and to replace such date with "March 31, 2005."
- 2. Public Contract provisions related to the payment of wages and notification of employees and resulting savings due to changes in Oregon law are amended and cost savings applied in the following manner:
 - A. The provisions of Article 29(D) are replaced by the following:
- "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."
- B. Metro is entitled to any reduced costs to the Contractor per Article 13(D) of the Contract due to the revised wage provisions described in item 2A, above. In lieu of passing such reduced costs to Metro, Contractor shall expend an amount equal to or greater than such reduced costs to perform additional activities to increase materials recovery at the Transfer Stations subject to the approval of Metro.
- 3. <u>Organic Waste Recovery</u>. Contractor shall provide the following additional services and shall be compensated for such services by Metro as follows:
 - A. Contractor shall reload source-separated organics brought to MCS into organics drop boxes provided by Metro's organics processor. Contractor shall handle the material from unloading through reloading in a manner to prevent contamination. Contractor shall manage the material in a manner that includes the following:
 - Receiving source-separated organic material at a location mutually agreed to
 by the parties. Metro shall be responsible for appropriately preparing the
 location. Metro shall be responsible for any deterioration to the location due
 to the nature of the material, if the Contractor manages the material in
 compliance with Item #3 of this change order.
 - Remove any incidental contaminants from source-separated organic loads.
 "Incidental contaminants" as used herein are any contaminants larger than the size of a five-gallon container.
 - Inspection of the loads to determine that the material is Acceptable Waste and qualifies as a load of source-separated organics (i.e. contains no more than four incidental contaminants per ton or 25 per load, or total contaminants of 5% by volume). Contractor, Metro and Metro's Organics Processing Contractor shall mutually develop practical rules for making such determinations.
 - If material is not Acceptable Waste it shall be managed in conformance with Item 10.0 of the Specifications for Metro Central Station. If material is Acceptable Waste but does not qualify as source-separated organics, it shall be managed in conformance with Item 4.0 of the Specifications for Metro Central Station; and Metro and the hauler shall be notified so that appropriate

fees may be charged. The notification to Metro shall include hauler name, Metro truck number, time of receipt, and date.

- Manage the material in a manner to minimize odor.
- Daily reloading of organic material into drop boxes provided by Metro's organics processor, including the staging of boxes to and from any storage area for pick up by a transporter.
- B. Metro shall pay Contractor \$8.50 per ton as a unit price for each ton of source-separated organics reloaded as provided in this section. All such payments shall be considered additional Variable Payments for the purposes of interpreting Change Order No. 3 of this Contract.
- 4. Metro shall reimburse Contractor for equipment maintenance costs as follows:
 - A. Metro shall reimburse Contractor for up to \$100,000 of the third party costs incurred to overhaul the 973 track loader, used as primary equipment in the pit at Metro South Station during the period of the extension described in this change order. Contractor shall be responsible for any additional costs required to render this equipment serviceable for these uses.
 - B. Metro shall reimburse Contractor for the failure of the transmission or engine of either of the 950 wheeled front-end loaders used as primary equipment at Metro Central Station during the period of this extension subject to the following limitations:
 - The failure must be catastrophic in nature (i.e. replacement is required);
 - Metro will reimburse contractor for only half of the costs incurred by Contractor for the replacement of each engine or transmission; and,
 - Metro's total expenditures under this clause shall be limited to no more than \$45,000.

BFI Waste Systems of North America, Inc.	METRO
Signature	Signature
Print Name and Title	Print Name and Title
Date	Date

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3502, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE CHANGE ORDER NO. 6 TO THE CONTRACT FOR OPERATION OF THE METRO SOUTH AND METRO CENTRAL TRANSFER STATIONS

Date: September 29, 2004 Prepared by: Chuck Geyer

BACKGROUND

In March 2004, Metro released a request for proposals to operate Metro's transfer stations. At the end of April, four proposals were received and evaluated per the process contained in the request for proposals. The evaluation of proposals was completed in June 2004 and Metro began negotiations with the highest-ranked firm (Oregon Resource Recovery, LLC).

Due to a variety of factors, Metro was unsuccessful in negotiating a contract with the highest-ranked firm and terminated negotiations in August. Per the process contained in the request for proposals, Metro initiated negotiations with the next highest-ranked firm (Browning-Ferris Industries, Inc.). Metro has successfully negotiated a contract with this firm that will be considered under a process separate from this resolution.

The request for proposals process used to secure a replacement contract for operation of the transfer stations anticipated a mobilization period of five to six months for the next contractor. This time is needed to obtain the major rolling stock vehicles required to operate the stations such as a bulldozer at Metro South and large wheeled front-end loaders for Metro Central.

Due primarily to the complexity of the proposal and financial structure of the initial highest-ranked proposer, both the evaluation and negotiation phase of the project exceeded the projected timeline. Therefore an extension of the existing operations contract is needed.

The extension will allow the next contract to begin with the new equipment required in the request for proposals. This allows Metro to enjoy the benefit of this equipment (primarily improved operations) for the full life of the contract.

In addition to extending the contract, the change order also addresses a change in law related to the payment of overtime, the addition of organics reload services and reimbursement for limited equipment maintenance expenses. The change in law provision reflects current state law that no longer requires the payment of overtime for weekend work in public contracts (but still requires overtime pay for time worked over 10 hours in any one day or over 40 hours in a week). This change will provide savings to the contractor that are due Metro per existing contractual requirements. The change order applies these savings to increased material recovery efforts during the extension period.

Metro anticipates initiating its program to receive source-separated organics from commercial generators in conjunction with the City of Portland in January 2005. The change order requires the contractor to provide these services during the extension and sets the per ton rate at which it will be reimbursed (it is the same rate for this work that has been negotiated for the next contract). Staff concludes that this work,

which entails the receipt and transfer of a new category of source-separated solid waste, is directly related to the scope of work that was described in the competitive process utilized to award the current contract to contractor.

In order to extend the life of the existing major pieces of equipment through the extension period, Metro will participate in some maintenance expenditures. The change order requires Metro to reimburse the contractor for the overhaul of the dozer used in the pit at Metro South Station. The dozer must be overhauled to remain a reliable front line piece of equipment during the extension, since it is now over seven years old. Metro also commits to half the expense of replacing any transmission or engine of the two front-end loaders at Metro Central Station should they fail during the extension. All these pieces of equipment will be used as backups during the next contract.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Metro Code section 2.04.058(b) requires approval of this change order by the Metro Council. If contract amendments require additional work, such as the new source-separated organics transfer work contained in this change order, Metro Code section 2.04.058(c) requires such additional work to be directly related to the scope of work that was described in the competitive process utilized to award the contract.

3. Anticipated Effects

The existing contract for the operation of the Metro transfer stations will be extended for four months and the contract will be amended to address the payment of overtime, the provision of organics reloading and the maintenance of certain pieces of equipment.

4. Budget Impacts

Metro will reimburse the contractor an additional \$100,000 for rebuilding its dozer, and is obligated to reimburse contractor up to \$45,000 (in total) for catastrophic failures of the front-end loaders at Metro Central. Metro will pay approximately \$176,000 less under the contract extension than it would under the replacement contract for the same time period.

The increased costs for the current fiscal year due to this change order and to the higher costs associated with a new operations contract beginning in April 2004, may require budget adjustments in FY 2004-05.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 04-3502.

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Resolution No. 04-3503, For the Purpose of Authorizing the Chief Operating Officer to Execute Contract No. 926063 for Operation of the Metro South and Metro Central Transfer Stations.

Contract Review Board

Metro Council Meeting Thursday, October 28, 2004 Metro Council Chamber

BEFORE THE METRO CONTRACT REVIEW BOARD

CHIEF OPERATING OFFICER TO EXECUTE CONTRACT NO. 926063 FOR OPERATION OF THE METRO SOUTH AND METRO CENTRAL TRANSFER STATIONS) Introduced by Chief Operating Officer) Michael J. Jordan, with the concurrence of) Council President David Bragdon)
WHEREAS, The Metro Council authorized the Metro South and/or Metro Central transfer stati	d release of a request for proposals for the operation of ons (RFP #04-1091 SWR); and,
WHEREAS, Metro staff followed the proceed responsible proposer and negotiating a contract; and	ess provided in the request for proposals for selecting d,
WHEREAS, Metro staff successfully nego now therefore,	tiated a contract with Browning-Ferris Industries, Inc.
	l, sitting as the Metro Contract Review Board, Contract No. 926063, in a form substantially similar to
ADOPTED by the Metro Council this day	of, 2004.
Da	avid Bragdon, Council President
Approved as to Form:	
Daniel B. Cooper, Metro Attorney	
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EXHIBIT A TO RESOLUTION NO. 04-3503

Exhibit A includes the following documents:

- Agreement (including Agreement Exhibit #1 and Final Price Schedule),
- General Conditions,
- Specifications for Metro South Station, and
- Specifications for Metro Central Station.

AGREEMENT

This Agreement is made by and between Browning-Ferris Industries, 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 and the Labor and Materials Payment Bonds (and/or Letter(s) of Credit), the General Conditions, the Specifications, 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 as modified in Agreement Exhibit #1, attached to this Agreement. 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 April 1, 2005, and remain in full force and effect through and including March 31, 2010, as more fully described in the Contract. The initial term of the Contract may be extended only by a written change order signed by Metro and Contractor.

6. Remedies for Default

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

7. Laws of Oregon Apply

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

8. Entire Agreement

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

CONTRACTOR	METRO
Ву:	By:
Print Name:	Michael Jordan Chief Operating Officer
Title:	_
Date:	Date:

Agreement Exhibit #1

Modifications to Contractor's Proposal

- 1. Contractor's Price Schedule for this Agreement shall be the attached "Final Price Schedule" dated 9/10/04.
- 2. Contractor shall not be required to provide the densifier proposed for Bay #3 at Metro South Station as contained in its Proposal.
- 3. Clean Exhaust Program- Subject to Metro's review and approval, Contractor shall install Diesel Particulate Filters (or Diesel Oxidation Catalysts or other pollution control devices if filters are deemed inappropriate) on all new onsite rolling stock utilizing diesel fuel. Contractor shall use ultra low sulfur diesel fuel (ULSD) for all onsite rolling stock using diesel fuel. Metro shall reimburse Contractor for the additional direct costs for installation and maintenance of the diesel particulate filters (or Diesel Oxidation Catalysts or other pollution control devices if filters are deemed inappropriate) and the additional cost of ULSD over the cost of low sulfur diesel, subject to the following limitations:
 - Metro shall not be obligated to reimburse the Contractor for an amount greater than \$100,000 for the fiscal year ending June 30, 2005;
 - Metro shall not be obligated to reimburse the Contractor for an amount greater than \$15,000 for any subsequent Metro fiscal year (Metro's fiscal year is July 1st through June 30th) for subsidizing the ULSD.
 - Metro may, at its sole discretion, make additional funds available to replace diesel
 particulate filters (or Diesel Oxidation Catalysts or other pollution control devices if
 filters are deemed inappropriate) that reach their useful life and to install diesel
 particulate filters (or Diesel Oxidation Catalysts or other pollution control devices if
 filters are deemed inappropriate) in new or old equipment.

Final Price Schedule 9/10/04

METRO SOUTH ONLY ITEMS

1.	Fixed Annual Payment for Waste Transfer	\$1,815,600		
2.	Per Ton Price for each ton in excess of 17,000 tons per Month	\$8.46		
3.	Per Ton Price for each ton of source separated yard debris/wood	\$35.62		
4.	Per Ton Price for each ton of source separated clean drywall	NA		
5.	Per Ton Price for each ton of source separated asphalt roofing material	NA		
6.	Contractor's Recovery Guarantee	15%		
7.	Fixed Annual Payment for Waste Recovery	<u>\$344,556</u>		
MI	ETRO CENTRAL ONLY ITEMS			
1.	Fixed Annual Payment for Waste Transfer	\$2,030,400		
2.	Per Ton Price for each ton in excess of 18,000 tons per Month	\$8.93		
3.	Per Ton Price for each ton of source separated yard debris/wood	\$35.62		
4.	Per Ton Price for each ton of source separated clean dry wall	NA		
5.	Per Ton Price for each ton of source separated asphalt roofing material	NA		
6.	Per Ton Price for each ton of source separated organics	\$8.50		
7.	Contractor's Recovery Guarantee	17%		
8.	Fixed Annual Payment for Waste Recovery	\$344,556		
Ite	<u>Items for Both Stations</u>			
1.	Per Ton Bonus Recovery Credit	\$13.72		
2.	Percentage of CPI proposed (cannot exceed 75%)	75%		
	Other Payments			
	 A. Per Ton Compaction Bonus B. Per Ton Compaction Deduction C. Per Load Overload Adjustment D. Per Ton Recovery Credit/(Disposal Cost Reimbursement) 		\$ 8.01 \$16.02 \$19.58 \$33.78	

GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE 1 -- DEFINITIONS

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

- "Acceptable Waste" means solid waste, as defined in ORS 459.005, as amended, except solid waste that is:
 - 1. Prohibited at a Metro transfer station pursuant to a solid waste disposal permit issued by the DEQ;
 - 2. Prohibited from disposal at a sanitary landfill by local, state or federal law;
 - 3. Special Waste, as defined in Metro Code Chapter 5.02 (including, without limitation, asbestos and asbestos-containing materials), unless the person in possession of such waste has a special waste permit approved by Metro;
 - 4. Conditionally Exempt Generator Waste, as defined in 40 CFR 261.5 as amended or replaced, except for certain types of such waste that Metro specifically identifies in writing as acceptable; or
 - 5. Waste that Metro has identified as unacceptable because it will disrupt transfer station operations, such as, for example, telephone poles.
- "Annual Base Recovery Level" means the number of tons of Recovered Material (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) that the Contractor is required to recover each year. The Annual Base Recovery Level at Metro Central Station shall be 10,200 tons. The Annual Base Recovery Level at Metro South Station shall be 10,200 tons.
- "Annual Base Transfer Level" means the number of tons of Acceptable Waste that the Contractor is expected to transfer for disposal each year. The Annual Base Transfer Level at Metro Central Station shall be 216,000 tons. The Annual Base Transfer Level at Metro South Station shall be 204,000 tons.
- **"Bonus Recovery Credit"** means the amount to be paid to Contractor for each ton of material that Contractor recovers above Contractor's Recovery Guarantee and shall be annually adjusted as provided in Article 12B of these General Conditions. Payment of the Bonus Recovery Credit is contingent on the availability of budgeted funds.
- "Code" means the Metro Code, including any amendments thereto.
- "Columbia Ridge Landfill or CRL" means that landfill located in Gilliam County, OR operated by the company with which Metro has contracted for waste disposal.
- "Container or Trailer" means the receptacle used to transport waste from the transfer station to a disposal site. The receptacle shall include intermodal containers and transfer trailers. Performance specifications are included within this Contract.
- "Contract" and "Contract Documents" include the following:

- 1. The Agreement signed by both parties thereto, and the Performance and Labor and Materials Bonds, or Letter(s) of Credit,
- 2. The Specifications, including Metro's *Transfer Station Contractor's Procedures Manual* attached thereto,
- 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 regarding customer service and material recovery levels, 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 14 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 Proposal" means all material submitted by Contractor to Metro in response to Metro's original RFP for the Contract.
- "Contractor's Recovery Guarantee" means the Material Recovery Level that the Contractor guarantees that it will achieve each month.
- "Contractor's Surety" means the holder(s) of the performance and labor and materials bonds, or the letter(s) of credit, as required by Article 17 of the Contract.
- "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 Cost Reimbursement" means the monthly payment that Contractor shall pay to Metro if Contractor recovers less material than Contractor's Recovery Guarantee. The per ton amount of the Disposal Cost Reimbursement shall be equal to the per ton amount of the Recovery Credit.
- "Disposal Site" means the landfill to which Acceptable Waste is transported and disposed.
- "Fixed Annual Payment for Waste Recovery" means the fixed amount paid to the Contractor each year for material recovery as provided in the Price Schedule and as annually adjusted as provided in Article 12B of these General Conditions.
- "Fixed Annual Payment for Waste Transfer" means the fixed amount paid to the Contractor each year for the transfer of Acceptable Waste received at the transfer station as provided in the Price Schedule and as annually adjusted as provided in Article 12B of these General Conditions.
- "Fixed Payments" means the Fixed Annual Payment for Waste Transfer and the Fixed Annual Payment for Waste Recovery.
- "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.
- "Load of Waste" means the quantity of waste transported by a container during each trip from a transfer station to the Disposal Site.
- "Material Recovery" means any process of obtaining from solid waste, by presegregation or otherwise, material that has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or another purpose.
- "Material Recovery Level" means the percentage amount of material recovery achieved by the Contractor at a transfer station. The Material Recovery Level shall be computed each month at each transfer station by dividing the total number of tons of Recovered Material in that month, excluding source separated materials for which a separate tip fee applies (such as yard debris, wood waste, and compostable organic waste), by the total number of tons of Recoverable Waste in that month.
- "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.
- "Recoverable Waste" means the number of tons of Acceptable Waste received at a transfer station less the sum of (1) the number of tons of waste delivered in loader-type vehicles, compacted drop boxes, transfer trailers, truck tractors, transfer trucks, and tankers, and (2) the number of tons of source separated materials for which a separate tip fee applies, such as yard debris and wood.
- "Recovered Material" means material removed from incoming Acceptable Waste at the transfer station, including source separated material, provided that such removed or source separated material is diverted for reuse, recycling, or use as a fuel. Material shall not be counted as Recovered Material until it has been transported off-site.
- "Recovery Credit" means the payment to the Contractor by Metro for each ton of Recovered Material (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) above the Annual Base Recovery Level. The Recovery Credit represents Metro's avoided cost of disposal for recovered material and shall be annually adjusted as provided in Article 12B of these General Conditions.
- "Recycle" means the transformation of material into new products in such a manner that the original material or product loses its identity.
- "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.
- "Reuse" means the return of material to the economic stream for use in the same kind of application as before without change in the material's identity.
- "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.
- "Suspicious Waste" is waste that the Contractor reasonably suspects or should suspect to be Unacceptable Waste.
- "Tip Fee" means the dollar amount customers are charged per ton to deposit waste at a transfer station.

- "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 Waste" means any waste that is not Acceptable Waste.
- "Variable Compaction Maximization Adjustment" means an addition or deduction from Metro's payment to Contractor based on (1) whether the average weight of each payload of waste compacted for transfer to a Disposal Site is greater than, or less than, 29 tons, and (2) the number of compacted waste payloads that require load redistribution or partial unloading to achieve a road legal payload. If the average weight of each payload of waste compacted for transfer to a Disposal Site is greater than 29 tons, then Contractor shall receive additional per ton payments for the additional waste compacted into each load. If the average weight of each payload of waste compacted for transfer to a Disposal Site is less than 29 tons, then Metro shall make a per ton deduction in its payment to Contractor for the number of additional tons of waste that Contractor would have transported had its loads averaged exactly 29 tons per payload. Metro shall also make a per incident deduction for each payload that requires load redistribution or partial unloading to achieve a road legal payload. The per ton or per incident amounts of the Variable Compaction Maximization Adjustment shall be annually adjusted as provided in Article 12B of these General Conditions.
- "Variable Payments" means Variable Proceeds from the Sale of Recovered Material and all payments from Metro to the Contractor other than the Fixed Payments.
- "Variable Payment for Processing Source Separated Materials" means the per ton payments from Metro to the Contractor for accepting and processing source separated materials such as yard debris, wood, asphalt roofing, and clean drywall, for which a separate tip fee applies. The per ton Variable Payment for Processing Source Separated Materials shall be annually adjusted as provided in Article 12B of these General Conditions.
- "Variable Payment for Waste Recovery" means Recovery Credits paid by Metro to the Contractor or Disposal Cost Reimbursements paid by Contractor to Metro.
- "Variable Payment for Waste Transfer" means the per ton payment from Metro to Contractor for the transfer of Acceptable Waste (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) above the Annual Base Transfer Level, and shall be annually adjusted as provided in Article 12B of these General Conditions.
- "Variable Proceeds from the Sale of Recovered Material" means the Contractor's revenues from the sale of recovered material to third parties.
- "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, fair or living 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, burning and nonburning requirements, permits, fees and similar requirements. Contractor shall also give all notices and obtain all licenses and permits pursuant to all applicable legal requirements.

At Metro's monthly meetings with Contractor, Contractor shall inform Metro of all correspondence or any other documents sent from, or received by, the Contractor, its officers, employees, agents or subcontractors to any federal, state, regional, county or local government agency, relative to any and all applicable legal requirements. Examples of such correspondence include, but are not limited to, citations received from any regulatory authority. Copies of all such correspondence shall be retained by Contractor and subcontractors as provided in Section K of this Article.

- All agreements between Contractor and persons, firms or corporations employed by Contractor for performance of this Contract shall contain this Section's requirements.
- G. 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.
- H. 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.

- I. 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.
- J. Metro may reasonably request any information it deems necessary to determine Contractor's ability to perform or to continue to perform this Contract. Contractor shall provide any such requested information by written reply to Metro within ten (10) days of receipt of such requests.
- K. Records Retention, Audits, and Inspections.
 - 1. Contractor and subcontractors shall maintain all fiscal records relating to the Contract in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:
 - a. The performance of the Contractor, including but not limited to the Contractor's compliance with the Contract, 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 on a subcontractor, under the terms of the Contract or a subcontract;
 - b. Any claims arising from or relating to the performance of the Contractor or a subcontractor under the Contract or a subcontract;
 - c. Any cost and pricing data relating to the Contract; and
 - d. Payments made to all suppliers and subcontractors.
 - 2. Contractor and subcontractors shall maintain records for the longer period of (a) six years from the date of final completion of the Contract, or (b) until the conclusion of any audit, controversy or litigation arising out of or related to the Contract. All agreements between Contractor and persons, firms or corporations employed by Contractor for performance of this Contract shall contain the requirements of this Section K of this Article. The document retention requirements of this Section shall survive the expiration of the Contract for the longer period of (a) six years from the date of final completion of the Contract, or (b) until the conclusion of any audit, controversy or litigation arising out of or related to the Contract.

- 3. 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.
- 4. 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 a 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 the provisions of subsection K.5 of this Article.
- 5. 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 any subcontractor, including, but not limited to, a court proceeding, arbitration, mediation, or any other dispute resolution process.
- 6. Contractor and subcontractors agree that if a Metro audit or records inspection reveals records that 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. Metro may withhold such costs from any sum that is due or that becomes due from Metro to Contractor.
- 7. The failure of Contractor or a subcontractor to keep or disclose records as required in this Section K of this Article, or any solicitation document, may result in the disqualification of Contractor or any such subcontractor as bidders or proposers 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 any such subcontractor is not a responsible bidder or proposer, as provided in ORS 279.029 and Metro Code Section 2.04.052.
- L. 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 16 of these General Conditions.
- M. 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.
- N. 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.
- O. 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 14 of these General Conditions.
- P. 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.
- Q. 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.
- R. Contractor and its respective subsidiary corporations, parent corporations, and any corporations owned or operated by its parent or subsidiary corporations, whether in existence at the time of this Contract or later created, agree not to dispute, contest, or challenge in any way the exercise by Metro of any flow control authority as described in its ordinances, regulations, and bond covenants unless the exercise of such flow control authority has been judicially declared or affirmed to be legally invalid by the highest court of law or equity having jurisdiction to consider the legality or illegality of Metro's exercise of flow control authority. Any breach of this provision, as determined by the sole opinion of Metro, shall constitute a default subject to the remedies contained in Article 11B of these General Conditions.

ARTICLE 3 -- INTENT OF THE CONTRACT DOCUMENTS

A. All services which are necessary to complete the Contract within the limits and in the manner established by these Contract Documents shall be considered as a part of the Contract, and such services shall be executed and performed by Contractor without extra compensation in the same manner and with the same quality of material and services as required by other portions of the Contract.

- B. Unless expressly stipulated or agreed in writing otherwise, Contractor shall provide and pay for all services, labor, overtime labor, standby labor, methods, material, equipment, transportation, necessary maintenance, power, fuel, water, taxes and all other facilities and services (including operating or other necessary costs associated with the testing of equipment), and all other items and facilities of every kind necessary for performance of this Contract.
- C. Words describing material or work which have a well–known technical or trade meaning, unless otherwise specifically defined in this Contract, shall be construed in accordance with such wellknown 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. Specifications, including Metro's Transfer Station Contractor's Procedures Manual attached
 - 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.
- D. Contractor shall also provide the services of a competent spokesperson for the term of this Contract as provided in Article 19 of these General Conditions. Prior to performing services under this Contract, Contractor shall notify Metro in writing of the name, title, address and telephone number of Contractor's Spokesperson.

ARTICLE 6 -- INDEPENDENT CONTRACTOR

- A. Contractor shall perform all work under this Contract as an independent contractor. Contractor is not and shall not be considered an employee, agent or servant of Metro for any purposes, under this Contract or otherwise; nor shall any of Contractor's subcontractors, employees or agents be, nor shall they be considered, employees, agents, subagents or servants of Metro for any purposes under this Contract or otherwise.
- B. Consistent with the provisions of this Contract, Contractor shall have exclusive control of, and the exclusive right to control, the details of the services and work performed hereunder and all persons performing such work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Contract shall be construed as creating a partnership or joint venture between Metro and Contractor.
- C. Nothing in the Contract shall be construed as giving Metro any duty to supervise or control any acts or omissions of any person, entity or party, which acts or omissions are in any way connected with the performance of services under the Contract.

ARTICLE 7 -- SUBCONTRACTORS

- A. Contractor shall submit to Metro the names and addresses of proposed subcontractors and suppliers for each subcontract of the Contract that is for payment of more than \$50,000 per year. Contractor shall provide copies of any subcontracts Contractor enters into to perform this Contract within three (3) business days of receiving a request for such contracts from Metro.
- B. All applicable provisions of the Contract, including, without limitation, Sections F and I of Article 2 and Section C of Article 24 of these General Conditions, and all applicable local, state and federal laws and regulations shall apply to all (1) subcontracts entered into by Contractor in connection with the Contract, and (2) leases, purchase agreements, or finance agreements for equipment or other material used in connection with the Contract.

- C. All subcontracts of whatever nature, including, but not limited to, leases and purchase and finance agreements, shall contain a clause which provides that if Contractor, in Metro's sole opinion, defaults in performance of this Contract and Metro accepts assignment of the subcontract, then subcontractor shall enter into a novation of the subcontract with Metro and, for purposes of interpretation of the subcontract, shall recognize Metro or its assignee as Contractor and shall further recognize that Metro or its assignee shall have all the rights, remedies and responsibilities of the Contractor under the relevant subcontract. Upon written notice from Metro, Contractor agrees to assign all of its rights in all such subcontracts to Metro upon Metro's determination that Contractor has defaulted under the terms of this Contract.
- D. Contractor shall be as fully responsible to Metro for the acts and omissions of the subcontractors and suppliers, and of the subcontractors' and suppliers' employees, firms, agents and servants, as Contractor is for the acts and omissions of its own employees and agents. No provision(s) of this Contract, nor of any contract between the Contractor and its subcontractors, shall be construed as creating any contractual relation between those subcontractors and Metro.

ARTICLE 8 -- SEPARATE CONTRACTS

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

ARTICLE 9 -- ALLOCATION OF RISK/FORCE MAJEURE

A. Representations of Parties

- Prior to submitting any Proposals, Contractor is required to acquaint itself with all transfer and disposal 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 transfer stations 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 14, to request that the Contractor perform work, whether emergency or otherwise, that Metro deems necessary during or following the occurrence of a force majeure in order to prevent damage or to preserve the integrity of the facility.

ARTICLE 10 -- LIQUIDATED DAMAGES

- A. In the event of any default of this Contract by Contractor which default, in the sole opinion of Metro, substantially impedes the normal operations of MSS or MCS, Contractor shall have one hour to remedy the situation such that, in Metro's sole opinion, operations at the transfer station 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 \$6,000 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 waste within twenty minutes of arrival at a facility or Contractor's failure to load a container within one half hour of its availability and the presence of sufficient waste.
- B. If a default as described in the preceding paragraph continues for a period in excess of twenty–four (24) hours, Metro shall not recover liquidated damages for periods beyond the initial twenty–four (24) hour period, but Metro shall be entitled to all other remedies for Contractor's continued default that this Contract or the law provides or permits.

C. It is expressly understood and agreed that any liquidated damages are not to be considered in the nature of a penalty, but, due to the difficulties of proof of loss, the parties have determined that such amounts represent a reasonable forecast of just compensation in light of the anticipated or actual harm suffered by Metro and caused by a breach or default on Contractor's part. Metro may deduct such damages from any amount due or which may become due, or, if not so deducted, the amount of such liquidated damages shall be due and collectible from the Contractor or the Contractor's Surety, from the variable portion of the compensation due, within fifteen (15) days of service of notice by Metro that liquidated damages have been imposed. This remedy shall be in addition to, and not a waiver or surrender of, any other rights or remedies Metro may have under this Contract or any provision or provisions of law.

ARTICLE 11 -- METRO'S RIGHTS AND REMEDIES FOR DEFAULTS IN PERFORMANCE

- A. Metro's Rights and Remedies for Contractor's Default which results in Liquidated Damages: For each default by Contractor that results in liquidated damages pursuant to Article 10A of these General Conditions Metro shall have the unconditional right to all of the following remedies, unless within twenty—four (24) 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:
 - Equitable Remedies: For each default under Article 11A, Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief and the taking possession and operation of any equipment or material used by Contractor in the performance of this Contract.
 - 2. Liquidated Damages: As an additional remedy for each default under Article 11A, Metro is entitled to liquidated damages, as provided in Article 10.
 - 3. Actual Damages: For each event of default under Article 11A which lasts more than twenty—four (24) hours, Metro shall be entitled to recover its actual damages for the period of default extending beyond the twenty-four (24) hour period. Any disputes arising as to the amount of Metro's actual damages shall be resolved by arbitration under Article 25.
 - 4. Immediate Termination or Suspension of Contract: For each default under Article 11A that extends beyond seventy-two (72) hours, Metro shall be entitled to terminate or suspend the Contract immediately and without the necessity of further prior notice to Contractor. In such a case, Metro shall provide Contractor and Contractor's Surety with written notice that it has terminated or suspended the Contract pursuant to this Section.
- B. Metro's Remedies for Defaults Other than Defaults in Article 11A: For each default other than a default under Article 11A of these General Conditions, Metro shall have the unconditional right to one or more of the following remedies to the extent permitted by law, unless, within thirty (30) days after written notice of such default has been served upon both Contractor and Contractor's Surety, Contractor or Contractor's Surety cures or remedies such default, or gives Metro reasonable assurances that the default will be promptly cured or remedied and Metro, in its sole discretion, deems such assurances as satisfactory:

- 1. Equitable Remedies: For each default under Article 11B, Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief and the taking possession and operation of any equipment or material in the custody, possession or control of Contractor.
- 2. Actual Damages: As an additional remedy for each default under Article 11B, Metro shall be entitled to recover its actual damages during all periods of default. Any disputes arising as to the amount of Metro's actual damages shall be resolved by arbitration under Article 25. No liquidated damages remedy shall apply to defaults under this Section.
- 3. Termination or Suspension of Contractor's Performance of the Contract: For each default under Article 11B that extends beyond thirty (30) days, Metro shall be entitled to terminate or suspend Contractor's performance of the Contract in accordance with Section C of this Article.
- C. Procedure for Termination or Suspension of the Contract by Metro:
 - 1. To terminate or suspend the Contract other than in the case of immediate termination or suspension pursuant to Section A(4) of Article 11 of these General Conditions, Metro must notify in writing both Contractor and Contractor's Surety of Metro's intent to terminate or suspend the Contract. Within ten (10) days after service upon Contractor and Contractor's Surety of Metro's notice of intent to terminate or suspend the Contract, Contractor or Contractor's Surety shall either:
 - (a) Cure or remedy any default; or
 - (b) Discontinue its work on the Contract or such part thereof as Metro shall designate.
 - 2. If Contractor does not cure or remedy each default after it has received Metro's service of notice of intent to terminate or suspend the Contract, Contractor's Surety may, at its option, assume full and complete performance of the Contract or the portion thereof that Metro has ordered Contractor to discontinue, and Contractor's Surety may perform the same or may subcontract such work to a contractor or contractors acting on behalf of Surety; provided, however, that Contractor's Surety shall exercise its option and begin performance of the work, if at all, within ten (10) days after Contractor's Surety is served with a copy of the written notice of termination or suspension. Contractor's Surety shall be paid by Metro for all work performed in accordance with and subject to each and every term of the Contract and Contractor's Surety shall be subject to each and every term and condition of the Contract.
 - 3. If Contractor does not cure or remedy each default within the time allowed herein, and if Contractor either does not have a surety or the Contractor's Surety elects not to exercise its option under this Section C of this Article, then this Contract shall terminate at the point in time that Contractor's Surety fails to begin performance pursuant to this Section C of this Article. For one hundred twenty (120) days from the date Contractor ceases to provide service Contractor or Contractor's Surety shall make available and provide to Metro all tractors, trailers, front end loaders, other rolling stock, drop boxes, containers and other attendant equipment used or available for use in carrying out the Contract at the time Contractor ceased or ceases to provide service. In such a case, Metro shall pay Contractor for use of all such equipment at average local market lease rates for substantially equivalent used equipment. This provision shall survive termination of the Contract.

- 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 on account of its insolvency, such an event could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Metro shall be entitled to make written request of Contractor, Contractor's successor in interest and Contractor's Surety for adequate assurance of future performance in accordance with the terms and conditions hereof. Failure of Contractor, Contractor's Surety or Contractor's successor in interest to comply with such request within ten (10) calendar days of its service shall entitle Metro to terminate or suspend Contractor's performance of the Contract pursuant to Section C of Article 11 of these General Conditions. This Contract shall not survive, but instead shall be immediately terminated by, the appointment of any trustee or receiver for Contractor, which appointment rests upon the insolvency of Contractor.
- E. Procedures and Remedies for Termination Under Force Majeure:
 - 1. In the event that any force majeure event results in the closure of the facility for more ten (10) days, Metro shall have the right, in its sole discretion, to immediately terminate this Contract. In the event that Metro chooses to terminate the Contract under this Section, Metro shall serve Contractor with written notice of such intent and shall reimburse Contractor for all actual costs which Metro determines Contractor has incurred in performing the Contract prior to service upon Contractor of the notice to terminate plus an amount equal to ten percent (10%) of such costs less the total payments which Metro has paid Contractor prior to service of the notice of termination upon Contractor.
 - 2. It shall also be a condition precedent to any payments under this paragraph that Contractor fully demonstrate and document to Metro's satisfaction the costs Contractor actually incurred prior to receiving service of the notice of termination. Metro shall determine, subject to its accounting and budget limitations, the method and manner of any payment(s) that it will make to Contractor, which payment(s) may include installment payments over an extended period of time that may extend beyond the termination or completion of the Contract. Any such determination with regard to payments shall take into consideration Contractor's reasonable and actual financing costs.
- F. Procedures and Remedies for Metro Termination for the Convenience of the Government: Metro shall have the option, exercisable in its sole discretion, to terminate this Contract without cause on the third anniversary of the start of this Contract upon sixty (60) days prior written notice. Upon such termination, Metro shall only be obligated for payments due under this Contract for work performed up to the effective date of such termination.
- G. No Waiver: Nothing in this Article, and no actions taken pursuant to this Article, shall constitute a waiver or surrender of any rights, remedies, claims or causes of action Metro may have against Contractor or Contractor's Surety under any other provision of this Contract or any provision(s) of law.

ARTICLE 12 -- BASIS AND METHOD OF PAYMENT

A. Payments:

- 1. On or prior to the tenth day of each month, Contractor will submit to Metro a billing that indicates the number of tons of Acceptable Waste received, waste transferred for disposal, and Recovered Material at the transfer station(s) pursuant to the Contract in the previous month. Contractor's monthly billing shall also indicate the tonnage and dollar amounts, as appropriate, for all items described in this Article based on the information available to Contractor at the time of such billing and in a format approved by Metro. For each calendar month just completed, the number of tons of Acceptable Waste received at the transfer station, the number of tons of Recoverable Waste, and the number of tons of Recovered Material 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 less any previous payments.
- 3. The parties acknowledge that no more than fifty (50) percent of annual payments received by Contractor under this Agreement shall be Variable Payments. On a quarterly basis, and at its sole discretion, Metro shall reconcile the amount of Fixed Payments and Variable Payments that Contractor has received during that contract year. If the Variable Payments received by Contractor to date in the contract year exceed the amount of Fixed Payments received by Contractor, Metro may withhold a portion of the Variable Payments otherwise due to Contractor in such amount as is necessary to ensure that Variable Payments do not exceed Fixed Payments. If Metro has withheld any such Variable Payments from Contractor and thereafter finds, at a subsequent reconciliation, that Fixed Payments exceed Variable Payments and that Metro does not have to make any further reduction in Variable Payments, then Metro shall make additional Variable Payments to Contractor in an amount not to exceed the amount of Variable Payments previously withheld by Metro; provided, that in no event shall total annual Variable Payments exceed total annual Fixed Payments.
- 4. If, pursuant to Section A(3) of this Article, Metro withholds a portion of the Variable Payments otherwise due to Contractor, then either Party may immediately initiate negotiations to amend this Contract as needed to ensure that future Variable Payments not exceed future Fixed Payments. If either Party requests such negotiations, both Parties shall conduct such negotiations in good faith.

B. Percentage Price Adjustment:

The Fixed Payments, the per ton price for the Variable Payment for Waste Transfer, the
Recovery Credit, the Bonus Recovery Credit, the per ton prices for the Variable Payments for
Processing Source Separated Materials, and the per ton and per overload amounts of the Variable
Compaction Maximization Adjustment shall be adjusted up or down on an annual basis
beginning on July 1, 2006, to reflect changes in the cost of doing business as measured by the
percentage price adjustment.

2. The following formula will be used to calculate the percentage price adjustment:

AI = $((CPI_X - CPI_B) / CPI_B) \times PA\%$

AI = Percentage price adjustment

CPIX = Consumer Price Index average for the current year CPIB = Consumer Price Index average for the previous year

PA% = Percentage price adjustment proposed by the Contractor in its

Proposal, not to exceed 75%

The Consumer Price Index (CPI) will be based on the index entitled "Consumer Price Index for All Urban Consumers (CPI-U): Selected areas, all items index; West urban, Size A" published by the United States Bureau of Labor Statistics (BLS). The CPI average for a given year will be a twelve (12) month average from January through December. For example, to calculate the first percentage price adjustment, which will be effective on July 1, 2006, CPIX shall be calculated by adding the published monthly CPI for January through December 2005, dividing by twelve (12), and rounding the result to the third decimal place (i.e., 0.1 percent); and CPIB will be calculated by adding the published monthly CPI for January through December 2004, dividing by twelve (12), and rounding the result to the third decimal place (i.e., 0.1 percent).

- 3. Percent changes in the CPI shall be calculated using 1982–84 as the base year until the BLS publishes data on a new base period. Calculations shall be made from data on the new base from that time forward.
- 4. If the BLS series specified above is discontinued, the contracting parties shall agree upon a substitute series by November 1 of any calendar year. If BLS designates an index with a new title and/or code number or table number as being the continuation of the index cited above, the new index will be used. If the specific index "West urban, Size A" is discontinued but the "All Urban Consumers" index remains, this latter index will be used. Otherwise, the parties shall agree upon a substitute.
- C. Fixed Annual Payment for Waste Transfer: Each year, Metro shall pay Contractor a fixed amount for providing basic waste transfer services for the entire year. The amount of such payment shall be as provided on the Price Schedule. The Fixed Annual Payment for Waste Transfer shall be made in twelve equal monthly disbursements.
- D. Fixed Annual Payment for Waste Recovery: Each year, Metro shall pay Contractor a fixed amount for providing basic waste recovery services for the entire year. The amount of such payment shall be as provided on the Price Schedule. The Fixed Annual Payment for Waste Recovery shall be made in twelve equal monthly disbursements.
- E. Variable Payment for Waste Transfer:
 - 1. Each month, Metro shall pay Contractor a variable payment for each additional ton of Acceptable Waste (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) accepted at MCS from the start of the contract year through the end of that month that exceeds the sum of (1) 18,000 times the number of months that have passed since the start of the contract year, and (2) the number of tons of Acceptable Waste accepted at MCS for which a variable payment has been made in a previous

- month of the contract year. The per ton amount of such payment shall be as provided on the Price Schedule.
- 2. Each month, Metro shall pay Contractor a variable payment for each additional ton of Acceptable Waste (excluding source separated materials for which a separate tip fee applies, such as yard debris and wood waste) accepted at MSS from the start of the contract year through the end of that month that exceeds the sum of (1) 17,000 times the number of months that have passed since the start of the contract year, and (2) the number of tons of Acceptable Waste accepted at MSS for which a variable payment has been made in a previous month of the contract year. The per ton amount of such payment shall be as provided on the Price Schedule.
- F. The Variable Payment for Waste Recovery, or Alternatively, the Disposal Cost Reimbursement:
 - 1. Recovery Credit: For each ton of Recovered Material (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) above the Annual Base Recovery Level, Metro shall pay Contractor a Recovery Credit of \$33.78. The per ton amount of the Recovery Credit shall be annually adjusted pursuant to Section B of this Article. Monthly disbursement of Recovery Credits, if any, shall be as follows:
 - a. Each month, Metro shall pay Contractor a variable payment for each ton of material that Contractor recovers from incoming Acceptable Waste (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) from the start of the contract year through the end of that month that exceeds the sum of (1) 850 times the number of months that have passed since the start of the contract year, and (2) the number of tons of material at MCS for which a variable Recovery Credit payment has been made in a previous month of the contract year.:
 - b. Each month, Metro shall pay Contractor a variable payment for each ton of material that Contractor recovers from incoming Acceptable Waste (excluding source separated materials for which a separate tip fee applies, such as yard debris and wood waste) from the start of the contract year through the end of that month that exceeds the sum of (1) 850 times the number of months that have passed since the start of the contract year, and (2) the number of tons of material at MSS for which a variable Recovery Credit payment has been made in a previous month of the contract year.
 - c. Additional Credit for Reuse: Metro shall pay Contractor an additional 10% of the Recovery Credit for each ton of material delivered to a third party for reuse, as opposed to material delivered to third parties for recycling or use as fuel. For the purpose of this subparagraph, material salvaged by employees of Contractor or Metro shall not be considered material delivered for reuse.
 - 2. Bonus Recovery Credits: Each month, subject to the availability of funds as described later in this paragraph, Contractor shall be eligible to receive a Bonus Recovery Credit for each ton of Recovered Material (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) for which the Contractor has received a Recovery Credit payment pursuant to section F(1) of this Article. For such tons, if the Material Recovery Level exceeds Contractor's Recovery Guarantee, then Metro shall pay to

Contractor a Bonus Recovery Credit for each ton of Recovered Material (excluding source separated materials for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste) above the number of tons of Recovered Material needed to meet Contractor's Recovery Guarantee in that month. The per ton amount of the Bonus Recovery Credit shall be as provided in the Price Schedule, and as annually adjusted pursuant to Section B of this Article. Each Metro fiscal year, Metro shall include in its operating budget a total amount of funds available for the payment of Bonus Recovery Credits and shall inform the Contractor of the amount so budgeted on July 1 of each year of the Contract. Each Metro fiscal year, Metro shall only be obligated to pay Bonus Recovery Credits until such budgeted funds have been exhausted.

3. Disposal Cost Reimbursement: Each month, if the Material Recovery Level is less than Contractor's Recovery Guarantee, then Contractor shall pay Metro a Disposal Cost Reimbursement for each additional ton of material that Contractor would have recovered had it achieved Contractor's Recovery Guarantee. The per ton amount of the Disposal Cost Reimbursement shall be equal to the per ton amount of the Recovery Credit. Any reimbursements made by Contractor under this subsection shall be deposited into the Metro account provided for payment of Recovery Credits, and the Contractor shall thereby have the opportunity to earn back such payments in future months.

Example: Contractor's Recovery Guarantee is 25%. Total incoming Recoverable Waste is 5,000 tons. Contractor must recover 1,250 tons of material. If Contractor recovers only 1,200 tons, Metro will deduct from its monthly payment to the Contractor an amount equal to 50 (the number of guaranteed tons not recovered) times the Recovery Credit.

- G. The Variable Payment for Processing Source Separated Materials: Each month, Metro shall pay Contractor for each ton of source separated materials received at the transfer station for which a separate tip fee applies, such as yard debris, wood waste, and compostable organic waste. The per ton amount of such payments shall be as provided on the Price Schedule, and as annually adjusted pursuant to Section B of this Article.
- H. The Variable Proceeds from the Sale of Recovered Material: Each month, Contractor shall be entitled to retain all proceeds from its sale of Recovered Material to third parties. Contractor shall report the amount of such proceeds as part of Contractor's monthly billing required under Section A of this Article.
- I. The Variable Compaction Maximization Adjustment:
 - Calculation of Compaction Bonus or Deduction. Metro shall adjust the Contractor's monthly
 payment based on average outgoing disposal waste payloads produced during the month as
 provided by the following formula:

Base Tonnage (BT) = 29 tons x (Number of loads of waste transported for disposal at the Disposal Site in the previous month)

Tons Transported (TT) = (Number of tons of waste transported for disposal in the previous month)

Adjustment Tons (AT) = TT - BT

If AT is greater than zero, Contractor shall receive a bonus adjustment equal to AT times \$8.01. If AT is less than zero, Metro shall deduct from its payment to Contractor a deduction adjustment equal to AT times \$16.02.

- 2. Calculation of Overload Deduction. Metro shall make an additional deduction to its monthly payment to Contractor based on the number of outgoing disposal waste payload overloads during the previous month. "Overloads" are defined as those trailers that require load redistribution or partial unloading to achieve a road legal payload. The overload deduction shall be equal to the number of overloads per month times \$19.58.
- J. The Variable Payment for Maintenance Costs.
 - 1. Routine Maintenance of Metro Equipment and Facilities.
 - a. Compactor Parts. Contractor shall be reimbursed for 50% of the costs of the parts necessary to perform routine maintenance of all preload compactors used to prepare a load of waste, including oil used for complete oil replacement. This subsection shall not apply to labor costs associated with compactor maintenance, which costs shall be the responsibility of the Contractor under subsection J(1)(b) of this Article.
 - b. All Other Parts and All Labor Costs. Routine maintenance of all equipment and facilities shall be the responsibility of the Contractor. Contractor shall not be reimbursed for the cost of parts and labor, including all associated costs, necessary to perform such routine maintenance, other than as provided in subsection J(1)(a) of this Article. For purposes of this Contract, routine maintenance shall mean the service and activities generally associated with normal care of the equipment and facilities as suggested by the manufacturer, including but not limited to cleaning, calibrating, oiling, lubricating, replacing filters and drive belts, welding, adjusting, inspecting, preventative maintenance, maintenance tracking and record keeping, and providing and maintaining spare parts inventories.
 - 2. Other Repair and Replacement Costs for Metro Equipment and Facilities: This section describes the responsibilities for the costs of the repair and replacement of parts necessary to keep the equipment and facilities operating or to return the equipment and facilities to an operational state, including the costs of replacing parts of the equipment and facilities that have become unusable as a result of normal wear and tear, except parts necessary in the course of routine maintenance as described in Section J(1)(b) of this Article, for which the Contractor shall be responsible for 100% of the cost.
 - a. Material Recovery Equipment. Contractor shall be responsible for 65% of all costs associated with the repair or replacement of parts necessary to keep the material recovery equipment operating or to return the equipment to an operational state, up to a maximum of \$20,000. Metro shall reimburse Contractor for 35% of such costs, until the amount for which Contractor is responsible has reached \$20,000, at which point Metro shall reimburse Contractor for 100% of the remaining costs.
 - b. All Other Equipment and Facilities. Contractor shall be responsible for 50% of all costs associated with the repair or replacement of parts necessary to keep the transfer equipment and facility operating or to return the equipment and facilities to an operational state, up to a maximum of \$20,000. Metro shall reimburse Contractor for 50% of such costs, until the amount for which Contractor is responsible has reached \$20,000, at which point Metro shall reimburse Contractor for 100% of the remaining costs.

- c. All reimbursements under this Section J(2) of this Article shall be made pursuant to, and in accordance with, all of the force account procedures in Section C of Article 14, but excluding the costs permitted in Section C(3) of Article 14.
- 3. Metro's Option to Effect Repair or Replacement If Costs Likely to Exceed \$20,000: If the repair or replacement of parts necessary to keep Metro's transfer equipment and facilities operating or to return the equipment to an operational state has, or is likely to, cost more than \$20,000 for a single repair or replacement, then Metro reserves the right to effect such repairs through a third party or the Contractor. If Metro uses a third party, Contractor shall reimburse Metro for Contractor's share due pursuant to Section J(2) of this Article. If Metro uses Contractor, repair costs (excluding Contractor's share) shall be reimbursed pursuant to and in accordance with all of the force account procedures in Section C of Article 14, but excluding the costs permitted in Section C(3) of Article 14.
- 4. 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 Waste being received at the facility.
- 5. Capital Improvement: In the event that any capital improvements to a transfer station are required for any reason other than Contractor's fault, Contractor, with the approval of Metro's Contract Manager, shall effect the same if the cost thereof is less than \$25,000 and Contractor shall be reimbursed for such costs pursuant to and in accordance with all of the force account procedures of Article 14C of these General Conditions except for item #3 of Article 14C.

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

- 1. For purposes of this Article and Article 14 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 K 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 K 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 K 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.
- L. 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 K 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 L 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 L 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.
- M. 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.
- N. Submittal of documentation: Contractor shall submit its invoices with a detailed cost breakdown in accordance with procedures approved by Metro.

O. Conditions Precedent to Payment: It is a condition precedent to Contractor's right to any payments under the Contract that all bills for labor and materials, including labor and materials supplied by or to Contractor, are paid in full; and, if requested by Metro, Contractor shall submit receipted invoices and lien waivers as evidence of payment in full of all such accounts. As a further condition precedent to Contractor's right to any payments under this Contract, if requested by Metro, Contractor shall submit a lien waiver before any payment and a final lien waiver stating Contractor has been paid in full prior to the final payment.

P. Final payment:

- 1. Final payment shall fall due only after Contractor shall:
 - (a) Submit to Metro an affidavit certifying that Contractor has paid all federal, state and local taxes including excise, use, sales and employee withholding taxes;
 - (b) Pay and obtain release of record of all liens and all other encumbrances which relate to the services performed under this Contract;
 - (c) Deliver to Metro written releases of all rights to file liens against any sites, signed by each subcontractor and material provider who performed labor or furnished material in connection with the work; and
 - (d) Deliver to Metro its written undertaking, with sureties acceptable to Metro, to:
 - (i) Promptly pay and obtain a release of record as to liens in connection with the work covered by this Contract; and
 - (ii) Defend, indemnify and save Metro harmless from any liability or expense because of any such lien or the enforcement thereof.
- 2. Final payment shall be deemed to occur when Contractor negotiates an instrument from Metro which instrument Metro has designated as final payment.
- 3. When final payment occurs, Contractor warrants that it has received payment in full for its performance of the Contract and waives all further claims against Metro in connection with the Contract. Contractor's acceptance of final payment by Metro shall be conclusive proof of Metro's full and complete performance of the Contract.
- Q. Nothing in this Article is meant to establish an exhaustive list of all the conditions precedent to payment in this Contract. Any and all conditions precedent to payment established by this Contract but not contained in this Article remain valid.

ARTICLE 13 -- RETAINAGE

- A. Metro shall retain five percent (5%) of all unit price payments and fixed payments to Contractor until the total amount of such retainage equals \$50,000 per transfer station. In the alternative, at Contractor's option, Contractor may provide Metro with all or part of the total \$50,000 in retainage for one or both transfer stations in a lump sum. If Contractor elects to pay only part of the retainage in a lump sum, Metro shall retain five percent (5%) of all unit price payments and fixed payments to Contractor until the total amount of retainage equals \$50,000 per transfer station.
- B. This retainage shall not be returned to Contractor until completion of the performance of this Contract, including all extensions to its term. The retainage will be placed in an interest-bearing

- account, pursuant to ORS 279.420. Interest shall accrue to the Contractor and be returned once the balance of the account reaches the limits stated herein.
- C. If at any time the total amount of retainage ever falls below \$50,000 per transfer station due to deductions from retainage allowed by the Contract, Metro shall be entitled to retain five percent (5%) of all unit price payments and fixed payments to Contractor until the total amount of such retainage equals \$50,000 per transfer station.

ARTICLE 14 -- CHANGE ORDERS AND ADDITIONAL OR DELETED WORK

- A. Change Orders and Payment or Credit for Additional Work:
 - For purposes of this Article, the term "additional work" means work which is in addition to the
 work required to be performed 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 12J of these General Conditions.
 - 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 but orders the additional work to be performed, Contractor shall perform the additional work pursuant to the force account procedures provided in Section C of this Article. If Metro does not order Contractor to perform the relevant work, Contractor shall not be entitled to any reimbursement for the work in Contractor's proposal.

- C. Amount of Payment for Force Account Work:
 - If Metro and Contractor cannot agree on the amount of payment that Contractor should receive to
 perform additional work prior to the Contractor beginning the work, and Metro directs in writing
 that the work be done on a force account basis, then the Contractor shall furnish labor, equipment
 and material necessary to complete the work in a satisfactory manner and within a reasonable
 period of time.
 - 2. For such additional work performed (the "force account work"), payment will be made for the documented actual cost of the following:
 - (a) Labor, including forepersons who are directly assigned to the force account work (actual payroll cost, including wages, customary fringe benefits, labor insurance and labor taxes as established by law). No other fixed labor burdens will be considered unless approved in writing by Metro;
 - (b) Material delivered and used on the force account work, including sales tax, if paid for by the Contractor or its subcontractor;
 - (c) Equipment rental, or equivalent equipment rental, including necessary transportation for items having a value in excess of \$100;
 - (d) Additional bond, as required and approved by Metro; and
 - (e) Additional insurance (other than labor insurance) as required and approved by Metro.
 - 3. Payment to the Contractor for force account work shall also include a fixed fee of ten percent (10%) of the cost of the items in Section C(2)(a), (b) and (c), of this Article and a fixed fee of five percent (5%) to the cost of the items in Section C(2)(d) and (e) of this Article.
 - 4. Payment to the Contractor for force account work shall also include an additional fixed fee of ten percent (10%) for the administrative handling of portions of the work that are required to be performed by an approved subcontractor, however, no additional fixed fee will be allowed for the administrative handling of work performed by a subcontractor of a subcontractor, unless by written approval of Metro.
 - 5. The additional fixed fees described in Sections C(3) and (4) of this Article shall be considered to be full compensation for the force account work, covering the cost of general supervision, overhead, profit and any other general expense. In addition, if the force account work permits the Contractor to achieve increased material recovery (in the sole opinion of Metro), Contractor shall not be entitled to additional recovery credits pursuant to Article 12 of these General Conditions for Recovered Material in excess of the average monthly recovered tonnage levels over the previous five (5) months. In such a case, however, Contractor may keep the revenue from the sale of any such additional Recovered Material as an incentive to increase material recovery.
 - 6. Metro reserves the right to furnish to Contractor such material and equipment as it deems expedient for completion of any force account work, and the Contractor shall have no claims for profit or added fees on the cost of such material and equipment.
 - 7. For the purpose of calculating payment for use of equipment as provided in Section C(2)(c) of this Article, rental or equivalent rental cost will be allowed for only those days or hours during which the equipment is in actual use. Rental and transportation allowances shall not exceed the

- current rental rates prevailing in the locality. The rentals allowed for equipment will, in all cases, be understood to cover all fuel, supplies, repairs and renewals, and no further allowances will be made for those items, unless specific agreement to that effect is made.
- 8. The Contractor shall maintain records in such a manner as to provide a clear distinction between the direct costs of work paid for on a force account basis and the costs of other operations. The Contractor shall furnish Metro report sheets in duplicate of each day's force account work no later than the working day following the performance of said work. The daily report sheets shall itemize the material used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor or others. The daily report sheets shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked and the size, type and identification number of equipment and hours operated.
- 9. For the purpose of calculating payment for material as provided in Section C(2)(b) of this Article, such material charges shall be substantiated by valid copies of vendors' invoices and such invoices shall be submitted with the daily report sheets, or, if not available, then with subsequent daily report sheets. The Contractor or its authorized agent shall sign said daily report sheets.
- 10. To receive partial payments and final payment for force account work, the Contractor shall submit, in a manner approved by Metro, detailed, completed and documented verification of the Contractor's and its subcontractors' actual current costs involved in the force account work. Such costs shall be submitted within thirty (30) days after said work has been performed. No payment will be made for work billed and submitted to Metro after the 30-day period has expired.
- 11. 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 Change Order.

D. 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.
- 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.

E. 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.

F. 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 25 of these General Conditions.
- G. 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.

H. Modifications to MSS or MCS:

- 1. Metro's Modifications: Metro shall have the right to make changes to MSS or MCS, including changes to transfer station equipment. If any such modification affects, or will affect, Contractor's costs of operation and maintenance of the affected transfer station, Contractor shall identify such costs and the parties shall negotiate how such change will increase or decrease Metro's payment to Contractor and shall document such changes in a Change Order. If the parties are unable to agree on such changes, then Metro may proceed with such changes and shall increase its payments to Contractor in accordance with Section C of this Article or shall decrease its payments to Contractor in accordance with Section F of this Article. If Contractor is dissatisfied with the amount that Metro increases or decreases such payments then Contractor shall submit such dispute to arbitration pursuant to Article 25 of these General Conditions.
- 2. Contractor's Modifications: Contractor shall not remove or modify any part of MSS, MCS or transfer station equipment without the prior written consent of Metro. Contractor is encouraged to suggest improvements to the transfer stations and transfer station equipment that will result in cost savings or increased recovery, particularly during Metro's annual Capital Improvement Plan review. Upon the implementation of any cost-saving improvement first recommended by Contractor, Metro will favorably consider Contractor's contribution in the course of any negotiations undertaken pursuant to Section H(1) of this Article.

ARTICLE 15 -- METRO'S RIGHT TO WITHHOLD PAYMENT AND TO WITHDRAW FUNDS FROM RETAINAGE

A. Metro shall have the right to withhold payments due Contractor and to withdraw from funds held in retainage 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 and to withdraw from funds held in retainage 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. In no event shall amounts withheld from payment under this Article be construed to be amounts attributable to retainage. Metro's right to retain five percent (5%) of Contract payments under Article 13 of these General Conditions is in addition to Metro's right to withhold payments under this Article.
- D. Metro shall provide at least ten (10) days' written notice of its intent to withhold payments under this Article, and Contractor shall have the right to dispute such actions as provided in these Contract Documents.
- E. No action taken by Metro under this Article shall affect any of the other rights or remedies of Metro granted by any other provision or provisions of this Contract or by law, nor shall it relieve Contractor from any consequences or liabilities arising from Contractor's acts or omissions.

ARTICLE 16 -- 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 17 - PERFORMANCE AND LABOR AND MATERIALS BONDS, OR LETTER(S) OF CREDIT

- A. The initial term of the Performance and Labor and Materials 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 \$1,000,000 per transfer station.
- B. Not later than sixty (60) days prior to each irrevocable Letter of Credit or Performance and Labor and Materials Bonds expiration, Contractor shall execute and deliver to Metro Performance and Labor and Materials 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 25 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:
 - To accept jurisdiction of the courts of the state of Oregon for the purposes of commencing, conducting and enforcing arbitration proceeding pursuant to Article 25 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 25 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 18 -- CONTRACTOR'S AND METRO'S LIABILITY INSURANCE

A. The Contractor shall provide and pay all costs for the insurance coverage designated in the table below 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.

Designated Insurance Requirements

Limits

1.	(a) Workers' Compensation covering all employees who are engaged in any work under the Contract (State/Federal) (including subcontractors' employees)	Statutory
	(b) The Contractor shall require its Workers' Compensation carrier to provide Metro with an endorsement for waiver of subrogation.	Statutory
	(c) Employers' Liability including bodily injury caused by disease.	Not less than \$1,000,000
2.	Commercial General Liability, and Protection and Indemnity, if applicable:	

	(a) Contractors' Public Liability:	\$1,000,000 per		
	(i) Bodily injury (inc. death) and Personal Injury	occurrence/aggregate combined single limit bodily injury and property damage		
	(ii) Broad Form Property Damage and Broad Form Property Damage including Completed Operations, and shall include coverage for Explosion, Collapse and Underground.	injury and property damage		
	This insurance shall include contractual liability to cover the liability assumed by the Contractor under Article 16 of the General Conditions.			
	 (b) Metro's and Contractors' Protective Liability: (i) Bodily injury (inc. death) (ii) Broad Form Property Damage and Broad Form Property Damage including Completed 	\$1,000,000 per occurrence/aggregate combined single limit bodily injury and property damage		
	Operations, and shall include coverage for Explosion, Collapse and Underground.			
3.	Comprehensive Automobile Liability including Owned, Nonowned and Hired Vehicles and including MCS90, (if applicable) endorsement.	\$1,000,000 per occurrence/aggregate combined single limit bodily injury and property damage		
	(a) Bodily injury (inc. death)(b) Property damage			
4.	Umbrella Coverage	to achieve a total coverage of \$10 million		

- 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. When activities of the Contractor are to be accomplished within a public or private right—of—way requiring special insurance coverage, Contractor shall conform to the particular requirements and provide the required insurance. Contractor shall include in its liability policy all endorsements that such an authority may require for the protection of the authority, its officers, agents and employees. Contractor also shall provide insurance coverage for special conditions, when required.
- F. 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.
- G. 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.
- H. Pursuant to Article 12 of these General Conditions, and to the extent allowed by that Article, Metro shall reimburse Contractor only for the actual increased cost of premiums that Contractor must pay to comply with insurance requirements not specified above which become effective after the deadline for submission of proposals. No other reimbursement for costs associated with increased insurance requirements will be allowed under Article 12 of these General Conditions.

ARTICLE 19 - NEWS RELEASES AND MEDIA RELATIONS

- A. Any and all news releases and interviews with news media representatives concerning the operations or facilities at MSS or MCS shall be scheduled and conducted by and through Metro.
- B. Contractor shall not issue news releases, conduct interviews with news media representatives or otherwise release or disclose to news media representatives any information concerning the operations or facilities at MSS or MCS without the prior consent of Metro. Contractor shall promptly notify Metro of the identity of any news media representative who requests disclosure of such information, and in no event shall such notice be provided more than one business hour after Contractor has received such a request. Metro, in its sole discretion, shall determine the response to any such request for disclosure of information in accordance with applicable law.
- C. Contractor's Spokesperson shall be available at Metro's request for interviews scheduled by Metro with news media representatives.

ARTICLE 20 -- 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 21 -- 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 22 -- 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 23 -- TITLE TO WASTE

Title to waste shall immediately pass to the Contractor once it has been accepted at the facility pursuant to the procedures contained in the specifications for MSS and MCS. Upon discovery of Unacceptable Waste other than recoverable materials, as listed in Section 9.0 of the specifications for both MSS and MCS, and medical infectious waste delivered in accordance with Metro's *Medical Waste Acceptance Procedures*, title to such waste shall immediately revert to the original generator/transporter, if identifiable.

Title to waste transfers from Contractor when either (a) the transport contractor breaks the seal on a trailer that has been loaded with waste after the seal has been affixed at the transfer station and before the trailer has been unloaded at the disposal site, at which time title to waste transfers to the transport contractor; or (b) the disposal contractor fails to indicate, in writing on the manifest accompanying the waste shipment and within 60 minutes after the load of waste is dumped at the disposal site, that the load of waste is suspicious waste or unacceptable waste, at which time title to waste transfers to the disposal

contractor. After any testing is performed on suspicious waste, title to such waste passes to the disposal contractor unless the results of such testing indicate that the waste is unacceptable.

ARTICLE 24 -- 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 25 -- 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 or otherwise involving the transfer, transport, collection or disposal of waste by Metro. 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 26 -- 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 27 -- ASSIGNMENT

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

ARTICLE 28 -- 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 29 -- PUBLIC CONTRACTS

A. The provisions set out in Oregon Revised Statutes ("ORS"), Chapters 187 and 279, as amended or superseded, including the latest applicable 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 12L 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 performance of the work as provided in this Contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund (IAF) from Contractor or any subcontractor incurred in the performance of the Contract. Contractor shall not permit any lien or claim to be filed or prosecuted against Metro on account of any labor or material furnished. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- C. Pursuant to ORS 279.314, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, Metro may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor by reason of this Contract. Metro's payment of such a claim in the manner authorized by ORS 279.314 shall not relieve Contractor or Contractor's Surety from obligation with respect to any unpaid claims.
- D. Pursuant to ORS 279.316(4) and ORS 279.334(8), Contractor must give written notice to employees who perform work under this Contract of the number of hours per day and per week that employees may be required to work, as specified in this Section D of this Article. Such notice must be provided either at the time of hire, before commencement of work, or by posting a notice in a location frequented by employees. Except as permitted by federal law or other state statutes or regulations:
 - 1. No person shall be employed under this Contract for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases the employee shall be paid at least time and a half pay for all time worked in excess of ten (10) hours a day or in excess of forty (40) hours in any one week, whichever is greater; and
 - 2. All persons shall be paid at least time and a half pay for all work performed under this Contract on the legal holidays specified in a collective bargaining agreement, if applicable, or on the following annual legal holidays: New Year's Day on January 1, Memorial Day on the last Monday in May, Independence Day on July 4, Labor Day on the first Monday in September, Thanksgiving Day on the fourth Thursday in November, and Christmas Day on December 25. For purposes of this provision, each time a holiday falls on a Sunday, the succeeding Monday shall be recognized as a legal holiday, and each time a holiday falls on a Saturday, the preceding Friday shall be recognized as a legal holiday.
- E. Pursuant to ORS 279.320, Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for such services and all moneys and sums that 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 services. 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 30 -- ASSIGNMENT OF ANTITRUST RIGHTS

- A. Contractor, for consideration paid to the Contractor under the Contract, does irrevocably assign to Metro an interest in any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future, including, at Metro's option, the right to control any such litigation on such claim for relief or cause of action, if Metro's interest, so assigned, exceeds fifty percent (50%) of the total claim in a cause of action by reason of any violation of 15 USC 1–15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person, which goods or services are used, in whole or in part, for the purpose of carrying out the Contractor's obligations under this Contract. Metro's interest shall be a proportion of the total claim or cause of action equal to the percentage of the total claim proportional to the performance of this Contract as measured against the total of Contractor's business affected by the violation.
- B. In the event the Contractor hires subcontractors to perform any of the Contractor's duties under the Contract, the Contractor shall require the subcontractor to irrevocably assign to Metro, as a third party beneficiary, any right, title or interest that has accrued or may accrue to the subcontractor by reason of any violation of 15 USC 1-15, ORS 646.725 or ORS 646.730, including, at Metro's option, the rights to control any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of the Contract, in a like manner as provided in Section A above.
- C. In connection with the assignments in this Article, it is an express obligation of the Contractor that it will take no action that will in any way diminish the value of the rights conveyed or assigned hereunder to Metro. It is an express obligation of the Contractor to advise the Metro Attorney:
 - 1. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
 - 2. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
 - 3. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to Metro.
- D. It is understood and agreed that in the event that any payment under any such claim is made to the Contractor, it shall promptly pay over to Metro its proportionate share thereof, if any, assigned to Metro hereunder.

ARTICLE 31 -- START OF CONTRACT AND CONTRACT COMPLETION

The Contractor agrees to begin services on April 1, 2005, and to terminate such services on March 31, 2010 subject to the provisions of Article 11(F) of these General Conditions.

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SPECIFICATIONS FOR METRO SOUTH STATION

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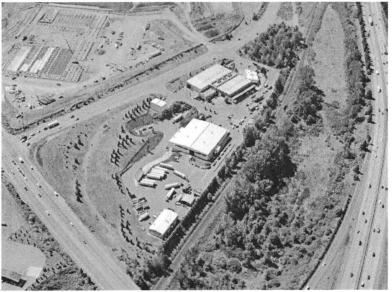
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1.0 INTRODUCTION

The purpose of the SPECIFICATIONS is to provide the Contractor with its operating and maintenance responsibilities for the Metro South Transfer Station (MSS) located at 2001 Washington, Oregon City, OR, as well as portions of the surrounding roadways. These responsibilities are detailed in the sections below. An overview is provided in this introduction.

Generally, the Contractor is responsible for all portions of the 11.5-acre site except for the hazardous waste facility and scalehouses, which are operated by Metro (see figure 1). This includes the supervision of customers while they are on the site. Note: the "Latex Building" in figure 1 should be available as a maintenance facility by the start of operations.



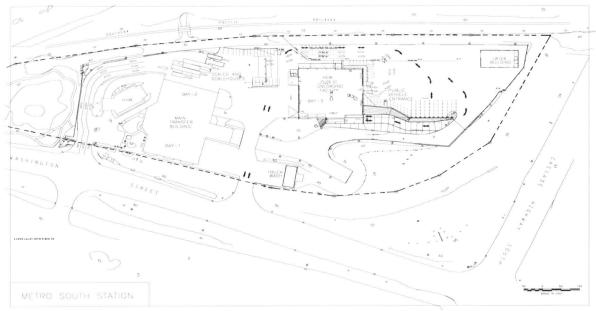


Fig. 1

The Metro South Station receives mixed solid waste and some source separated recyclables from both commercial haulers and the general public. Customers enter the facility through the entrance of the site on Washington Street where the developed portion of the site meets the wetlands portion of the site.

Commercial customers (generally those with packer or drop box size loads) will utilize the scalehouse closest to the transfer building to weigh in. After weighing, the Contractor is responsible for directing the customer to the appropriate area for unloading in Bays #1or #2 depending on the type of waste and how the Contractor chooses to utilize the facility. The bays are divided by a pit (40'wide by 15'deep by 100'

long) into which waste for disposal is dumped. The floor of Bay #2 has been used to sort dry waste for recoverable material. After waste is unloaded into the pit, a bulldozer mixes and pushes the waste into the hoppers of the compactors. Waste must be inspected for unacceptable waste and managed efficiently to facilitate customer throughput. After unloading, commercial customers requiring re-weighing proceed to the scalehouse adjacent to that used for weighing in. Customers with established tare weights leave the site via the exit near the truck wash.

Public customers proceed to third scale near the main transfer building for weighing. After leaving the scalehouse they are under the direction of the Contractor, and shall be directed to the public unloading area at Bay #3. Waste must be inspected for unacceptable waste, materials recovered and the remaining waste managed efficiently to facilitate customer throughput. Contractor may utilize other portions of the facility other than Bay 3 for the public when separation from commercial haulers can be maintained, such as on the weekends.

Contractor is responsible for providing all rolling stock to accomplish the requirements of the contract as detailed herein. This includes rolling stock necessary to receive waste and recoverable materials unloaded at the public area (Bay #3) and move to the main transfer building for compaction, or if recoverable, to markets.

The site is equipped with 2 compactors, truck scales and a wash rack. These systems, as well as the other parts of the facility are the responsibility of the Contractor except as noted. Contractor shall utilize any manuals, manufacturer's recommendations, drawings and directions available to operate and maintain the facility properly.

Contractor is responsible for loading the waste into Metro's Waste Transport Contractor's (Transporter's) trailers. Contractor shall coordinate its activities with the Transporter as well as with any other Metro contractors to maximize transfer efficiencies. The services provided by the Contractor shall be conducted in accordance with all state, federal and local regulations. Operating priorities shall be safety, efficiency, material recovery, protection of the environment and customer service. The Contractor shall make efforts to maintain positive public and community relations.

2.0 PROJECT DESCRIPTION/REQUIREMENTS

Metro will provide the Contractor use of the facilities located at 2001 Washington Street, Oregon City, Oregon, and known as Metro South Station (MSS) for performing the work under this Contract. All equipment and facilities provided at that site shall remain the property of Metro, except as specified herein, and shall be returned to Metro in good working order upon termination or completion of this Contract.

The Contractor shall be responsible for the security, proper operation, maintenance, repair, and condition of all equipment and facilities furnished by Metro. The equipment shall be used exclusively to conduct waste transfer and material recovery operations and shall not be removed from the premises except for purposes of repair or maintenance unless approved by Metro.

Contractor shall provide Metro with a full service transfer station serving the disposal and recycling needs of the public, commercial collectors and industrial accounts, as designated by Metro. While the INTRODUCTION provides an overview of the work to be provided by the Contractor, below is listed the major components and responsibilities of the Contractor for this Contract.

Components of this project include:

- A. Mobilization of equipment and personnel onto the site.
- B. Providing safety equipment and safety/operations training.
- C. Emergency and contingency planning and preparedness.

- D. Maintenance of safe and healthy operating conditions for all customers and employees.
- E. Receiving waste and recyclables on-site from the public, commercial haulers, and industrial accounts.
- F. Conducting Load Check Program and handling Unacceptable Waste in accordance with these Specifications and Metro's *Transfer Station Contractor's Procedures Manual* (referred to as *Contractor's Procedures Manual*).
- G. Traffic control.
- H. The removal of recyclables from public loads by assisting customers and processing of waste.
- I. Operation and provision of a Recycling Center for source separated recyclables.
- J. Movement of waste and recyclables from the Hazardous Waste Facility on-site.
- K. Materials Recovery processing of a portion of the solid waste delivered by commercial customers.
- L. Locating markets for recyclables and providing vehicles and personnel to transport the Source-Separated and Recovered Materials.
- M. Handling, compacting and loading solid waste on-site, including movement from the public area to the main transfer building.
- N. Operation and maintenance of Contractor-furnished equipment and Metro-furnished equipment and facilities except weighing system and Hazardous Waste Facility.
- O. Furnishing of all supplies, materials, equipment and services for performance of the Contract.
- P. Litter control on-site and in designated areas on roadways approaching the facility. Use of a magnet daily for on site cleanup. Site security during all hours.
- Q. Insect, vermin, dust and odor control.
- R. At least monthly meetings with Metro to report on progress achieved and any special problems encountered.
- S. Coordination with other contractors.
- T. Demobilization of equipment and personnel from the site upon completion or termination of this Contract, and return of the site to its original condition as at the start of this Contract, normal wear and tear excepted.
- U. Provision of uniforms for all non-office staff.

3.0 WASTE FLOW AND HOURS OF OPERATION

The facility will be open for the general 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 four hours earlier for commercial and industrial accounts with automation tags, 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 these Specifications 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 be entitled to a reduction in payment for any decrease in hours of operation in accordance with the deletion of work provisions of the General Conditions. For any increase in the hours of operation, Contractor shall be entitled to an increase in compensation in accordance with the additional work provisions of the General

Conditions. 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. For a detailed analysis of projected waste flow on an hourly, weekly, monthly and yearly basis, refer to the Appendix in this document. These projections are estimates only and shall not be regarded as guaranteed flows.

4.0 WEIGHING AND BILLING SYSTEM

After entering the facility, customers will be processed through the weighing and billing system. Metro will be responsible for the operation of the weighing and billing system located at the scalehouses, and for admitting public, commercial haulers and industrial accounts into the facility. Each vehicle shall be weighed by Metro upon entering the facility. Metro employees, operating the scalehouse, shall make all determinations regarding fees to be paid by haulers using the facility and determining what waste shall be categorized as Recoverable Waste.

After unloading, the vehicle shall be reweighed to determine the net weight of the load. If a vehicle contains a large amount of recyclables that qualify for a reduced charge, Metro may require the vehicle to unload the recyclables and reweigh prior to unloading the waste.

The empty or tare weight of commercial vehicles may be established by Metro and recorded so that the vehicles will not be required to re-weigh each time after unloading and so commercial haulers may utilize the automatic weighing system. This system utilizes a tag reader system to identify the vehicle and its tare weight, and then weighs the vehicle and generates a receipt.

The Contractor will not be allowed to operate the weighing and billing system, and will not be responsible for maintenance of the system's equipment, except for cleaning of the scale pits monthly. Maintenance of the scalehouse structures and the provision of janitorial services will be the responsibility of the Contractor.

All Recovered Materials, compacted waste, and Unacceptable Waste shall be weighed by Metro prior to removal from the Facility. This data will provide checks on the facility efficiency and known quantities for Material Recovery and disposal. The Contractor shall be paid based on the incoming weights established at Metro scalehouses for waste and source separated materials for which individual prices have been established. Payment for Recovered Materials shall be established based on outgoing weights as established at the scalehouses.

The Contractor will coordinate its activities with Metro's scalehouse personnel. The Contractor shall provide and maintain a three channel (one of which will be reserved solely for emergency communications on-site), alternate radio communication link between all work areas (Contractor's and Metro's and any other contractors on-site) and the Contractor's spotters in the transfer station.

5.0 TRAFFIC CONTROL

The Contractor shall have responsibility for controlling the movement of traffic onsite and off-site if needed. This shall include the optimal use of queuing lanes and unloading spaces, and the provision of personnel to direct traffic.

Contractor shall provide at least one spotter located in the vicinity of the scalehouse to initially direct customers to the appropriate unloading areas. For commercial customers, the spotter's responsibilities shall include making a prompt determination of the appropriate bay to which to direct the load. The spotter(s) shall be equipped with a radio that shall be used to alert personnel in the unloading areas of the arrival of a load of waste. As the Contractor's initial point of contact with customers, the spotter(s) shall be courteous and be thoroughly trained in evacuation procedures. Any disputes between the spotter(s)

and customers shall be immediately reported to Metro. Contractor shall provide a mobile shelter for the spotter(s).

Once a load of waste arrives at the appropriate unloading area, additional spotters shall direct the load into the appropriate bay and to the appropriate spot for unloading of the vehicle. These personnel shall be appropriately attired to be visible in all lighting conditions, be equipped with flashlights or other signaling devices of sufficient brightness to be seen by customers and be equipped with radios. These spotters shall ensure that the unloading area over which the customers travels and unloads is free of debris and that there is sufficient space for unloading to proceed in a safe and efficient manner. Spotters shall assist customers as needed. Spotters shall be trained in the unloading and load check procedures of *Contractor's Procedures Manual*. Upon completion of unloading, spotters shall coordinate the exiting of vehicles to ensure a safe exit from the facility and remove any debris from the unloading area including around the stanchions at the edge of the pit.

The Contractor shall assist all disabled vehicles and remove them from the traffic ways if necessary.

Contractor shall obtain Metro's approval for proposed on-site traffic patterns and such approval shall not be unreasonably withheld. Metro may direct the flow of traffic at any time for any purpose.

If, in the sole opinion of Metro, the Contractor is providing insufficient personnel to alleviate traffic problems, the Contractor will have one hour to remedy the situation. If Contractor fails to remedy the situation within an hour of notice by Metro, liquidated damages may be assessed.

6.0 ACCEPTANCE OF WASTE

The Contractor shall operate the facility to receive regular deliveries of mixed solid waste on a seven-day per week basis from drop box trucks, compactor-type vehicles, large dump trucks, transfer vehicles, private citizen vehicles and other vehicle types approved by Metro.

Contractor must ensure that unloading operations are done in a safe manner in accordance with Section 12 of these Specification and *Contractor's Procedures Manual*. Contractor shall visually monitor actions taken and equipment used by commercial and public users of the facility, and shall immediately correct any hazards detected during the course of normal operations. Ongoing safety activities include inspecting incoming loads for Unacceptable Waste or hazardous materials, investigating all reported hazards and near miss situations, identifying vehicles with safety deficiencies and notifying Metro immediately.

Contractor shall keep an ongoing log of incidents, inspection activities and follow-up actions, and shall submit this log to Metro each month. Reporting forms and logs are included in the *Contractor's Procedures Manual*.

The Contractor shall accept all of the following types of solid waste that are delivered to the Metro South Station: (1) Acceptable Waste, as defined in this Contract, (2) recoverable materials that are listed in Section 9.0 of these Specifications, and (3) medical infectious waste delivered to the Metro South Station in accordance with Metro's *Medical Waste Acceptance Procedures*, which are part of *Contractor's Procedures Manual*. Unacceptable Waste shall be handled in accordance with Section 12 of these Specifications and *Contractor's Procedures Manual*. Contractor shall be responsible for implementing Metro's load checking program as described in Section 12.

7.0 REFUSAL OF WASTE BY THE CONTRACTOR

The Contractor may refuse to accept any waste at the facility if: (1) the Contractor can demonstrate that current state or federal regulations or the facility's solid waste permit prohibit Contractor from accepting such waste, or (2) such waste is Unacceptable Waste as defined in this contract and is not a recoverable material listed in Section 9.0 of these Specifications or medical infectious waste delivered to the Metro South Station in accordance with Metro's *Medical Waste Acceptance Procedures*, which are part of

Contractor's Procedures Manual. The Contractor shall immediately notify Metro's Operations Supervisor in writing of its refusal of any waste and shall provide a written justification for such refusal. The Contractor shall recover from mixed solid waste any Unacceptable Waste that is a recoverable material listed in Section 9.0 of these Specifications, including tires and white goods. For any portion of Unacceptable Waste that has been accepted and unloaded at the facility, the Contractor shall follow the procedures specified under Section 12 of these Specifications. Contractor must keep records of the following information regarding any such waste that has been unloaded: date, time, vehicle license number, company and/or the individual's name and address, conversation regarding waste with such company representative or individual, pictures and approximate volume and weight of such waste. Contractor shall be deemed to have taken title to any waste it accepts without complying with this section.

8.0 MANAGEMENT OF WASTE AFTER UNLOADING

After unloading, waste shall be managed in a manner to maximize the dual goals of materials recovery and efficient movement of the waste. Sufficient equipment and personnel shall be available to ensure targeted materials are recovered and that the waste is moved efficiently and safely to the compaction systems. This includes sufficient equipment and personnel to move waste from the public unloading area to the compaction system in a timely manner.

Movement of the waste shall be coordinated with incoming loads such that a clean and unimpeded area is available for unloading at all times, in a safe manner. Unloading vehicles shall not be made to back over or unload onto waste. Particular attention shall be paid to the removal of items on the floor that may puncture tires or otherwise damage customers' equipment or jeopardize their safety.

Contractor shall alter operations as directed by Metro to ensure compliance with this section.

9.0 MATERIALS RECOVERY - GENERAL

Metro's goal is to maximize material recovery at its transfer stations. To this end, the Contractor is required to conduct materials recovery operations for both the public and commercial segments of the waste stream, in a manner consistent with the Contractor's proposal and as necessary to achieve the Base Recovery Rate, Contractor's Recovery Guarantee and any Bonus Recovery Credit proposed. Contractor shall also provide the following:

- A. <u>Staffing</u>: Operator must have a designated, qualified and skilled staff person to oversee the materials recovery operations at all times. Skills include experience with and knowledge of markets, marketing and material recovery facility operations. Contractor must demonstrate that it has the corporate resources to support this activity and this position including appropriate training and applicable professional certifications. Metro reserves the right to review and approve the employee that is designated to fill this position.
- B. Markets: The Contractor will be responsible for selecting the markets/brokers for recovered materials except organics, as well as for all activities related to transporting the materials to market. Metro reserves the right to disapprove the Contractor's choice of vendors for the sale and other distribution of all recovered materials. Vendors must meet the following basic criteria:
 - Vendors must be fully permitted and in compliance with applicable federal, state and local laws, regulations, standards and conditions;
 - Recovered materials that meet vendor specifications may not be disposed in a landfill;
 - Vendors' operations must be environmentally sound and must not have a detrimental impact on air, land, or water quality, or on their surrounding neighbors.

When selecting vendors, the Contractor shall give preference to vendors based on the end use of the recovered materials the vendors receive, according to the following priority (in order from most preferred to least preferred): reuse, recycling, composting (yard trimmings and food) and, finally, energy recovery and other beneficial use. If the Contractor has a choice between multiple, comparable vendors that are not distinguishable on the basis of the end use of the recovered materials, then the Contractor shall give preference to the vendor located closest to the Metro region.

Disposal of source-separated recyclable materials (materials accepted under a separate posted price, brought to the facility by self-haul customers receiving a discount, or contained on the list in this section in uncontaminated form) is strictly prohibited. Contractor will arrange for and be responsible for all costs associated with removing tires, oil filters, anti-freeze and yard debris from the entire site, as well as any other material listed in this section that may have a negative market value.

Historical patterns of materials recovery are discussed in the background section of the RFP for this project and in the Appendix, as well as in the operations manual for the facility.

The Contractor shall not be entitled to additional compensation for the loss of, or fluctuations in, recycling revenues due to actions taken by Metro. Contractor shall be allowed to keep the revenues from all recovered materials.

- C. <u>Reuse</u>: Metro's Regional Solid Waste Management Plan as well as the state recycling hierarchy [ORS 459.015(a)] places a priority on reuse and recycling over energy recovery or disposal. Contractor shall remove reusables from the wastestream for reuse by an approved third party. Metro will pay Contractor an additional 10% of the Recovery Credit for each ton of materials delivered to a third party for reuse.
- D. Reporting: The Contractor will report monthly the weight of materials recovered and recovered for reuse by type as measured at Metro scalehouses, the amount by receiving end-markets, and the revenue received by materials. Contractor must develop satisfactory recovery and reuse reporting methods that include an analysis of the cost-effectiveness of recovering materials. For accounting purposes, material recovery must be treated as separate journal entries and must include cost estimates for labor and equipment.

9.1 PUBLIC RECYCLING STATION

Unless otherwise approved by Metro, Contractor shall be required to provide a recycling station, with Metro approved signage in the area and on the bins Contractor provides to receive source-separated recyclable materials from the general public at a location near the area for public unloading designated on the transfer station drawing contained in the Appendix. The purpose of the recycling station is to provide public customers with the opportunity to recycle materials. The recycling station will handle the following materials:

Newsprint Glass containers Mixed non-ferrous

Steel (tin) cans Mixed ferrous Tires

White goods Corrugated cardboard Car batteries

Used motor oil Oil filters Plastic bottles/milk jugs

Anti-freeze Yard debris/wood Magazines Scrap paper Phone books Plastic film

Lawnmowers Window glass Non-halon fire extinguishers

Carpet padding Aluminum

Metro shall have the right to add or delete materials from this list at any time.

All source-separated materials will be stored in containers furnished by the Contractor. The Contractor shall:

- Make a good faith effort to recover materials from public loads by
 - a) keeping materials that are delivered as source separated materials from being mixed;
 - b) pulling recoverables from the mixed waste stream; and,
 - c) recovering materials for reuse.
- Assure the materials are properly prepared for market;
- Assure sufficient containers are available for use and have clear signage posted for the public in the public recycling area;
- Transfer materials to markets and/or processing centers in fully covered containers;
- Keep the recycling station free from litter and contaminated material at all times;
- Maintain the entire recycling area in a neat and clean manner;
- Schedule sufficient pick-ups of recyclable materials to prevent excessive accumulation;
- Maintain warning signs, spill kits and safety equipment;
- Maintain operating safety shower and eyewash in the public recycling area at all times; and
- Collect from Metro's on-site household hazardous waste facility, at no additional charge, any
 of the materials listed above.

Employees assigned to handle recyclable hazardous materials shall be properly trained and equipped.

9.2 COMMERCIAL MATERIALS RECOVERY

The Contractor shall recover materials from incoming commercial loads of mixed solid waste, including all loads originating at construction/demolition sites (guidelines for identifying C&D loads are contained in the Appendix), in accordance with the terms of Contractor's Recovery Guarantee to the extent that such activities do not interfere with the loading of waste in a timely manner as determined by Metro. Contractor may provide incentives to haulers to deliver high-grade loads rich in recoverable materials.

Targeted materials to be recovered from high grade loads:

•	PAPER newspaper telephone books magazines cardboard paperboard scrap paper	MISC. roofing tires window glass car batteries carpet padding carpet mattresses	•	METAL steel cans aluminum nonferrous ferrous scrap white goods	•	PORCELAIN toilets sinks other DRYWALL unpainted painted		PLASTIC plastic bottles plastic film WOOD unpainted lumber pallets yard debris painted lumber
						,	•	painted lumber

Except for materials that are prohibited from disposal in a landfill under state or federal law, such as whole tires and white goods, Contractor shall not be required to recover these materials if it is unable to locate markets for them.

9.3 RECYCLED PRODUCTS PROCUREMENT

Contractor shall adhere to Metro procurement guidelines for recycled products in the operation of the facility. Recycled products include but are not limited to the following: office paper and general office supplies, latex paint, re-refined oil, compost products, retread tires, and building materials. Vendors that supply recycled products are listed in an online database maintained by Metro at www.metro-region.org/buyersguide. Contractor shall abide by recycled products procurement standards of Chapter 2.04 of the Metro Code, as amended (a copy is contained in the Appendix). Contractor shall provide an annual report to Metro that itemizes the type of recycled products that they purchased and their dollar amount.

9.4 RECYCLING

Contractor will also be required to collect recyclable and recoverable materials, including all recyclable paper, glass containers, plastic bottles and cans, in its day-to-day office and on-site general business operations.

9.5 SUSTAINABLE PRACTICES

Contractor shall maximize sustainable practices in conducting its activities. Examples of activities to add for the transfer station:

- use of re-refined oil, lubricants and hydraulic fluids in equipment and rolling stock
- use of bio-based fuel for diesel operated equipment and vehicles or other low polluting fuels and/or pollution control equipment minimizing emissions
- purchase of reused wood and other materials from Rebuilding Center or use of Forest Stewardship Council-certified wood
- plastic lumber or Forest Stewardship Council-certified wood in place of treated wood
- minimum 30% post-consumer content recycled paper for all office use
- toilet tissue, paper towels, and napkins that meet minimum EPA post-consumer fiber standards
- · reusable dishware, cups and utensils
- · Metro latex paint
- recycling system for paper, containers and other office activities
- duplexing where possible
- energy-efficient lighting (use of compact fluorescents)
- Use of remanufactured toner cartridges
- use of environmentally preferable cleaners (see Appendix)
- use of storage containers, plastic and paper bags, traffic management equipment with recycled content

Contractor shall supply information during Metro's annual audit demonstrating compliance with these practices or upon request. Required sustainable practices shall be established through the proposal process.

10.0 TRANSFER INTO TRANSPORTER'S TRAILERS - GENERAL

After materials recovery, the remaining waste shall then be loaded into the compactors. The Contractor is responsible for the compaction and extrusion, into the Transporter's trailers of a road legal payload of waste (also referred to as a bale). The Transporter is responsible for positioning its trailers to the compactors for receiving the loads, removing the loaded trailers, and positioning the next.

The Contractor shall provide bales for loading in a timely manner during pre-arranged compaction hours. For purposes of this section, a "timely manner" shall mean six bales of waste per hour. Metro, the Contractor and Transporter shall meet as needed to establish the compaction hours for which this standard applies. Generally such hours will coincide with peak weekday delivery periods for the facility.

Contractor shall attempt to maximize payloads transferred in the Transporter's trailers while minimizing overloads. Contractor will receive bonuses or deductions based on average payloads. The monthly

payment will also be adjusted for overloads incurred during the month. Payload and overload adjustments shall be made in accordance with Article 12(I)of the General Conditions of this Contract.

A log shall be kept at each compactor to record the information required below. The format shall be approved by Metro.

Prior to extruding a bale of waste into the Transporter's trailer, Contractor is required to do a preload inspection of each trailer. The purpose of the inspection is to determine the condition of the trailer. Contractor shall record the time, trailer number, inspector and any comments concerning the trailer's condition for every inspection. If the inspector believes the condition of a trailer is unsatisfactory for loading, Contractor shall inform the Transporter's representative and Metro to decide whether a replacement trailer should be provided.

At the completion of extruding the waste into the trailer, the Contractor is responsible for installing a lock seal on the trailer, such as a flat metal seal that prohibits removal by hand. Each seal shall be marked with the letters *MSS*, three letters identifying the Contractor and a sequentially increasing set of at least four digits.

Example: MSS-CON-0000

The Contractor shall record the time the bale was ready for extrusion, the time a trailer was available for loading, the seal number, and the weight of the load from the compactor readout into the log. Contractor shall also note whether the load contained special or suspicious waste.

It is the responsibility of the Transporter to ensure that the seal was properly installed before the trailer leaves the staging/storage area. Once the Transporter has verified that the seal is properly installed, the waste contained within the trailer is the responsibility of the Transporter until the seal is broken in accordance with the "ENTRANCE POLICY" contained in the Appendix.

If the Contractor improperly installs the seal, the Transporter is required to notify the Contractor prior to leaving the Facility and request a new seal. The Contractor shall comply with any such requests. Failure to request a new seal will preclude Transporter from any recovery for damages arising out of any improperly installed seal. In addition, the Transporter can request removal of the seal to inspect the interior of the transfer trailer, its contents, and request and receive a new seal from the Contractor.

Each load sealed into the Transporter's trailer will be weighed at the on-site Transporter scale system to determine the payload and whether the load is road legal. The weight of each load extruded into transfer trailers will be printed on a manifest. This manifest will become the official weight record of the load and serve as the basis of payment for the Transporter, the Disposal Site operator as well as for the Contractor's Variable Compaction Maximization Adjustment. It will contain the date, time, container number, container tare weight, the seal number, as well as the weight of the load. A copy of the manifest will be given to the Contractor.

11.0 COMPACTOR OPERATIONS – GENERAL

Contractor shall operate and maintain the compactors in accordance with the manufacturer's recommendations, all applicable regulations and Metro's recommended practices specified below. Contractor shall prepare waste for loading consistent with the manufacturer's recommended practices and shall remove material that is inappropriate for compaction or that become lodged in the compactors. Contractor shall load only Acceptable Waste into the compactors.

11.1 SAFETY

It is the Contractors responsibility to provide all operator training, equipment and operating procedures to protect personnel. Emergency stops shall be visible (red), unobstructed, and easily accessible to the

compactor operator during operations. The Contractor shall maintain all warnings and decals attached to any equipment and will not alter any E-stop or manufacturers' safety equipment without written approval of Metro. Contractor is responsible for ensuring that all operation and maintenance personnel receive appropriate training and certification (including manufacturer's certification).

A written lockout / tag-out program for all equipment must be in place and strictly enforced at all times. A written confined space program describing safe entry procedures for all hoppers, pits and chambers must be implemented. Contractor shall provide and maintain all safety equipment needed to implement these programs. Guarding must be maintained on all rotating / moving parts and conveyors. Guardrails (top rail, mid-rail and toe boards) on elevated surfaces must remain in place at all times. Contractor shall maintain all warnings and decals attached to the machine. Contractor shall ensure that all hazards in the compactor area are clearly marked.

The Contractor Compactor Operators are the assigned Emergency Coordinator for the compactors and loading area at the site for purposes of *Contractor's Procedures Manual*. Compactor operators must receive 40 hours of OSHA Emergency Response Training and medical surveillance and be able to participate in incident response in the event that the compactor is involved in a hazardous materials emergency.

Equipment must be readily available to contain and block any spills from the compactor load or equipment. Equipment and procedures to block storm and sewer drains from contamination must be in place at all times. Immediate actions to take in the event of a hydraulic fluid release from the compactor shall be posted in the compactor area. Contractor shall ensure that safety equipment including respiratory protection, emergency eyewash and fire extinguishers are available at all times in the compactor area.

11.2 LOADING THE COMPACTOR

Compactors are SSI models 4500SPH. They are equipped with remote controls that operate the compactors. These compactors build a single bale. Contractor shall follow the steps for building the bale as described in the operator's manual.

It is the responsibility of the Contractor to load the compactor so it will function properly without jamming, puncturing the compactor or trailer walls, causing fire, explosion, or any other damage. Contractor should follow the operator's manual in selecting materials for compaction.

Waste loaded into the compactors should be well mixed such that consistent density and lengths of maximized payloads are produced. This includes mixing dry garbage with very wet loads to avoid short dense payloads. Loosely packed garbage loads that may produce loads of less than 30 tons should also be avoided.

A reader board for each compactor is visible to equipment operator in the pit loading waste into each hopper. The board displays the weight and length of the bale. Similar information is available at the control panels. Weights are determined by loads cells located on the compactor. It is the responsibility of the Contractor to check and maintain each of the compactor load cells, such that overloads do not occur. It is the Contractor's responsibility to repair the load cell as soon as possible in order to continue operating without overloads.

The compactor shall be operated in such a manner as to reduce spillage of garbage and moisture when ejecting the bale. All waste spilled must be cleaned up after each bale is ejected.

12.0 LOAD CHECKING PROGRAM AND MANAGEMENT OF UNACCEPTABLE WASTE

The requirements of this section are more fully explained in *Contractor's Procedures Manual*, which includes Metro's *Load Check Program* and *Medical Waste Acceptance Procedures*. The requirements of

the manual shall be binding on the Contractor and are incorporated in this Contract by reference. Contractor shall familiarize itself with the manual and its requirements, and shall avail itself of the training opportunities available from Metro's safety and emergency response programs as described in the manual. Contractor shall follow Metro's waste acceptance protocol and procedures for conducting load checks and managing unacceptable and hazardous waste as contained in *Contractor's Procedures Manual*. Contractor shall be bound by the requirements of the manual and any updates thereto.

Below is a summary of the responsibilities of the Contractor and Metro regarding load checking and managing Unacceptable Waste at the facility.

12.1 SERVICES PROVIDED BY CONTRACTOR.

- A. Contractor shall inspect all waste received in a manner which is reasonably necessary to determine whether or not such waste is Unacceptable Waste. Waste that is received at the transfer station shall be visually inspected before and while it is tipped onto the floor. Visual inspection shall be done by at least one person, whose **primary** duty is to monitor the tipping of waste. Contractor shall provide at least one trained hazardous materials employee (HazMat Technician) to be available during all hours of waste acceptance, seven days per week, who's primary responsibility is to carry out the duties of these programs. At the conclusion of the visual inspection, if waste is not refused, title to the waste shall transfer to Contractor.
- B. HazMat technicians shall conduct required load checks and follow up activities in accordance with Metro's Load Check Program and Medical Waste Acceptance Procedures. Contractor shall provide to Metro a log of this activity along with documentation concerning Unacceptable Waste on a monthly basis.
- C. Contractor shall be responsible for all costs associated with incidents or accidents created by movement or loading of Unacceptable Waste that was not spotted during tipping and was later discovered within the facility or loaded into a transport vehicle. This includes, but is not limited to, cleanup and decontamination costs of the facility floor, compactors and Transporter's trailers.

12.2 SERVICES PROVIDED BY METRO.

- A. Metro will provide proper disposal of Unacceptable Wastes, other than recoverable materials listed in Section 9.0 of these Specifications or medical infectious waste delivered in accordance with Metro's *Medical Waste Acceptance Procedures*, if discovered prior to loading into a compactor conveyor, compactor or trailer, subject to Contractor's compliance with *Contractor's Procedures Manual*.
- B. Metro shall provide space for collection of hazardous materials and shall purchase any necessary secondary containers for its collection.
- C. Metro personnel will contact generators of any Unacceptable Waste found by the Contractor, other than recoverable materials listed in Section 9.0 of these Specifications or medical infectious waste delivered in accordance with Metro's *Medical Waste Acceptance Procedures*, and Metro personnel will make arrangements for the removal and proper disposal of such waste.

12.3 GENERAL LIMITATION ON METRO'S LIABILITY

Except as otherwise provided in Section 7 of these Specifications, Metro shall have no duty to reimburse the Contractor for, nor to hold harmless, indemnify, nor defend the Contractor against, any claims, demands, suits, damages, penalties, charges, judgments, liabilities, or losses of whatsoever character or kind, which may arise directly or indirectly from or are in any way connected with any negligent acts or omissions of the Contractor which relate to the management or disposal of Unacceptable Waste.

12.4 CONTRACTOR'S RESPONSIBILITY FOR SHIPPED UNACCEPTABLE WASTE

Contractor shall be responsible for all costs associated with the proper handling and disposal of Unacceptable Waste that has been loaded into a transfer trailer.

13.0 CONTINGENCY PLANS. GENERAL

The Contractor will submit to Metro for approval, within thirty (30) days of signing this Contract, comprehensive contingency plans for protecting life safety, the environment and property while maximizing continued operations under the following conditions:

- A. Emergency bad weather operating procedures, including but not limited to flooding, ice storms and high winds.
- B. Equipment failure at Metro South Station. Plans must include time frame for the implementation of the plan, and the sources for, and description of replacement equipment.
- C. A work stoppage by any of the Contractor's employees.
- D. Local or regional events that requires additional solid waste collection and transport activity such as flooding or earthquakes.

13.1 CONTINGENCY PLANS - EMERGENCY

- A. Contractor shall use the Incident Command System as outlined by Metro's Emergency Action Plan (EAP) and Emergency Response Plan (ERP) contained in the *Contractor's Procedures Manual* to coordinate all emergency response activities. Contractor shall implement and follow Metro's Emergency Action Plan and Emergency Response Plan as specified by Metro's Response Levels Chart, ICS Checklists, ERTeam Procedures and site evacuation procedures for all potential emergency incidents.
- B. In addition to Metro's EAP and ERP, Contractor shall develop and provide to Metro coordinated plans to minimize hazards to human health and the environment, damage to buildings and the site, and the interruption of normal transfer station operations due to:
 - 1. Fires: including alarm system information, fire protection systems and monitoring, and fire prevention programs;
 - Releases of hazardous substances beyond the scope of site responders: including arrangements with emergency responders and outside contractors;
 - 3. Explosions;
 - 4. Power outages;
 - 5. Hostile, violent or threatening persons on the site; and
 - 6. Flooding, Earthquake, or other serious local or regional emergency.
- C. Contractor shall ensure that a trained and certified Incident Commander who has the authority to implement the Site Emergency Action Plan is available at the site at all times. Contractor shall provide to Metro the names and telephone numbers of all personnel designated as Incident Commanders. Incident Commanders must be thoroughly familiar with the Site Emergency Action Plan (EAP), Emergency Response Plan (ERP), and other established contingency plans.
- D. Contractor's on-site Incident Commander shall serve as Incident Commander in all potential emergency situations, and shall protect life safety by initiating evacuation procedures as per Metro's Response Levels Chart. Contractor shall unify or transfer command to Metro and/or emergency response agencies as appropriate once evacuation procedures are completed. Contractor shall notify Metro Management Support Team by pager immediately in all incidents that requires any partial or full transfer station

evacuation, whenever 9-1-1 is called to the site, and whenever operations are halted for emergency response.

13.2 HEALTH AND SAFETY PROGRAM, ACCIDENT PREVENTION

- A. The Contractor shall establish a formal Safety Program for employees and supervisors, and shall document safety activities in order to identify, reduce and control potential hazards to workers and other personnel at the site. Contractor shall respond promptly to hazard reports, complaints and accidents to determine the cause of the hazard and to take corrective action in order to reduce or eliminate the reported hazard. Contractor will develop site-specific safety manuals. *Contractor's Procedures Manual*, Emergency Action Plan, and Emergency Response Plan are provided by Metro.
- B. Contractor shall ensure compliance with all applicable Oregon OSHA standards, including but not limited to written programs, training, equipment, and standard operating procedures. All applicable Or-OSHA standards shall be observed including but not limited to: hazard communication, blood borne pathogens, confined spaces, personal protective equipment, respiratory protection, hearing protection, lock-out tag-out, medical surveillance, asbestos, radiation, fire prevention, vehicle and equipment operations, welding, machine guarding, fall protection, safety committees, accident prevention and Hazardous Waste Operations and Emergency Response, and Oregon OSHA documentation and reporting requirements. All safety program policies, procedures, investigations, site inspections and records of training shall be made available to Metro upon request. Contractor is responsible for the occupational health and safety of all personnel employed by the Contractor and it's subcontractors working on site.
- C. Contractor shall ensure compliance with the General Safety Program requirements listed in the Contractor's Procedures Manual

13.3 SAFETY AND EMERGENCY RESPONSE TRAINING PROGRAM

- A. Contractor personnel training requirements are specified in the *Contractor's Procedures Manual*.
- B. Contractor shall ensure that all training requirements are met on an on-going basis, ensuring that personnel are trained to appropriate levels based on job duties, task assignments, changes in equipment, programs or policies, and on expected actions in emergency situations. Contractor is required to provide all employees with safety and health information and appropriate training as required by Or-OSHA and this Contract.
- C. An employee safety orientation and training program will be implemented by the Contractor prior to the start of the Contract, and will continue throughout the term of the Contract.
- D. Training and warning signs must be presented in a format and language understood by all employees. Contractor shall provide safety orientation, hazard communication, job-specific training, and basic personal safety instruction to all staff. Contractor shall regularly evaluate employees' on-going understanding of safety procedures and concepts.

14.0 PARKING

Parking is available for use by the Contractor's employees in areas designated by Metro. All other parking areas shall be approved by Metro prior to use. Metro reserves the right to change parking areas as necessary.

15.0 SECURITY

Contractor shall provide personnel for mobile/foot patrol for the site, 24 hours per day to prevent unauthorized site entry and/or facility misuse. Contractor shall have in place 24 hour staffed communication coverage including emergency communications equipment to include both required radio and cellular services. Security patrol backup and emergency situation response shall be available in addition to on-site personnel and shall be on-site no more than fifteen minutes from the time of the original request for security assistance to come to the site. Provision of these additional personnel shall be reimbursed in accordance with Article 14 of the General Conditions.

On-site security personnel's supervisors shall perform and document at least two unscheduled on-site inspections of such personnel (at least one of which will be between the hours of 11:00 p.m. and 4:00 a.m.) monthly and the inspections shall be noted and signed by the supervisor on a shift report kept by on-site security personnel and available to Metro.

Contractor shall provide back up and/or additional security personnel for Metro special events or meetings as requested by Metro within two hours of such request. Such additional personnel shall be reimbursed in accordance with Article 14 of the General Conditions.

Contractor shall replace any on-site security personnel requested by Metro.

Contractor shall document and provide copies to Metro ensuring that all security personnel assigned to the site shall:

- have recent and regularly scheduled background checks;
- be free from all felony and misdemeanor convictions deemed unacceptable under the Oregon Department of Public Safety Standards and Training requirements pursuant to ORS 181.870-879;
- > not be a user of illegal drugs or an abuser of alcohol; and
- be certified as a private security officer under the Oregon Department of Public Safety Standards and Training requirements pursuant to ORS 181.870-889.

All services provided under this specification shall be performed in accordance with the highest industry standards as determined by Metro. Said performance shall include but not be limited to the reasonable handling of sensitive public and emergency situations. Contractor shall be liable for all damages resulting from its failure to provide adequate security.

16.0 LAND FOR STORAGE PURPOSES

On-site storage of equipment, rolling stock and supplies, for the use in performance of the Contract, shall be permitted as space is available. Upon notice, Metro will have the right of access to all storage areas occupied by the Contractor.

17.0 TRANSFER TRAILER STORAGE

A transfer trailer staging/storage area is provided at Metro South Station such that the Transporter can store up to ten transfer trailers on-site, near the entrance to Bay 3. The Transporter is responsible for shuttling (via a "yard goat" vehicle) an empty transfer trailer to the compactor, and returning it to the staging area when loaded.

18.0 INSPECTION

Notwithstanding the annual review and inspection, the Contractor shall permit inspection of the Work by Metro, its representatives, and governmental authorities having jurisdiction over the Work, at all times.

Metro will inform the Contractor which of Metro's employees will be responsible for routine inspections, and what authority such inspectors will have.

In conjunction with the review of the Contractor's annual report, Metro, at its own expense, will review records of Facility performance over the previous contract year and inspect the Facility. The primary objective of this annual review and inspection will be to verify that the Facility is operating at its design level.

The annual performance review will consist of an audit of all Facility operating records for the previous contract year. The annual inspection will consist of: (1) an inspection of the physical plant and the Contractor's operating history with emphasis on facility condition, safety and hazard mitigation; (2) a review of plant and equipment maintenance and replacement records; (3) a review of on-site or offsite accounting or bookkeeping data related to the receipt, recovery and disposal of all waste brought to the Facility; and (4) determination of continued efficiency and optimal operation of the Facility.

Prior to the start of work and prior to termination or completion of this Contract, Metro, accompanied by the Contractor, will inspect all items of Metro-furnished equipment and facilities and shall jointly prepare a list of items requiring repair as a result of the Contractor's use. Final payment will not be made until the required repairs have been completed. Equipment and facilities that have deteriorated due to normal usage need not be repaired to a like-new condition.

19.0 PREFERENTIAL TREATMENT

The Contractor shall not, by act or omission, discriminate against, treat unequally, or prefer any user of the facility in the operation of the transfer station. Preferential treatment within the site will be considered a default by the Contractor and a breach of this Contract.

20.0 FIRE CONTROL

The site is provided with fire control equipment. The fire control equipment now on-site shall remain for the Contractor's use. Contractor will ensure inspections and recharging of all fire extinguishers within all buildings on site per applicable law. Any additional or replacement equipment required for fire protection, and any maintenance of existing, additional or replacement equipment shall be the responsibility of the Contractor. The equipment shall be tested in accordance with manufacturer's guidelines, Metro's insurance provider and any applicable legal requirements. The Contractor shall provide 24 hour monitored alarm service for the Facility, including the Hazardous Waste Facility.

21.0 VECTOR CONTROL

The Contractor shall conduct the operation of the transfer station in a manner considered unfavorable for attracting or breeding rodents, birds and insects and that complies with Metro's Integrated Pest Management mandate. An annual report shall be written and provided to Metro that details pest related activity, action taken and results experienced.

Strict adherence to these specifications and operation procedures will reduce the potential problems to a minimum. In the event that rodent, bird or insect activity becomes apparent to Metro or the Contractor, the Contractor shall initiate supplemental vector control measures at its expense, including removal of dead animals. Semi-annual inspections by a certified exterminator shall be conducted at Metro's direction and expense, and a copy of the findings will be forwarded to Contractor. Metro may direct the Contractor to undertake any recommended actions by the exterminator, at the Contractor's expense.

22.0 ODOR, DUST AND NOISE CONTROL

The Contractor shall control odor and dust on the site using proper waste handling methods. Contractor may perform alternative dust and odor control measures with the approval of Metro. Equipment will be operated within limits of noise regulations.

Contractor must meet or exceed OSHA or ACGIH recommended Threshold Limits Values for all regulated hazards. Contractor shall monitor all work areas for hazards including toxic substances, dust and noise at least annually.

Contractor shall not allow dust levels in customer areas to exceed 2.0 mg/m3 at any time.

If in the sole opinion of Metro, odor, dust, noise or other hazards are not adequately controlled, then Contractor shall immediately correct the hazards at Metro's direction.

23.0 HAZARDOUS WASTE FACILITY

Metro operates an on-site Hazardous Waste Facility that accepts household and commercially exempt generator hazardous materials. It is the responsibility of the Contractor to provide traffic control to and from the Hazardous Waste Facility, and shall obey any emergency orders given by Metro personnel in connection with that facility. Contractor may use the Hazardous Waste Facility to dispose of hazardous Unacceptable Waste accumulated from incoming waste in conformance with the *Hazardous Waste Handling Procedures Manual*. Contractor shall remove all recyclables recovered at the Hazardous Waste Facility for no charge, and shall remove and dispose of Acceptable Waste generated at that facility. Contractor shall receive only its normal per ton rate for removal and disposal of such Acceptable Waste.

24.0 LITTER CONTROL

The Contractor shall conduct at least two daily litter cleanup activities, once before 10:00 a.m. and once after 5:00 p.m. each day. Covered areas are to include the entire site (including, the Hazardous Waste Facility area, Transporter's parking area, landscape areas), and both sides of Hwy 213 between the I-205 interchange and Washington St., and both sides of Washington St. between Hwy213 and the Abernethy Creek Bridge.

25.0 ON-SITE PERSONNEL

The Contractor shall provide sufficient on-site personnel to ensure efficient operation, maintenance and management of the facility (including separate operating areas for self-haul and commercial customers). During peak periods, or when some personnel are unavailable for whatever reasons, additional personnel shall be provided as necessary for the continued and uninterrupted operation and maintenance of the facility in the most efficient manner. The Contractor is responsible for identifying such trends and adjusting the number of personnel as required at no additional cost to Metro.

If Metro determines that additional personnel are needed, Metro shall direct the Contractor to provide additional personnel and Contractor shall supply the additional personnel as directed within 2 hours of receiving the directive.

To ensure proper staffing, Contractor shall submit a staffing plan for Metro's approval every three months. The Contractor shall follow the staffing minimums listed below.

During all hours of Commercial Waste Acceptance - Acceptable Minimum

The Contractor shall meet the following minimum personnel requirements during Commercial Waste Acceptance hours:

- A. One spotter per operating area to assist in the control of traffic, unloading of refuse, control of debris, maintenance of the site, recovery of recyclables from public loads, and the checking of receipts from all customers (minimum 40 hour hazwaste-trained).
- B. On-site security.

During all hours of Self-Haul Waste Acceptance - Acceptable Minimum

In addition to the requirements listed above, the Contractor shall meet the following minimum personnel requirements during all hours of Self-haul Waste Acceptance:

- C. One Superintendent or Foreman who shall be considered the representative of the Contractor in charge of the work.
- D. One inspector whose <u>primary</u> duty is to monitor for suspicious waste and unacceptable waste, ensure compliance with Special Waste Conditions, conduct the load-checking program and ensure compliance with the *Contractor's Procedures Manual*.
- E. One loader/equipment operator per operating area (exclusive of compactor operators).
- F. Two traffic control laborers.
- G. One laborer, per operating area that is accepting self-haul waste to control traffic and to assist with the recovery of recyclable materials from loads, the processing of recovered materials for shipment to markets including the stripping of appliances, the high grading or processing of commercial loads if required.
- H. One laborer dedicated to provide litter patrol and cleanup on and off site (8 hours per day).

During the peak periods of 10 a.m. to 2 p.m. weekdays and 8 a.m. to 5 p.m. weekends, the Contractor shall provide twice as many personnel in operating areas accepting self-haul waste for items A and G above, as well as twice the number of traffic control laborers (F above).

The Contractor shall be required to train all personnel directly involved in performing the Work described in the Contract. All employees operating equipment shall receive documented training and acquisition of certificates as recommended by the manufacturer, on all equipment they are authorized to operate. All employees shall receive sexual harassment and diversity training annually. Supervisory personnel shall be familiar with the Contract Documents. At least one supervisor shall have read Metro's Regional Solid Waste Management Plan.

The Contractor shall ensure that, only to the extent that their essential job responsibilities require it, personnel are sufficiently proficient in speaking, understanding, reading, and writing English to enable them to perform their essential job responsibilities. For example: (1) Supervisory personnel must be able to read, understand, and explain the Contract Documents and other written materials such as OSHA rules and safety manuals, must frequently communicate with public customers, and must occasionally write reports, letters and other documents; (2) Equipment operators must be able to communicate orally with the other staff and customers concerning proper tipping operations, unacceptable wastes and emergency procedures; and (3) Spotters and traffic control personnel must be able to communicate orally with public customers, with whom they will be in constant contact, concerning proper parking and tipping activities, to answer operation questions concerning recycling rules and unacceptable wastes, and to provide safety information in an emergency. This requirement shall not be implemented in a manner that illegally discriminates on the basis of national origin, and in no event shall the requirements of this paragraph be interpreted to permit, condone, or encourage illegal discrimination against any person on the basis of national origin. If the Contractor determines that it is unable to comply with this paragraph without engaging in illegal discrimination on the basis of national origin, then Contractor shall not comply with this provision. If Contractor makes such a determination, then Contractor shall immediately inform Metro of its conclusion to that effect in writing, and Contractor shall work with Metro, at Metro's request, to address this issue in a non-discriminatory way.

26.0 TRANSFER STATION EQUIPMENT

Contractor shall use adequate equipment, suitable for heavy-duty service in connection with a solid waste transfer station and materials recovery operation. The equipment proposed by the Contractor (and modified in any subsequent negotiation) shall be used in the performance of the work. It is the responsibility of the Contractor to supply additional equipment or make substitutions as appropriate, at no additional cost, to accomplish the work as described in the Contract in an efficient manner.

All rolling stock must, at a minimum, use low sulfur diesel and be equipped with the latest apparatus to minimize discharge of particulates and other contaminates to the air, or more stringent pollution control measures as negotiated in finalizing this Contract. The equipment utilized must be specifically designed for the use intended. Modified or "built-up" equipment will not be acceptable without Metro approval. The Contractor shall properly protect the equipment and place it in the charge of competent operators.

All major pieces of rolling stock such as front end and track loaders, and skid loaders furnished by Contractor shall be new and unused as of the beginning of this Contract, and all equipment shall be suitable in design and construction for arduous, heavy duty service in a solid waste transfer station operation. All equipment shall comply with all applicable laws and regulations.

Metro shall have the right, but not the duty, to purchase any or all equipment owned by Contractor at the expiration or earlier termination of this Contract, at its net book value as shown on Contractor's financial statements, which shall be no greater than the purchase price less accumulated depreciation claimed by Contractor on its federal income tax returns. Contractor shall provide to Metro, upon request, properly signed Financing Statements and all other necessary documents for Metro to secure its purchase options.

Contractor shall use blade guards and rubber tires on all mobile equipment operated in and around the facility and shall use due care in their operation to avoid damaging the tipping floors and other facilities.

26.1 FUEL STORAGE

A Metro-approved fuel storage area is available on-site for a Contractor-supplied tank. The Contractor shall ensure compliance with all regulations if an on-site storage tank is utilized.

26.2 COMPACTORS

Two Metro-owned SSI Model 4500 compactors are to be used in the compaction of waste.

27.0 MAINTENANCE REQUIREMENTS

Unless otherwise specified, the Contractor shall be responsible for the maintenance and repair of the facility, all Contractor-furnished equipment, and all Metro-furnished equipment and facilities, including all plumbing, mechanical, and electrical systems and components, drainage structures, fixtures and devices related thereto, or which form a part of, or are installed therein.

27.1 METRO-FURNISHED EQUIPMENT

- A. The Contractor shall maintain Metro-furnished equipment in good working condition at all times. Maintenance shall conform to the recommendations of the manufacturer. The Contractor shall not alter or remodel Metro furnished equipment without advance written approval from Metro.
- B. Equipment covered by a manufacturer's warranty shall be maintained in accordance with the terms of the warranty. All repairs or adjustments covered by the manufacturer's warranty shall be referred to an authorized representative of the manufacturer.

- C. Contractor shall make all necessary repairs that are not covered by the terms of the manufacturer's warranty, for whatever reason, shall be made by the Contractor. The Contractor will use manufacturer-recommended parts in preventative or repair maintenance, unless Metro approves substitutions.
- D. The Contractor shall be responsible for replacement/repair of any Metro-owned equipment or facilities lost, damaged, destroyed, worn out, stolen, or rendered inoperable, due to Contractor's negligence, including but not limited to Contractor's failure to operate or maintain the equipment in accordance with the manufacturer's recommendations as contained in the appropriate manual (a list of which is contained in the Appendix) or these Specifications.
- E. Contractor shall maintain an inventory of spare parts as recommended by the manufacturer and as necessary to minimize down time.
- F. All stationary equipment shall be suitably painted and/or finished so as to present an acceptable appearance in the opinion of Metro.
- G. Upon completion of the Contract, Contractor shall return to Metro the Metro-furnished equipment in a condition that reflects normal wear and tear.

27.2 CONTRACTOR-FURNISHED EQUIPMENT

- A. Contractor-Furnished equipment shall be properly maintained in a safe working condition at all times. The Contractor shall be responsible for all costs associated with Contractorfurnished equipment.
- B. The Contractor shall furnish, at its expense, whatever backup or substitute equipment for Contractor-supplied equipment which may be required to continue operation in accordance with Contract requirements during the period when equipment is inoperable. Provisions must be made, and approved by Metro, for a replacement dozer to be available.
- C. Contractor shall ensure all equipment complies with Metro's Clean Exhaust Program as negotiated as part of the proposal process.

27.3 BUILDINGS

- A. The buildings shall be maintained in good condition at all times. Contractor shall repaint all painted surfaces on the interior and exterior of the scalehouses, Contractor's offices, all breakrooms and restrooms (excluding facilities associated with the onsite hazardous waste facility), and interior concrete walls in Bay 1 every 24 months. Metro will supply latex paint for non-specialty applications (for example, safety yellow cannot be provided) at no cost to the Contractor. Factory-finished metal wall panels of the buildings shall not be repainted. Contractor shall repaint all safety devices in the transfer station bays and wash rack such as bollards, entrances and exits, traffic dividers, etc. every 24 months or as needed (in Metro's sole determination and at its direction). The type of paint, color, and method of application shall be subject to review and approval by Metro prior to commencement of repainting work.
- B. The Contractor shall be responsible for inspection, lubrication, adjustment, repair and maintenance of all building systems (including scalehouses) to include, but not necessarily be limited to, plumbing, sumps, degreasers, fixtures, heating, ventilating, and air conditioning systems, components, and devices; fire and dust suppression systems; radio communications equipment. Contractor shall replace any item, component, or device that is lost, damaged, destroyed, or which fails during the contract period shall be replaced by the Contractor.
- C. The Contractor will be required to clean storm water sumps as needed.. Contractor will ensure compliance with all permits and be responsible for all costs associated with permit compliance.

27.4 WEIGHING SYSTEMS

- A. Maintenance and repair of weighing system scales and associated equipment will be performed by Metro at no expense to the Contractor. The Contractor will be required to clean the scale pits and decks monthly at no cost to Metro and during times that are not disruptive to traffic flow.
- B. Maintenance of the compactor weighing systems shall be the responsibility of the Contractor.

27.5 COMMERCIAL AND INDUSTRIAL VEHICLES WASH RACK

- A. The Contractor shall operate and maintain twice daily, or as needed, the existing commercial and industrial vehicle wash rack. Contractor shall restrict use of the wash rack to commercial and industrial customers.
- B. Daily maintenance will include the inspection of the truck wash sump, and cleaning as needed or at least weekly. Contractor shall conduct a general cleanup of the wash rack area *at least* twice daily. Weekly removal of all accumulated solids from catch basins shall be performed. Hoses must be maintained in operable condition and nozzles must be attached to hoses at all times. The operating pressure shall be such that commercial collection vehicles that use the facility can be cleaned adequately. The Contractor will be responsible for maintaining the sewer lines from the wash rack, and for all other parts of the wash rack as well, including their replacement.
- C. Contractor shall supply shovels and brooms for users of the washrack.

27.6 DRIVES AND PAVEMENTS

- A. Repair, patching, sealing and remarking of drives and pavements inside and outside of structures, but within the site's boundaries, shall be the responsibility of the Contractor, as needed or directed by Metro, at no additional cost to Metro.
- B. The Contractor shall be responsible for painting and maintaining traffic direction lines on the roadways (including staging/storage area).
- C. Replacement of the pavement shall be done as needed, with either the Contractor acting as Metro's agent or through Metro contracting directly for this service.
- D. Additional or replacement signage shall be provided by the Contractor. All signs must be professionally prepared and mounted.

27.7 STREET CLEANING AND MAINTENANCE

- A. The Contractor shall pull a mobile magnet capable of removing all ferrous metal daily, to collect all ferrous objects from the truck wash facility, transfer station area, Transporter's parking area on-site, the entrance and any and all other paved areas on the site.
- B. At no time will customers be directed to back or drive over debris anywhere on or in the facility.
- C. All areas will be kept clean using a power broom or other street cleaning equipment approved by Metro. These areas must be cleaned at least one time per week or as often as necessary, as determined by Metro.

28.0 HOUSEKEEPING

28.1 TRANSFER BUILDING

Contractor shall:

- Clean exterior of all onsite buildings (except for the hazardous waste area) by pressure
 washing annually walls, roofs and gutters from the time operation commences, and at one
 month prior to completion of the Contract;
- Steam clean exterior of the buildings as needed to remove stains in conjunction with the pressure washing of the exterior;
- Clean interior of transfer buildings and truck wash and (excluding rafters, other metal structural supports and ceilings) by pressure washing annually;
- Sweep and hose work, vehicle maneuvering and maintenance areas within the transfer station area daily at a minimum and wash with environmentally preferred detergent if necessary;
- Immediately address and clean all spills when they occur;
- Daily remove wastes from the cleaning process and not dispose of such wastes in storm drains or sanitary sewers.

The Contractor shall supply all equipment, supplies and labor for cleaning. Contractor shall use environmentally safe cleaning agents as determined in cooperation with Metro.

28.2 JANITORIAL SERVICES

The following services will be provided a minimum of three (3) days per week, for the transfer station operations' offices, (including but not limited to the conference and break rooms) all scalehouses, Metro office building, and an on-site trailer used by household hazardous waste personnel, unless otherwise indicated:

- Vacuum mats and carpets;
- Dust desks, chairs, cabinets, etc.;
- Spot clean fingerprints from walls and doors;
- Empty trash, replace liners as needed;
- Dust off counters, desks and tables;
- Dust-mop any tile floors and stairwells; Wet-mop any tile floors and stairwells;
- Spot clean fingerprints from bathroom cabinets;
- Clean bathroom sinks, toilets and counters;
- Replace toilet tissue, paper towels as needed;
- Strip and wax floors once a month;
- Clean all windows weekly;
- Buff floors weekly;
- Carpets shall be scrubbed bimonthly;
- Provide doormats at each entry to the offices and scalehouse, replace with clean mats weekly;
- · Provide working mats in the offices, scalehouses, hazardous waste facility as requested; and,
- Provide all janitorial and cleaning supplies as needed (non-toxic). All cleaning supplies shall comply with the environmentally preferred specifications for such products in the Appendix.

29.0 LANDSCAPE MAINTENANCE

Metro will be responsible for the landscaping at the site. Contractor will be responsible for utility billings, such as water related to landscaping activities. Contractor will be responsible for the repair and replacement of all structures such as drainage structures and fences. Cleaning of drainage structures and filters shall be considered routine maintenance.

30.0 PERMIT COMPLIANCE

The Contractor will be required to operate the transfer station in complete compliance with all permits issued to Metro by regulatory agencies. The Contractor will be responsible for making any improvements or modifications in operating procedures necessary to stay in compliance with all such permits. Contractor shall pay any penalties levied by regulatory agencies for Permit noncompliance due to negligent operation or omission by the Contractor.

Penalties will be in addition to any liquidated damages assessed according to the Contract Documents.

30.1 OPERATING PERMITS

Metro has the necessary permits to operate the facility. These include:

- Solid Waste Disposal Permit from the Oregon Department of Environmental Quality
- Industrial Wastewater Discharge Permit
- Storm Water Discharge Permit
- Scale Permits

Other required permits are the responsibility of the Contractor. Likely examples include city business licenses and radio frequency permits.

30.2 IMPLEMENTATION OF PERMITS

It is the responsibility of the Contractor to perform any testing required by the permits listed in Section 30.1 and to pay for all associated costs with the exception of industrial wastewater and storm water permits. For those two permits, Metro will perform and pay for all required testing (i.e., sampling and analysis) and reporting of test results, and will be the regulatory agency's contact for routine communications. The responsibilities of the Contractor for industrial wastewater permit shall be all the responsibilities for permit compliance described in Section 30.0.

31.0 UTILITIES

All utility charges, including water/sewer, electricity and telephone will be the responsibility of the Contractor, except the telephone charges for Metro personnel and the electricity for the Hazardous Waste Facility. The Contractor shall forward copies of utility bills to Metro as requested.

Contractor shall participate in the electrical supplier's Clean Wind Program at the *Patron Level* at which 15% of the electricity purchased is generated by wind turbines. Metro shall be listed as the program participant for purposes of participating in the utility's recognition program and shall direct where the clean energy originates through *Green Tags* designations or other similar available mechanisms.

32.0 COORDINATION

The Contractor will be responsible for coordinating its activities with the waste Transporter. Metro will act as the arbitrator of any disputes between any and all contractors and/or disposal site operators connected with their work, regarding their performance of the work and the interpretation of the contracts involved. It will be the responsibility of the Contractor to prepare for and respond to complaints, charges, and allegations brought against the Contractor prior to any such arbitration meeting. The Contractor will also be required to present a monthly report summarizing activities during the prior month and plans and schedules for future activities. The organization of and invitation to any such meeting will be the responsibility of Metro.

33.0 OPERATIONS REPORTING REQUIREMENTS

The Contractor shall establish and maintain an information system to provide storage and ready retrieval of Facility operating data and all financial information.

The Contractor shall prepare and maintain proper, accurate, and complete records and accounts of all transactions related to the Facility (except for Scalehouse functions). The Contractor shall maintain records of its costs in a manner that will permit, to the extent possible, the separate determination of the

cost of providing service to (1) the general public, and (2) commercial customers. These records shall include, but not be limited to (as applicable): maintenance records, equipment replacement records and schedules, and safety and accident reports; quantity of Acceptable Waste delivered to the Facility; quantity of Source-Separated recyclable materials received and sold; quantity of Recovered Materials produced and sold; quantity of compacted waste loaded for transport to disposal; and quantity and type of Unacceptable Waste handled. Metro shall have complete access to all such records.

The Contractor shall provide Metro with monthly reports within ten (10) calendar days of the end of each month, including, but not limited to, the following operating data (as applicable):

- (1) Complaint forms, recommended actions, and/or actions taken;
- (2) Any extraordinary occurrences affecting Metro;
- (3) Status of operating equipment;
- (4) Any correspondence between the Contractor and governmental bodies relevant to the Contract;
- (5) Reports on accidents and their status;
- (6) Monthly sales of Recovered Materials (by material and price);
- (7) Monthly quantity of waste compacted and loaded for transport to disposal (by facility);
- (8) Quantity and type of Unacceptable Waste; and,
- (9) Financial data and utility consumption as deemed appropriate by Metro.

The Contractor shall prepare an annual report subject to independent audit that incorporates a summary of the monthly operations reports for the preceding 12-month period summarizing all required data and records. This report shall be submitted to Metro within ninety (90) days after the end of each Contract year.

The Contractor shall prepare an operating and maintenance manual for the facility. The manual shall include waste handling procedures, the number and type of positions and equipment, routine maintenance requirements, and the contingency plans required above. The manuals shall be updated at least annually, or sooner if major changes to the operations occur.

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SPECIFICATIONS FOR METRO CENTRAL STATION

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1.0 INTRODUCTION

The purpose of the SPECIFICATIONS is to provide the Contractor with its operating and maintenance responsibilities for the Metro Central Transfer Station (MCS) located at 6161 NW 61st Ave., Portland, OR, as well as portions of the surrounding roadways. These responsibilities are detailed in the sections below. An overview is provided in this introduction.

Generally, the Contractor is responsible for all portions of the six-acre site except for the hazardous waste facility, Metro Office and scalehouses, which are operated by Metro (see figure 1). This includes the supervision of customers while they are on the site.



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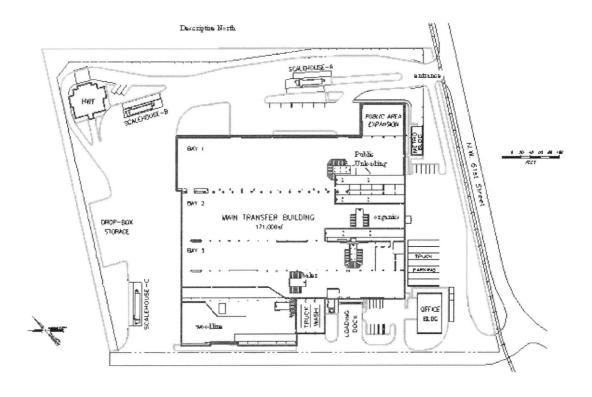


Fig. 1

The Metro Central Station 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. Public customers proceed to scalehouse A for weighing. After leaving the scalehouse they are under the direction of the Contractor, which is responsible for ensuring the waste is properly unloaded in a manner emphasizing good customer service. Waste must be inspected for unacceptable waste, materials recovered and the remaining waste managed efficiently to facilitate customer throughput. Waste from these customers shall be unloaded in the *public area*. Contractor may utilize other portions of the facility for the public when separation from commercial haulers can be maintained, such as on the weekends.

Commercial customers (generally those with packer or drop box size loads) will utilize either scalehouse A or B. Scalehouse B is used if queuing problems develop or if the customer participates in the automatic transaction system located at scalehouse B. After weighing, the Contractor is responsible for directing the customer to the appropriate area for unloading in Bays #1-3 or at the woodline or organics area depending on the type of waste and how the Contractor chooses to utilize the facility. Waste must be inspected for unacceptable waste, materials recovered and the remaining waste managed efficiently to facilitate customer throughput in a courteous and customer service-oriented manner.

Contractor is responsible for providing all rolling stock to accomplish the requirements of the contract as detailed herein. The site is equipped with some major systems for use by the Contractor; these include 3 compactors, a woodline, mobile grapple, truck scales and a washrack. These systems, as well as the other parts of the facility are the responsibility of the Contractor except as noted. Contractor shall utilize any manuals, manufacturer's recommendations, drawings and directions available to operate and maintain the facility properly.

Contractor is responsible for loading the waste into Metro's Waste Transport Contractor's (Transporter's) trailers. Contractor shall coordinate its activities with the Transporter as well as with any other Metro contractors to maximize transfer efficiencies. The services provided by the Contractor shall be conducted in accordance with all state, federal and local regulations. Operating priorities shall be safety, efficiency, material recovery, protection of the environment and customer service. The Contractor shall make efforts to maintain positive public and community relations.

2.0 PROJECT DESCRIPTION/REQUIREMENTS

Metro will provide the Contractor use of the facilities located at 6161 NW 61st Street, Portland, Oregon, and known as Metro Central Station for performing the work under this Contract. All equipment and facilities provided at that site shall remain the property of Metro, except as specified herein, and shall be returned to Metro in good working order upon termination or completion of this Contract.

The Contractor shall be responsible for the security, proper operation, maintenance, repair, and condition of all equipment and facilities furnished by Metro. The equipment shall be used exclusively to conduct waste transfer and material recovery operations and shall not be removed from the premises except for purposes of repair or maintenance unless approved by Metro.

Contractor shall provide Metro with a full service transfer station serving the disposal and recycling needs of the public, commercial collectors and industrial accounts, as designated by Metro. While the INTRODUCTION provides an overview of the work to be provided by the Contractor, below is listed the major components and responsibilities of the Contractor for this Contract.

Components of this project include:

- A. Mobilization of equipment and personnel onto the site.
- B. Providing safety equipment and safety/operations training.
- C. Emergency and contingency planning and preparedness.
- D. Maintenance of safe and healthy operating conditions for all customers and employees.
- E. Receiving waste and recyclables on-site from the public, commercial haulers, and industrial accounts.
- F. Conducting Load Check Program and handling Unacceptable Waste in accordance with these Specifications and Metro's *Transfer Station Contractor's Procedures Manual* (referred to as *Contractor's Procedures Manual*).
- G. Traffic control.
- H. The removal of recyclables from public loads by assisting customers and processing of waste.
- I. Operation and provision of a Recycling Center for source separated recyclables.
- J. Movement of waste and recyclables from the Hazardous Waste Facility on-site.
- K. Materials Recovery processing of a portion of the solid waste delivered by commercial customers.
- L. Locating markets for recyclables and providing vehicles and personnel to transport the Source-Separated and Recovered Materials.
- M. Handling, compacting and loading solid waste on-site.
- N. Operation and maintenance of Contractor-furnished equipment and Metro-furnished equipment and facilities except weighing system and the Hazardous Waste Facility.
- O. Furnishing of all supplies, materials, equipment and services for performance of the Contract.
- P. Litter control on-site and in designated areas on roadways approaching the facility. Use of a magnet daily for on site cleanup. Site security during all hours.
- Q. Insect, vermin, dust and odor control.
- R. At least monthly meetings with Metro to report on progress achieved and any special problems encountered.
- S. Coordination with other contractors.
- T. Demobilization of equipment and personnel from the site upon completion or termination of this Contract, and return of the site to its original condition as at the start of this Contract, normal wear and tear excepted.
- U. Provision of uniforms for all non-office staff.

3.0 WASTE FLOW AND HOURS OF OPERATION

The facility will be open for the general public from 8:00 a.m. to 7:00 p.m. during PDT and from 8:00 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 five hours earlier, except on Sundays when it will open at 8:00 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 these Specifications 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 be entitled to a reduction in payment for any decrease in hours of operation in accordance with the deletion of work provisions of the General Conditions. For any increase in the hours of operation, Contractor shall be entitled to an increase in compensation in accordance with the additional work provisions of the General Conditions. 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. For a detailed analysis of projected waste flow on an hourly, weekly, monthly and yearly basis, refer to the Appendix in this document. These projections are estimates only and shall not be regarded as guaranteed flows.

4.0 WEIGHING AND BILLING SYSTEM

After entering the facility, customers will be processed through the weighing and billing system. Metro will be responsible for the operation of the weighing and billing system located at the scalehouses, and for admitting public, commercial haulers and industrial accounts into the facility. Each vehicle shall be weighed by Metro upon entering the facility. Metro employees, operating the scalehouse, shall make all determinations regarding fees to be paid by haulers using the facility and determining what waste shall be categorized as Recoverable Waste.

After unloading, the vehicle shall be reweighed to determine the net weight of the load. If a vehicle contains a large amount of recyclables that qualify for a reduced charge, Metro may require the vehicle to unload the recyclables and reweigh prior to unloading the waste.

The empty or tare weight of commercial vehicles may be established by Metro and recorded so that the vehicles will not be required to re-weigh each time after unloading and so commercial haulers may utilize the automatic weighing system. This system utilizes a tag reader system to identify the vehicle and its tare weight, and then weighs the vehicle and generates a receipt.

The Contractor will not be allowed to operate the weighing and billing system, and will not be responsible for maintenance of the system's equipment, except for cleaning of the scale pits monthly. Maintenance of the scalehouse structures and the provision of janitorial services will be the responsibility of the Contractor.

All Recovered Materials, compacted waste, and Unacceptable Waste shall be weighed by Metro prior to removal from the Facility. This data will provide checks on the facility efficiency and known quantities for Material Recovery and disposal. The Contractor shall be paid based on the incoming weights established at Metro scalehouses for waste and source separated materials for which individual prices have been established. Payment for Recovered Materials shall be established based on outgoing weights as established at the scalehouses.

The Contractor will coordinate its activities with Metro's scalehouse personnel. The Contractor shall provide and maintain a three channel (one of which will be reserved solely for emergency communications on-site), alternate radio communication link between all work areas (Contractor's and Metro's and any other contractors on-site) and the Contractor's spotters in the transfer station.

5.0 TRAFFIC CONTROL

The Contractor shall have responsibility for controlling the movement of traffic onsite and offsite if needed. This shall include the optimal use of queuing lanes and unloading spaces, and the provision of personnel to direct traffic.

Contractor shall provide at least one spotter located in the vicinity of Scalehouse "A" to initially direct customers to the appropriate unloading areas. For commercial customers, the spotter's responsibilities shall include making a prompt determination of the appropriate bay to which to direct the load. The spotter(s) shall be equipped with a radio that shall be used to alert personnel in the unloading areas of the arrival of a load of waste. As the Contractor's initial point of contact with customers, the spotter(s) shall be courteous and be thoroughly trained in evacuation procedures. Any disputes between the spotter(s) and customers shall be immediately reported to Metro. Contractor shall provide a mobile shelter for the spotter(s).

Once a load of waste arrives at the appropriate unloading area, additional spotters shall direct the load into the building and to the appropriate spot for unloading of the vehicle. These personnel shall be appropriately attired to be visible in all lighting conditions, be equipped with flashlights or other signaling devices of sufficient brightness to be seen by customers and be equipped with radios. These spotters shall ensure that the unloading area over which the customers travels and unloads is free of debris and that there is sufficient space for unloading to proceed in a safe and efficient manner. Spotters shall assist customers as needed. Spotters shall be trained in the unloading and load check procedures of *Contractor's Procedures Manual*. Upon completion of unloading, spotters shall coordinate the exiting of vehicles to ensure a safe exit from the facility.

The Contractor shall assist all disabled vehicles and remove them from the traffic ways if necessary.

Contractor shall obtain Metro's approval for proposed on-site traffic patterns and such approval shall not be unreasonably withheld. Metro may direct the flow of traffic at any time for any purpose.

If, in the sole opinion of Metro, the Contractor is providing insufficient personnel to alleviate traffic problems, the Contractor will have one hour to remedy the situation. If Contractor fails to remedy the situation within an hour of notice by Metro, liquidated damages may be assessed.

6.0 ACCEPTANCE OF WASTE

The Contractor shall operate the facility to receive regular deliveries of mixed solid waste on a seven-day per week basis from drop box trucks, compactor-type vehicles, large dump trucks, transfer vehicles, private citizen vehicles and other vehicle types approved by Metro.

Contractor must ensure that unloading operations are done in a safe manner in accordance with Section 12 of these Specifications and *Contractor's Procedures Manual*. Contractor shall

visually monitor actions taken and equipment used by commercial and public users of the facility, and shall immediately correct any hazards detected during the course of normal operations. Ongoing safety activities include inspecting incoming loads for Unacceptable Waste or hazardous materials, investigating all reported hazards and near miss situations, identifying vehicles with safety deficiencies and notifying Metro immediately.

Contractor shall keep an ongoing log of incidents, inspection activities and follow-up actions, and shall submit this log to Metro each month. Reporting forms and logs are included in *Contractor's Procedures Manual*.

The Contractor shall accept all of the following types of solid waste that are delivered to the Metro Central Station: (1) Acceptable Waste, as defined in this Contract, (2) recoverable materials that are listed in Section 9.0 of these Specifications, and (3) medical infectious waste delivered to the Metro Central Station in accordance with Metro's *Medical Waste Acceptance Procedures*, which are part of *Contractor's Procedures Manual*. Unacceptable Waste shall be handled in accordance with Section 12 of these Specifications and *Contractor's Procedures Manual*. Contractor shall be responsible for implementing Metro's load checking program as described in Section 12.

7.0 REFUSAL OF WASTE BY THE CONTRACTOR

The Contractor may refuse to accept any waste at the facility if: (1) the Contractor can demonstrate that current state or federal regulations or the facility's solid waste permit prohibit Contractor from accepting such waste, or (2) such waste is Unacceptable Waste as defined in this contract and is not a recoverable material listed in Section 9.0 of these Specifications or medical infectious waste delivered to the Metro Central Station in accordance with Metro's Medical Waste Acceptance Procedures, which are part of Contractor's Procedures Manual. The Contractor shall immediately notify Metro's Operations Supervisor in writing of its refusal of any waste and shall provide a written justification for such refusal. The Contractor shall recover from mixed solid waste any Unacceptable Waste that is a recoverable material listed in Section 9.0 of these Specifications, including tires and white goods. For any portion of Unacceptable Waste that has been accepted and unloaded at the facility, the Contractor shall follow the procedures specified under Section 12 of these Specifications. Contractor must keep records of the following information regarding any such waste that has been unloaded: date, time, vehicle license number, company and/or the individual's name and address, conversation regarding waste with such company representative or individual, pictures and approximate volume and weight of such waste. Contractor shall be deemed to have taken title to any waste it accepts without complying with this section.

8.0 MANAGEMENT OF WASTE AFTER UNLOADING

After unloading, waste shall be managed in a manner to maximize the dual goals of materials recovery and efficient movement of the waste. Sufficient equipment and personnel shall be available to ensure targeted materials are recovered and that the waste is moved efficiently and safely to the compaction systems.

Movement of the waste shall be coordinated with incoming loads such that a clean and unimpeded area is available for unloading at all times, in a safe manner. Unloading vehicles shall not be made to back over or unload onto waste. Particular attention shall be paid to the removal of items on the floor that may puncture tires or otherwise damage customers' equipment or jeopardize their safety.

Contractor shall alter operations as directed by Metro to ensure compliance with this section.

9.0 MATERIALS RECOVERY - General

Metro's goal is to maximize material recovery at its transfer stations. To this end, the Contractor is required to conduct materials recovery operations for both the public and commercial segments of the waste stream, in a manner consistent with the Contractor's proposal and as necessary to achieve the Base Recovery Rate, Contractor's Recovery Guarantee and any Bonus Recovery Credit proposed. Contractor shall also provide the following:

- A. <u>Staffing:</u> Operator must have a designated, qualified and skilled staff person to oversee the materials recovery operations at all times. Skills include experience with and knowledge of markets, marketing and material recovery facility operations. Contractor must demonstrate that it has the corporate resources to support this activity and this position including appropriate training and applicable professional certifications. Metro reserves the right to review and approve the employee that is designated to fill this position.
- B. Markets: The Contractor will be responsible for selecting the markets/brokers for recovered materials except organics, as well as for all activities related to transporting the materials to market. Metro reserves the right to disapprove the Contractor's choice of vendors for the sale and other distribution of all recovered materials. Vendors must meet the following basic criteria:
 - Vendors must be fully permitted and in compliance with applicable federal, state and local laws, regulations, standards and conditions;
 - Recovered materials that meet vendor specifications may not be disposed in a landfill;
 - Vendors' operations must be environmentally sound and must not have a detrimental impact on air, land, or water quality, or on their surrounding neighbors.

When selecting vendors, the Contractor shall give preference to vendors based on the end use of the recovered materials the vendors receive, according to the following priority (in order from most preferred to least preferred): reuse, recycling, composting (yard trimmings and food) and, finally, energy recovery and other beneficial use. If the Contractor has a choice between multiple, comparable vendors that are not distinguishable on the basis of the end use of the recovered materials, then the Contractor shall give preference to the vendor located closest to the Metro region.

Disposal of source-separated recyclable materials (materials accepted under a separate posted price, brought to the facility by self-haul customers receiving a discount, or contained on the list in this section in uncontaminated form) is strictly prohibited. Contractor will arrange for and be responsible for all costs associated with removing tires, oil filters, anti-freeze and yard debris from the entire site, as well as any other material listed in this section that may have a negative market value.

Historical patterns of materials recovery are discussed in the background section of the RFP for this project and in the Appendix, as well as in the operations manual for the facility.

The Contractor shall not be entitled to additional compensation for the loss of, or fluctuations in, recycling revenues due to actions taken by Metro. Contractor shall be allowed to keep the revenues from all recovered materials.

- C. Reuse: Metro's Regional Solid Waste Management Plan as well as the state recycling hierarchy [ORS 459.015(a)] places a priority on reuse and recycling over energy recovery or disposal. Contractor shall remove reusables from the wastestream for reuse by an approved third party. Metro will pay Contractor an additional 10% of the Recovery Credit for each ton of materials delivered to a third party for reuse.
- D. Organic Waste Recovery: Contractor shall reload source-separated organics brought to MCS into organics drop boxes provided by Metro' organics processor. Contractor shall handle the material from unloading through reloading in a manner to prevent contamination. Contractor shall manage the material in a manner that includes the following:
 - Receiving source-separated organic material at a location mutually-agreed to by
 the parties. Metro shall be responsible for appropriately preparing the location.
 Metro shall be responsible for any deterioration to the location due to the nature
 of the material, if the Contractor manages the material in compliance with Item
 #3 of this change order.
 - Remove any incidental contaminants from source-separated organic loads.
 "Incidental contaminants" as used herein are any contaminants larger than the size of a five-gallon container.
 - Inspection of the loads to determine that the material is Acceptable Waste and qualifies as a load of source-separated organics (i.e. contains no more than four incidental contaminants per ton or 25 per load, or total contaminants of 5% by volume). Contractor, Metro and Metro's Organics Processing Contractor shall mutually develop practical rules for making such determinations.
 - If material is not Acceptable Waste it shall be managed in conformance with Item 10.0 of the Specifications for Metro Central Station. If material is Acceptable Waste but does not qualify as source-separated organics, it shall be managed in conformance with Item 4.0 of the Specifications for Metro Central Station; and Metro and the hauler shall be notified so that appropriate fees may be charged. The notification to Metro shall include hauler name, Metro truck number, time of receipt, and date.
 - Manage the material in a manner to minimize odor.
 - Daily reloading of organic material into drop boxes provided by Metro's organics processor, including the staging of boxes to and from any storage area for pick up by a transporter.
 - Contractor shall supply equipment and an equipment operator for the operating
 area in which source-separated organic material is received. No additional
 personnel will be required. Used equipment may be provided for this work.
- **E.** Reporting: The Contractor will report monthly the weight of Recovered Material by type as measured at Metro scalehouses, the amount by receiving end-markets, and the revenue

received by material. Contractor must develop satisfactory recovery and reuse reporting methods that include an analysis of the cost-effectiveness of recovering materials. For accounting purposes, material recovery must be treated as separate journal entries and must include cost estimates for labor and equipment.

9.1 PUBLIC RECYCLING STATION

Unless otherwise approved by Metro, Contractor shall be required to provide a recycling station, with Metro-approved signage in the area and on the bins Contractor provides, to receive source-separated recyclable materials from the general public at a location near the area for public unloading designated on the transfer station drawing contained in the Appendix. The purpose of the recycling station is to provide public customers with the opportunity to recycle materials. The recycling station will handle the following materials:

Newsprint	Glass containers	Aluminum
Steel (tin) cans	Mixed ferrous	Mixed non-ferrous
White goods	Corrugated cardboard	Tires
Used motor oil	Oil filters	Car batteries
Anti-freeze	Yard debris/wood	Plastic bottles/milk jugs
Scrap paper	Phone books	Magazines
Plastic film	Non-halon fire extinguishers	Window glass
Lawnmowers	Carpet padding	

Metro shall have the right to add or delete materials from this list at any time.

All source-separated materials will be stored in containers furnished by the Contractor. The Contractor shall:

- Make a good faith effort to recover materials from public loads by
 - a) keeping materials that are delivered as source separated materials from being mixed;
 - b) pulling recoverables from the mixed waste stream; and,
 - c) recovering materials for reuse.
- Assure the materials are properly prepared for market;
- Assure sufficient containers are available for use and have clear signage posted for the public in the public recycling area;
- Transfer materials to markets and/or processing centers in fully covered containers;
- Keep the recycling station free from litter and contaminated material at all times;
- Maintain the entire recycling area in a neat and clean manner;
- Schedule sufficient pick-ups of recyclable materials to prevent excessive accumulation;
- Maintain warning signs, spill kits and safety equipment in the public recycling area;
- Maintain operating safety shower and eyewash in the public recycling area at all times; and
- Collect from Metro's on-site household hazardous waste facility, at no additional charge, any
 of the materials listed above.

Employees assigned to handle recyclable hazardous materials shall be properly trained and equipped.

9.2 COMMERCIAL MATERIALS RECOVERY

The Contractor shall recover materials from incoming commercial loads of mixed solid waste, including all loads originating at construction/demolition sites (guidelines for identifying C&D loads are contained in the Appendix), to the extent that such activities do not interfere with the loading of waste in a timely manner as determined by Metro. Contractor may provide incentives to haulers to deliver high-grade loads rich in recoverable materials.

Targeted materials to be recovered from high-grade loads:

	PAPER	MISC.		METAL		PORCELAIN		PLASTIC
•	newspaper •	roofing	•	steel cans	•	toilets	•	plastic bottles
•	telephone books •	tires	•	aluminum	•	sinks	•	plastic film
•	magazines •	window glass	•	nonferrous	•	other		
•	cardboard •	car batteries	•	ferrous scrap				WOOD
•	paperboard •	carpet padding	•	white goods		DRYWALL	•	unpainted lumber
•	scrap paper •	carpet			•	unpainted	•	pallets
	•	mattresses			•	painted	•	yard debris
							•	painted lumber

Except for materials that are prohibited from disposal in a landfill under state or federal law, such as whole tires and white goods, Contractor shall not be required to recover these materials if it is unable to locate markets for them.

A wood waste material recovery system (woodline) is available for the Contractor's use. See Appendix for a description. Preprocessing for the woodline and other materials recovery is to be accomplished primarily on the floor using manual labor.

9.3 RECYCLED PRODUCTS PROCUREMENT

Contractor shall adhere to Metro procurement guidelines for recycled products in the operation of the facility. Recycled products include but are not limited to the following: office paper and general office supplies, latex paint, re-refined oil, compost products, retread tires, and building materials. Vendors that supply recycled products are listed in an online database maintained by Metro at www.metro-region.org/buyersguide. Contractor shall abide by recycled products procurement standards of Chapter 2.04 of the Metro Code, as amended (a copy is contained in the Appendix). Contractor shall provide an annual report to Metro that itemizes the type of recycled products that they purchased and their dollar amount.

9.4 RECYCLING

Contractor will also be required to collect recyclable and recoverable materials, including all recyclable paper, glass containers, plastic bottles and cans, in its day-to-day office and on-site general business operations.

9.5 SUSTAINABLE PRACTICES

Contractor shall maximize sustainable practices in conducting its activities. Examples of activities to add for the transfer station:

- use of re-refined oil, lubricants and hydraulic fluids in equipment and rolling stock
- use of bio-based fuel for diesel operated equipment and vehicles or other low polluting fuels and/or pollution control equipment minimizing emissions

- purchase of reused wood and other materials from Rebuilding Center or use of Forest Stewardship Council-certified wood
- plastic lumber or Forest Stewardship Council-certified wood in place of treated wood
- minimum 30% post-consumer content recycled paper for all office use
- toilet tissue, paper towels, and napkins that meet minimum EPA post-consumer fiber standards
- reusable dishware, cups and utensils
- Metro latex paint
- recycling system for paper, containers and other office activities
- duplexing where possible
- energy-efficient lighting (use of compact fluorescents)
- use of remanufactured toner cartridges
- use of environmentally preferable cleaners (see Appendix)
- use of storage containers, plastic and paper bags, traffic management equipment with recycled content

Contractor shall supply information during Metro's annual audit demonstrating compliance with these practices or upon request. Required sustainable practices shall be established through the proposal process.

10.0 TRANSFER INTO TRANSPORTER'S TRAILERS- GENERAL

After materials recovery, the remaining Acceptable Waste shall then be loaded into the compactors. The Contractor is responsible for the compaction and extrusion, into the Transporter's trailers, of a road legal payload of waste (also referred to as a bale). The Transporter is responsible for positioning its trailers to the compactors for receiving the loads, removing the loaded trailers, and positioning the next.

The Contractor shall provide bales for loading in a timely manner during pre-arranged compaction hours. For purposes of this section, a "timely manner" shall mean six bales of waste per hour. Metro, the Contractor and Transporter shall meet as needed to establish the compaction hours for which this standard applies. Generally such hours will coincide with peak weekday delivery periods for the facility.

Contractor shall attempt to maximize payloads transferred in the Transporter's trailers while minimizing overloads. Contractor will receive bonuses or deductions based on average payloads. The monthly payment will also be adjusted for overloads incurred during the month. Payload and overload adjustments shall be made in accordance with Article 12(I) of the General Conditions of this Contract.

A log shall be kept at each compactor to record the information required below. The format shall be approved by Metro.

Prior to extruding a bale of waste into the Transporter's trailer, Contractor is required to do a preload inspection of each trailer. The purpose of the inspection is to determine the condition of the trailer. Contractor shall record the time, trailer number, inspector and any comments concerning the trailer's condition for every inspection. If the inspector believes the condition of a trailer is unsatisfactory for loading, Contractor shall inform the Transporter's representative and Metro to decide whether a replacement trailer should be provided. At the completion of extruding the waste into the trailer, the Contractor is responsible for installing a lock seal on the trailer, such as a flat metal seal that prohibits removal by hand. Each seal shall be marked with the letters *MCS*, three letters identifying the Contractor and a sequentially increasing set of at least four digits.

Example: MCS-CON-0000

The Contractor shall record the time the bale was ready for extrusion, the time a trailer was available for loading, the seal number, and the weight of the load from the compactor readout into log. Contractor shall also note whether the load contained special or suspicious waste.

It is the responsibility of the Transporter to ensure that the seal was properly installed before the trailer leaves the staging/storage area. Once the Transporter has verified that the seal is properly installed, the waste contained within the trailer is the responsibility of the Transporter until the seal is broken in accordance with the "ENTRANCE POLICY" contained in the Appendix.

If the Contractor improperly installs the seal, the Transporter is required to notify the Contractor prior to leaving the Facility and request a new seal. The Contractor shall comply with any such requests. Failure to request a new seal will preclude Transporter from any recovery for damages arising out of any improperly installed seal. In addition, the Transporter can request removal of the seal to inspect the interior of the transfer trailer, its contents, and request and receive a new seal from the Contractor.

Each load sealed into the Transporter's trailer will be weighed at the on-site Transporter scale system to determine the payload and whether the load is road legal. The weight of each load extruded into transfer trailers will be printed on a manifest. This manifest will become the official weight record of the load and serve as the basis of payment for the Transporter, the Disposal Site operator as well as for the Contractor's Variable Compaction Maximization Adjustment. It will contain the date, time, container number, container tare weight, the seal number, as well as the weight of the load. A copy of the manifest will be given to the Contractor.

11.0 COMPACTOR OPERATIONS – GENERAL

Contractor shall operate and maintain the compactors in accordance with the manufacturer's recommendations, all applicable regulations and Metro's recommended practices specified below. Contractor shall prepare waste for loading consistent with the manufacturer's recommended practices and shall remove material that is inappropriate for compaction or that becomes lodged in the compactors. Contractor shall load only Acceptable Waste into the compactors.

11.1 SAFETY

It is the Contractors responsibility to provide all operator training, equipment and operating procedures to protect personnel. Emergency stops shall be visible (red), unobstructed, and easily accessible to the compactor operator during operations. The Contractor shall maintain all warnings and decals attached to any equipment and will not alter any E-stop or manufacturers' safety equipment without written approval of Metro. Contractor is responsible for ensuring that all operation and maintenance personnel receive appropriate training and certification (including manufacturer's certification).

A written lock-out/tag-out program for all equipment must be in place and strictly enforced at all times. A written confined space program describing safe entry procedures for all hoppers, pits and chambers must be implemented. Contractor shall provide and maintain all safety equipment

needed to implement these programs. Guarding must be maintained on all rotating/moving parts and conveyors. Guardrails (top rail, mid-rail and toe boards) on elevated surfaces must remain in place at all times. Contractor shall maintain all warnings and decals attached to the machine. Contractor shall ensure that all hazards in the compactor area are clearly marked.

The Contractor's Compactor Operators are the assigned Emergency Coordinator for the compactors and loading areas at the site for purposes of Metro's *Contractor's Procedures Manual*. Compactor operators must receive 40 hours of OSHA Emergency Response Training and medical surveillance and be able to participate in incident response in the event that the compactor is involved in a hazardous materials emergency.

Equipment must be readily available to contain and block any spills from the compactor load or equipment. Equipment and procedures to block storm and sewer drains from contamination must be in place at all times. Immediate actions to take in the event of a hydraulic fluid release from the compactor shall be posted in the compactor area. Contractor shall ensure that safety equipment including respiratory protection, emergency eyewash and fire extinguishers are available at all times in the compactor areas.

11.2 LOADING THE COMPACTOR.

Compactors located in bays 1 and 3 are SSI models 4500SPH. They are equipped with remote controls that operate both the conveyor loading systems as well as the compactors. These compactors build a single bale. The compactor located in bay 2 is a SSI model 4000 that builds half bales. Contractor shall follow the steps for building the bale as described in the operator's manual.

It is the responsibility of the Contractor to load the compactor so it will function properly without jamming, puncturing the compactor or trailer walls, causing fire, explosion, or any other damage. Contractor should follow the operator's manual in selecting materials for compaction.

Waste loaded into the compactors should be well mixed such that consistent density and lengths of maximized payloads are produced. This includes mixing dry garbage with very wet loads to avoid short dense payloads. Loosely packed garbage loads that may produce loads of less than 30 tons should also be avoided.

For SSI models 4500SPH, a reader board is visible to personnel loading waste onto the conveyor from the bay floor. The board displays the weight and length of the bale. Similar information is available at the control panels. Weights are determined by loads cells located on the compactor. It is the responsibility of the Contractor to check and maintain each of the compactor load cells, such that overloads do not occur. It is the Contractor's responsibility to repair the load cell as soon as possible in order to continue operating without overloads.

The compactor shall be operated in such a manner as to reduce spillage of garbage and moisture when ejecting the bale. All waste spilled must be cleaned up after each bale is ejected.

12.0 LOAD CHECKING PROGRAM AND MANAGEMENT OF UNACCEPTABLE WASTE

The requirements of this section are more fully explained in *Contractor's Procedures Manual*, which includes Metro's *Load Check Program* and *Medical Waste Acceptance Procedures*. The

requirements of the manual shall be binding on the Contractor and are incorporated in this Contract by reference. Contractor shall familiarize itself with the manual and its requirements, and shall avail itself of the training opportunities available from Metro's safety and emergency response programs as described in the manual. Contractor shall follow Metro's waste acceptance protocol and procedures for conducting load checks and managing unacceptable and hazardous waste as contained in *Contractor's Procedures Manual*. Contractor shall be bound by the requirements of the manual and any updates thereto.

Below is a summary of the responsibilities of the Contractor and Metro regarding load checking and managing Unacceptable Waste at the facility.

12.1 SERVICES PROVIDED BY CONTRACTOR

- A. Contractor shall inspect all waste received in a manner which is reasonably necessary to determine whether or not such waste is Unacceptable Waste. Waste that is received at the transfer station shall be visually inspected before and while it is tipped onto the floor. Visual inspection shall be done by at least one person, whose **primary** duty is to monitor the tipping of waste. Contractor shall provide at least one trained hazardous materials employee (HazMat Technician) to be available during all hours of waste acceptance, seven days per week, who's primary responsibility is to carry out the duties of these programs. At the conclusion of the visual inspection, if waste is not refused, title to the waste shall transfer to Contractor.
- B. HazMat technicians shall conduct required load checks and follow up activities in accordance with Metro's Load Check Program and Medical Waste Acceptance Procedures. Contractor shall provide to Metro a log of this activity along with documentation concerning Unacceptable Waste on a monthly basis.
- C. Contractor shall be responsible for all costs associated with incidents or accidents created by movement or loading of Unacceptable Waste that was not spotted during tipping and was later discovered within the facility or loaded into a transport vehicle. This includes, but is not limited to, cleanup and decontamination costs of the facility floor, compactors and Transporter's trailers.

12.2 SERVICES PROVIDED BY METRO

- A. Metro will provide proper disposal of Unacceptable Wastes, other than recoverable materials listed in Section 9.0 of these Specifications or medical infectious waste delivered in accordance with Metro's *Medical Waste Acceptance Procedures*, if discovered prior to loading into a compactor conveyor, compactor or trailer, subject to Contractor's compliance with *Contractor's Procedures Manual*.
- B. Metro shall provide space for collection of hazardous materials and shall purchase any necessary secondary containers for its collection.
- C. Metro personnel will contact generators of any Unacceptable Waste found by the Contractor, other than recoverable materials listed in Section 9.0 of these Specifications or medical infectious waste delivered in accordance with Metro's *Medical Waste Acceptance Procedures*, and Metro personnel will make arrangements for the removal and proper disposal of such waste.

12.3 GENERAL LIMITATION ON METRO'S LIABILITY

Except as otherwise provided in Section 7 of these Specifications, Metro shall have no duty to reimburse the Contractor for, nor to hold harmless, indemnify, nor defend the Contractor against, any claims, demands, suits, damages, penalties, charges, judgments, liabilities, or losses of whatsoever character or kind, which may arise directly or indirectly from or are in any way connected with any negligent acts or omissions of the Contractor which relate to the management or disposal of Unacceptable Waste.

12.4 CONTRACTOR'S RESPONSIBILITY FOR SHIPPED UNACCEPTABLE WASTE

Contractor shall be responsible for all costs associated with the proper handling and disposal of Unacceptable Waste that has been loaded into a transfer trailer.

13.0 CONTINGENCY PLANS. GENERAL

The Contractor will submit to Metro for approval, within thirty (30) days of signing this Contract, comprehensive contingency plans for protecting life safety, the environment and property while maximizing continued operations under the following conditions:

- A. Emergency bad weather operating procedures, including but not limited to flooding, ice storms and high winds.
- B. Equipment failure at Metro Central Station. Plans must include time frame for the implementation of the plan, and the sources for, and description of replacement equipment.
- C. A work stoppage by any of the Contractor's employees.
- D. Local or regional events that requires additional solid waste collection and transport activity such as flooding or earthquakes.

13.1 CONTINGENCY PLANS - EMERGENCY

- A. Contractor shall use the Incident Command System as outlined by Metro's Emergency Action Plan (EAP) and Emergency Response Plan (ERP) contained in the *Contractor's Procedures Manual* to coordinate all emergency response activities. Contractor shall implement and follow Metro's Emergency Action Plan and Emergency Response Plan as specified by Metro's Response Levels Chart, ICS Checklists, ERTeam Procedures and site evacuation procedures for all potential emergency incidents.
- B. In addition to Metro's EAP and ERP, contractor shall develop and provide to Metro coordinated plans to minimize hazards to human health and the environment, damage to buildings and the site, and the interruption of normal transfer station operations due to:
 - 1. Fires: including alarm system information, fire protection systems and monitoring, and fire prevention programs:
 - 2. Releases of hazardous substances beyond the scope of site responders: including arrangements with emergency responders and outside contractors;
 - 3. Explosions;
 - 4. Power outages;
 - 5. Hostile, violent or threatening persons on the site; and
 - 6. Flooding, Earthquake, or other serious local or regional emergency.

- C. Contractor shall ensure that a trained and certified Incident Commander who has the authority to implement the Site Emergency Action Plan is available at the site at all times. Contractor shall provide to Metro the names and telephone numbers of all personnel designated as Incident Commanders. Incident Commanders must be thoroughly familiar with the Site Emergency Action Plan (EAP), Emergency Response Plan (ERP), and other established contingency plans.
- D. Contractor's on-site Incident Commander shall serve as Incident Commander in all potential emergency situations, and shall protect life safety by initiating evacuation procedures as per Metro's Response Levels Chart. Contractor shall unify or transfer command to Metro and/or emergency response agencies as appropriate once evacuation procedures are completed. Contractor shall notify Metro Management Support Team by pager immediately in all incidents that requires any partial or full transfer station evacuation, whenever 9-1-1 is called to the site, and whenever operations are halted for emergency response.

13.2 HEALTH AND SAFETY PROGRAM, ACCIDENT PREVENTION

- A. The Contractor shall establish a formal Safety Program for employees and supervisors, and shall document safety activities in order to identify, reduce and control potential hazards to workers and other personnel at the site. Contractor shall respond promptly to hazard reports, complaints and accidents to determine the cause of the hazard and to take corrective action in order to reduce or eliminate the reported hazard. Contractor will develop site-specific safety manuals. Contractor's Procedures Manual, Emergency Action Plan, and Emergency Response Plan are provided by Metro.
- B. Contractor shall ensure compliance with all applicable Oregon OSHA standards, including but not limited to written programs, training, equipment, and standard operating procedures. All applicable Or-OSHA standards shall be observed including but not limited to: hazard communication, blood borne pathogens, confined spaces, personal protective equipment, respiratory protection, hearing protection, lock-out tag-out, medical surveillance, asbestos, radiation, fire prevention, vehicle and equipment operations, welding, machine guarding, fall protection, safety committees, accident prevention and Hazardous Waste Operations and Emergency Response, and Oregon OSHA documentation and reporting requirements. All safety program policies, procedures, investigations, site inspections and records of training shall be made available to Metro upon request. Contractor is responsible for the occupational health and safety of all personnel employed by the Contractor and it's subcontractors working on site.
- C. Contractor shall ensure compliance with the General Safety Program requirements listed in the *Contractor's Procedures Manual*

13.3 SAFETY AND EMERGENCY RESPONSE TRAINING PROGRAM

- A. Contractor personnel training requirements are specified in the *Contractor's Procedures Manual*.
- B. Contractor shall ensure that all training requirements are met on an on-going basis, ensuring that personnel are trained to appropriate levels based on job duties, task assignments, changes in equipment, programs or policies, and on expected actions in emergency situations. Contractor is required to provide all employees with safety and health information and appropriate training as required by Or-OSHA and this Contract.

- C. An employee safety orientation and training program will be implemented by the Contractor prior to the start of the Contract, and will continue throughout the term of the Contract.
- D. Training and warning signs must be presented in a format and language understood by all employees. Contractor shall provide safety orientation, hazard communication, job-specific training, and basic personal safety instruction to all staff. Contractor shall regularly evaluate employees' on-going understanding of safety procedures and concepts.

14.0 PARKING

Parking is available for use by the Contractor's employees behind the Contractor's transfer station offices and at the offsite parking area for the Transporter. All other parking areas shall be approved by Metro prior to use. Metro reserves the right to change parking areas as necessary.

15.0 SECURITY

Contractor shall provide personnel for mobile/foot patrol for the site, 24 hours per day to prevent unauthorized site entry and/or facility misuse. Contractor shall have in place 24 hour staffed communication coverage including emergency communications equipment to include both required radio and cellular services. Security patrol backup and emergency situation response shall be available in addition to on-site personnel and shall be on-site no more than fifteen minutes from the time of the original request for security assistance to come to the site. Provision of these additional personnel shall be reimbursed in accordance with Article 14 of the General Conditions.

On-site security personnel's supervisors shall perform and document at least two unscheduled on-site inspections of such personnel (at least one of which will be between the hours of 11:00 p.m. and 4:00 a.m.) monthly and the inspections shall be noted and signed by the supervisor on a shift report kept by on-site security personnel and available to Metro.

Contractor shall provide back up and/or additional security personnel for Metro special events or meetings as requested by Metro within two hours of such request. Such additional personnel shall be reimbursed in accordance with Article 14 of the General Conditions.

Contractor shall replace any on-site security personnel requested by Metro.

Contractor shall document and provide copies to Metro ensuring that all security personnel assigned to the site shall:

- have recent and regularly scheduled background checks;
- be free from all felony and misdemeanor convictions deemed unacceptable under the Oregon Department of Public Safety Standards and Training requirements pursuant to ORS 181.870-879;
- > not be a user of illegal drugs or an abuser of alcohol; and
- be certified as a private security officer under the Oregon Department of Public Safety Standards and Training requirements pursuant to ORS 181.870-889.

All services provided under this specification shall be performed in accordance with the highest industry standards as determined by Metro. Said performance shall include but not be limited to the reasonable handling of sensitive public and emergency situations. Contractor shall be liable for all damages resulting from its failure to provide adequate security.

16.0 LAND FOR STORAGE PURPOSES

On-site storage of equipment, rolling stock and supplies, for the use in performance of the Contract, shall be permitted, as space is available. Upon notice, Metro will have the right of access to all storage areas occupied by the Contractor.

17.0 TRANSFER TRAILER STORAGE

A transfer trailer staging/storage area is provided at Metro Central Station such that the Transporter can store up to five transfer trailers on-site, on the east side of the building as shown on Figure 1. Offsite storage of additional containers is also available. The Transporter is responsible for shuttling (via a "yard goat" vehicle) an empty transfer trailer to the compactor, and returning it to the staging area when loaded.

18.0 INSPECTION

Notwithstanding the annual review and inspection, the Contractor shall permit inspection of the Work by Metro, its representatives, and governmental authorities having jurisdiction over the Work, at all times.

Metro will inform the Contractor which of Metro's employees will be responsible for routine inspections, and what authority such inspectors will have.

In conjunction with the review of the Contractor's annual report, Metro, at its own expense, will review records of Facility performance over the previous contract year and inspect the Facility. The primary objective of this annual review and inspection will be to verify that the Facility is operating at its design level.

The annual performance review will consist of an audit of all Facility operating records for the previous contract year. The annual inspection will consist of: (1) an inspection of the physical plant and the Contractor's operating history with emphasis on facility condition, safety and hazard mitigation; (2) a review of plant and equipment maintenance and replacement records; (3) a review of on-site or offsite accounting or bookkeeping data related to the receipt, recovery and disposal of all waste brought to the Facility; and (4) determination of continued efficiency and optimal operation of the Facility.

Prior to the start of work and prior to termination or completion of this Contract, Metro, accompanied by the Contractor, will inspect all items of Metro-furnished equipment and facilities and shall jointly prepare a list of items requiring repair as a result of the Contractor's use. Final payment will not be made until the required repairs have been completed. Equipment and facilities that have deteriorated due to normal usage need not be repaired to a like-new condition.

19.0 PREFERENTIAL TREATMENT

The Contractor shall not, by act or omission, discriminate against, treat unequally, or prefer any user of the facility in the operation of the transfer station. Preferential treatment within the site will be considered a default by the Contractor and a breach of this Contract.

20.0 FIRE CONTROL

The site is provided with fire control equipment. The fire control equipment now on-site shall remain for the Contractor's use. Contractor will ensure inspections and recharging of all fire extinguishers within all buildings on site per applicable law. Any additional or replacement

equipment required for fire protection, and any maintenance of existing, additional or replacement equipment shall be the responsibility of the Contractor. The equipment shall be tested in accordance with manufacturer's guidelines, Metro's insurance provider and any applicable legal requirements. The Contractor shall provide 24 hour monitored alarm service for the Facility, including the Hazardous Waste Facility.

21.0 VECTOR CONTROL

The Contractor shall conduct the operation of the transfer station in a manner considered unfavorable for attracting or breeding rodents, birds and insects and that complies with Metro's Integrated Pest Management mandate. An annual report shall be written and provided to Metro that details pest related activity, action taken and results experienced.

Strict adherence to these specifications and operation procedures will reduce the potential problems to a minimum. In the event that rodent, bird or insect activity becomes apparent to Metro or the Contractor, the Contractor shall initiate supplemental vector control measures at its expense, including removal of dead animals. Semi-annual inspections by a certified exterminator shall be conducted at Metro's direction and expense, and a copy of the findings will be forwarded to Contractor. Metro may direct the Contractor to undertake any recommended actions by the exterminator, at the Contractor's expense.

22.0 ODOR, DUST AND NOISE CONTROL

The Contractor shall control odor and dust on the site using proper waste handling methods. Contractor may perform alternative dust and odor control measures with the approval of Metro. Equipment will be operated within limits of noise regulations.

Contractor must meet or exceed OSHA or ACGIH recommended Threshold Limits Values for all regulated hazards. Contractor shall monitor all work areas for hazards including toxic substances, dust and noise at least annually.

Contractor shall not allow dust levels in customer areas to exceed 2.0 mg/m3 at any time.

If in the sole opinion of Metro, odor, dust, noise or other hazards are not adequately controlled, then Contractor shall immediately correct the hazards at Metro's direction.

23.0 HAZARDOUS WASTE FACILITY

Metro operates an on-site Hazardous Waste Facility that accepts household and commercially exempt generator hazardous materials. It is the responsibility of the Contractor to provide traffic control to and from the Hazardous Waste Facility, and shall obey any emergency orders given by Metro personnel in connection with that facility. Contractor may use the Hazardous Waste Facility to dispose of hazardous Unacceptable Waste accumulated from incoming waste in conformance with the *Hazardous Waste Handling Procedures Manual*. Contractor shall remove all recyclables recovered at the Hazardous Waste Facility for no charge, and shall remove and dispose of Acceptable Waste generated at that facility. Contractor shall receive only its normal per ton rate for removal and disposal of such Acceptable Waste.

24.0 LITTER CONTROL

The Contractor shall conduct at least two litter cleanup activities each day, once before 10:00 a.m. and once after 5:00 p.m. The entire site shall be covered by such activities, including the

Hazardous Waste Facility area, Transporter's parking area, landscape areas, and both sides of Calebra/61st Street between Front Avenue and Highway 30.

25.0 ON-SITE PERSONNEL

The

Contractor shall provide sufficient on-site personnel to ensure efficient operation, maintenance and management of the facility (including separate operating areas for self-haul and commercial customers). During peak periods, or when some personnel are unavailable for whatever reasons, additional personnel shall be provided as necessary for the continued and uninterrupted operation and maintenance of the facility in the most efficient manner. The Contractor is responsible for identifying such trends and adjusting the number of personnel as required at no additional cost to Metro.

If Metro determines that additional personnel are needed, Metro shall direct the Contractor to provide additional personnel and Contractor shall supply the additional personnel as directed within 2 hours of receiving the directive.

To ensure proper staffing, Contractor shall submit a staffing plan for Metro's approval every three months. The Contractor shall follow the staffing minimums listed below.

During all hours of Commercial Waste Acceptance - Acceptable Minimum

The Contractor shall meet the following minimum personnel requirements during Commercial Waste Acceptance hours:

- A. One spotter per operating area to assist in the control of traffic, unloading of refuse, control of debris, maintenance of the site, recovery of recyclables from public loads, and the checking of receipts from all customers (minimum 40 hour hazwaste-trained).
- B. On-site security.

During all hours of Self-Haul Waste Acceptance - Acceptable Minimum

In addition to the requirements listed above, the Contractor shall meet the following minimum personnel requirements during all hours of Self-haul Waste Acceptance:

- C. One Superintendent or Foreman who shall be considered the representative of the Contractor in charge of the work.
- D. One inspector whose <u>primary</u> duty is to monitor for suspicious waste and unacceptable waste, ensure compliance with Special Waste Conditions, conduct the load-checking program and ensure compliance with the *Contractor's Procedures Manual*.
- E. One loader/equipment operator per operating area accepting commercial waste (exclusive of compactor operators).
- F. One traffic control laborer.

- G. One laborer, per operating area that is accepting self-haul waste to control traffic and assist with the recovery of recyclable materials from loads, the processing of recovered materials for shipment to markets including the stripping of appliances, the high grading or processing of commercial loads if required.
- H. One laborer dedicated to provide litter patrol and cleanup on and off site (8 hours per day).

During the peak periods 10 a.m. to 5 p.m. weekends, the Contractor shall provide twice as many personnel in areas accepting self-haul waste for items A and G above, as well as twice the number of traffic control laborers (F above). This requirement does not apply to the months of November through February unless, in Metro's sole determination, transfer station operations have been unacceptably impaired by insufficient staffing. If Metro makes such a determination, Contractor will supply twice as many personnel for the months of November through February (or portion thereof as determined by Metro) in areas accepting self-haul waste for items A and G above, as well as twice the number of traffic control laborers (F above), at no additional expense to Metro.

The Contractor shall be required to train all personnel directly involved in performing the Work described in the Contract. All employees operating equipment shall receive documented training and acquisition of certificates as recommended by the manufacturer, on all equipment they are authorized to operate. All employees shall receive sexual harassment and diversity training annually. Supervisory personnel shall be familiar with the Contract Documents. At least one supervisor shall have read Metro's Regional Solid Waste Management Plan.

The Contractor shall ensure that, only to the extent that their essential job responsibilities require it, personnel are sufficiently proficient in speaking, understanding, reading, and writing English to enable them to perform their essential job responsibilities. For example: (1) Supervisory personnel must be able to read, understand, and explain the Contract Documents and other written materials such as OSHA rules and safety manuals, must frequently communicate with public customers, and must occasionally write reports, letters and other documents; (2) Equipment operators must be able to communicate orally with the other staff and customers concerning proper tipping operations, unacceptable wastes and emergency procedures; and (3) Spotters and traffic control personnel must be able to communicate orally with public customers, with whom they will be in constant contact, concerning proper parking and tipping activities, to answer operation questions concerning recycling rules and unacceptable wastes, and to provide safety information in an emergency. This requirement shall not be implemented in a manner that illegally discriminates on the basis of national origin, and in no event shall the requirements of this paragraph be interpreted to permit, condone, or encourage illegal discrimination against any person on the basis of national origin. If the Contractor determines that it is unable to comply with this paragraph without engaging in illegal discrimination on the basis of national origin, then Contractor shall not comply with this provision. If Contractor makes such a determination, then Contractor shall immediately inform Metro of its conclusion to that effect in writing, and Contractor shall work with Metro, at Metro's request, to address this issue in a non-discriminatory way.

26.0 TRANSFER STATION EQUIPMENT

Contractor shall use adequate equipment, suitable for heavy-duty service in connection with a solid waste transfer station and materials recovery operation. The equipment proposed by the Contractor (and modified in any subsequent negotiation) shall be used in the performance of the work. It is the responsibility of the Contractor to supply additional equipment or make

substitutions as appropriate, at no additional cost, to accomplish the work as described in the Contract in an efficient manner.

All rolling stock must, at a minimum, use low sulfur diesel and be equipped with the latest apparatus to minimize discharge of particulates and other contaminates to the air, or more stringent pollution control measures as negotiated in finalizing this Contract. The equipment utilized must be specifically designed for the use intended. Modified or "built-up" equipment will not be acceptable without Metro approval. The Contractor shall properly protect the equipment and place it in the charge of competent operators.

All major pieces of rolling stock such as front end and track loaders, and skid loaders furnished by Contractor shall be new and unused as of the beginning of this Contract, and all equipment shall be suitable in design and construction for arduous, heavy duty service in a solid waste transfer station operation. All equipment shall comply with all applicable laws and regulations.

Metro shall have the right, but not the duty, to purchase any or all equipment owned by Contractor at the expiration or earlier termination of this Contract, at its net book value as shown on Contractor's financial statements, which shall be no greater than the purchase price less accumulated depreciation claimed by Contractor on its federal income tax returns. Contractor shall provide to Metro, upon request, properly signed Financing Statements and all other necessary documents for Metro to secure its purchase options.

Contractor shall use blade guards and rubber tires on all mobile equipment operated in and around the facility and shall use due care in their operation to avoid damaging the tipping floors and other facilities.

26.1 FUEL STORAGE

A Metro-approved fuel storage area is available on-site for a Contractor-supplied tank. The Contractor shall ensure compliance with all regulations if an on-site storage tank is utilized.

26.2 COMPACTORS

Two Metro-owned SSI Model 4500 compactors and one Metro- owned SSI Model 4000 are to be used in the compaction of waste.

27.0 MAINTENANCE REQUIREMENTS

Unless otherwise specified, the Contractor shall be responsible for the maintenance and repair of the facility, all Contractor-furnished equipment, and all Metro-furnished equipment and facilities, including all plumbing, mechanical, and electrical systems and components, drainage structures, fixtures and devices related thereto, or which form a part of, or are installed therein.

27.1 METRO-FURNISHED EQUIPMENT

- A. The Contractor shall maintain Metro-furnished equipment in good working condition at all times. Maintenance shall conform to the recommendations of the manufacturer. The Contractor shall not alter or remodel Metro furnished equipment without advance written approval from Metro.
- B. Equipment covered by a manufacturer's warranty shall be maintained in accordance with the terms of the warranty. All repairs or adjustments covered by the manufacturer's warranty shall be referred to an authorized representative of the manufacturer.

- C. Contractor shall make all necessary repairs that are not covered by the terms of the manufacturer's warranty, for whatever reason, shall be made by the Contractor. The Contractor will use manufacturer-recommeded parts in preventative or repair maintenance, unless Metro approves substitutions.
- D. The Contractor shall be responsible for replacement/repair of any Metro-owned equipment or facilities lost, damaged, destroyed, worn out, stolen, or rendered inoperable, due to Contractor's negligence, including but not limited to Contractor's failure to operate or maintain the equipment in accordance with the manufacturer's recommendations as contained in the appropriate manual (a list of which is contained in the Appendix) or these Specifications.
- E. Contractor shall maintain an inventory of spare parts as recommended by the manufacturer and as necessary to minimize down time.
- F. All stationary equipment shall be suitably painted and/or finished so as to present an acceptable appearance in the opinion of Metro.
- G. Upon completion of the Contract, Contractor shall return to Metro the Metro-furnished equipment in a condition that reflects normal wear and tear.

27.2 CONTRACTOR-FURNISHED EQUIPMENT

- A. Contractor-Furnished equipment shall be properly maintained in a safe working condition at all times. The Contractor shall be responsible for all costs associated with Contractorfurnished equipment.
- B. The Contractor shall furnish, at its expense, whatever backup or substitute equipment for Contractor-supplied equipment that may be required to continue operation in accordance with Contract requirements during the period when equipment is inoperable.
- C. Contractor shall ensure all equipment complies with Metro's Clean Exhaust Program as negotiated as part of the proposal process.

27.3 BUILDINGS

- A. The buildings shall be maintained in good condition at all times. Contractor shall repaint all painted surfaces on the interior and exterior of the scalehouses, Contractor's and Metro's offices, all breakrooms and restrooms (excluding facilities associated with the onsite hazardous waste facility) every 24 months. Metro will supply latex paint for non-specialty applications (for example, safety yellow cannot be provided) at no cost to the Contractor. Factory-finished metal wall panels of the buildings shall not be repainted. Contractor shall repaint all safety devices in the transfer station bays and wash rack such as bollards, entrances and exits, traffic dividers, etc. every 24 months or as needed (in Metro's sole determination and at its direction). The type of paint, color, and method of application shall be subject to review and approval by Metro prior to commencement of repainting work.
- B. The Contractor shall be responsible for inspection, lubrication, adjustment, repair and maintenance of all building systems (including scalehouses) to include, but not necessarily be limited to, plumbing, sumps, degreasers, fixtures, heating, ventilating, and air conditioning systems, components, and devices; fire and dust suppression systems; radio communications equipment. Contractor shall replace any item, component, or device that is lost, damaged, destroyed, or which fails during the contract period.

C. Contractor will be required to clean storm water sumps as needed. Contractor will ensure compliance with all permits and be responsible for all costs associated with permit compliance.

27.4 WEIGHING SYSTEMS

- A. Maintenance and repair of weighing system scales and associated equipment will be performed by Metro at no expense to the Contractor. The Contractor will be required to clean the scale pits and decks monthly at no cost to Metro and during times that are not disruptive to traffic flow.
- B. Maintenance of the compactor weighing systems shall be the responsibility of the Contractor.

27.5 COMMERCIAL AND INDUSTRIAL VEHICLES WASH RACK

- A. The Contractor shall operate and maintain twice daily, or as needed, the existing commercial and industrial vehicle wash rack. Contractor shall restrict use of the wash rack to commercial and industrial customers.
- B. Daily maintenance will include the inspection of the truck wash sump, and cleaning as needed or at least weekly. Contractor shall conduct a general cleanup of the wash rack area *at least* twice daily. Weekly removal of all accumulated solids from catch basins shall be performed. Hoses must be maintained in operable condition and nozzles must be attached to hoses at all times. The operating pressure shall be such that commercial collection vehicles that use the facility can be cleaned adequately. The Contractor will be responsible for maintaining the sewer lines from the wash rack, and for all other parts of the wash rack as well, including their replacement.
- C. Contractor shall supply shovels and brooms for users of the washrack.

27.6 DRIVES AND PAVEMENTS

- A. Repair, patching, sealing and remarking of drives and pavements inside and outside of structures, but within the site's boundaries, shall be the responsibility of the Contractor, as needed or directed by Metro, at no additional cost to Metro.
- B. The Contractor shall be responsible for painting and maintaining traffic direction lines on the roadways (including staging/storage area).
- C. Replacement of the pavement shall be done as needed, with either the Contractor acting as Metro's agent or through Metro contracting directly for this service.
- D. Additional or replacement signage shall be provided by the Contractor. All signs must be professionally prepared and mounted.

27.7 STREET CLEANING AND MAINTENANCE

- A. The Contractor shall pull a mobile magnet capable of removing all ferrous metal daily, to collect all ferrous objects from the truck wash facility, transfer station area, Transporter's parking area on-site, the entrance and any and all other paved areas on the site.
- B. At no time will customers be directed to back or drive over debris anywhere on or in the facility.

C. All areas will be kept clean using a power broom or other street cleaning equipment approved by Metro. These areas must be cleaned at least one time per week or as often as necessary, as determined by Metro.

28.0 HOUSEKEEPING

28.1 TRANSFER BUILDING

Contractor shall:

- Clean exterior of all onsite buildings (except for the hazardous waste area) by pressure washing annually walls, roofs and gutters from the time operation commences, and at one month prior to completion of the Contract;
- Steam clean exterior of the buildings as needed to remove stains in conjunction with the pressure washing of the exterior;
- Clean interior of transfer building and truck wash (excluding rafters, other metal structural supports and ceilings) by pressure washing annually;
- Sweep and hose work, vehicle maneuvering and maintenance areas within the transfer station area daily at a minimum and wash with environmentally preferred detergent if necessary;
- Immediately address and clean all spills when they occur;
- Daily remove wastes from the cleaning process and not dispose of such wastes in storm drains or sanitary sewers.

The Contractor shall supply all equipment, supplies and labor for cleaning. Contractor shall use environmentally safe cleaning agents as determined in cooperation with Metro.

28.2 JANITORIAL SERVICES

The following services will be provided a minimum of three (3) days per week, for the transfer station operations' offices, (including but not limited to the conference and break rooms) all scalehouses, Metro office building, and an on-site trailer used by household hazardous waste personnel, unless otherwise indicated:

- Vacuum mats and carpets;
- Dust desks, chairs, cabinets, etc.;
- Spot clean fingerprints from walls and doors;
- Empty trash, replace liners as needed;
- Dust off counters, desks and tables;
- Dust-mop any tile floors and stairwells; Wet-mop any tile floors and stairwells;
- Spot clean fingerprints from bathroom cabinets;
- Clean bathroom sinks, toilets and counters;
- Replace toilet tissue, paper towels as needed;
- Strip and wax floors once a month;
- Clean all windows weekly;
- Buff floors weekly;
- Carpets shall be scrubbed bimonthly;
- Provide doormats at each entry to the offices and scalehouse, replace with clean mats weekly;
- Provide working mats in the offices, scalehouses, hazardous waste facility as requested; and,
- Provide all janitorial and cleaning supplies as needed (non-toxic). All cleaning supplies shall
 comply with the environmentally preferred specifications for such products in the Appendix.

29.0 LANDSCAPE MAINTENANCE

Metro will be responsible for the landscaping at the site. Contractor will be responsible for utility billings, such as water related to landscaping activities. Contractor will be responsible for the repair and replacement of all structures such as drainage structures and fences. Cleaning of drainage structures and filters shall be considered routine maintenance.

30.0 PERMIT COMPLIANCE

The Contractor will be required to operate the transfer station in complete compliance with all permits issued to Metro by regulatory agencies. The Contractor will be responsible for making any improvements or modifications in operating procedures necessary to stay in compliance with all such permits. Contractor shall pay any penalties levied by regulatory agencies for Permit noncompliance due to negligent operation or omission by the Contractor.

Penalties will be in addition to any liquidated damages assessed according to the Contract Documents.

30.1 OPERATING PERMITS

Metro has the necessary permits to operate the facility. These include:

- Mitigation Agreement between Metro and the City of Portland
- Solid Waste Disposal Permit from the Oregon Department of Environmental Quality
- Industrial Wastewater Discharge Permit
- Storm Water Permit
- Scale Permits

Other required permits are the responsibility of the Contractor. Likely examples include city business licenses and radio frequency permits.

30.2 IMPLEMENTATION OF PERMITS

It is the responsibility of the Contractor to perform any testing required by the permits listed in Section 30.1 and to pay for all associated costs with the exception of industrial wastewater and storm water permits. For those two permit types, Metro will perform and pay for all required testing (i.e., sampling and analysis) and reporting of test results, and will be the regulatory agencies' contact for routine communications. The responsibilities of the Contractor for industrial wastewater and storm water permits shall be all the responsibilities for permit compliance described in Section 30.0.

31.0 UTILITIES

All utility charges, including water/sewer, electricity, natural gas and telephone will be the responsibility of the Contractor, except the telephone charges for Metro personnel. The Contractor shall forward copies of utility bills to Metro as requested.

Contractor shall participate in the electrical supplier's Clean Wind Program at the *Patron Level* at which 15% of the electricity purchased is generated by wind turbines. Metro shall be listed as the program participant for purposes of participating in the utility's recognition program and shall direct where the clean energy originates through *Green Tags* designations or other similar available mechanisms.

32.0 COORDINATION

The Contractor will be responsible for coordinating its activities with the waste Transporter and organics contractor. Metro will act as the arbitrator of any disputes between any and all contractors and/or disposal site operators connected with their work, regarding their performance of the work and the interpretation of the contracts involved. It will be the responsibility of the Contractor to prepare for and respond to complaints, charges, and allegations brought against the Contractor prior to any such arbitration meeting. The Contractor will also be required to present a monthly report summarizing activities during the prior month and plans and schedules for future activities. The organization of and invitation to any such meeting will be the responsibility of Metro.

33.0 OPERATIONS REPORTING REQUIREMENTS

The Contractor shall establish and maintain an information system to provide storage and ready retrieval of Facility operating data and all financial information.

The Contractor shall prepare and maintain proper, accurate, and complete records and accounts of all transactions related to the Facility (except for Scalehouse functions). The Contractor shall maintain records of its costs in a manner that will permit, to the extent possible, the separate determination of the cost of providing service to (1) the general public, and (2) commercial customers. These records shall include, but not be limited to (as applicable): maintenance records, equipment replacement records and schedules, and safety and accident reports; quantity of Acceptable Waste delivered to the Facility; quantity of Source-Separated recyclable materials received and sold; quantity of Recovered Materials produced and sold; quantity of compacted waste loaded for transport to disposal; and quantity and type of Unacceptable Waste handled. Metro shall have complete access to all such records.

The Contractor shall provide Metro with monthly reports within ten (10) calendar days of the end of each month, including, but not limited to, the following operating data (as applicable):

- (1) Complaint forms, recommended actions, and/or actions taken;
- (2) Any extraordinary occurrences affecting Metro;
- (3) Status of operating equipment;
- (4) Any correspondence between the Contractor and governmental bodies relevant to the Contract;
- (5) Reports on accidents and their status;
- (6) Monthly sales of Recovered Materials (by material and price);

- (7) Monthly quantity of source-separated organics received and reloaded for transport to a composting facility, including number and tons of loads rejected;
- (8) Monthly quantity of waste compacted and loaded for transport to disposal (by facility);
- (9) Quantity and type of Unacceptable Waste; and,
- (10) Financial data and utility consumption as deemed appropriate by Metro.

The Contractor shall prepare an annual report subject to independent audit that incorporates a summary of the monthly operations reports for the preceding 12-month period summarizing all required data and records. This report shall be submitted to Metro within ninety (90) days after the end of each Contract year.

The Contractor shall prepare an operating and maintenance manual for the facility. The manual shall include waste handling procedures, the number and type of positions and equipment, routine maintenance requirements, documentation requirements and the contingency plans required above. The manuals shall be updated at least annually, or sooner if major changes to the operations occur.

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3503, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE CONTRACT NO. 926063 FOR OPERATION OF THE METRO SOUTH AND METRO CENTRAL TRANSFER STATIONS

Date: September 29, 2004 Prepared by: Chuck Geyer

BACKGROUND

In March 2004, Metro released a request for proposals to operate Metro's transfer stations, as authorized in Resolution No. 04-3426, For the Purpose of Authorizing an Exemption from Competitive Bidding Requirements and Authorizing Issuance of RFP #04-1091-SW&R for the Operation of the Metro South and/or Metro Central Transfer Stations, adopted February 26, 2004. At the end of April, four proposals were received and evaluated per the process contained in the request for proposals. The evaluation of proposals was completed in June 2004 and Metro began negotiations with the highest-ranked firm (Oregon Resource Recovery, LLC).

Due to a variety of factors, Metro was unsuccessful in negotiating a contract with the highest-ranked firm and terminated negotiations in August. Per the process contained in the request for proposals, Metro initiated negotiations with the next highest-ranked firm (Browning-Ferris Industries, Inc.). Metro has successfully negotiated a contract with this firm as attached to Resolution No. 04-3503 as Exhibit "A".

Some of the major features of the final contract (that were contained or solicited in the request for proposals authorized for release) are as follows:

- The contract is for up to five years beginning April 1, 2005 and ending March 31, 2010. As required by IRS rules, Metro has the unconditional right to terminate the contract at the end of three years.
- The guaranteed recycling rate is 15% for Metro South Station and 17% for Metro Central Station. These rates are slightly better than the current recovery rates for the facilities. In addition, the Contractor will receive a bonus payment for exceeding the guaranteed rate.
- The contract provides for the replacement of rolling stock and includes a new material recovery line at Metro South to improve the recovery of dry waste.
- Staffing levels and training requirements are increased over the current contract to improve customer service, efficiency and safety.
- The contract provides for the reloading of source-separated organics received at Metro Central Station.
- The contract also provides a variety of sustainability features as solicited or required in the RFP including a reuse program, the purchase of 15% renewable energy, the use of recycled products and implementation of a clean exhaust program featuring the use of diesel particulate filters and ultralow sulfur diesel fuel.

Negotiations resulted in two major changes to Browning-Ferris Industries (BFI) proposal submitted in April 2004. This initial proposal included the provision of a compactor for Bay 3 of Metro South where the majority of public customers dump its waste. The compactor would be used to directly load Metro's transport contractor's vehicles. Currently the waste is loaded into a walking floor trailer and dumped in the pit prior to compaction. The equipment BFI had proposed was surplus equipment from the corporate parent. When Metro initiated contract negotiations with Oregon Resource Recovery, BFI allowed the surplus equipment to go to another firm of the parent corporation. Installation of a compactor in Bay 3 is contained in the list of capital improvement projects approved by the Metro Council and was valued at approximately \$900,000.

In exchange for allowing the withdrawal of this offer, Metro negotiated a reduction in the organics reload rate proposed by BFI from \$19.50/ton to \$8.50/ton. The savings to Metro over the life of the contract from this reduced rate is approximately \$1.6 million. Metro will continue to evaluate the importance of the compactor for this area during our CIP process.

ANALYSIS/INFORMATION

1. Known Opposition

Although no specific opposition has been voiced as of this writing, there is precedent for opposition to any solid waste rate increase that may occur as a result of this contract. The following are historical reactions from various user groups:

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

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

Probable Support.

<u>Recycling Interests</u>. Recycling interests have historically supported higher disposal fees, because that makes recycling relatively more attractive.

<u>Private Facility Operators</u>. Private solid waste facility operators have historically supported increases in Metro's tip fee because their own private tip fees can follow the public lead—so long as the increase is not due primarily to the Regional System Fee, which is a cost to these same operators.

2. Legal Antecedents

The Metro Council (sitting as the Contract Review Board) adopted Res. No. 04-3426 on February 26, 2004 exempting this contract from pubic bidding requirements pursuant to Metro Code section 2.04.054, and authorizing the release of the RFP.

Metro Code 2.04.026 requires that the Chief Operating Officer must obtain authorization by the Metro Council prior to execution of a contract that has significant impact on Metro. Council identified this project as a significant impact contract in its FY 2004-05 budget ordinance.

3. Anticipated Effects

Adoption of Resolution No. 04-3503 will authorize the Chief Operating Officer to execute Contract No. 926063 with Browning-Ferris Industries, Inc. for the operation of the Metro South and Metro Central transfer stations for a period of up to five years.

4. Budget Impacts

The approximate value of the contract is \$30 million dollars. As compared to the current contract, costs will increase approximately \$1/ton. The fiscal impact of these increased costs may be reflected in future rate increases.

Budget impacts for FY 2004-05 are discussed under the staff report for Resolution No. 04-3502, For the Purpose of Authorizing the Chief Operating Officer to Execute Change Order No. 6 to the Contract for Operation of the Metro South and Metro Central Transfer Stations, to be considered by Council on October 28, 2004.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 04-3503.

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MINUTES OF THE METRO COUNCIL MEETING

Thursday, October 21, 2004 Metro Council Chamber

Councilors Present:

David Bragdon (Council President), Susan McLain, Rod Monroe, Rex

Burkholder, Carl Hosticka, Rod Park, Brian Newman

Councilors Absent:

Council President Bragdon convened the Regular Council Meeting at 2:05 p.m.

1. INTRODUCTIONS

Mr. Mike Huycke spoke about some changes in leadership at Allied Waste. Mr. Huycke will be moving to Corvallis to become district manager for the state for Allied Waste, replacing Merle Irvine. Todd Irvine will become the general manager of the Portland division. Tom Wyatt will be retiring at the end of the year and will be replaced by Craig Holmes as operations manager of the BFI facilities.

2. CITIZEN COMMUNICATIONS

There were none.

3. CONSOLIDATED ECONOMIC DEVELOPMENT STRATEGY

Lydia Neill, Planning Department spoke about this project, which is being initiated by the regional partners to complete an application for an Economic Development District designation in order to be in line to receive federal funds. The regional partners received a grant for \$170,000 from the Economic Development Administration (EDA) and PDC is heading up the project. Metro staff is participating on a technical advisory committee to this project. Eco Northwest is the consulting group hired to complete the application and is scheduled to finish in May 2005.

Because of the strict federal requirements for this project, there will not be much possibility to use this information to springboard other local economic strategy plans. There are three work elements:

- 1) Oversight/project management Uncover problem areas and opportunities for directing future funding to targeted infrastructure projects.
- 2) Develop project priority list (from existing infrastructure plans and the Regional Transportation Plan). Shape cluster research.
- 3) Develop organizational structure, including increasing elected official participation in regional partners work. The suggestion is to use the Metropolitan Economic Policy Task Force as a way to engage elected officials in this process.

Councilor Burkholder said that this issue came up often during the discussion of industrial land supply. He said that there wasn't much discussion about outcome and was encouraged that the structural goal was to include more elected officials. In terms of Metro participation, he encouraged discussion of Centers and what makes them work well, such as boulevard improvements and transit oriented development. He wants to make sure that we are looking at the broader picture.

Councilor Newman asked when the work program would be available for review. Ms. Neill said that it could be completed shortly. Councilor Newman hoped that the scope and work program puts as much emphasis on homegrown entrepreneurship and creating jobs in existing firms as it does on recruiting firms from out of state. Ms. Neill said that the discussion of the cluster research is an important component of that and will focus on building and expanding industries that do well.

4. CONSENT AGENDA

4.1 Consideration of minutes of the October 14, 2004 Regular Council Meetings.

Motion: Councilor Newman moved to adopt the meeting minutes of the October 14,

2004 Regular Metro Council.

Vote: Councilors Burkholder, McLain, Monroe, Park, Newman, Hosticka and

Council President Bragdon voted in support of the motion. The vote was 7

aye, the motion passed.

5. ORDINANCES -FIRST READING

5.1 **Ordinance No. 04-1060**, For the Purpose of Removing \$367,740 in Grants, Donations and Related Expenditures from Regional Parks Capital Fund, and Transferring \$58,500 from Capital Outlay to Contingency in the Regional Parks Capital Fund; and Declaring an Emergency.

Council President Bragdon assigned Ordinance No. 04-1060 to Council.

5.2 **Ordinance No. 04-1061**, For the Purpose of Recognizing \$367,740 in Grants, Donations and Related Capital Expenditures in the Regional Parks Capital Fund; and Declaring an Emergency.

Council President Bragdon assigned Ordinance No. 04-1061 to Council.

6. RESOLUTIONS

6.1 **Resolution No. 04-3506**, For the Purpose of Directing the Chief Operating Officer to Develop a Fish and Wildlife Habitat Program that Relies on a Non-regulatory Effort to Improve Habitat Prior to Any Implementation of New Regional, Performance-based Regulations

Motion:	Councilor Park moved to adopt Resolution No. 04-3506.	
Seconded:	Councilor Newman seconded the motion.	

Councilor Park spoke to his support of the resolution, stating that citizens of the Metro region value living in a place that provides green spaces for people and for fish and wildlife habitat. For over eight years Metro has engaged the public and our local partners in an extensive effort to protect the natural habitat in our region. Metro has had very few efforts that have required this level of public involvement. However, even with all the hundreds of meetings and thousands of hours of citizens' and staff time, we have not yet been able to adopt measures to provide certainty that habitat will actually be protected. Certainty that the public, business and the environment of our region deserve.

This lack of certainty has become both a dilemma and a warning sign. A dilemma because eight years of effort have not resulted in further habitat protection. A warning sign that the tools we have relied upon in the past, of a "Command and Control" system of regulations, have become dulled with over usage.

It is now time to consider thinking "outside the box" to break the "paralysis by analysis" during which the region has languished and habitat has continued to be lost or degraded.

The region's fixation on how to stop bad things from happening to fish and wildlife habitat needs to change to how to inspire good things to happen to fish and wildlife habitat. A program leading with regulations does not inspire, it only keeps the region divided. A program that regulates the activities of the few does not inspire the many to help. A program that does not lead will not achieve the desired outcomes of our region.

Resolution 04-3506 will move us in a new and much needed direction.

<u>First</u>. Resolution 04-3506 acknowledges the good faith and efforts of Oregonians in environmental protections. The very fact that our region is having this debate on <u>HOW</u> not <u>WHETHER</u> to protect and restore the wildlife habitat areas should be applauded.

<u>Second</u>, we recognize the hard work and efforts of our local partners in their separate labors for habitat protections. This resolution leverages those labors by providing the overarching framework of a region wide cohesive effort and to provide model programs for local communities to adopt if so desired or needed to achieve equivalence.

<u>Third</u>. The relationship between a regional body and local jurisdictions is at its best when it is a partnership instead of that of a regulator and those regulated. As such, this resolution intentionally repositions Metro as a partner to local governments and not a regulator to the region.

 $\underline{\text{Fourth}}$. The resolution also expresses our intent to sponsor a ballot measure to enable acquisitions of valuable habitat areas from willing sellers, one of several tools for habitat protection. Metro has proven to be a good steward of public investment, returning over 8000 acres of green space from the 1995 bond measure – over 2000 more acres than promised.

<u>Fifth</u>. Instead of relying on imposing new region-wide regulations, our intent would be to favor performance standards and a range of best management practices that local governments would have latitude in meeting.

Sixth. This resolution also recognizes the immediacy of voluntary programs and the limitation of regulations that by their very nature require a delayed and perhaps uneven implementation. Metro, as part of this resolution if adopted, will immediately begin plans to meet the regional outcome measures in the form of technical assistance and providing information to local governments to help them develop and improve their local fish and wildlife habitat programs. Such technical assistance may include providing information about alternative low impact development practices, scientific analysis of local habitat conditions, the collection, organization and use of geographic information system data and mapping technologies, development of educational information and curricula, and review of local land use codes to identify current barriers to development approaches that benefit fish and wildlife habitat and potential modifications to benefit fish and wildlife habitat.

This does not mean rules are not a necessary part of any habitat program. Regulations have played an important role as one tool of environmental protection. We recognize the strides that have been made in some localities during the many years that this matter has been pending before the Metro Council. Should local regulations and enhanced non-regulatory measures fail to meet regional performance standards, this resolution reserves the option for regulations. Metro will periodically assess the region's progress and if outcomes are not achieved by 2010, we will impose regional regulatory measures by 2012. This "regulatory backstop" would provide added impetus for governments and the development industry to make voluntary approaches and locally adopted regulatory programs a success.

This new direction is controversial to some but is also welcomed by many, including our local government partners. My own personal experience in agriculture shows me this approach can work and does work, based on the results of Senate Bill 1010. Because of the bold leadership of Gov. John Kitzhaber and others, all 39 watershed basins in Oregon now have voluntary (with a regulatory back-up), locally developed agricultural water management plans - a feat that many said could not be done. Agriculture has moved past the paralysis of analyzing to actually making good things happen in the environment. I will not accept that the urban areas are any less capable, any less environmentally sensitive and certainly not any less motivated.

Councilor Burkholder moved that the resolution be continued to November 4, 2004. Councilor Newman seconded the motion. Councilor Burkholder said that the purpose of the public hearing today is to gather information. This resolution has also been presented to the Metro Policy Advisory Committee and some technical committees and moving to November 4 will allow more time to receive and process input from these groups.

Councilor McLain expressed her support of the motion, and stressed that Council should put this discussion off until at <u>least</u> November 4th and perhaps delay the vote beyond that. She emphasized the need to provide adequate time for public input about these changes.

Councilor Hosticka expressed his support as well, stating that the November 4th meeting would be the earliest. He added that the Water Resources Policy Advisory Committee and the Goal 5 Technical Advisory Committee met on Tuesday and almost unanimously the members asked for more time. There were some things in the resolution that members liked and some that they had serious questions about and would like more time to give it further consideration.

Councilor Newman asked for confirmation that the public hearing would still occur today. Council President Bragdon affirmed it would. Councilor Newman noted his support of the motion.

Council President Bragdon confirmed that consideration of the resolution would be moved to the November 4, 2004 Council regular meeting and that the next public hearing would occur then as well, not on October 28th as originally scheduled.

Council President Bragdon opened a public hearing on Resolution No. 04-3506.

1) Randy Miller, Portland Ambassador Program, 333 SE 2nd, Portland, Oregon 97219 noted that he is a fifth generation Oregonian. He spoke about his involvement with the Portland Ambassador Program and the importance of economic health to allow citizens to enjoy the other benefits of our region. The organization works towards the goal of business retention. He discussed his understanding of the business culture in the State of Oregon. He said that in Oregon, growth has

been slow, but steady and businesses that come here participate in the values of this region. He said that the need for new regulation is unnecessary; expressed his support of the resolution.

- 2) Blaine Ackley, 655 NW 229th Avenue, Hillsboro, Oregon 97121. He noted that he is a property owner that will be directly affected by Goal 5. He addressed the unintended consequences of the Goal 5 decision before the Council, advocating for more balance to ensure the maintenance of the natural environment. He supports this resolution as the best alternative compromise for all environmental views. He said that if we don't take property owners' views into consideration we will end up with passage of Measure 37, which will hurt all of us. [Details are contained in his submission to the public record]
- 3) Cindy Catto, Associated General Contractors, 9450 SW Commerce Circle, Wilsonville, Oregon 97070. She expressed her organization's support of the resolution. AGC has always been a proponent of using "carrots" instead of a "big stick." She said that this resolution represents a new direction in Metro's leadership. The decision to take a new approach does not require a great deal of time. She encouraged that the Council move to adopt and determine the details after the November 4 decision. She also provided additional suggestions, including a more explicit timeline for periodic reporting, developing performance measures in 2005 with 2-year updates after that. She said that moving forth with a bond measure would spread the benefit and cost throughout the region. Finally, she recommended that increased expertise of developers be included in the implementation team. [Details are contained in her submission to the public record]
- 4) Beverly Bookin, CREEC, 1020 SW Taylor Street, #760, Portland, Oregon 97205. She noted her organization's strong support of the resolution. She has participated in the Goal 5 planning process since its inception. The original intent was for Metro to fill the gaps between jurisdictions but that changed to a "full-bore" regional approach, duplicating jurisdictional efforts and becoming politically untenable. She said CREEC supports the resolution in general, but added that the "devil is in the details", especially in terms of implementation. [Details are contained in her submission to the public record] Councilor Newman asked about the shift from the initial approach. Ms. Bookin said that the initial work program was specifically called out as a "gap" program with an 18-month time frame for development. With the change in program direction, the development has extended over 5-6 years and in the meantime many local jurisdictions have improved their protection programs.
- 5) Steve Pfeiffer, NAIOP, 1120 NW Couch, Portland, Oregon 97204. Mr. Pfeiffer offered support for the intent of the resolution, acknowledging that the details need to be worked out. He emphasized the need for certainty with regard to planning and development. He said the resolution represents an opportunity to restore certainty and balance. He said that regulation only goes so far. He said one of the details of most concern is that local governments will be able to rely upon their existing programs and their own maps. His organization supports a ballot measure for acquisition.
- 6) Jonathan Schlueter, Executive Director, Westside Economic Alliance, 10200 SW Nimbus Avenue, Portland, Oregon 97223. He noted his group's support of the resolution. He emphasized that the Portland metropolitan region still has the largest unemployment rate in the nation. He said we have to improve the business climate in order to turn things around. He said new and innovative ways need to be developed at the government level to address the environmental needs of the region. Full employment is required to ensure that the money is available to protect the environment. Supports the resolution. [Details are contained in his submission to the public record]

- 7) Carl Axelsen, 11405 SW 33rd Avenue, Portland, Oregon 97219. He did not favor dropping the regulatory aspects of the Goal 5 program fix the regulations. He shared his experience in the Civil Rights Movement, and how business claimed that extending civil rights would be bad for business. He expressed his doubt over the voluntary measures that the resolution relies upon without regulation behind them. A lot of progress has already been made. [Details are contained in his submission to the public record]
- 8) Cheryl Hummon, Defenders of Wildlife, 1880 Willamette Falls Drive, West Linn, Oregon 97068. Ms. Hummon provided background on the work of her organization. She applauded Metro's scientific research, and stated her group's support of working with Metro on implementing incentive programs. However, she did not favor dropping the regulatory aspects of Goal 5. The results of this would undermine conservation efforts in the region and habitats will be lost. She supports a gradual transition away from regulatory approach after protective measures are implemented, rather than an abrupt change in approach. [Details are contained in her submission to the public record]
- 9) Robert McKean, Centennial School District, 18135 SE Brooklyn Street, Portland, Oregon 97236. Mr. McKean spoke about 18 acres of undeveloped property that the school district owns (identified as Class B wildlife habitat), and the concern they have about the long-term use of the property as the school district continues to grow. There is a need to consider the land for the development of a new middle school. The standards that provided flexibility are far more attractive than the regulatory approach that could provide an incentive for property owners to destroy property in anticipation of regulation. [Details are contained in his submission to the public record]

Councilor Hosticka asked where the stringent regulations are coming from. Mr. McKean said he is anticipating that some may develop.

10) Jane Leo, Portland Metropolitan Association of Realtors, 5331 SW Macadam Avenue, Portland, Oregon 97232. She asked that the Council encourage support of the resolution. It represents a new direction in Metro's leadership. The resolution underscores Metro's role as facilitator in planning for the region's environment. PMAR strongly supports purchasing land from willing sellers rather than regulating private property. She asked that the Council not delay adoption. [Details are contained in her submission to the public record]

Councilor Newman addressed Ms. Leo's point that Metro supply the resources to assist smaller municipalities that cannot afford the planning. He said that one of the critical issues that he wants to avoid is adopting a mandate that passes the cost along to the local jurisdictions without including the support and resources necessary to get programs in place.

11) Travis Williams, Executive Director, Willamette Riverkeepers, 380 SE Spokane Street, #305, Portland, Oregon 97202. Mr. Williams described the resolution as representing "inspiration by retreat." He did not feel the resolution fits the mold of bold political action to protect natural resources in Oregon. It actually undermines years of hard work that had been done to protect water and fish resources. He said that there are better ways to deal with public perception and uncertainty than taking a step back. Volunteerism is good, but the goodwill of all people cannot be relied upon. There are always people that will not be swayed by the need to preserve the natural environment. Regulation is needed. [Details are contained in his submission to the public record]

12) Clair Klock, 931 NE Salzman Road, Corbett, Oregon 97019. Mr. Klock urged Council not to support this resolution. Progress is not made without some level of regulation and gave the example of the Forest Practices Act. Regulation often has preceded volunteerism. He cited instances of this in the past, i.e. clean up of the Willamette River. He advocated that regulation and volunteerism go hand-in-hand with Goal 5. [Details are contained in his submission to the public record]

Councilor Park clarified that this resolution does have a regulatory backstop. Mr. Klock said that it is important that people in the region understand that there is a regulatory backstop or nothing will get done.

13) Amanda Fritz, Friends of Arnold Creek, 4106 SW Vacuna Street, Portland, Oregon 97219. Ms. Fritz said that those in favor of the resolution have a financial gain in destroying the natural resources of the region. She said she spoke on behalf of those resources. She expressed her doubt that the Council is actually interested in the public process. She expressed her distrust of the process, and said that she does not trust the Council anymore, after spending hundreds of hours of volunteer time and taxpayer dollars in staff time. She said that the environmental community and the public have been betrayed. Once the Goal 5 resources are gone, they will not come back.

Councilor McLain underscored that the resolution has not been voted upon; that it was authored by two out of seven councilors. She encouraged Ms. Fritz to submit her comments to the process and recognized that the backbone of Metro has always been the volunteers and that they are appreciated.

- 14) Susan Murray, 11555 SW Denfield Street, Beaverton, Oregon 97005. Ms. Murray emphasized that the non-regulatory approach (volunteerism) is necessary. However, she was concerned that doing more of the same would not prevent the loss of natural habitat like the 16,000 acres that have already been lost. She said the resolution does not provide evidence that continuing voluntary efforts will change the outcome. She said the bond measure was unfair, as it essentially would require citizens to underwrite the loss of habitat caused by developers. Ms. Murray also addressed the No. 2 provision, stating that Low Impact Development best management practices do not protect natural habitat. She urged the Council to vote no on the resolution.
- 15) Brenda Brady, Mt. Hood Community College, 26000 SE Stark Street, Gresham, Oregon 97030. Ms. Brady expressed the college's support of the resolution. She revisited the donation of land made by MHCC a benefit to the area. But she said that Goal 5 would infringe upon MHCC's ability to develop an additional parcel that it owns. The College Board is committed to sustainable building practices and environmentally sound development. [Details are contained in her submission to the public record]

Councilor McLain clarified that Metro staff is working on the issue of how to treat educational institutions in the Goal 5 program.

16) Wayne Kingsley, 110 SW Caruthers, Portland Oregon 97?. Mr. Kingsley expressed his support of the resolution. He said we have been bogged down in the Goal 5 process long enough. Resolution 04-3406 enables the region to move forward, to develop the right tools for the right job. He emphasized that cooperation is essential in achieving a balanced approach to fish and wildlife protection and economic development. His opposition to Goal 5 has been lessened by this new proposal, and he thanked the Council for its bold leadership. [Details are contained in his submission to the public record]

17) Lise Glancy, Portland of Portland, 121 NW Everett, Portland, Oregon 97208. Ms. Glancy expressed the Port of Portland's support for the resolution. The Port is one of the largest landowners with property along resource areas likely to be affected by Goal 5 and has had a history of managing their property for multiple objectives, including natural resource protection. She provided a Port of Portland Goal 5 Impact Assessment on what impact Goal 5 would have on Port property (tens of \$millions) and on the region, including a loss of developable industrial land. The Port is committed to working with Metro and its partners to develop the details of this new approach. [Details are contained in her submission to the public record]

Councilor McLain asked about the filters indicating the variety of ways to use land owned by the Port of Portland. Ms. Glancy said she took the analysis from the ESEE and the page number is referenced in their report. Councilor McLain clarified that the Council has not yet decided on the application of implementation and so impacts cannot be determined. Ms. Glancy said that their report is based on projected outcomes of proposal 2B.

Councilor Hosticka asked if under a voluntary program, would the Port take the necessary steps to provide mitigation of development, which they estimate at a cost of \$60 million? Ms. Glancy said that much of their property would fall under local jurisdictions restrictions. The Port has an environmental policy and they integrate that into all development. She gave the example of the Alcoa property and said that the Port only plans to develop half of the property. The assessment is based on net increase in regulated areas, not based on existing regulated areas.

Council President Bragdon clarified that the comparison is not with a voluntary program but rather with the current baseline of existing regulations of local jurisdictions. Ms. Glancy concurred.

- 18) Sue Marshall, Executive Director, Tualatin Riverkeepers, 16507 SW Roy Rogers, Sherwood, Oregon 97146. Ms. Marshall thanked the Council for agreeing to postpone the decision, at least until WRPAC and MTAC could study the issues further. She also complimented the work of Metro staff and expressed her hope that Metro staff are not disheartened that they don't view this resolution as an absolute setback. In addressing the resolution itself, Ms. Marshall expressed her concerns about the potential impact of this resolution on the work of the Tualatin Basin partners and spoke about the non-regulatory aspects of SB 1010. She feels that they are partners with Metro. The organization supported the first bond measure. But she emphasized that a regulatory component needs to be part of the Goal 5 program. [Details are contained in her submission to the public record]
- 19) Jim Labbe, Audubon Society of Portland, 5151 NW Cornell Road, Portland, Oregon 97217. Mr. Labbe asked that the Council honor the efforts of all of the hundreds of people involved in both the 2040 planning process and the Goal 5 process. He believed the resolution would delay the updating of regulations of local governments. He felt this would leave natural habitat even more vulnerable than it already has proven to be. He said that is it not realistic to expect cash-strapped local governments and watershed councils to prevent imminent and ongoing impacts to the environment by developers. [Details are contained in his submission to the public record]

Councilor Newman asked Mr. Labbe if environmentalists are concerned about the resolution due to philosophical or political differences. He asked if it was the approach or the timeline that was the problem?

Mr. Labbe responded by saying that there was a definite philosophical problem because regulations have a critical role, in combination with voluntary measures. Mr. Labbe referred to an attached report, which said that jurisdictions with regulations reported significantly lower loss of habitat than those without regulations. He said that the timeline is an important issue as well.

Councilor Park clarified that in Mr. Labbe's written testimony, it was an error that he asked Council to "do" support the resolution. Mr. Labbe confirmed that it was indeed an error.

Councilor Park clarified once again that there is a regulatory backstop in this resolution and it's part of why the work of the technical committee is so important in developing measurements. This is not an abandonment of all the work done so far; it's just a different approach to get to the same place.

- 20) Jill Fuglister, Coalition for a Livable Future, 510 SW 4th Street, #612, Portland, Oregon. Ms. Fuglister opposed this resolution and supported a delay in the adoption of this resolution, even beyond Nov. 4. This process has happened too quickly for many citizens and organizations to respond. CLF is still working on developing their response to the content of the resolution. She supports a cooperative approach and is concerned that the proposal was developed behind closed doors and was being fast-tracked. She believed this resolution does not seem consistent with Metro's adopted principles of citizen involvement, especially Principle Six that has the goal of involving citizens early in the process of policy development. She encouraged the Council to give the public the time that is needed to consider the options before them. [Details are contained in her submission to the public record]
- 21) Julie DiLeone, 5401 SE Mitchell Street, Portland, Oregon 97206. Ms. DiLeone thanked the Council for the opportunity to address the resolution. She moved to Portland due to the livability of the region, fostered by Metro's planning efforts. She said that this resolution moves away from a regional approach toward a piecemeal one. She expressed her own concern over the time it has already taken to address the various aspects of Goal 5. She is a strong supporter of non-regulatory efforts; however, she has experienced how a non-regulatory approach is not enough. People need regulation in order to know what they need to comply with. [Details are contained in her submission to the public record]
- 22) Brian Lightcap, Director, West Multnomah SW Conservation District, 13347 NW Newberg Road (city not indicated). Mr. Lightcap spoke to the need to find creative ways to determine how incentives can work. He also said there is a way to phase enforcement; it should not be pushed too far out. He recommended that Council defer enforcement, better define the incentives, and proposed a strategy to partner with the conservation districts serving this region. [Details are contained in his submission to the public record]

Council President Bragdon closed the public hearing.

Councilor Burkholder shared some information he gathered at a meeting with Dr. Jane Lubchenko, professor of oceanographics at Oregon State University, on global warming and why people are so emotionally engaged in the issue of habitat loss. Between one-half and two-thirds of the world has been transformed through human behavior. The current rate of extinction is one hundred to 1000 times the background rate of extinction. Councilor Burkholder emphasized that Goal 5 is not just a small, local issue. It is part of a global issue and the Metro Council takes it very seriously. He emphasized the need to address multiple human needs while not killing off humanity by poisoning our nest.

Councilor Hosticka shared some of the concerns of the Water Resource Policy Advisory Committee and the Goal 5 Technical Advisory Committee. The overwhelming response was that they feel there is a need to take more time. The most widely shared concern had to do with timing, that is, when the regulatory backstop would kick in; timing of when we would evaluate the performance measures, timing on acquisition. Another major question deals with how Metro and local governments will be able to get the resources necessary (money and people power) to monitor the non-regulatory measures of the resolution.

Councilor McLain emphasized that she is committed to the goal of completing the vision. Whether or not she agrees with the roll-out of the resolution, that is behind us now. In going forward, she stressed the need to include the public in the process. She also wanted to make sure that nothing stands in the way of Metro's partners, particularly the Washington County/Tualatin Basin group, being successful. She called for the business community and the general public to pitch in. In addition, she addressed the "tool box." The resolution focuses on volunteerism, acquisition and education, which is 60-70% of what they've been talking about all along. But she asked what would it mean if we only utilize these tools without regulation or the certainty scientifically. She said that she will work with staff and the authors of the resolution to answer those questions. She also stated that Metro greatly appreciates all the volunteers who have worked on this project and the Council realizes that we couldn't accomplish anything without them.

Councilor Park noted that Mayor David Fuller of Wood Village is in favor of the resolution and submitted a letter from him (in the record). Councilor Park stated that this is not a retreat; it is more an effort to create some movement in a process that has been bogged down. He expressed his support of Council President Bragdon's effort to redirect the process.

Councilor Newman wanted clarification on how the five-year time period would work for local jurisdictions to adopt measures. Second, what kind of resources is the Metro Council willing to commit to those groups who do not have the resources to develop a program, e.g. City of Milwaukie. Third, what will the performance measures look like? Water quality, water temperature, the loss of habitat and who would do the measuring. Finally, Councilor Newman wondered if the current Goal 5 map is going to be thrown out, or if a new map will be developed based on local jurisdictions' current programs. He said he would need some assurances on these issues before he goes forward with his support of the resolution.

Councilor Hosticka took exception with the perception that nothing has been done thus far. He noted the planning efforts of the Tualatin Basin partners who are on a timeline to adopt a program next month. Metro staff has been working diligently and we are on a timeline to adopt a program ourselves in December. He said that a lot of work has been accomplished – we just haven't taken the last step yet.

Councilor President Bragdon spoke to the misnomer that the resolution does not include an element of regulation. He made the distinction between regional and local regulation. He also wanted to emphasize that the staff has done an excellent job, and that The Oregonian editorial stepped over the line in maligning their efforts.

7. CHIEF OPERATING OFFICER COMMUNICATION

COO Michael Jordan spoke of a housekeeping issue, reminding the Council members about next Wednesday's Strategic Planning meeting, from 1:00-4:30pm.

8. COUNCILOR COMMUNICATION

Councilor McLain announced the Community Planning Day scheduled for Nov. 13 at OMSI, 9:30am-5:30pm. Mr. Jordan commended Metro DRC staff, especially Paul Couey, for their technical work on this event.

Council President Bragdon announced a brief recess before reconvening for a budget work session.

9. BUDGET WORK SESSION

Councilor Burkholder opened the budget meeting and introduced Chief Financial Officer, Bill Stringer. Mr. Stringer talked about the schedule for hearing from various departments and the schedule for Council to review budget items and to ask questions. Mr. Stringer asked to have a second series of meetings in November in order to come back with a better definition of actual programs and to allow the Council to give further direction to departments. Based upon those discussions, the departments will submit their budgets to financial planning in January 2005. In February and March of 2005, Council can ask for additional meetings to review any programmatic questions that may arise. Mr. Stringer will present the Council President's budget in April 2005 and there will be final adoption on or around May 5th, 2005. Councilor Burkholder stated it would be helpful to have the schedule and the order of budget issues in writing for the Council to refer to. Councilor Hosticka concurred that a schedule would be helpful. Council President Bragdon stated that the timeline for the budget events would be extremely helpful in providing the Council with a way to best express its needs. Councilor McLain commented on the finance staff, stating they have designed great opportunities and challenges to talk about with regard to responsibilities between Metro staff and the Council. They have provided an opportunity to fine-tune the process and to make it more efficient.

Councilor Burkholder introduced Metropolitan Exposition-Recreation Commission (MERC) Interim Director Cheryl Manning, Kathy Taylor, Director of Administration/Finance Officer, and MERC Commissioner Bruce Forbes.

Councilor Burkholder discussed various issues and opportunities at MERC and stated that a great deal of time has been spent discussing how the program works. Burkholder alluded to the fact that the Council needs to spend more time on strategic planning process. He also went on to say that MERC'S mission is quite clear and that the Council hopes to give MERC valuable feedback.

Ms. Taylor began by speaking about MERC, referring to the *Strategic Planning Discussion Description of Programs & Issues/Opportunities* handout. Ms. Taylor discussed how the MERC program aligns with Metro's goals for tourism, green building and economic impact. Councilor Burkholder stated that he sees MERC's mission as reaching out to people and communicating with people about what Metro and MERC actually do.

MERC Interim Director Cheryl Manning discussed the perils MERC is dealing with: a stagnant economy, high unemployment, escalating insurance costs, maintenance issues and fewer conventions than in years past. She also addressed the fact that the EXPO Center has experienced a steady decrease in usage. Ms. Manning also noted the trend of regular ticket holders discontinuing season tickets and buying individual tickets for the specific events they want to attend. There was also a brief discussion regarding a verbal agreement between the City of Portland and the Portland Center for the Performing Arts (PCPA) – a promise of money that has not come to fruition. To date, the promised monies have not been received, nor are they expected

to be in the future, and replacement for the \$500,000 has yet to be found. MERC is budgeting at a 50% fringe rate. There was discussion about EXPO's inability to attract certain types of events because of the age of the facility and its location. Ms. Manning stated that the Keller Auditorium is much nicer now, and has a much heralded and long-awaited additional women's restroom. She also heralded MERC's tremendous staff and world-class facility directors.

Councilor Newman asked about the promised contribution from the City of Portland to the Portland Center for Performing Arts. Again, Ms. Manning referred to it as a verbal promise and said that she had spoken to Commissioner Dan Saltzman's office and hoped to collect perhaps some of the funds at some point. But she did not have a guarantee that this would happen. Councilor McLain asked that the Council get together in a work session with MERC to strategize. Councilor McLain also spoke to the fact that Metro has different strengths and weaknesses than MERC and would like to make sure we are trying to sell all of the different types of facilities and to sell the region and our attractions.

President Bragdon asked about the EXPO Master Plan and what happened with their aspirations. He also asked about the current thinking surrounding EXPO's future. Ms. Manning talked about the lack of hotel rooms being a serious deterrent to attracting larger venues other than "gate shows" at EXPO. Private/public partnerships were also discussed.

Councilor Hosticka asked Ms Manning to clarify her statement about conventions being down from 15 to 10 this year. Ms. Manning confirmed that for the years 2005-2006, conventions have not been booked to the extent they were in previous years. Councilor Hosticka asked whether there are options other than conventions for the facility. Ms. Manning replied that each convention is responsible for \$800,000 in revenue. In the absence of that business, building up the food and banquet services, and selling the Convention Center as a significant meeting and banquet facility, is going to be key.

MERC Commissioner George Forbes also responded to Councilor Hosticka's questions by stating that most of the large conventions are four or five years out. The National Rifle Association (NRA) is looking at OCC for 2007. They will need 200,000 sq feet of meeting space. OCC will be able to accommodate them; however, they will need help with hotel rooms. The Oregon Bar Association, along with other businesses are also showing interest in renting the facility. OCC is getting far more local people showing interest, not just for trade shows, but for conventions as well. Councilor McLain stated that the goal is to fill hotel rooms and to help our community's economy. Councilor Burkholder stated that perhaps MERC and Metro should be looking at the Oregon Zoo and PGE Park as possibilities to be placed under MERC's operation. He also suggested there might be other potential customers as well, for instance, Washington County Fair Grounds and Clark County.

The issue of a headquarters hotel at the Oregon Convention Center was the next topic. Commissioner Forbes and Interim Director Manning stated that the OCC is at a competitive disadvantage due to a lack of hotel rooms in close proximity to the facility. Mr. Forbes went on to state that Long Beach, Seattle and Salt Lake City all have far more hotel rooms within an easy distance of their convention centers than does Portland. Mr. Forbes also stated that he does not want to see tractor pulls and rodeos in the Convention Center for lack of being able to provide rooms for larger events. Mr. Forbes stated in no uncertain terms that the OCC needs a headquarters hotel and would like to see the Metro Council put some renewed effort toward making that happen.

Councilor Newman asked about the status of the Portland Development Commission's RFP. Ms. Manning stated that the RFP was sent to seven groups, and that they expect proposals will be returned in December. President Bragdon underscored the need for a renewed line of communication with the PDC. Discussion followed about the "Denver Model" and a property owned by Barry Menashe (the site of a defunct television station). Councilor Newman commented on the fact that there does not appear to be very much coordination happening here.

Councilor Hosticka stated that at some point, Metro will be asked to put some money on the table. Because of this, there should be a formal way to be involved in the discussion sooner rather than later.

Ms. Taylor spoke to performance measures. [Note: handout was submitted for the record]. Councilor McLain reiterated that she wants the strategic meetings to happen between the Council and MERC, adding that it is very important to have a discussion about philosophy. Mr. Forbes stated that this is a very strategic time for all groups involved, especially in light of the fact that Portland will soon have a new Mayor.

Councilor McLain and Mr. Forbes spoke to the connection between Expo and the Oregon Convention Center, and to making it part of next year's work plan. Mr. Forbes stated that the EXPO Center is not desirable for conventions because it is geographically undesirable.

Councilor Burkholder introduced Mike Hoglund, Director of Metro's Solid Waste and Recycling (SW&R) Department, and Doug Anderson, Financial Manager of SW&R. Mr. Hoglund referred to handouts and why they are labeled the way they are. [Note: the handouts were submitted for the record] Mr. Hoglund discussed tonnage increases from year to year, reviewed the reason for the loss of shares in previous years, and why the Solid Waste and Recycling is doing better this year. Mr. Hoglund also spoke to the debt service reserve and St. Johns reserve, and how both impact the overall budget. Mr. Hoglund then referred to another handout titled, *Matching Department Programs with Council Objectives*, and detailed why the colors appear as they do on the handouts. [Note: the handouts were submitted for the record]

The main focus of the discussion surrounded components within the attached matrix. Mr. Hoglund explained that the purpose of the chart is to identify and be able to say where the Solid Waste and Recycling Department may need to do more, what could be accomplished, and where changes can be made over the next few years.

Councilor McLain asked for clarification on the color chart. Mr. Hoglund restated how the chart is set up and what the various colors indicate at the top of the matrix.

Mr. Hoglund stated that they are looking at a 15- year plan, determining what their measures are and how to talk about their successes. Mr. Hoglund also stated that the present issue with the program is that it needs to be tied to better goals and outcomes in order to help Metro refine the program. Councilor Park stated that if the department is going to look at everything on a more refined scale, then they need to pull back to see what we are ultimately trying to accomplish. Councilor Park went on to comment that certain things have changed the competitive nature of the solid waste and recycling industry, and that problems need to be solved or realigned in a different way. Councilor McLain stated that she had heard some of these same issues last year.

Mr. Hoglund said the department is working on new initiatives and have a contingency task force to help determine how they can get businesses to recycle more. Mr. Hoglund also spoke to their continued interest in doing more education and outreach to the business community.

Mr. Hoglund also spoke about the Rehabilitation Enhancement Program and disposals after neighborhood clean ups. He stated that even though these programs don't match the SW&R mission, they do them because it is a good thing for Metro's reputation.

Mr. Hoglund spoke to water quality and the Department of Environmental Quality's request that Metro do some work to help them. He also spoke about the fact that Metro is not getting responsiveness at the county level for some of the funding received.

Councilor Burkholder stated that the Council would not review SWAC and RSWMP at this time. Mr. Hoglund went on to discuss operational objectives and the need to be more entrepreneurial and collaborative with Council staff by giving more timely information. He also spoke about his interest in better sharing expertise with other departments, and their interest in doing a better job in the area of policy analysis and searching out grants and other opportunities. He emphasized that the Solid Waste and Recycling Department has always funded everything through rates, but that he would like to see the department be more entrepreneurial.

Councilor McLain stated that she liked the charts provided and found them to be very helpful. She complimented Doug Anderson on his diligence, and described areas she hoped the department would ramp up its efforts. Mr. Hoglund asked that Council email him with any specific ideas on next steps to take.

10. ADJOURN

There being no further business before the Metro Council, Council President Bragdon adjourned the meeting at 5:43 p.m.

Prepared by

Patty Unfred Montgomery Cameron Vaughan-Tyler Council Support Specialists

$\frac{\text{ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF OCTOBER 21,}}{2004}$

Item	Topic	Doc Date	Document Description	Doc. Number
6.1	Res. 04-3506	10-21-04	Testimony – Randy Miller	102104c-01
6.1	Res. 04-3506	10-21-04	Testimony – Blaine Ackley	102104c-02
6.1	Res. 04-3506	10-21-04	Testimony – Cindy Catto	102104c-03
6.1	Res. 04-3506	10-21-04	Testimony – Beverly Bookin	102104c-04
6.1	Res. 04-3506	10-21-04	Testimony – Jonathan Schlueter	102104c-05
6.1	Res. 04-3506	10-21-04	Testimony – Carl Axelsen	102104c-06
6.1	Res. 04-3506	10-21-04	Testimony – Cheryl Hummon	102104c-07
6.1	Res. 04-3506	10-21-04	Testimony – Dr. Robert McKean	102104c-08
6.1	Res. 04-3506	10-21-04	Testimony – Jane Leo	102104c-09
6.1	Res. 04-3506	10-21-04	Testimony – Travis Williams	102104c-10
6.1	Res. 04-3506	10-21-04	Testimony – Clair Klock	102104c-11
6.1	Res. 04-3506	10-21-04	Testimony – Brenda Brady	102104c-12
6.1	Res. 04-3506	10-21-04	Testimony – Wayne Kingsley	102104c-13
6.1	Res. 04-3506	10-21-04	Testimony – Lise Glancy/Bill Wyatt	102104c-14
6.1	Res. 04-3506	10-21-04	Testimony – Sue Marshall	102104c-15
6.1	Res. 04-3506	10-21-04	Testimony – Jim Labbe	102104c-16
6.1	Res. 04-3506	10-21-04	Testimony – Jill Fuglister	102104c-17
6.1	Res. 04-3506	10-21-04	Testimony – Julie DiLeone	102104c-18
6.1	Res. 04-3506	10-21-04	Testimony – Brian Lightcap	102104c-19
6.1	Res. 04-3506	10-21-04	Letter – Mayor David Fuller	102104c-20
4.1	Minutes	10-14-04	Minutes from October 14 Council	102104c-21
			Meeting	
10	Budget	10-21-04	Solid waste and Recycling	102104c-22
			department strategic planning and	(Budget 1)
			budgeting discussion draft	
10	Budget		Solid Waste and Recyling	102104c-23
		10-21-04	department program organization	(Budget 2)
			Issues and opportunities chart.	
10	Budget	10-7-04	Strategic Planning Discussion	102104c-24
			Description of Programs &	(Budget 3)
			Issues/Opportunities MERC	

102804/6-02

MEMORANDUM

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736 TEL 503 797 1700 FAX 503 797 1794



DATE: September 28, 2004

TO: David Bragdon, Council President

Rex Burkholder, Councilor Carl Hosticka, Councilor Susan McLain, Councilor Rod Monroe, Councilor Brian Newman, Councilor

Rod Park, Councilor

Kathy Rutkowski, Budget Coordinator FROM:

RE: **BUDGET ASSUMPTIONS FOLLOW-UP**

At the September 21, 2004 Council work session, I presented the FY 2005-06 financial assumptions for your review. Councilors identified several areas where they wished to see additional information.

- ✓ Cost estimates for a range of cost-of-living options
- ✓ The estimated excise tax/general fund impact of the salary adjustment options
- ✓ Listing of capital projects that fall within the \$50,000 to \$100,000 range

In addition, two items were flagged for future discussion – (1) options regarding the provision of certain benefits such as retirement, and (2) the automatic CPI inflator on the dedicated per ton portions of the solid waste excise tax. This memo is to follow up on the additional information requested from the last meeting.

<u>Cost of Living Options and Excise Tax Impact</u> – The financial assumptions presented to the Council recommended a 2.5 percent cost of living assumption for all employee groups. This assumption was developed in consultation with Human Resources and is based on the 10-year average of the Portland-Salem CPI-U, all items, annual average. Several Councilors wished to see cost estimates for a range of cost of living options. In addition, Councilor Park requested information on the General Fund impact of the recommended salary adjustments. These two requests have been summarized in the table below. The table summarizes, in 0.5 percent increments, the estimated cost of COLA options ranging from 0.5 percent to 3.0 percent. It shows salary cost by department as well as total estimated fringe cost and total General Fund impact. On the average, 16.5 percent of total salary adjustments are paid either directly or indirectly with excise tax.

Attachment 1 to this memo provides a more detailed table for the 0.5 percent COLA option. It shows estimated salary, fringe and General Fund impact at both the department and employee group level. This table may be used to estimate the detailed cost of other COLA options by multiplying these costs by the appropriate factor (e.g. - multiply the table by 2 to estimate costs for 1% COLA). The detailed tables for all cost of living option levels, including General Fund impact, are available upon request.

Table 1 - Estimated Cost of Various Cost of Living Options with Excise Tax Impact

ı	Estimated Cost @						
	0.5% COLA	1.0% COLA	1.5% COLA	2.0% COLA	2.5% COLA	3.0% COLA	
Auditor	1,436	2,873	4,309	5,746	7,183	8,619	
Council	2,997	5,992	8,989	11,985	14,983	17,979	
Finance & Admin. Services	17,643	35,294	52,934	70,581	88,229	105,878	
Human Resources	3,340	6,680	10,020	13,361	16,701	20,039	
MERC	37,270	74,555	111,824	149,102	186,373	223,651	
Metro Attorney	4,136	8,271	12,406	16,543	20,679	24,815	
Oregon Zoo	36,923	73,851	110,774	147,704	184,631	221,557	
Planning	24,648	49,298	73,946	98,590	123,238	147,888	
Public Affairs	4,933	9,866	14,799	19,729	24,664	29,597	
Regional Parks	12,320	24,640	36,957	49,279	61,598	73,915	
Solid Waste & Recycling	30,529	61,062	91,590	122,128	152,652	183,185	
Total Estimated Salary Cost	\$176,175	\$352,382	\$528,548	\$704,748	\$880,931	\$1,057,123	
Variable Fringe Cost @ 33.3%	\$58,666	\$117,343	\$176,006	\$234,681	\$293,350	\$352,022	
TOTAL ESTIMATED COST	\$234,841	\$469,725	\$704,554	\$939,429	\$1,174,281	\$1,409,145	
ESTIMATED GENERAL FUND IMPACT	\$38,460	\$76,919	\$115,377	\$153,833	\$192,298	\$230,755	

<u>CIP Project Between \$50,000 and \$100,000</u> – The financial assumptions also recommended the increase in the cost threshold of a project to be included in the Capital Improvement Plan from \$50,000 to \$100,000. The Council requested further information about the projects that currently fall between these two threshold levels. Of the 96 projects included in the FY 2004-05 through FY 2008-09 CIP, nine fall below the \$100,000 level. Eight of the nine projects are renewal and replacement projects. There are also eleven projects in the CIP estimated at exactly \$100,000. These projects would still be included in the CIP as long as they remain at or above \$100,000. All eleven projects are considered renewal or replacement. Table 2 below lists the projects between \$50,000 and \$100,000. Table 3 lists the projects in the CIP estimated at exactly \$100,000.

In addition, Attachment 2 to this memo provides a complete listing of all projects in the FY 2004-05 through FY 2008-09 Capital Improvement Plan by department, fund and fiscal year cost. Attachment 3 lists all projects by department and total cost grouped in relative dollar cost increments.

Table 2 – Capital Improvement Projects less than \$100,000

Projects between \$50,000 - \$100,000						
Department	Project Title	Project Cost				
Finance & Admin. Services	Upgrade Desktop Operating Systems and Office Software	\$50,000				
MERC	ASCH - Fore Stage Lift Replacement	\$80,000				
MERC	OCC - Replace Sound Proofing in Oregon Ballroom	\$55,000				
MERC	OCC - Garbage Compactors	\$70,000				
MERC	OCC - Replace Glass-Ext Canopies, MLK & Holladay	\$65,000				
Oregon Zoo	Elevator Replacements	\$90,000				
Regional Parks	Glendoveer Golf Course Fence Repair	\$90,000				
Solid Waste & Recycling	Metro South- Latex Bldg/Public Lunch Room Conversion	\$60,000				
Solid Waste & Recycling	Metro South-Replace Dust Suppression Sys Components	\$50,000				

Budget Assumption Follow Up September 28, 2004 Page 3

Table 3 – Capital Improvement Projects estimated at \$100,000

Carrie Laboration	Projects @ \$100,000	对自然是包括的基础的
Department	Project Title	Project Cost
MERC	ASCH - Dressing Tower Elevator	\$100,000
MERC	ASCH - Sound System Replacement	\$100,000
MERC	Keller - Pit Lifting System	\$100,000
MERC	NTB (Winningstad) - Replace Seat Risers	\$100,000
MERC	NTB - Stage Floor Replacement (Newmark Theatre)	\$100,000
Oregon Zoo	Steller Cove Upgrades	\$100,000
Oregon Zoo	AfriCafe Terrace Permanent Cover	\$100,000
Oregon Zoo	Cascade Grill and Sunset Room Remodel	\$100,000
Oregon Zoo	Elephant Museum renovation	\$100,000
Solid Waste & Recycling	Metro Central-HHW- Ventilation System Replacement	\$100,000
Solid Waste & Recycling	Metro South- Replace Ventilation System Components	\$100,000

cc: Michael Jordan, Chief Operating Officer Bill Stringer, Chief Financial Officer Casey Short, Financial Planning Manager Karen Feher, CIP Coordinator Brad Stevens, Financial Planning Analyst

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Attachment 1
Estimated Cost of 0.5% Cost of Living Adjustment
With Estimate of General Fund (excise tax) Impact

		大学教理的基础		ESTIMATED COS	ST FOR A 0.50%	COLA AWAR			
	AFSCME	LIU 483	MERC IUOE/AFSCME	Non- Represented/ Unclassified	Overtime	Total Estimated Salary Cost	Variable Fringe Cost @ 33.3%	TOTAL ESTIMATED COST	Estimated General Fund Support
Auditor	0	0	0	1,436	0	1,436	478	1,914	345
Council	0	0	0	2,997	0	2,997	998	3,995	3,995
Finance & Admin. Services	10,623	0	0	6,860	160	17,643	5,875	23,518	4,233
Human Resources	247	0	0	3,087	6	3,340	1,112	4,452	801
MERC	0	0	14,487	22,074	709	37,270	12,411	49,681	0
Metro Attorney	0	0	0	4,098	38	4,136	1,377	5,513	992
Oregon Zoo	7,165	15,594	0	12,907	1,257	36,923	12,295	49,218	0
Planning	15,892	0	0	8,731	25	24,648	8,208	32,856	12,485
Public Affairs	3,197	0	0	1,736	0	4,933	1,643	6,576	6,576
Regional Parks	5,124	3,011	0	4,106	79	12,320	4,103	16,423	9,033
Solid Waste & Recycling	22,159	0	0	7,746	624	30,529	10,166	40,695	0
Total Est. Salary Cost	\$64,407	\$18,605	\$14,487	\$75,778	\$2,898	\$176,175	\$58,666	\$234,841	\$38,460
Variable Fringe Cost @ 33.3%	\$21,448	\$6,195	\$4,824	\$25,234	\$965	\$58,666			必须是否指挥性
TOTAL ESTIMATED COST	\$85,855	\$24,800	\$19,311	\$101,012	\$3,863	\$234,841	\$58,666	\$234,841	\$38,460

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	Finance and	Administrative	Services					Increa	se CIP proj to	100,000.xls 11:55 AM
Priority	Exp thru FY 2002-03	FY 2003-04 Budget	Total Prior Years	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	Grand Total	Funding Source
Property Services								, , 2000 00	Grand Total	i unumg Source
Building Management Fund										
Metro Regional Center Roof Replacement	-		-	-	-	-	-	455,000	455,000	Fund Balance Capital Reserve
3 Carpet Replacement	-		-	-	250,000	200,000	50,000	•		Fund Balance Capital Reserve
Total Building Management Fund	-		-	-	250,000	200,000	50,000	455,000	955,000	,
Support Services Fund										
1 Copier Replacement in Print Shop	-	50,000	50,000	-		65,000	-	-	115,000	Cost Alloc Plan
4 Satellite copier replacement		-	•	36,000	36,000	36,000	36,000	36,000	180,000	Cost Alloc Plan
Total Support Service Fund	-	50,000	50,000	36,000	36,000	101,000	36,000	36,000	295,000	A second control of the standard substitute of t
Total Property Services		50,000	50,000	36,000	286,000	301,000	86,000	491,000	1,250,000	
All Funds 3 Replace/Acquire Desktop Computers	160,237	150,000	310,237	115,000	115,000	115,000	115,000	115,000	885,237	Fund Balance Capital Reserve
Total All Funds	160,237	150,000	310,237	115,000	115,000	115,000	115,000	115,000	885,237	
Planning Fund Regional Land Information System (RUS)										
(1.2.0)	706,025		706,025	30,000	20,000	70,000	35,000	25,000	886,025	Capital Lease/Enterprise Rev
6 Travel Forecasting System Computer Replacement Total Planning Fund	710,666	89,200	799,866	17,000	122,500	127,000	25,000	57,000	1,148,366	Capital Lease/Enterprise Rev
Support Services Fund	1,416,691	89,200	1,505,891	47,000	142,500	197,000	60,000	82,000	2,034,391	
1										1
Server Management	149,965	132,000	281,965	84,000	313,000	80,000	126,000	98,000	982,965	Cost Alloc Plan/Cap. Lease/Cap Re
2 Upgrade Network Infrastructure	143,208	25,000	168,208	55,000	55,000	25,000	55,000	25,000	202 202	Cook Alles Dissipation
4 Upgrade of Business Enterprise Software (PeopleSoft)		22,300	.55,200	50,000	55,500	50,000	50,000	25,000		Cost Alloc Plan/Cap. Lease/Cap Re Cost Alloc Plan
7 Upgrade Desktop Operating Systems and Office Software	•		S = 515		50,000		55,500	Att of .		Cost Alloc Plan
Total Support Services Fund	293,173	157,000	450,173	189,000	418,000	155,000	231,000	123,000	1,566,173	Cook and Cright
Total Information Technology	1,870,101	396,200	2,266,301	351,000	675,500	467,000	406,000	320,000	4,485,801	1
Total Finance and Administrative Services	1,870,101	446,200	2,316,301	387,000	961,500	768,000	492,000	811,000	5,735,801	

Total FY 2004-05 through FY 2008-09 3,419,500 Total Number of Projects

RESOLUTION NO 04-3454

Metro Exposition-Recreation Commission

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			on commissi							
Project	Exp thru FY 2002-03	FY 2003-04 Budget	Total Prior Years	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	Grand Total	Funding Source
MERC Pooled Capital Fund										_
ASCH - West Entry Remodel	-	200,000	200,000	180,000		-	-	-	380,000	City of Portland
2 * ASCH - Carpet	-		-	300,000	-	-	-	.=	300,000	Donation
3 ASCH - Main Street Tents			-	400,000				-	400,000	Donation
4 ASCH - Dressing Tower Elevator			-	•	-	100,000	-		100,000	City of Portland
5 ASCH - Fore Stage Lift Replacement	35.1			-		-		80,000	80,000	City of Portland
6 ASCH - Sound System Replacement	- 1		-		•		-	100,000	100,000	Donation
Total MERC Pooled for ASCH	-	200,000	200,000	880,000		100,000	-	180,000	1,360,000] an
MERC Pooled Capital Fund										_
1 Keller - Portico Upgrades		110,000	110,000	95,000			-	-	205,000	Donation
2 * Keller - Pit Lifting System	-		-	100,000		-	-	-	100,000	Donation
3 Keller - Lobbies Upgrade		406,000	406,000	40,000			1-	-	446,000	Donation
4 Keller - ASCH Fire Alarm Upgrade	-		-	-		150,000	-	-	150,000	Donation
5 Keller - Roof Replacement	-		-	-			175,000	-	175,000	Donation
Total MERC Pooled for Keller	-	516,000	516,000	235,000		150,000	175,000		1,076,000	1
MERC Pooled Capital Fund										-
1 * NTB (Winningstad) - Replace Seat Risers				100,000		-	-	-	100,000	Donation
NTB - Stage Floor Replacement (Newmark Theatre)	-				100,000		-		100,000	Donation
3 NTB - Interior Painting	-				300,000			-	300,000	Donation
Total MERC Pooled for NTB	-		-	100,000	400,000	-		-	500,000	1
MERC Pooled Capital Fund										-
1 OCC - Expansion	114,748,698	1,825,000	116,573,698	450,000					117,023,698	Bond/Fund Balance Cap Reserve
OCC - Replace Sound Proofing in Oregon Ballroom	12.1	72	-	55,000			20000714	2552	55,000	Fund Balance Capital Reserve
OCC - Video Signage System	•			266,750					266,750	Fund Balance Capital Reserve
4 OCC - Garbage Compactors		**			70,000	and the	27.00	SKIPL TO THE	70,000	Fund Balance Capital Reserve
5 OCC - Replace Glass-Ext Canopies, MLK & Holladay					65,000	-		3822.4T	65,000	Fund Balance Capital Reserve
6 OCC - Six Foot Round Tables				-		150,000	-	-	150,000	Fund Balance Capital Reserve
OCC - Resurface Exhibit Hall Moveable Partitions	-				÷	•	150,000	-	150,000	Fund Balance Capital Reserve
Total MERC Pooled for OCC	116,573,698	116,573,698	116,573,698	771,750	135,000	150,000	150,000		117,780,448	
MERC Pooled Capital Fund										_
1 Expo - Parking Lot Maintenance		40,000	40,000	50,000	50,000	50,000	50,000	50,000	290,000	Fund Balance Capital Reserve
2 Expo - In-House Electrical	-	-		750,000				-	750,000	Fund Balance Capital Reserve
Total MERC Pooled for EXPO	-	40,000	40,000	800,000	50,000	50,000	50,000	50,000	1,040,000	
Total MERC	116,573,698	117,329,698	117,329,698	2,786,750	585,000	450,000	375,000	230,000	121,756,448	7

Total FY 2004-05 through FY 2008-09

4,426,750 23

Total Number of Projects

* These projects were in prior-year CIPs, but not last year's.

RESOLUTION NO 04-3454

Oregon Zoo

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	Oregon 200									
Project	Exp thru FY 2002-03	FY 2003-04 Budget	Total Prior Years	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	Grand Total	Funding Source
General Revenue Bond Fund (Zoo)										, driving Coding
15 Washington Park Parking Lot Renovation	4,376,576	-	4,376,576	178,988		-	-	-	4 555 564	Donations/Fund Bal Cap Reserve
Total General Revenue Bond Fund	4,376,576	-	4,376,576	178,988	-	_			4,555,564	To riadionari and bar cap i cocive
Zoo Capital Projects Fund									1,000,001	J
1 Introduction to the Forest & Remote Forest (GNW V)	-		-	2,200,000	-	2,500,000	-		4 700 000	Donations/Fund Bal Cap Reserve
2 Lion Exhibit	-	-	-	-	1,900,000	-		-		Donations
California Condor Captive Breeding Facility	-	1,200,000	1,200,000	800,000	1,000,000	-	-	-	3,000,000	
4 Refurbish Tree Tops Area	-	-		-	400,000		-	-		Fund Balance Capital Reserve
6 Insect Zoo		-		-	-	250,000	_	-		Donations
7 Primate Building	724,414	-	724,414	-		-	500,000	500,000		Donations/Fund Bal Cap Reserve
Admission Ticketing System Upgrade		-		-	200,000	-				Fund Balance Capital Reserve
9 Steller Cove Upgrades		-			100,000	-	-	-		Fund Balance Capital Reserve
10 AfriCafe Terrace Permanent Cover		-				100,000	-			Fund Balance Capital Reserve
11 Administration Building Upgrades	-	-					135,000	-		Fund Balance Capital Reserve
12 Cascade Grill and Sunset Room Remodel						-	100,000	-		Fund Balance Capital Reserve
13 Elephant Museum renovation	-	-		-	-		-	100,000		Donations
Total Zoo Capital Projects Fund	724,414	1,200,000	1,924,414	3,000,000	3,600,000	2,850,000	735,000	600,000	12,709,414	
Zoo Operating Fund										•
14 Elevator Replacements		-				90,000	40 × 10 0 15 -		90,000	Fund Balance Capital Reserve
Total Zoo Operating Fund		•		-	-	90,000	-	-	90,000	
Total Zoo	5,100,990	1,200,000	6,300,990	3,178,988	3,600,000	2,940,000	735,000	600,000	17,354,978	

Total FY 2004-05 through FY 2008-09 11,053,988
Total Number of Projects 14

Regional Parks and Greenspaces

FIN 700 FE		Regional Par	ks and Green	spaces							
Priorit	Project	Exp thru FY 2002-03	FY 2003-04 Budget	Total Prior Years	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	Grand Total	Funding Source
(Open Spaces Fund										
1	Open Spaces Land Acquisition	124,414,468	2,124,510	126,538,978	3,096,940	-	-	-		129.635.918	GO Bonds/Interest/Donations
	Total Open Spaces Fund	124,414,468	2,124,510	126,538,978	3,096,940		-		-	129,635,918	
1	Regional Parks Fund										•
1	M. James Gleason Boat Ramp Renovation Phase I & II	756,540	-	756,540	300,000	9,000	600,000	6,000	-	1.671.540	Grants/ Fund Bal Capital Reserve
2	Oxbow Park - Picnic Shelters & Restrooms	380,000		380,000	30,000					410,000	1
3	Blue Lake Park - Lakefront Enhancement	213,884		213,884	25,000					238,884	1
4	Mt. Talbert Development			-	150,000	1,341,600					Excise Tax
5	Wilsonville Tract Development			-	75,000	825,000	684,750				Excise Tax
6	Cooper Mountain Park Development						150,000	650,000	780,000		Excise Tax
7	Three Bridges on the Springwater	-	*		-	4,691,000		-	-		Grants/Government Contribution
8	Trolley Trail Engineering & Construction - Phase I	-		-		342,209	673,750	-	-		Grants/Local Share
9	Glendoveer Golf Course Fence Repair		***	Sec. 10. 10. 10.	90,000	No.	SAL STORY		162,635		Excise Tax
10	Gales Creek/Tualatin River Confluence Project	-	-	-	367,740	-	-	-	-		Grants/Donations
11	Road Resurfacing	-		-	255,000		-		-		Excise Tax
2	Water Play Area - Blue Lake Park	-	-	-	140,000	-	-	-	-		Grants/Fund Bal Capital Reserve
13	M James Gleason Boat Ramp - Phase III	-	-	-	-	-	-	-	700,000		Grants/Fund Bal Capital Reserve
	Total Regional Parks Fund	1,350,424		1,350,424	1,432,740	7,208,809	2,108,500	656,000	1,480,000	14,236,473	
5	mith and Bybee Lakes Fund										•
1	Smith & Bybee Lakes Facility Improvements	80,714	22,536	103,250	801,349	-	-		-	904,599	Grants/Gov Cont/Fund Balance
	Total Smith and Bybee Lakes Fund	80,714	22,536	103,250	801,349	-	-	-	-	904,599	
	Total Regional Parks	125,845,606	2,147,046	127,992,652	5,331,029	7,208,809	2,108,500	656,000	1,480,000	144,776,990	1

Total FY 2004-05 through FY 2008-09 16,784,338
Total Number of Projects 15

RESOLUTION NO 04-3454

Solid Waste and Recycling

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		Gona Tradic (and Recycling								
Priorit	Project	Exp thru FY 2002-03	FY 2003-04 Budget	Total Prior Years	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	Grand Total	Funding Source
S	olid Waste General Account										
1	Metro South- Relocate Latex Paint Operations	-	-	-	320,000	-	- 1	-	- 1	320.000	Fund Balance Capital Reserve
2	Metro South- Latex Bidg/Public Lunch Room Conversion	The second	10,000	10,000	50,000		Charles and	article and the same			Fund Balance Capital Reserve
3	Metro Central - Expansion of Hazardous Waste Facility	47,000	-	47,000	150,000	150,000	-	-	-		Fund Balance Capital Reserve
4	Metro South - Install High Capacity Baler	-	-	-	50,000	400,000	325,000	-	-		Fund Balance Capital Reserve
5	Metro Central - Office Addition		-		19,000	106,000		-	-		Fund Balance Capital Reserve
6	Metro Central - Woodroom Improvements	-	20,000	20,000	216,000	-			-		Fund Balance Capital Reserve
7	Metro Central - Seismic Cleanup		-	-	25,000	175,000	-		-		Fund Balance Capital Reserve
8	Metro South - Wood Processing Capacity	-	-	-	60,000	595,000	150,000	-	-		Fund Balance Capital Reserve
9	Metro Central - Chimney Removal	-		-	-	10,000	165,000	-	-		Fund Balance Capital Reserve
10	Metro South- Install Compactor for Public Unloading Area	-	-	-		-	200,000	680,000	-		Fund Balance Capital Reserve
11	Metro Central - Install New Scale at Scalehouse "C"	-	-		-	25,000	252,000	-	-		Fund Balance Capital Reserve
12	Metro Central - Rainwater Harvesting	-	-		-	-	310,000	-	-		Fund Balance Capital Reserve
13	Future Master Facility Plan Improvements	-	-	-	-			400,000	1,000,000		Fund Balance Capital Reserve
1	Total Solid Waste Operating Account	47,000	30,000	77,000	890,000	1,461,000	1,402,000	1,080,000	1,000,000	5,910,000	,
8	olid Waste Landfill Closure								.,		'
1	St. John's - Leachate Pretreatment	224,074	195,000	419,074	105,000			-		524,074	Fund Balance Capital Reserve
2	St. John's - Groundwater Monitoring Wells	-	-	-	200,000	10,800			-		Fund Balance Capital Reserve
3	St Johns - Perimeter Dike Stabilization & Seepage Control	1,578	-	1,578	60,000	211,000	442,000	6,000	6,000		Fund Balance Capital Reserve
4	St. John's - Re-establish Proper Drainage	54,482	550,000	604,482	5.000	5,000	5,000	5,000	252,000		Fund Balance Capital Reserve
5	St. John's - Landfill Bridge Repairs	-	-		-	30,000	120,000	-			Fund Balance Capital Reserve
6	St. Johns Landfill Remediation	-	-		-		500,000	500,000	500,000		Fund Balance Capital Reserve
7	St. John's - Native Vegetation on the Cover Cap	82,752	5,000	87,752	15,000	15.000	10,000	15,000	10,000		Fund Balance Capital Reserve
	Total Solid Waste Landfill Closure Account	362,886	750,000	1,112,886	385.000	271,800	1.077.000	526,000	768,000	4,140,686	The Bulance Supliar (1000) 10
s	W Renewal & Replacement Account					2,000	1,011,000	020,000	100,000	4,140,000	ı
1	Metro South - Convert Mechanical Room to Lockers	-1	37,000	37,000	320,000			-	-	357 000	Fund Balance Capital Reserve
2	Metro Central - Rebuild Compactor No. 2	-	-	-	400,000	-	-				Fund Balance Capital Reserve
3	Metro Central - Replace Compactor #2 Feed Conveyor	-	-	-	385,000		-	-			Fund Balance Capital Reserve
4	Metro South - Install Sidewalk on Washington Street	-	-	-	250,000	-	-				Fund Balance Capital Reserve
5	Metro Central - Replace Compactor #3 Feed Conveyor	-	-	-	59,000	325,000	-		-		Fund Balance Capital Reserve
6	Metro Central - Woodline			_	-	400,000	472,000				Fund Balance Capital Reserve
7	Replace Computer Network Components	-	-	-		67,000	67,000			134,000	Fund Balance Capital Reserve
8	Metro Central - Truckwash	-	-	-	_	30,000	150,000			180,000	Fund Balance Capital Reserve
9	Metro South - Compactor Replacement		-	-			150,000	750,000	750,000	1,650,000	Fund Balance Capital Reserve
10	Metro South - Repair Commercial Tip Floor	-	-	-		-	100,000	197,900	700,000	197,900	Fund Balance Capital Reserve
11	Metro Central-HHW- Ventilation System Replacement	-		-	-		-	107,000	100,000		Fund Balance Capital Reserve
12	Metro South-Replace Dust Suppression Sys Components	3 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -	SALES CONTRACTOR		12 Y = 12 17 12 12 12 12 12 12 12 12 12 12 12 12 12			44/20/ABB/AABB	50,000		Fund Balance Capital Reserve
13	Metro South- Replace Ventilation System Components	-	-	-	_	_	-	_	100,000	100,000	Fund Balance Capital Reserve
	Total Solid Waste Renewal & Replacement		37,000	37,000	1,414,000	822,000	839,000	947,900	1,000,000	5,059,900	I did balance Capital Nesel Ve
	Total Solid Waste and Recycling	409,886	817,000	1,226,886	2,689,000	2,554,800	3,318,000	2,553,900	2,768,000	15,110,586	1
	The state of the s	,	5,500	.,220,500	2,000,000	2,004,000	0,010,000	2,000,000	2,700,000	15,110,566	

Total FY 2004-05 through FY 2008-09 13,883,700
Total Number of Projects 33

Grand Total Metro	249,800,281	121,989,944	255,166,527	14,372,767	14,910,109	9,584,500	4,811,900	5,889,000 30	04,734,803

Total FY 2004-05 through FY:	2008-09 49,568,276
ACT TO SEE THE PROPERTY OF THE PARTY OF THE	
10	tal Number of Projects 96

ATTACHMENT 3 FY 2004-05 through FY 2008-09 Capital Improvement Plan - Projects by Total Cost Increments

Department	Project	Prior Years	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	Grand Total
Below \$100,000								Jana Total
Finance & Admin. Services.	Upgrade Desktop Operating Systems and Office Software	-		50,000				. 650,000
Solid Waste & Recycling	Metro South-Replace Dust Suppression Sys Components			30,000	-	-	50,000	\$50,000
MERC	OCC - Replace Sound Proofing in Oregon Ballroom	<u> </u>	55,000	-	-	-	50,000	\$50,000
Solid Waste & Recycling	Metro South- Latex Bldg/Public Lunch Room Conversion	10,000	50,000	-	-	•	-	\$55,000
MERC	OCC - Replace Glass-Ext Canopies, MLK & Holladay	10,000	30,000	65,000	-	-	-	\$60,000
MERC	OCC - Garbage Compactors			70,000	-	-	-	\$65,000
MERC	ASCH - Fore Stage Lift Replacement			70,000	-	-		\$70,000
Oregon Zoo	Elevator Replacements	1	-	-	90,000	-	80,000	\$80,000
Regional Parks	Glendoveer Golf Course Fence Repair	1	90.000	-	90,000	-	-	\$90,000
Between \$100,000 - \$249,999	Control Con Course Folioc Repuil	-	30,000	-		-	-	\$90,000
MERC	ASCH - Dressing Tower Elevator							
MERC	ASCH - Sound System Replacement	-	-		100,000	-	-	\$100,000
MERC	Keller - Pit Lifting System	-	-	•	-	-	100,000	\$100,000
MERC	NTB (Winningstad) - Replace Seat Risers	-	100,000	•	-	-		\$100,000
MERC	NTB - Stage Floor Replacement (Newmark Theatre)	-	100,000	-	-	-	-	\$100,000
Oregon Zoo	Steller Cove Upgrades	-	-	100,000	-	-	-	\$100,000
Oregon Zoo	AfriCafe Terrace Permanent Cover	-	•	100,000	-	-	-	\$100,000
Oregon Zoo	Cascade Grill and Sunset Room Remodel	-		-	100,000	-	-	\$100,000
Oregon Zoo	Elephant Museum renovation	-	-	-	-	100,000	-	\$100,000
Solid Waste & Recycling		-	-	-	-	-	100,000	\$100,000
Solid Waste & Recycling	Metro Central-HHW- Ventilation System Replacement	-	-	-	-		100,000	\$100,000
Finance & Admin, Services.	Metro South- Replace Ventilation System Components	-	-	•	-	-	100,000	\$100,000
Solid Waste & Recycling	Copier Replacement in Print Shop	50,000	-	-	65,000	-	-	\$115,000
Solid Waste & Recycling	Metro Central - Office Addition	-	19,000	106,000	-	-	-	\$125,000
Oregon Zoo	Replace Computer Network Components	-	-	67,000	67,000	-	-	\$134,000
	Administration Building Upgrades	-	-		-	135,000	-	\$135,000
Regional Parks	Water Play Area - Blue Lake Park	-	140,000	-	-	-	-	\$140,000
Finance & Admin. Services. MERC	Upgrade of Business Enterprise Software (PeopleSoft)	-	50,000	-	50,000	50,000	-	\$150,000
	Keller - ASCH Fire Alarm Upgrade	-	-	-	150,000	-	-	\$150,000
MERC	OCC - Six Foot Round Tables			7-	150,000	-	-	\$150,000
MERC	OCC - Resurface Exhibit Hall Moveable Partitions	-	•	-	-	150,000	-	\$150,000
Solid Waste & Recycling	St. John's - Landfill Bridge Repairs	-	-	30,000	120,000	-	-	\$150,000
Solid Waste & Recycling	St. John's - Native Vegetation on the Cover Cap	87,752	15,000	15,000	10,000	15,000	10,000	\$152,752
MERC	Keller - Roof Replacement	-	-	-	-	175,000	-	\$175,000
Solid Waste & Recycling	Metro Central - Chimney Removal	-	-	10,000	165,000	-	-	\$175,000
Finance & Admin. Services.	Satellite copier replacement	-	36,000	36,000	36,000	36,000	36,000	\$180,000
Solid Waste & Recycling	Metro Central - Truckwash	-	-	30,000	150,000	-	-	\$180,000
Solid Waste & Recycling	Metro South - Repair Commercial Tip Floor	-	-	-	-	197,900		\$197,900
Oregon Zoo	Admission Ticketing System Upgrade	-	=	200,000	-	-	-	\$200,000
Solid Waste & Recycling	Metro Central - Seismic Cleanup *	-	25,000	175,000	-	-	-	\$200,000
MERC	Keller - Portico Upgrades	110,000	95,000	-	-			\$205,000
Solid Waste & Recycling	St. John's - Groundwater Monitoring Wells	-	200,000	10,800	-	-	-	\$210,800
Solid Waste & Recycling	Metro Central - Woodroom Improvements	20,000	216,000	-	-	-	-	\$236,000
Regional Parks	Blue Lake Park - Lakefront Enhancement	213,884	25,000					\$238,884

ATTACHMENT 3
FY 2004-05 through FY 2008-09 Capital Improvement Plan - Projects by Total Cost Increments

Department	Project	Prior Years	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	Grand Total
Between \$250,000 - \$499,999								
Oregon Zoo	Insect Zoo	-		-	250,000	-	-	\$250,000
Solid Waste & Recycling	Metro South - Install Sidewalk on Washington Street	-	250,000	-	-	-	-	\$250,000
Regional Parks	Road Resurfacing	-	255,000	-	-	-	-	\$255,000
MERC	OCC - Video Signage System	-	266,750					\$266,750
Solid Waste & Recycling	Metro Central - Install New Scale at Scalehouse "C"		-	25,000	252,000	-		\$277,000
MERC	Expo - Parking Lot Maintenance	40,000	50.000	50,000	50.000	50.000	50.000	\$290,000
MERC	ASCH - Carpet	-	300,000	-	-	-	-	\$300,000
MERC	NTB - Interior Painting	·		300,000		-	-	\$300,000
Solid Waste & Recycling	Metro Central - Rainwater Harvesting	-	-	-	310.000	-	_	\$310,000
Solid Waste & Recycling	Metro South- Relocate Latex Paint Operations	-	320,000	-		-	l .	\$320,000
Solid Waste & Recycling	Metro Central - Expansion of Hazardous Waste Facility	47,000	150,000	150,000	-	-	-	\$347,000
Solid Waste & Recycling	Metro South - Convert Mechanical Room to Lockers	37,000	320,000	-	-			\$357.000
Regional Parks	Gales Creek/Tualatin River Confluence Project	_	367,740	-	-	_	-	\$367,740
MERC	ASCH - West Entry Remodel	200,000	180,000	-	-	-		\$380,000
Finance & Admin. Services.	Upgrade Network Infrastructure	168,208	55,000	55,000	25,000	55,000	25,000	\$383,208
Solid Waste & Recycling	Metro Central - Replace Compactor #3 Feed Conveyor	-	59.000	325,000	-	-		\$384,000
Solid Waste & Recycling	Metro Central - Replace Compactor #2 Feed Conveyor	_	385,000	-	-	_	-	\$385,000
MERC	ASCH - Main Street Tents	-	400,000	-	-	-	-	\$400,000
Oregon Zoo	Refurbish Tree Tops Area	-	-	400,000	-	-	-	\$400,000
Solid Waste & Recycling	Metro Central - Rebuild Compactor No. 2	-	400,000	-	-	-		\$400,000
Regional Parks	Oxbow Park - Picnic Shelters & Restrooms	380,000	30,000					\$410,000
MERC	Keller - Lobbies Upgrade	406,000	40,000	-	-	-	-	\$446,000
Finance & Admin. Services.	Metro Regional Center Roof Replacement	-	-	-	-	-	455,000	\$455,000
Between \$500,000 - \$999,999								
Finance & Admin. Services.	Carpet Replacement	-		250,000	200,000	50,000	-	\$500,000
Solid Waste & Recycling	St. John's - Leachate Pretreatment	419,074	105,000	-	,	-	-	\$524,074
Regional Parks	M James Gleason Boat Ramp - Phase III	-	-	-	-	-	700,000	\$700,000
Solid Waste & Recycling	St Johns - Perimeter Dike Stabilization & Seepage Control	1,578	60,000	211,000	442,000	6,000	6,000	\$726,578
MERC	Expo - In-House Electrical	-	750.000	211,000	- 12,000		0,000	\$750,000
Solid Waste & Recycling	Metro South - Install High Capacity Baler	-	50,000	400.000	325.000		-	\$775,000
Solid Waste & Recycling	Metro South - Wood Processing Capacity	-	60,000	595,000	150,000	_	_	\$805,000
Solid Waste & Recycling	Metro Central - Woodline	i	-	400,000	472,000			\$872,000
Solid Waste & Recycling	St. John's - Re-establish Proper Drainage	604,482	5.000	5,000	5,000	5,000	252,000	\$876,482
Solid Waste & Recycling	Metro South- Install Compactor for Public Unloading Area	-	-	-,	200,000	680,000		\$880,000
Finance & Admin. Services.	Replace/Acquire Desktop Computers	310,237	115,000	115,000	115,000	115,000	115,000	\$885,237
Finance & Admin. Services.	Regional Land Information System (RLIS)	706,025	30,000	20,000	70,000	35,000	25.000	\$886,025
Regional Parks	Smith & Bybee Lakes Facility Improvements	103,250	801,349	-	. 0,000	-	20,000	\$904,599
Finance & Admin. Services.	Server Management	281,965	84,000	313,000	80,000	126,000	98.000	\$982,965

ATTACHMENT 3
FY 2004-05 through FY 2008-09 Capital Improvement Plan - Projects by Total Cost Increments

Department	Project	Prior Years	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	Grand Total
Between \$1,000,000 - \$5,000,000								
Regional Parks	Trolley Trail Engineering & Construction - Phase I	-		342,209	673,750			\$4.04E.0E0
Finance & Admin. Services.	Travel Forecasting System Computer Replacement	799,866	17,000	122,500	127,000	25,000	57,000	\$1,015,959
Solid Waste & Recycling	Future Master Facility Plan Improvements	- 100,000	- 17,000	122,000	127,000	400,000	1,000,000	\$1,148,366
Regional Parks	Mt. Talbert Development	-	150,000	1,341,600		400,000	1,000,000	\$1,400,000
Solid Waste & Recycling	St. Johns Landfill Remediation		100,000	1,541,000	500,000	500,000	500,000	\$1,491,600
Regional Parks	Cooper Mountain Park Development	_	-		150,000	500,000	500,000	\$1,500,000
Regional Parks	Wilsonville Tract Development		75,000	825,000	684,750	650,000	780,000	\$1,580,000
Solid Waste & Recycling	Metro South - Compactor Replacement		73,000	023,000	The same of the sa	750,000	750 000	\$1,584,750
Regional Parks	M. James Gleason Boat Ramp Renovation Phase I & II	756,540	300,000	9,000	150,000	750,000	750,000	\$1,650,000
Oregon Zoo	Primate Building	724,414	300,000	9,000	600,000	6,000	-	\$1,671,540
Oregon Zoo	Lion Exhibit	124,414		1 000 000	-	500,000	500,000	\$1,724,414
Oregon Zoo	California Condor Captive Breeding Facility	1 200 000	900,000	1,900,000	-	-	-	\$1,900,000
Oregon Zoo	Washington Park Parking Lot Renovation	1,200,000	800,000	1,000,000	-	-	-	\$3,000,000
Regional Parks	Three Bridges on the Springwater	4,376,576	178,988	-	-	-	-	\$4,555,564
Oregon Zoo		-		4,691,000	-		-	\$4,691,000
Section of the sectio	Introduction to the Forest & Remote Forest (GNW V)	-	2,200,000	-	2,500,000		-	\$4,700,000
Greater than \$5,000,000								
MERC	OCC - Expansion	116,573,698	450,000					\$117,023,698
Regional Parks	Open Spaces Land Acquisition	126,538,978	3,096,940	-				\$129,635,918

FINANCIAL ASSUMPTIONS FOR FY 2005-06 BUDGET

Presentation to Council Council Work Session September 21, 2004 Prepared by: Kathy Rutkowski

Assumptions are inherent in any financial planning process. They provide the numerical basis for the development of the annual budget. This report will outline and discuss the various global financial assumptions to be used in the development of the FY 2005-06 budget. It will be divided into four main categories: Salary Base and Adjustments, Fringe Benefits, General Revenue Estimates, and Other Global Assumptions. Each main category will include multiple assumptions. Significant assumptions (such as health & welfare, PERS, and excise tax) will be discussed individually, while other assumptions will be discussed as a group. Included in the report will be an estimate of the cost to Metro if the Council accepts the proposed assumption. The analysis includes all departments and facilities of Metro, including MERC, as well as all salary/wage costs including temporary, seasonal, MERC part-time event-related staff, and overtime/holiday pay.

A resolution has been submitted to Council that will formalize the financial assumptions to be used by departments in the preparation of their FY 2005-06 budget. It will also direct the Chief Operating Officer to advise the Council of any substantive changes in the assumptions prior to submission of the proposed budget to the Council for public review.

A. Salary Base and Adjustments

The analysis used the FY 2004-05 adopted budget salaries, wages, and FTE as the base for all FY 2005-06 cost estimates. Budgeted salaries and wages were adjusted to reflect a COLA award of 1.6 percent and estimated average step/merit awards taking into consideration the relative progression through the salary ranges. The analysis was broken down by fund, department, and employee representation status or group (such as non-represented, AFSCME, LIU 483, etc.). This presentation will focus on costs by employee representation status or group.

Each employee group has its own pay plan and scale; however, certain generalities can be made. All collective bargaining agreements, except Metro AFSCME, have pay plans with limited steps. In all cases, employees in these other collective bargaining agreements reach the top step within one year. Metro AFSCME's pay plan includes seven steps with five percent increments between each step. An employee steps through the plan with annual increases on the anniversary of the date of hire into the position. Elected Officials' salaries are tied to the District Court Judge salary that is adjusted by the State Legislature. Non-represented employees, both Metro and MERC, as well as the Council unclassified position, are paid within a salary range with increases based on merit review and implementation of a pay-for-performance plan. Unclassified employees of the Office of the Auditor are paid in accordance with the Auditor's direction. For purposes of this analysis all unclassified employees are treated the same as non-represented employees.

For discussion of the analysis all employees have been grouped into one of four categories: (1) elected officials, (2) non-represented/unclassified, (3) Metro AFSCME, or (4) all other employee groups. The salary base and proposed assumption for FY 2005-06 will be discussed separately for each group.

1) Elected Officials

The elected officials include the salaries for the Council President, Auditor, and six Councilors. The salaries are tied to the District Court Judge salary. Adjustments are allowed only through legislative action. At this time, nothing is known that would change elected officials' salaries for FY 2005-06.

Proposed assumption: 0% increase for FY 2005-06

2) Non-Represented (Metro and MERC), Unclassified

During FY 2004-05, Metro introduced the beginning of a merit pay salary structure for non-represented employees. The basic tenants of the Metro merit pay salary structure are similar to the MERC pay for performance salary structure. All salary ranges have a beginning, mid-point, and maximum rate. The range between beginning and mid-point is considered the base salary range. Any amount above mid-pint is considered the bonus range. Employees are eligible for a salary adjustment based on performance on their annual anniversary date. The adjustment may be in the form of an increase to base pay if the employee is below the mid-point; a one-time bonus if the employee is at or above the mid-point; or a combination of both if the employee is below the mid-point and the recommended percentage increase would bring the employee's salary above the mid-point.

The Chief Operating Officer has the discretion, with Council approval, to award a cost of living or market trending adjustment for Metro non-represented salary ranges. The adjustment may be applied to the salary ranges as well as all employees' existing salaries or only to the salary ranges. If the adjustment were applied only to the salary ranges employees formerly at the mid-point would again be eligible for an increase in base pay.

Traditionally, separate assumptions were provided for COLA and merit adjustment. Beginning with the FY 2004-05 budget, the recommendation was to assume one adjustment factor to create a pool in each department from which all salary adjustments would be funded. We recommend this approach be continued for FY 2005-06. The salary pool will fund all non-represented salary adjustments including COLA (if awarded), merit and/or bonus.

In FY 2004-05, non-represented employees were awarded a 1.6% cost of living adjustment and a maximum merit/bonus adjustment, based on performance, of up to 3 percent. As will be discussed later, the recommended cost of living factor for represented employees for FY 2005-06 is 2.5 percent. Given what is known today, it is reasonable to assume that a maximum merit/bonus adjustment of at least 3 percent will also be awarded for FY 2005-06. However, since anniversary dates fluctuate throughout the year it is not necessary to budget the full merit/bonus amount for all salaries. Currently, about 55 percent of non-represented staff have anniversary dates in the first six months of the fiscal year. Folding in this factor, an average 4.5 percent adjustment on all non-represented salaries would provide a sufficient pool to award a 2.5 percent cost of living award (if the COO so chooses) and an average 3 percent merit/bonus in FY 2005-06.

Proposed assumption: 4.5% of salaries/wages for adjustment pool

3) Metro AFSCME

Metro is currently in negotiations with AFSCME 3580. Pending settlement of that collective bargaining agreement and for the purpose of budget estimates only, the FY 2005-06 assumptions will assume the continuation of the seven-step pay plan as well as the award of a cost of living adjustment.

The cost of living award is usually tied to a specific CPI indicator. However, lacking a settled bargaining agreement, it is not known which CPI indicator to use. After discussions with the Human Resources Director and Labor Relations Manager, we recommend using a 10-year average of the Portland-Salem CPI-U, all items, annual average. The 10-year average of that indicator is currently 2.5 percent.

In addition to the cost of living award, AFSCME employees receive a 5 percent step increase on the anniversary date of hire until they reach the top step. As of early August, approximately 54 percent of AFSCME employees have reached the top step. Also, 55 percent of all employee review dates occur in the first six months of the fiscal year. Finally, Metro's annual attrition rate is approximately 8 percent. Folding in these three factors to the overall salary base indicates that an average 2.5 percent salary adjustment on all AFSCME salaries and wages would provide a pool sufficient to award step increases during FY 2005-06.

Proposed assumption: COLA – 2.5% for FY 2005-06 Step Increase – 2.5% of salaries/wages for adjustment pool

4) All Other Employee Groups

All other employee groups, such as LIU local 483, IUOE local 701 and local 701-1, AFSCME local 3580-1 (MERC Utility Workers), IATSE local B-20 and local 28, and MERC non-represented part-time positions, have limited pay scales. In all cases, employees reach the top of the scale in one year. Thereafter, salary adjustments are based on annual cost of living adjustments. The financial assumptions for the budget usually assume that all employees in these groups have reached the top step, however, there is flexibility for departments to provide for the limited step increases for certain employees if needed. The only assumption provided for these groups is the annual cost of living adjustment awarded to each employee. It is recommended the same CPI factor be used for these groups as proposed for Metro AFSCME.

Proposed assumption: 2.5% increase for FY 2005-06

Summary of Salary Base and Adjustment Assumptions:

	Assumption	Base Salary	Estimated FY 2005-06 Cost
Elected Officials	0.00%	\$364,038	\$0
Cost of Living - Represented Only	2.50%	\$20,079,830	\$501,996
Other Salary Adjustments:			
AFSCME - 5% Step	2.5% pool	\$12,881,842	\$282,527
Non-Represented - COLA/Merit or Bonus	4.5% pool	\$15,157,239	\$682,076
All Other Groups	0% pool	\$12,593,425	\$0
Total	[16] (V) (A) (E) (A)	and the state of the	\$1,466,599

B. Fringe Benefits

Fringe benefits include all costs coded to the Fringe Benefit line item in personal services. They include items such as health & welfare (medical, dental, vision insurance), PERS, and life insurance, as well as required payroll taxes such as FICA, TriMet payroll tax, and worker comp tax. Discussion of these costs will be divided into three categories: (1) Required or Miscellaneous Benefits, (2) Health & Welfare, and (3) PERS.

1) Required or Miscellaneous Benefits

Metro pays three required payroll taxes – FICA, TriMet payroll tax, and worker compensation tax. In addition, Metro provides for six miscellaneous benefits – long term disability insurance, life insurance, accidental death insurance, dependent care insurance, employee assistance program, and TriMet Passport program.

The analysis uses the current existing rates for all benefits and makes no assumption for an increase in FY 2005-06. There are, however, several areas where the existing rate is slightly different than the assumption used for the FY 2004-05 budget. The rate for long term disability has been reduced from 0.74% of eligible salary to 0.55% of eligible salary; life insurance reduced from \$0.17 per \$1,000 of annual salary to \$0.15 per \$1,000 of annual salary; and the worker comp tax changed from \$0.018 per hour worked to \$0.017 per hour worked.

The costs for the TriMet passport program are different from the estimates used for the FY 2004-05 budget preparation. Last year's estimates assumed the cost for FY 2004-05 would be \$190 per year for Metro Regional Center employees, \$121 per year for Oregon Zoo employees and \$21 per year for Regional Parks and Solid Waste facility offsite employees. While the cost for Metro Regional Center employees dropped to \$166 per year, the per employee cost for the Oregon Zoo increased to \$164 per year. The offsite facility costs remained relatively the same except for Metro Central that increased to \$70 per employee per year.

The following table summarizes the proposed assumption for each benefit and estimates the cost to Metro for FY 2005-06.

Summary of Required and Miscellaneous Benefits:

Benefit	Proposed Rate Assumptions	Estimated FY 2005-06 Cost
FICA	7.65% of salaries/wages with exceptions for Elected Officials	\$3,225,850
TriMet Payroll Tax	0.6218% of salaries/wages	\$264,035
Worker Comp Tax	\$0.017 per hour worked	\$32,166
Total Required Benefits		\$3,522,051

Benefit	Proposed Rate Assumptions	Estimated FY 2005-06 Cost
Long Term Disability	0.55% of eligible salaries/wages	\$203,864
Life Insurance	\$0.15 per \$1,000 of annual salary (to a maximum of \$50,000) per month	\$58,701
Accidental Death Insurance	\$0.03 per \$1,000 of annual salary (to a maximum of \$50,000) per month	\$11,749
Dependent Life Insurance	\$0.35 per employee per month	\$2,698
Employee Assistance Program	\$1.78 per employee per month	\$13,918
TriMet Passport Program	Regular Employees Only Metro Regional Center - \$166/emp Oregon Zoo - \$164/emp Solid Waste Offsite - \$46/emp (average) Regional Parks Offsite - \$20/emp	\$74,949
Total Miscellaneous Benefits		\$365,879

2) Health & Welfare (medical, dental, vision)

Currently, Metro's cap on health & welfare for FY 2004-05 as set by the Chief Operating Officer for non-represented employees and various bargaining agreements is \$629.50 per employee per month. AFSCME, Metro's largest collective bargaining unit, is currently under negotiations. LIU local 483, the second largest collective bargaining unit, will be in the second year of a three-year collective bargaining agreement in FY 2005-06. The LIU agreement sets a health & welfare cap of \$692.50 in FY 2005-06, a 10 percent increase over the current year. At this time, it is too early in the fiscal year to have any better indication of actual benefit costs. We recommend using the agreed upon cap in the LIU local 483 bargaining agreement as the basis for Metro's health & welfare costs for all employees.

The following table shows the cost estimate by major employee group of the proposed assumption as well as the estimated cost for each 1 percent increase in the cap over \$692.50 and each \$10 increase in the cap.

Proposed assumption: \$692.50 per employee per month

	Estimated Cost @ \$692.50 cap	Estimated Cost of each 1% increase in Cap	Estimated Cost of each \$10 increase in Cap
Elected Officials	\$66,480	\$605	\$960
Non-Represented	\$1,932,082	\$17,620	\$27,900
Represented	\$3,440,353	\$31,318	\$49,680
Total	\$5,438,915	\$49,543	\$78,540

3) PERS – Public Employee Retirement System

Prior to recent legislative actions, Metro's employer PERS rate was set at 13.79 percent. When combined with the 6 percent employee pick-up provided to all employees except LIU Local 483 (member employees received an offsetting salary increase) Metro's total effective PERS rate was 19.79 percent.

Legislative actions reduced Metro's employer rate to 7.14 percent, a 6.65 percent decrease. The decrease was effective July 1, 2003. However, PERS cautioned at the time that several variables would affect future rates. First, the reduced rates did not recognize \$3.6 billion in unrecognized investment losses through 2001. Second, investment losses in 2002 of \$6.4 billion would eventually be reflected in higher employer contributions unless offset by future investment gains. And third, court challenges and any other legal initiatives, when resolved, could also have a major impact on future contributions.

With Council approval, we are currently reserving, where allowable, the difference between the previous rate of 19.79 percent and the actual rate we pay to PERS of 13.14 percent. The funds reserved will be available to offset, in some fashion, any future rate increases received from PERS. In addition, the current practice retains the ability to fund potentially higher rates in the future without making significant reductions to programs.

Court challenges are currently proceeding on a dual track – one in federal court challenging the constitutionality of the changes based on the contract provisions included in the U.S. Constitution; the other in state courts making the same challenge against the state constitution. The federal district court recently upheld the legislative changes. It is expected this will be appealed to the Federal Court of Appeals and potentially to the U.S. Supreme Court. The state challenges were remanded directly to the State Supreme Court. The Supreme Court is expected to rule in December 2004.

In deciding the budget assumption for FY 2004-05, the Council stated they wished to maintain a conservative approach regarding PERS and opted to retain the 6.65 percent rate difference in a reserve. Until court challenges to recent legislative actions are resolved it is very difficult to forecast where PERS rates will be in the future; and we would not recommend allocating the PERS savings to other program costs and recommend retaining the 6.65 percent reserve until the court rulings are known.

In addition, as earlier stated, PERS cautioned that even if all legislative changes were upheld, there would likely be increases in the near future because of investment losses already incurred that had yet to be recognized in the actuarial study. PERS is currently in the process of updating its actuarial study. That study will be through December 31, 2003, and will fold in all or a portion of the investment losses incurred in 2001 and 2002, as well as a portion of the investment gains in 2003. While Metro's individual rate will not be known until November or December 2004, PERS has estimated a statewide average increase of 4.70 percent in the employer rate. Absent any other information forthcoming in the near future, we would recommend folding this estimate into the FY 2005-06 PERS rates. If Metro's actual rate increase is substantially different than this estimate, either up or down, we will return to the Council and recommend an amendment to this assumption.

In summary, the proposed recommendation includes four parts – the existing employee rate, the existing employer rate, the recommended PERS reserve, and the recommended increase in the employer rate due to recognition of investment losses. The following table summarizes the estimated costs for FY 2005-06 for each rate:

	Rate	Estimated FY 2005-06 Cost
Required - Employee Pick-up/Contribution	6.00%	\$1,995,234
Required - Current Employer Contribution	7.14%	\$2,646,639
Recommended - Est. Increase - Investment Loss	4.70%	\$1,742,180
Optional - PERS Reserve	6.65%	\$2,465,006
TOTAL	24.49%	\$8,849,059

C. General Revenue Estimates

There are two areas for assumptions that impact General Revenue Estimates – interest rate assumption and excise tax forecast. Each will be discussed separately.

1) Interest Rate

Oregon law (and Metro's investment policy) generally limits investments to no more than 18-months – short-term investments. Although the Federal Reserve, in its August 10th report, said the economy "appears poised to resume a stronger pace of expansion going forward," this has not yet materialized. Key economic indicators released since then have been weaker than expected. Many now feel the Federal Reserve may not raise the Fed funds rate as quickly as they once predicted. Market interest rates have fallen based on this expectation. Using an analysis of the Treasury Yield Curve, Metro's Investment Manager estimates an average interest yield of about 2.5 percent for FY 2005-06.

Proposed assumption: 2.5% for FY 2005-06

2) Excise Tax Forecast

The discussion of the excise tax will be divided into four parts – solid waste generated base excise tax, all other facility generated base excise tax, solid waste per ton excise tax dedicated to Regional Parks, and solid waste per ton excise tax dedicated to the Tourism Opportunity and Competitiveness Account.

a. Solid Waste Generated Excise Tax – Metro code sections 7.01.020 – 7.01.028 guide the calculation and budgeting of the excise tax generated from solid waste tonnage. The code provides for a base level of excise tax increased annually by a CPI factor. The base level of excise tax generated from solid waste tonnage is the amount that is available in the General Fund for general revenue purposes. Any amount collected over and above this amount is placed in a reserve in the General Fund and is accessible only by specific Council action. The CPI indicator stated in the code is the Portland-Salem CPI-U for the first half of the federal report year (January – June). The CPI indicator available in August of 2004 is used to determine the allowable increase in solid waste generated base excise tax for FY 2005-06. The following is a historical summary of the solid waste base excise tax calculations with the CPI indicator and base excise tax amount for FY 2005-06.

	CPI	Base General	Increase from
FY 2000-01		\$5,700,000	
FY 2001-02	3.3%	\$5,888,100	\$188,100
FY 2002-03 (1)	2.7%	\$6,050,000	\$161,900
FY 2003-04	1.3%	\$6,128,650	\$78,650
FY 2004-05	1.4%	\$6,214,451	\$85,801
FY 2005-06	2.0%	\$6,338,740	\$124,289

^{\$5,888,100 + 2.7%} increase = \$6,047,079. A revision to the excise tax ordinance set a new base rate in FY 2002-03.

b. All Other Facility General Excise Tax — The excise tax on all other facilities is set by Metro Code section 7.01.020(a). The rate is currently 7.5 percent of all eligible enterprise revenues. While at this time there are no firm forecasts of FY 2005-06, departments did update their five-year forecasts based on the FY 2004-05 budget. Until further information is known, we recommend using these forecasts as the initial base for the FY 2005-06 budget assumptions.

The following table compares excise tax generated by facility between the FY 2004-05 adopted budget and the FY 2005-06 preliminary estimate.

Facility	FY 2004-05 Adopted Budget	FY 2005-06 5-Year Forecast	Change
Zoo	\$1,048,165	\$1,069,200	\$21,035
Planning	10,651	11,250	599
Regional Parks	194,425	199,249	4,824
Expo Center	430,374	438,607	8,233
Building Management	39,513	40,303	790
Convention Center	892,852	962,729	69,877
MERC Administration	306	0	(306)
Base Excise Tax Estimate	\$2,616,286	\$2,721,338	\$105,052

c. Per ton excise tax dedicated to Regional Parks – During the FY 2004-05 budget process the Council took two actions that affected the per ton excise tax dedicated to Regional Parks – (1) elimination of the sunset clause on the existing \$1.00 per ton dedication, and (2) dedication of an additional \$1.50 per ton to assist in the development of four open space sites to public facilities, and to provide for renewal, replacement, and maintenance of existing facilities and lands. Effective September 1, 2004, the original per ton dedication was rolled back to \$1.00 (CPI adjustment were eliminated) and added to the new \$1.50 per ton dedication, for a total per ton dedication of \$2.50. The same CPI inflator is applied to the \$2.50 per ton as to the base solid waste excise tax. The following is a historical summary of the per ton excise tax dedicated to Regional Parks with the CPI indicator and estimated excise tax amount for FY 2005-06.

			PER TON RATE TO PARKS					
	Actual/ Estimated Tons	СРІ	for F		for	-	ea	timate to be rned on per on to Parks
FY 2002-03	1,210,246		\$	1.000	\$	-	\$	1,210,246
FY 2003-04	1,248,179	1.3%	\$	1.013	\$	-	\$	1,264,405
FY 2004-05 (1)	1,229,193	1.4%	\$	1.027	\$	2.500	\$	2,754,226
FY 2005-06	1,247,466	2.0%	\$	-	\$	2.550	\$	3,181,038

Excise tax rates per ton changed mid-year FY 2004-05. Estimated tonnage for period 7/1/04 through 8/31/04 = 226,581. Estimated tonnage for period 9/1/04 through 6/30/04 = 1,008,611

d. Tourism Opportunity and Competitiveness Account – Also in FY 2004-05, the Council adopted legislation than enacted a \$0.50 per ton excise tax levy dedicated to the Tourism Opportunity and Competitiveness Account. This levy is also increased annually based on the Portland-Salem CPI-U for the first half of the federal report year (January – June). The following table summarizes the per ton excise tax dedicated to this Account with the CPI indicator and the estimated excise tax amount for FY 2005-06.

		PE	R TON RA	ATE	TO OCC	
	Actual/ Estimated Tons	СРІ	to	50 per ton Oregon Courism	e	imate to be arned on .50 per ton
FY 2002-03	1,210,246		\$	-	\$	-
FY 2003-04	1,248,179	1.3%	\$	-	\$	-
FY 2004-05 (1)	1,229,193	1.4%	\$	0.500	\$	504,306
FY 2005-06	1,247,466	2.0%	\$	0.510	\$	636,208

Excise tax rates per ton changed mid-year FY 2004-05. Estimated tonnage for period 9/1/04 through 6/30/04 = 1,008,611

Summary - Excise Tax Forecast

In summary, while solid waste generated excise tax will produce approximately \$124,000 more than FY 2004-05 based on a 2 percent CPI, the rest of the facilities are projected to increase about 4 percent or approximately \$105,000. Current forecasts estimate a net increase in base excise tax of about \$229,000 or 2.6 percent over FY 2004-05.

The per ton dedications to Regional Parks and the Tourism Opportunity Account are reflecting much larger increases than would be expected based on CPI. However, the new levies did not become effective until September 1, 2004. The FY 2004-05 budget reflects only 10 months of the new levy, whereas the FY 2005-06 estimates reflect a full year.

	FY 2004-05 Adopted Budget	FY 2005-06 5-Year Forecast Estimate	Change	Percent Change
Base Solid Waste	6,214,451	6,338,740	124,289	2.0%
All Other Facilities	2,616,286	2,721,338	105,052	4.0%
Base Excise Tax Available	\$8,830,737	\$9,060,078	\$229,341	2.6%
\$2.50 per ton to Parks (1)	\$2,754,226	\$3,181,038	\$229,341	8.3%
\$0.50 per ton to OCC (1)	\$504,306	\$636,208	\$229,341	45.5%

(1) FY 2005-06 includes a full year of the new excise tax levy that was effective 9/1/04.

D. Other Global Assumptions

1) Excise Tax Allocations to Operating Departments

Along with a forecast of the excise tax revenue to the General Fund, the Budget Manual provides initial operating transfer amounts for those departments dependent on excise tax. Historically, the proposed excise tax allocations have been based on the previous years' allocations. This year, however, we are not proposing a specific allocation method at this time. Instead, we intend to return to the Council in late October for a further discussion of this issue. By then the Council will have engaged in additional conversations regarding agency goals and objectives as well as department proposed programs. Based on those discussions, the Council will then be asked how it wishes to divide the estimated excise tax resources for FY 2005-06. For the current fiscal year, FY 2004-05, the excise tax is allocated as follows:

Current Excise Tax Funded Requirements	FY 2004-05 Budget	Comments/Explanation
to Planning Department		
General allocation	\$4,066,611	
Project allocation	75,234	1.0 FTE for Affordable Housing
to Regional Parks Department		
 General allocation 	476,847	
 Earned on base SW revenue 	730,198	11.75% of base SW excise tax
• \$2.50 per ton on SW tonnage		Includes new \$1.50 per ton effective 9/1/04
Landbanking	231,008	per Council policy
to MERC Operations		
OCC - VDI Compliance	182,129	Amount above allowable increase in OCC overhead
 Tourism Opportunity & Competitiveness Account 	504,307	\$0.50 per ton beginning 9/1/04
to General Fund Operations		
• Council	1,435,201	
 Public Affairs 	665,991	
 FY 2004-05 PERS Reserve for General Fund staff 	86,758	6.65% of regular salaries
 Special Appropriations 	265,000	Elections, Public Notices, RACC, Water Consortium
 Central Services allocations 	1,031,945	Building Mgmt, Support Services, Risk Mgmt
 Added to undesignated ending balance 	25,642	Balance remaining in general excise tax funding
Less: Other Funding Sources		
 Beginning Fund Balance 	(50,000)	Carried forward for strategic planning
 Recovery Rate Stabilization Reserve 	(75,234)	1.0 FTE for Affordable Housing
 Interest Earnings 	(25,000)	A Section 1
 Costs allocated to departments 	(291,550)	COO & Archives Office
Total FY 2004-05 Excise Tax Requirements	\$12,083,153	的 化成为的 医外胚性 人名英格兰人姓氏

Proposed assumption: None at this time.; will return to Council in late October for further discussion.

2) Inflation Factor for Other Costs

Most expenditures are tied to one or more factors either stated in this report or required by external sources. For example, most contracts or intergovernmental agreements have stated rates or provide for increases based on some CPI factor. Utility expenses are based on experience plus estimates of rates or rate increases from the utility provider. In those cases, however, in which there is no external basis for an increase the department is allowed to apply a basic inflation factor. The inflation factor is usually tied closely to the Portland-Salem CPI-U. This CPI indicator is currently at 2.04 percent for the first half of 2004. We recommend tying the inflation factor for other costs to the same estimate used for cost of living adjustments. That factor uses a 10-year average of the Portland-Salem CPI-U all items annual average.

Proposed assumption: 2.5% for FY 2005-06

3) Contingency

Each operating fund will provide for a contingency for unexpected needs that may arise throughout the year. By law, the Council may only transfer from contingency a cumulative amount not to exceed 15 percent of a fund's appropriations. Any amount exceeding the 15 percent threshold would require a supplemental budget with TSCC public hearing. The Budget

Manual provides a general guideline for departments to follow but allows flexibility for each department to budget for a contingency that is more suited to its particular needs. For example, the Planning Fund may not need a large contingency: it is largely grant funded and there are exceptions provided in budget law for the recognition of additional grant funds. However, enterprise operations such as the Zoo that are sensitive to factors outside of their control may wish to budget for higher contingency levels. Contingency levels are evaluated on a case-by-case basis.

Proposed assumption: 4% of operating expenses as a general guideline with variances based on volatility of activity.

4) Special Appropriations in the General Fund

a. <u>Elections Expenses</u>: The FY 2005-06 budget will include elections costs for the May 2006 primary elections for the Auditor, the Council President and three Council seats. In May 2002, the last time these same positions were up for election, the total cost was approximately \$174,000. However, subsequent to that election, Multnomah County recognized that it was not including in the allocation of elections costs the cost of printing the ballots. This is an allowable cost to allocate under state law and is now included in the County's elections bills. Had this error been recognized prior to the May 2002 primary election Metro's total elections expense would have been about \$277,000. Recognizing that election costs have been trending higher, we would recommend a budget of \$300,000 in elections expense for FY 2005-06. This represents an annual 2 percent cost of inflation.

Proposed assumption: \$300,000 for May primary elections for the Auditor, Council President and three Council seats

b. <u>Contribution to RACC</u>: For the last two fiscal years, the budget has included a \$25,000 contribution to RACC. It is assumed that this contribution will continue into FY 2005-06 at the same level of funding.

Proposed assumption: \$25,000 contribution to RACC

c. <u>Water Consortium Dues:</u> Since FY 2001-02, the General Fund budget has included \$15,000 for Water Consortium dues. The actual cost for these dues in FY 2003-04 was \$15,611. The FY 2004-05 request was just received for \$15,600. It is assumed that these dues will continue; however, it is recommended that the budget reflect some recognition of inflation over the five-year period since FY 2001-02. The proposal would be to increase the historical amount by 5 percent, to \$15,750.

Proposed assumption: \$15,750 for Water Consortium Dues

d. <u>Public Notifications</u>: For several years, the Special Appropriations category has included an amount to provide for legal notices required under ballot measure 56. As part of the FY 2003-04 budget, the purpose of this funding was expanded to include notifications required under ballot measure 26-29 and any other notification required by approved ballot measure or Metro Code. Historically, each year's budget has included a new appropriation of \$75,000. Any amount not believed to be needed in that year was carried over to the next year. The FY 2004-05 budget includes \$75,000 of new appropriation for notifications. Public Affairs staff,

after discussions with a number of project managers, recommends a budget for FY 2005-06 of \$150,000. This assumes multiple notification requirements for Goal 5 and 2040 revisitation. As FY 2004-05 progresses, we will work closely with the Planning and Public Affairs departments to determine the amount that will actually be needed in the current year. Any amount identified as extra can be carried over to supplement next year's appropriation.

Proposed assumption: \$150,000 for legal notifications

5) Central Service Transfers/Overhead Rates

The cost allocation plan is the tool that calculates central service transfers and overhead rates for each department. Each year the cost allocation plan is updated with new allocation basis data and budgeted costs. As a result, there are two variables that can cause changes in any one department's central service allocations -(1) a change in service level usage or benefit as defined by the allocation basis, and (2) a change in the budgeted cost for that central service function.

Traditionally, the Budget Manual has provided overhead rates that are based on the current year cost allocation plan. These rates do not take into consideration the changes in service level usage by the departments. Changes in usage or benefit levels of service can result in significant shifts in costs between departments. In order to eliminate as many of the variables as possible between Budget Manual estimates and actual costs, Financial Planning now prepares a preliminary version of the cost allocation plan with updated service level usage/benefit data and forecasted costs for status quo service levels. The preliminary plan will incorporate any direction received from the Council on risk management costs. At this time, we anticipate running the preliminary cost allocation plan for FY 2005-06 around the end of October so that central service estimates will be available in time for the release of the Budget Manual.

In addition, we will provide individual estimates for Risk Management separate from all other central service costs. Costs for the Risk Management Fund are due largely to factors such as cost of claims and insurance directly related to the activity and value of facilities and not to the size of staffing or other indirect costs of central services. As such, the changes in these costs should be evaluated separately from all other central service costs.

Proposed assumption: Central service estimates to be provided in the budget manual based on a preliminary run of the FY 2005-06 cost allocation plan as described above.

6) Capital Improvement Plan

The Capital Improvement Plan (CIP) has not changed its criteria for the definition of a capital project since the CIP was first instituted at Metro in 1996. Those criteria are that a project is any physical asset acquired or constructed by Metro with a total capital cost of \$50,000 or more and a useful life of at least five years. Financial Planning has reviewed the 96 projects included in the 2005 – 2009 CIP to determine the ranges of project costs, and has found that a small number of projects (eight) fall within the \$50,000 - \$100,000 range. These projects tend to be those that receive little or no Council comment in the CIP process, and could possibly be excluded from the CIP without deleterious effect on the Council's oversight

Financial Assumptions for FY 2005-06 Budget Council Work Session September 21, 2004

function. This would go a small way to relieving departments of a layer of work, with negligible impact on Council's prerogative or the agency's financial position. We recommend that the threshold level for a project to be included in the CIP be increased from \$50,000 to \$100,000.

Proposed assumption: Increase the minimum capital cost criteria of a CIP project from \$50,000 to \$100,000.

NORTH PORTLAND REHABILITATION AND ENHANCEMENT COMMITTEE 2004-2005

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April 2005*

Karen Blauer, Metro Community Grants Coordinator 600 NE Grand Ave. Portland, OR 97232 503 797-1506 (w) 503 797-1795 FAX blauerk@metro.dst.or.us

* They may have a second two-year consecutive term

**Pending Council Confirmation

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North Portland Enhancement Grant Program

Awards for 2004-2005 grant cycle

Grant recipient	Project description	Award		
Loaves and Fishes	Second meal program for homebound, elderly North Portland residents suffering from malnutrition. Program includes services to help participants self manage	\$	3,000	
North Portland Tool Library	Home repair and gardening tool lending library for to low/moderate income residents in Kenton, Arbor Lodge, Portsmouth and St. Johns neighborhoods.	\$	2,000	
Peninsula Senior Center	Foot care and blood pressure clinics that serve low income seniors in North Portland.	\$	3,000	
Peninsula Senior Center	One year support for operational expenses of Center that provides health and social services to low-income seniors in North Portland.	\$	1,020	
PPS District Roosevelt High School	Science research seminar to study environmental impacts of public policies and community health. Program includes field studies, fundamentals of modern genetics and animal	\$	1,500	
PPS District Tender Loving Care - Think 'n Try	Intensive summer program for youth between the ages of 5 and 12. Self-esteem and team building activities as well as field trips. Includes leadership development component	\$	2,500	
University Park Community Center	Nutrition education and healthy snack program to help combat effects of hunger and malnutrition. Project includes a training model for up to 10 high school age mentors.	\$	3,500	
YWCA of Greater Portland	Laundry appliances at SafeHaven shelter for homeless families. The shelter accommodates up to 35 residents (nine families): during their stay, families are responsible	\$	2,453	
		\$	44,333	

North Portland Enhancement Grant Program

Awards for 2004-2005 grant cycle

Grant recipient	Project description	vard
Bethel Neighborhood Drop-in Center	After-school supervised activities for 20+ elementary	\$ 2,000
	school aged children throughout 2004-05 school year.	
	Emphasis on homework help, quiet activities, community	
Caring Community of North Portland	Back to School Readiness Fair to help families and their	\$ 2,500
	children (1,300+ people) with health screenings and	
	immunizations, personal safety instructions, community	
Cathedral Park Jazz Festival	Six portable toilets (including one universally-accessible)	\$ 160
	and three double sinks for the 24th annual free-to-the-	
	public jazz festival in Cathedral Park.	
Desarrollo Integral de la Familia	Integration of nutritional education in child support and	\$ 2,000
	parent activities designed for first generation immigrant	
	Latino families. Includes culturally-appropriate cooking	
Friends of Cathedral Park	Free classical concert by Portland Festival Symphony and	\$ 2,500
Neighborhood Association	music workshops for students at local schools.	
Friends of Trees	Subsidized tree planting project targetting low-income	\$ 4,200
	seniors and residents in North Portland neighborhoods.	
	Goal to plant 300 new trees and inspire community	
Girl Scouts - Columbia River Council	An 8-10 week training program for approximately 85 high	\$ 2,000
	school girls to mentor elementary school children. Mentors	
	learn group behavior management, resume writing,	
Golden Harvesters, Inc.	Purchase cooling equipment to protect perishable foods	\$ 3,000
	until they are distributed to low-income seniors, disabled	
	and no-income residents in North Portland.	
St. Johns Graffiti Nemesis	Pole litter, street trash removal and graffiti removal;	\$ 3,000
	advocacy and education campaigns to encourage citizens	
	to adopt areas where litter and graffiti gather.	
Homowo African Arts & Culture	Youth African dance classes at University Park Community	\$ 2,500
	Center with visiting health experts from African American	
	Health Coalition to educate students on benefits of	
PPS District	Playground safety fence to close gaps in existing fencing	\$ 1,500
James John PTA	and improve safety for school children.	

Date:

October 28, 2004

To:

Metro Council

From: Regarding:

Dan Cooper, Metro Attornex

Executive Summary of OMA Advice Provided During the Transfer

Station RFP Process

 Staff could request clarifying information regarding each of the proposals after they were received.

- Staff could use an organics reloading price of \$19.50 per ton when evaluating BFI's bid, rather than the \$52 per ton in BFI's proposal, based on the clarifying information staff received from BFI and independent information known to staff.
- The Evaluation Committee should be very reluctant to find that ORR's proposal was non-responsive, or that ORR was not a responsible proposer, despite the committee's significant concerns about whether ORR could really perform the work and meet its material recovery guarantee. If the committee's concerns could be addressed by including a condition in the final contract, then Metro should address the concerns that way, rather than find that ORR was not responsible or that its proposal was non-responsive.
- A challenge from one of the other proposers was likely to be successful if Metro entered into a contract with ORR based on the terms requested by ORR at the time negotiations were ended. Those terms included hog fuel price subsidies, diesel fuel purchases, new bonus recovery payment provisions, and a lower organics reloading price that, in sum, could have potentially increased the total contract price by \$1.8 million or more. In return for taking on more risk and expenses, Metro would pay less for organics reloading, but ORR still refused to meet Metro's demand for a limited, two-year corporate guarantee to provide Metro with some additional financial assurance that the fledgling company would be able to initiate its operations and perform as the contract required.
- A challenge from one of the other proposers was likely to be unsuccessful if Metro entered
 into the contract negotiated with BFI, which included a lower organics reloading price that
 effectively lowered the cost of BFI's proposal by at least \$1.5 million, but did not include
 installation of a compactor in the public unloading building at MSS, a project with an
 approximate value of \$700,000 to \$900,000, which BFI had originally included in its
 proposal.

OMA Conclusions:

There is no legal reason to reject the proposed contract with BFI. The staff and the Metro Contract Manager followed legitimate contracting procedures throughout this process. If the Council believes, however, that the staff has not negotiated the best possible deal for the operation of the transfer stations, it may, at its option, cancel this procurement and direct staff to prepare a new procurement, either by RFP or RFB.

M:\attorney\confidential\09 Solid Waste\04METRO.SOU\10operat.ion\06-2004tsRFB-RFP\DBC 1page for Council 102804.doc

Date:

October 28, 2004

To:

Metro Council

From:

Dan Cooper, Metro Atorney

Regarding:

Transfer Stations Operations Contract RFP Process

In response to questions raised at yesterday's work session regarding the request for proposals (RFP) process for securing a new contract for the operation of Metro's two transfer stations, the Chief Operating Officer thought it would be helpful to provide a summary of the legal advice provided by the Office of the Metro Attorney during the course of the RFP process to the staff of the Solid Waste and Recycling Department (SWR) and to Metro's Contracts Manager.

Background—RFP Process Approved by Council

To begin, it is worthwhile to recap some basic aspects of the contractor selection process described in the RFP. The RFP included two significant changes to how the new contractor would operate, as compared to current operations, and those changes were reflected in the RFP process. The first change was to prescribe higher minimum staffing, safety, and training requirements to ensure the facilities are operated more safely and that service to the public was improved. The second change was to provide incentives to the contractor to increase material recovery. This was accomplished by asking the proposers to guarantee the percentage of waste they would recover from incoming non-putrescible solid waste. The higher the guarantee, the higher the proposal was scored (explained more fully below). Proposers were "kept honest" on their proposals, however, in two ways. First, the RFP provided that if the evaluation team judged that a recovery approach would be incapable of achieving the recovery guarantee, then the proposal would be deemed non-responsive and rejected. Second, the contract included a provision that required the contractor to pay a penalty to Metro if it did not attain its recovery guarantee.

There also were several other changes of note, such as adding responsibility for organics reloading at Metro Central Station, revising some of the maintenance provisions to provide the optimal cost-sharing arrangements to ensure equipment was well cared for, and including some sustainability elements to decrease the amount of pollutants attributable to the facilities' operations.

The factors and process for evaluating proposals was described in the RFP. Each facility was eligible to receive up to 100 total points. 50 of those points were allocated to the total cost of each proposal, using Metro's best estimates of the amount of putrescible and non-putrescible solid waste that the facilities will receive over the next four years. The lowest cost proposal would receive all 50 points, and more expensive proposals would receive fewer points based on their proposed cost relative to the lowest cost proposal. 25 points were allocated to facility

operations (up to 10 points for each separate facility, and up to another 5 points for overall operations). The remaining 25 points were allocated to material recovery. 20 of these points were given based on the recovery guarantee (10 for each transfer station), with the highest guarantee receiving all 10 points and the other proposers gaining points relative to the highest guarantee. The other 5 points were allocated based on the feasibility of the proposers' material recovery approaches.

The RFP provided for an evaluation team to evaluate the proposals. The evaluation team would first determine whether proposals conformed to the RFP's instructions, and would then score the proposals. The RFP provided that Metro would then enter negotiations with the top ranked proposer to attempt to finalize a contract. If Metro was unsuccessful in negotiating a contract with the top ranked proposer, the RFP provided that Metro would attempt to negotiate a contract with the next highest ranked proposer, and that the process would continue until Metro negotiated a contract or chose to terminate the procurement.

The Council approved release of the RFP on February 26, 2004.

Evaluation of Proposals

Metro received four proposals in response to the RFP, from Oregon Resource Recovery, LLC (ORR), Browning-Ferris Industries, Inc. (BFI), Norcal Waste Systems, Inc. (Norcal), and Waste Management of Oregon, Inc. (WMO). Metro formed an Evaluation Committee consisting of representatives from the Port of Portland, the City of Portland's wastewater treatment facility, a recycling expert, and Jim Watkins, the SWR Engineering and Environmental Services Manager. The Evaluation Committee was staffed by SWR staff and provided advice from a solid waste consulting firm, CalRecovery, Inc.

A. Clarifications of Proposals

After initial review of the proposals, SWR staff had questions regarding all four proposals.¹ OMA advised SWR staff that it could ask each of the proposers to clarify their proposals to address staff's questions, and reviewed the clarification requests before they were sent. SWR staff then sent the clarification requests to the proposers and received their replies.

Two of the price elements of BFI's proposal raised significant questions for staff. The prices proposed by BFI for reloading organics and for its Bonus Récovery Credit were exceptionally

In summary, the questions were as follows. Staff wanted ORR to clarify its organizational structure because it was a brand new company, to include the resumes of the primary management staff that would operate the facilities, and to clarify how it proposed to sort through putrescible waste at Metro South Station, given that MSS is a pit operation and there is no additional room in the building for dumping and sorting wet waste. Staff wanted Norcal to provide operating specifications on a proposed mechanical waste processing system and to provide details concerning Norcal's proposal to reload dry waste for MSS for delivery and recovery at MCS. Staff wanted WMO to clarify whether its proposed facility managers would be working exclusively at the facilities, or if they would oversee multiple facilities, and to clarify that WMO would comply with Oregon law regarding overtime pay, which WMO had indicated was contrary to company policy. Staff's questions regarding BFI's proposal are discussed in the text, above.

high compared to the other proposals and staff believed BFI likely had made a mistake in its proposal. Specifically, BFI's organics reloading price was \$52.00 per ton (the other proposals ranged from \$4.39 to \$17.00 per ton) and its Bonus Recovery Credit was \$47.50 per ton (the other proposals ranged from \$11.00 to \$22.00 per ton). After consulting with OMA, staff asked BFI what work it contemplated to be included in its organics reloading rate, and whether its proposed Bonus Recovery Credit include the standard payment of \$33.78 per recovered ton (the "avoided cost of transport and disposal" payment), or was intended to be in addition to that amount (the RFP was intended to elicit only the additional amount).

BFI responded that its organics reload price included reloading the waste, transporting it to an organics composting facility, and paying a tip fee at that facility. In other words, it understood that Metro was requesting a proposed "full-service" organics price, rather than only asking how much it would cost to simply reload organic waste at the transfer station (the work contemplated by the RFP). BFI also responded that its Bonus Recovery Credit did include the standard \$33.78 that Metro would pay for all recovered tons.

SWR staff then consulted the Metro Contracts Manager, David Biedermann, regarding whether it was bound to evaluate BFI's proposal using the proposal's original prices, or if BFI's proposal should be evaluated using "corrected" prices. The Contracts Manager consulted with the OMA regarding what constitutes a "mistake" in a contract proposal that could be "corrected" prior to evaluation, under Oregon contracting law. The Contracts Manager concluded that BFI had made mistakes in its price proposals, and that they were partially correctable. When such mistakes are made, it is not fair for the proposer to have the opportunity to adjust its proposal after the deadline for submitting a proposal. Thus, mistaken prices may be adjusted only if the government agency has independent information it can use to calculate a corrected price. The Contracts Manager concluded that BFI had provided an organics reload price that include more work elements than intended, and that Metro had independently received from an unaffiliated third party a price quote covering transportation and tipping fee costs for composting organic waste. The price quoted by that third party (Threemile Canyon Farms, LLC) was \$32.50 per ton. The Contracts Manager therefore recommended that Metro could evaluate BFI's proposal using an organics reloading price of \$19.50 per ton (\$52.00 minus \$32.50). In addition, the Contracts Manager also recommended that BFI's proposal could be evaluated using a Bonus Recovery Credit price of \$13.72 per ton (\$47.50 minus \$33.78).

B. Responsibility and Responsiveness of ORR Proposal

In reviewing the proposal from ORR, the Evaluation Committee was concerned about whether ORR was a responsible proposal and whether ORR's proposal was responsive. The Evaluation Committee's concerns were regarding whether ORR's proposal would be adequate to keep the solid waste transfer operation moving and to actually achieve ORR's recovery guarantee. The Evaluation Committee expressed concerns both with the waste recovery approach proposed (hand picking waste out of piles), and with the staffing and resources dedicated to both recovery and waste transfer. In response to its concerns, the Evaluation Committee asked for legal advice from OMA regarding the standards it should use to judge whether a proposer is responsible and a proposal responsive, under Oregon contracting law.

Regarding the question of whether ORR was a responsible proposer, OMA advised the Evaluation Committee that responsiveness is judged on three factors. The first question is whether the proposer has shown that it has available, or has the ability to obtain, the appropriate resources and expertise (financial, material, equipment, facility and personnel) necessary to show it is capable of meeting all contractual responsibilities. The second question is whether the proposer has a documented, unsatisfactory record of performance and integrity. The third question is whether the proposer has supplied all of the necessary information to determine whether it is responsible. OMA recommended that the Evaluation Committee be very reluctant to exercise its discretion to find ORR not responsible. In other words, the Evaluation Committee has to be very confident that the proposer is not responsible in order to make that finding. Moreover, to the extent that the Evaluation Committee's concerns could be addressed by including additional conditions as part of the contract, the committee should not find that ORR was not responsible.

Regarding the question of whether ORR's proposal was responsive, the issue was simply whether or not the Evaluation Committee believed that the material recovery approach proposed by ORR was incapable of achieving ORR's proposed recovery guarantee. Again, OMA advised the Evaluation Committee to exercise its discretion on this question very reluctantly for two reasons: First, the RFP already provided that five evaluation points should be based on the feasibility of the proposer's material recovery approach, so the issue already contributed to the proposer's overall evaluation score. Second, the RPF also provided for the contractor to pay a significant penalty if it did not reach its recovery guarantee, so there was already a strong monetary incentive for proposers not to overreach. OMA advised the committee that it should only find ORR's proposal non-responsive if it believed to an exceptionally high degree of certainty that ORR would not achieve its guarantee.

After receiving OMA's advice regarding these matters, the Evaluation Committee concluded that ORR's proposal was responsible and responsive.

C. Evaluation Scores of Proposals

After addressing the preliminary issues described above, the Evaluation Committee scored the proposals. ORR's proposal was the highest ranking proposal, with a score of 83.4 points. BFI was second with 78.1 points. Norcal and WMO were second and third, respectively, with 45.1 and 35.5 points.

Negotiations with ORR

SWR staff prepared to enter into contract negotiations with ORR, the highest ranked proposer. Based on the fact that (1) ORR would be a brand new company, organized solely for the purpose of operating Metro's transfer stations, (2) ORR's corporate structure as a limited liability corporation and its initial operating capital of just \$1 million, and (3) the strong reservations the Evaluation Committee had regarding ORR's proposal, having come very close to determining that ORR was either not responsible or that its proposal was not responsive, staff determined that it was advisable, in order to provide the maximum prudent fiscal security for Metro, to seek a corporate guarantee from one or both of the primary partners that were joining to create ORR

(Envirocon, Inc. and Calbag Metals). Staff consulted with OMA regarding whether it would be legally permissible to seek such additional financial assurance for performance of the contract. OMA advised SWR staff that, given the factors described above, such a demand would be legally defensible.

SWR staff also identified five other issues to be resolved in negotiations. First, SWR staff wanted to negotiate a lower per-ton organics reloading price than the \$17 per ton proposed by ORR. Second, staff was concerned about the provision in the contract that provided for sharing the costs of compactor repairs, since the compactor's manufacturer, SSI, was one of the minor partners of ORR. Staff wanted to be sure that it was not possible for SSI to run up high maintenance expenses as a way to make money off the contract. Third, staff wanted to clarify how ORR intended to operate the clean exhaust program. Fourth, staff had some concerns about ORR's operating agreement, which did not appear to provide a definitive decision-making process that clearly put a single entity in control of day-to-day operations, and with the coroporate structure of Calbag, LLC (one of the partners in ORR), which was not fully explained in the proposal. And fifth, amendments to the contract's general conditions were necessary to implement new Metro Code provisions recommended by the Metro Auditor regarding record retention and inspection.

At the initial negotiating meeting, ORR immediately began asking for Metro to make price concessions and to share the risk of depressed material recovery markets and of volatile fuel markets. First, ORR wanted Metro to bear the risk of the hog fuel market dropping below \$15 per ton. Staff estimated Metro's total risk, if the hog fuel market collapsed completely, was as great as \$1.5m. Staff analyzed several possible scenarios where Metro would assume some of this additional risk, but not all of it; for example, capping the subsidy at \$4 per ton, which would put Metro at risk of paying an additional \$400,000 over the term of the contract. Second, ORR proposed that Metro provide the diesel fuel for the operation of transfer station vehicles, and in return ORR would reduce its annual price by the cost of fuel it assumed in its proposal.² In other words, Metro would be assuming the risk of future fuel increases. Staff calculated that the additional risk to Metro over the course of the contract would be approximately \$85,000. Third, ORR requested a six month "rolling start" to the recovery guarantee, so that it would have time to fully implement its recovery approach before it would have to start paying penalties for failing to reach that level. Fourth, ORR requested that Metro accelerate the installation of wood processors the MSS and replace the existing wood line at MCS. And fifth, ORR proposed adding another recovery bonus level, with an even higher recovery bonus payment if ORR reached that higher level.

In addition, ORR also responded to the concerns raised by staff. First, ORR flatly refused to provide any corporate guarantees. Second, the maintenance provisions were discussed and left open for further discussion, to provide some mechanism to ensure that SSI could not "soak" Metro for excessive maintenance costs. Third and fourth, regarding the organics reloading price and the clean exhaust program, both sides seemed willing to negotiate on these issues, if other issues could be resolved. Fifth, ORR explained its operating agreement and insisted that its

² It should be noted that off-road fuel may be used for these vehicles, so no federal taxes apply that could be saved by having the government buy the fuel (unlike for the waste transport contract).

decision-making processes would work fine, and Calbag, LLC explained that its structure was similar to the overall ORR structure, and declined to provide a copy of its operating agreement. And sixth, the new records retention and inspection provisions were not discussed, though ORR did raise some concerns about unidentified "audit" provisions of the contract.

All of these issues continued to be negotiated over the course of several meetings between SWR staff, the Metro Contract Manager, and ORR's representatives. OMA did not participate in any of the negotiating sessions but was updated regularly on their progress. Prior to SWR staff terminating negotiations, the remaining unresolved issues between the parties, and the parties' positions on those issues were as follows:

- (1) Hog Fuel Subsidy. SWR staff indicated that Metro might be willing to subsidize up to a \$5 per ton drop in prices (\$100,000 per year), to pay ORR a higher per ton cost for not disposing of the material than ORR had proposed, to equally share the revenue of a hog fuel price increase, and if ORR agreed that Metro would not pay any material recovery bonus payments until any hog fuel subsidies provided by Metro were repaid to Metro. ORR still wanted a \$10 per ton subsidy, and was willing to share hog fuel price increases until Metro was reimbursed for any subsidy it had provided, but was not willing to forego recovery bonus credits to cover Metro's hog fuel subsidies. SWR staff estimated the potential cost impact of ORR's proposal was \$1 million over the contract term.
- (2) Diesel Fuel Purchasing and Organics Reloading. Metro refused to purchase fuel for ORR. ORR proposed for Metro to increase ORR's lump sum payments by approximately \$1.1 million, to agree that if diesel fuel prices exceeded \$2.00 per gallon ORR would be entitled to an annual reimbursement adjustment (an additional \$200,000 over the course of the contract, for example, if diesel prices rose to \$2.40 per gallon), and, in return, ORR agreed to an organics reload price of \$10 per ton (a decrease of approximately \$1 million over the course of the contract). The net contract price increase of ORR's proposal, if fuel prices did not rise above \$2 per gallon, would be approximately \$100,000.
- (3) Corporate Guarantees. SWR staff proposed a declining guarantee of an additional \$1 million in year 1, \$500,000 in year 2, and no additional guarantee in subsequent years. ORR refused to provide any guarantee.
- (4) Bonus Recovery Kicker. ORR requested an \$8.11 per ton bonus payment for recovery above 30%. This proposal would presuppose that Metro would pay recovery bonuses of \$16.22 per ton for all tons recovered between ORR's recovery guarantee of 22% and the higher 30% bonus level, in addition to the additional bonuses for even more recovery. The contract limited Metro's payment of any recovery bonuses to \$100,000 in the first contract year and made subsequent bonus payments contingent on Metro's budgeting process. Based on ORR's proposal, if ORR achieved a recovery rate of 30% and Metro budgeted to fully fund the payment of bonuses at the level proposed by ORR, SWR staff estimated that the total cost of the contract would increase by \$500,000. SWR

staff agreed to re-evaluate the concept during the course of the contract once ORR had demonstrated it could reach its recovery guarantee of 22%.

Regarding other issues, the parties came to agreement on allowing ORR a rolling start for its material recovery operations, and agreed that other issues could be resolved after major issues were resolved or during the course of the contract.

At this point in the negotiations, SWR staff asked OMA for advice as to whether it would be legally defensible to agree to a contract containing the terms requested by ORR. In other words, a contract where ORR agreed to charge a lower price for reloading organics but did not provide any additional corporate guarantees, and where Metro agreed to subsidize the hog fuel market, raise the price of the contract to cover the risk that diesel fuel prices would increase, and provide the opportunity for new bonus recovery payments. SWR staff estimated that ORR's proposals would potentially raise the price of the contract by nearly \$1.8 million. In addition, Metro could be put in a position where it was subsidizing the cost of hog fuel, but also paying out large recovery bonuses for the recovery of the same hog fuel. OMA advised SWR staff and the Metro Contracts Manager that if Metro entered into such a contract with ORR, Metro would be at substantial risk for having the contract overturned on a challenge because the deal negotiated between the parties served overwhelmingly to improve the contract for ORR, with inequitable benefits to Metro. OMA therefore advised SWR staff not to recommend such a contract and, if SWR staff believed that ORR was not willing to provide Metro with any additional benefits as part of the negotiations, to terminate its negotiations with ORR.

Negotiations with BFI

Having been unable to negotiate a contract with ORR, Metro terminated negotiations with ORR and initiated negotiations with the next highest ranked proposer, BFI. SWR staff began the negotiations by further clarifying the mistaken prices BFI had proposed for organics reloading and the bonus recovery credit payment. Although an organics reloading price of \$19.50 per ton had been used to evaluate BFI's proposal, BFI had previously quoted Metro a price of \$8.50 per ton to do this work (OMA had advised SWR staff and the Metro Contracts Manager that the lower price could not be used to evaluate BFI's proposal because it had not come from an independent third party). BFI quickly agreed that it would reload organics at the \$8.50 per ton price, which effectively lowered the price of BFI's proposal by approximately \$1.5 million. BFI also confirmed a bonus recovery payment amount of \$12.78 per ton.

In addition, BFI had originally offered to provide a compactor for the public unloading building at MSS at no cost to Metro. Such a compactor was on Metro's Capital Improvement Plan at a cost of \$880,000, to be installed a couple years from now. Although the provision of a compactor was not required in the RFP, and its provision apparently did not contribute to the Evaluation Committee's scoring of BFI's proposal, its estimated value, nevertheless, was at least \$700,000, plus the cost of installation (although that is an estimated price for a new compactor, and BFI was proposing to install a used compactor). The purpose of the compactor was to make BFI's material recovery operations at MSS more efficient so that it could recover more material and meet its recovery guarantee. When negotiations began with BFI, however, BFI withdrew its offer of the new compactor, and agreed to allow Metro to remove the installation of such a

compactor from Metro's Capital Improvement Plan. Metro was not in a position to force BFI to honor its proposal for two reasons: first, the RFP provided that proposals were required to be "good" for at least 120 days from submission, and that deadline had passed due to the long period of time it took to evaluate the proposals and attempt to negotiate a contract with ORR; and second, BFI was making other concessions (on the organics price) from the price on which its proposal had been evaluated, so the compactor issue was simply part of those negotiations.

SWR staff then asked OMA for legal advice regarding whether entering into a contract with BFI with the reduced organics price, but without the promised compactor, would be legally defensible. Given that, even accounting for the removal of the compactor as a contract price "increase," the net effect of that was more than offset by the price reduction to be realized by the lower organics price. For that reason, OMA advised SWR staff and the Metro Contract Manager that entering into such a contract with BFI would be legally defensible, if challenged.

Conclusion

For the reasons described in this memorandum, OMA advises Council that there is no legal reason to reject the proposed contract with BFI, and that the SWR staff and the Metro Contract Manager followed legitimate contracting procedures throughout this process. If the Council believes, however, that the staff has not negotiated the best possible deal for the operation of the transfer stations, it may at its option cancel this procurement and direct staff to prepare a new procurement, either by RFP or RFB.

M:\attorney\confidential\09 Solid Waste\04METRO.SOU\10operat.ion\06-2004tsRFB-RFP\DBC memo to Council 102704.DOC

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October 28, 2004

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Re: RFP No. 04-1091 SWR

Website: www.lanepowell.com

Our Client: Oregon Resource Recovery, L.L.C.

File No. 013262-55

Dear Metro President Bragdon and Councilors:

HFRF

I am writing this letter on behalf of Oregon Resource Recovery, L.L.C. ("ORR"), which submitted the highest-scored proposal to operate the Metro South and Metro Central Waste Transfer Stations. The contract is for \$30 million or more over its five-year life.

After Metro staff recognized the ORR proposal as the best one for the public, both for cost and recovery rate, Metro held only two negotiating meetings with ORR, which together spanned about five hours. Metro initiated the first meeting, telling ORR that Metro wanted the principals of ORR to give their personal or corporate guarantees of the contract. This was not a requirement of the request for proposals (the "RFP"), but was a new and surprising demand of Metro. ORR had already agreed to provide a surety bond as required by the RFP. Furthermore, ORR during this first negotiating session offered to supply an Irrevocable Letter of Credit for \$2 million in place of the surety bond, thereby providing Metro a collectible financial instrument.

ORR had quoted a price of about \$17/ton for organic materials handling. Also in the first meeting, Metro told ORR that Metro's program for organic materials would not be financially feasible at a price of \$17/ton, and asked ORR to reduce the price to about

Anchorage, AK Olympia, WA Portland, OR Seattle, WA Vancouver, WA London, England Metro Council President David Bragdon Metro Councilors Newman, Hosticka, Burkholder, Monroe, Park, and McLain October 28, 2004 Page 2

\$10/ton, at a cost to ORR of about \$700,000 over the life of the contract. This was the second instance in which Metro initiated a diversion from the original RFP. ORR agreed to do this, if Metro would make up for the lost revenue stream somewhere else in the contract. ORR suggested revising the payment method for processed wood waste.

In the second meeting, Metro rejected ORR's processed wood waste proposal and appeared unwilling to do anything else to replace the \$700,000. Metro also repeated its insistence that the principals guarantee the contract.

Metro (Mike Wetter, Mike Hoglund and Dan Cooper) and ORR (Warren Rosenfeld and Vince Gilbert) had a brief third meeting at ORR's request, in which ORR repeated its willingness to negotiate the contract with Metro, but without any substantive response from Metro.

A few days later, on August 23, Metro wrote ORR to terminate negotiations with ORR, based in large part on ORR's principals declining to guarantee the contract beyond the requirements of the RFP. (Metro's letter left out the fact it had insisted on reducing the contract price for handling organic materials.)

Metro stopped negotiating with ORR based on two substantive meetings and about five hours of negotiation. Five hours may be a reasonable time to negotiate to buy a car. It is far too short a time in which to expect to negotiate a five-year, \$30 million contract.

Metro moved to the second bidder without negotiating for a reasonable time with the high scorer, using as its first reason a new requirement of guarantees. As Metro materially changed the rates and requirements for one bidder after opening the proposals, Metro should offer all bidders an opportunity to submit new proposals. Metro could do this very quickly by simply reissuing the existing RFP with a short addendum that lists any additional requirements Metro wishes to impose. The proposals will then be truly comparable and Metro can choose the one that best meets the needs of Metro and the community.

THANK YOU.

Very truly yours,

LANE POWELL SPEARS LUBERSKY LLP

Dan N. Alt

Dean N. Alterman

cc: Mr. Warren J. Rosenfeld Mr. Ralph Gilbert 013262.0055/487574.1 DATE:

October 25, 2004

VIA FACSIMILE (503) 378-5518

TO:

John Van Landingham, Chair

Land Conservation & Development Commission

FROM:

Metro

RE:

Exceptions to Department's October 13, 2004 Report on Metro's Task 2

The Department's October 13, 2004, report "Referral of Metro's Periodic Review Task 2, UGB Amendment and Related Documents", recommends remand of Metro's work. Metro takes exception to the report on the following points and asks the Land Conservation and Development Commission to approve Metro's Task 2 work.

EXCEPTION 1 METRO TAKES EXCEPTION TO THE DEPARTMENT'S CONCLUSION (PP. 23-25) THAT GOAL 9 BECOMES APPLICABLE TO METRO THROUGH GOAL 2.

The department contends that Goal 9 applies to Metro, and that Metro violated it by failing to determine how cities and counties in the region will meet their Goal 9 responsibilities to provide short-term supplies of employment land. This is a significant departure from the law and planning practice with broad implications for the metropolitan region.

Goal 9 does <u>not</u> apply to Metro. A careful reading of Goal 9, the Goal 9 rule, and state statutes discloses that: (1) there is no mention of Metro in the goal or rule; (2) the goal and rule assign responsibilities to cities and counties, not to Metro or a regional government; (3) the goal and the rule specify that they are to be implemented by "comprehensive plans"; (4) Metro does not have a "comprehensive plan" as defined in ORS 197.015(5); (5) Metro has a "regional framework plan", a term used in statute when the legislature intends a law to apply to Metro; and (6) ORS 197.015(16) expressly states that Metro's regional framework plans is not a "comprehensive plan." The Court of Appeals held that ORS 197.712, the legislature's analogue to Goal 9, does not apply to Metro because the statute, like Goal 9, assigns responsibilities to cities and counties, not to Metro. *Citizens Against Irresponsible Growth v. Metro*, 179 Or. App. 468, 472-73 (2002).

Metro understands that it has responsibility under Goal 14 to ensure a long-term supply of employment land in the region's UGB. Metro also understands that it has responsibility under Goal 2 to coordinate its decision-making with local governments in the region. But Goal 9, but its own terms, does not apply to Metro; Goal 2 cannot make it apply "indirectly."

This is not simply a matter of semantics. Metro has <u>never</u> undertaken the work of Goal 9. Goal 9 is not part of Metro's current periodic review work program; Goal 9 has <u>never</u> been part of a Metro periodic review work program. Economic development is not among the "matters addressed" in the regional framework plan or "other assigned functions" under Metro's charter [see Chapter II, section 5(2)(b) and section (6)]. In order to add economic development to Metro's functions, the legislature would have to make the assignment by statute, or Metro would have to assume the function by ordinance after obtaining the approval of voters in the region or of a majority of the member of the Metropolitan Policy Advisory Committee (MPAC). None of these steps has been taken.

The department is worried about the short-term supply of industrial sites in the UGB. To allay the department's concerns, we have scoured the Task 2 record to identify vacant industrial lands that can be available for use within five years. Metro derived this information from our periodic review database using the methodology used in the Regional Industrial Land Study (RILS) (part of the Task 2 record) to identify "Tier A industrial land" (land "readily developable without major constraints") and from our coordination with cities and counties of the during more than four years of work on Task 2 of periodic review. This information shows that 2,897 acres (31 percent) of the approximately 9,344-acre need for vacant industrial land now in the UGB can be available for use within five years. This calculation of short-term supply does not include any of the industrial land included in June, 2004. There is no reason to let your concern for short-term supply cause you to distort the coordination requirements of Goal 2 to make Goal 9 applicable to Metro.

EXCEPTION 2

METRO TAKES EXCEPTION TO THE DEPARTMENT'S CONCLUSION (PP. 22-23) THAT INCLUSION OF LESS LAND FOR THE WAREHOUSE AND DISTRIBUTION INDUSTRY THAN IDENTIFIED IN THE URBAN GROWTH REPORT VIOLATES GOALS 2, 9 AND 14.

The Goal 9 rule requires cities and counties to analyze "the major categories of industrial and commercial uses" and to identify sites to accommodate those categories desired by the city or county. Goal 9, as explained in Exception 1 above, does not apply to Metro. Hence, Metro cannot have violated Goal 9 by including less land for one category of employment land than another.

Goal 14 requires Metro to include land for "employment opportunities", but it does not require Metro to divide employment opportunities into categories and to ensure a supply of land for each category. Metro did not violate Goal 14 by including less land for one category of employment land than another.

The department argues (p. 23) that it would be "illogical" for Metro to ignore Goal 9 because cities and counties of the region must comply with the goal; if Metro ignores the goal, it may make it impossible for the cities and counties to achieve their Goal 9 objectives. Ignoring city and county Goal 9 efforts, the department contends, violates Goal 2.

¹ 2,092 acres within pre-expansion UGB; 805 acres added to UGB in December, 2002 (Shute Road-189; Clackamas County-144; Wilsonville-176; Tualatin- 280; Oregon City-20)=2,897 acres. See Ordinance No. 02-969B, Appendix A, Item 4 (Urban Growth Report: An Employment Land Need Analysis) for discussion of the RILS.

Metro did not ignore city and county work under Goal 9, and it did not fail to coordinate with local governments in the region about the need for land for the warehouse and distribution industry. In fact, coordination with local governments over an adequate supply of sites suitable for that industry consumed more of Metro's coordination with local governments than any other industrial lands issue.

As noted in its Findings (p.6), Metro surveyed the Goal 9 elements of the city and county comprehensive plans in the region as part of the Task 2 decisions in December, 2002 ("Status of Research Element Assessing Metro Policy Options for Providing Land to Meet Future Employment Needs", July, 2001, pp. 20-50). The survey indicates that only the City of Tualatin identifies the warehouse and distribution industry as a desired employment opportunity in its Goal 9 element. The Council added land adjacent to the City of Tualatin suitable for that industry in both the December, 2002, and June, 2004 parts of Task 2.

Metro's record is loaded with testimony and documentation by cities on the south side of the region close to the I-5 corridor (particularly the cities of Tualatin and Wilsonville) that they already have enough land devoted to warehouse and distribution. The City of Wilsonville expressed willingness to accept additional land for that industry between Wilsonville and Tualatin (Tualatin and Coffee Creek Areas). The Council included those areas in the UGB. In response to the cities, the Council removed Wilsonville East and Wilsonville South from further consideration. The Council turned to Helvetia, on the west side of the region, instead. The effect of these Council decisions was to reduce the amount of land highly suitable for the warehouse and distribution industry. The decisions were made in response to Metro's coordination with cities and counties of the region. How does this become a violation of Goal 2?

Metro's choice to include land (Helvetia) less suitable for the warehouse and distribution industry rather than land more suitable for that industry (Langdon Farms, for example) did not violate Goal 2, Goal 9 or Goal 14.

EXCEPTION 3

METRO TAKES EXCEPTION TO THE DEPARTMENT'S CONCLUSION (P. 23) THAT METRO VIOLATED GOALS 14 AND 2 BY DISMISSING THE ENTIRE WILSONVILLE SOUTH AREA WITHOUT CONSIDERING THE SMALLER PORTION PROPOSED BY LANGDON FARMS.

A. Goal 14

The Metro Council set forth its rationale for rejecting land in the Wilsonville South Study Area. The Council's rationale applies whether the entire study area (1,327 acres) or the reduced Langdon Farms site (172 acres) is being considered:

"Finally, the Council considered Class II farmland south of Wilsonville, near the I-5 corridor on the south side of the Willamette River. The Council rejected this farmland because inclusion would constitute a projection away from the urbanization [sic] portion of the metropolitan region, toward Marion County to the south. Industrial development south of the river would also be separated from the services of the City of Wilsonville and the rest of the

metropolitan region, connected only by a limited access (interstate highway) bridge across the river The Oregon Department of Agriculture urged the Council not to add farmland south of the Willamette River because it would further introduce urban uses into that core area of the Willamette Valley's commercial agriculture."

Ordinance No. 04-1040B, Exhibit G, Findings of Fact, pp. 21, 25.

In other findings, the Council compared other areas of Class II farmland and concluded that inclusion of other areas was more consistent with the locational factors of Goal 14 and Metro policies. Findings, p. 21 (Helvetia) and p. 25 (Cornelius).

Metro explained in its findings that it did not include small areas (less than 300 acres) that are some distance from other industrial areas. The rationale for this exclusion, relating to the need and locational factors of Goal 14, is set forth in a memorandum entitled "Formation of Industrial Neighborhoods", Ordinance No. 1040B, Appendix A, Item (u). The department implicitly accepts this rationale in discussion of other areas considered for possible inclusion in the UGB (Report, p. 29). Neither the entire Wilsonville South Study Area nor the reduced Langdon Farms site is expressly mentioned in the memorandum because the entire area is much larger than 300 acres, and the smaller site had not been proposed by the date of the report. Also, the memorandum focuses on exception areas. Nonetheless, the rationale for not including smaller, more remote sites not contiguous to any industrial area (Report, pp 3-4) applies to the Langdon Farms site, which is only 172 acres.

The department wants Metro to reconsider the Langdon Farms site because the department believes Metro considered only the entire Wilsonville South Study area (1,327 acres) in comparison to other study areas, and failed to consider the smaller Langdon Farms portion of the study area (172 acres). Given the enormous size of Metro's record, and the great volume of material submitted to Metro in the last six weeks prior to Metro's June 24, 2004, decision, it is not surprising that the department might have overlooked information submitted to the Council by the City of Wilsonville.

The City of Wilsonville evaluated material submitted by Langdon Farms about the cost of services to urbanize the site. The city's evaluation, attached to a June 10, 2004, letter from the city to Metro, concludes that provision of services to the site will be considerably higher than suggested by Langdon Farms' consultant. The principal disagreement between the city and the consultant is over the unit costs for each service (cost per linear foot of roads, water lines, sewer lines, storm drain lines), based upon the city's own experience with services. The city's analysis is part of the record behind the findings made by the Council to support its decision not to include land in the Wilsonville South Study Area. Ordinance No. 04-1040B, Exhibit G, Findings of Fact, pp. 4-7 (general explanation for inclusion or exclusion of areas considered) and pp. 21, 25 (specific findings). The city's letter and attachments are found at pages 1,285 to 1,317 of Metro's record.

In short, the Council made findings based upon substantial evidence in the record that justify rejection of the Langdon Farms site and the entire Wilsonville South Study Area, considering the locational factors of Goal 14 and policies in the Regional Framework Plan.

B. Goal 2

The department is also concerned about coordination between Metro and the Port of Portland, which asked the Council to consider the Langdon Farms site for warehouse and distribution. Metro must point out that it is <u>not</u> the Port of Portland that raised this objection, with good reason: there were many months of coordination between Metro and the Port (at the end of the Port's May 5, 2004, letter to the Council, Port Executive Director Bill Wyatt says: "Once again, I want to commend Metro for an excellent process"). It is <u>Langdon Farms</u> that asserts Metro did not coordinate adequately with the Port of Portland.

The objection and the department's response bring to light a great difficulty Metro faced in its coordination efforts. As noted in Metro's response to Exception 2, above, Metro reviewed the Goal 9 elements of the city and county comprehensive plans in the region. Only Tualatin calls for new warehouse and distribution opportunities. Metro added land suitable for that industry to the UGB adjacent to Tualatin.

Then, Metro held hearings on its proposed additions to the UGB in April, May and June of 2004. All the cities at the south side of the region, including Tualatin, objected to addition of any land south or east of Wilsonville. The Council did what Goal 2 requires: it heard testimony from the cities – the local government service providers in that part of the region – and accommodated city concerns as much as possible: the Council included the Tualatin and Coffee Creek Study Areas and rejected the Wilsonville East and Wilsonville South Study Areas (including the Langdon Farms site). The Council accommodated the Port of Portland as much as possible to balance its coordination with the cities on the south side of the region: the Council included the Tualatin and Coffee Creek sites, both suitable for warehouse and distribution and both consistent with the plans of the cities of Tualatin and Wilsonville. As Metro sees it, this is fully consistent with the coordination requirements of Goal 2. 1000 Friends of Oregon v. City of North Plains, 27 Or LUBA 372, 393-94 (1994).

EXCEPTION 4

METRO TAKES EXCEPTION TO THE DEPARTMENT'S CONCLUSION THAT METRO MUST RECONSIDER ITS DECISION <u>NOT</u> TO INCLUDE TERRITORY IN THE EVERGREEN STUDY AREA BECAUSE (1) METRO FAILED TO COORDINATE WITH THE CITY OF HILLSBORO TO THE EXTENT REQUIRED BY GOAL 2 (P. 13); (2) METRO DID NOT PROVIDE AN ADEQUATE FACTUAL BASE AS REQUIRED BY GOAL 2 (PP. 14-15).

A. Coordination with Hillsboro

The department concludes that the Goal 2 issues raised by the City of Hillsboro "are sufficient to warrant a remand for lack of coordination" The department then explains that Hillsboro thinks

a portion of the Evergreen Study Area should have been added instead of a portion of the Helvetia Study Area. The department's questions about the relative merits of the two areas <u>may</u> implicate the locational factors of Goal 14 (see below). But where is the Goal 2 coordination issue?

It cannot be the alleged failure of the Council to consider the portion of Evergreen that the City of Hillsboro preferred to Helvetia. The Council's Metropolitan Policy Advisory Committee ("MPAC") discussed the proposal at its May 26 and June 9, 2004, meetings, and recommended consideration by the Council. As the department notes, the Council responded to the city and MPAC by preparing motions to add portions of the Evergreen Study Area, sponsored by Councilors Newman and McLain and explained and analyzed in a staff report (Record, pp. 1893-1929). The councilors presented the written motions at the Council's June 17, 2004, meeting. In short, the city's Evergreen proposal was considered by the Council.

Metro coordinated for 17 months on this last part of Task 2 with all the local governments of the region, including Hillsboro, through MPAC, through Metro staff meetings with planning departments and local officials, through workshops, through correspondence, through many hearings before the Council. In the course of its coordination efforts with the City of Hillsboro, Metro inquired whether the city wanted Metro to include the Helvetia area in the UGB. Until the end of this long process, the city told Metro that it would accept the Helvetia area, but preferred the Evergreen Area. Not in its April 5, 2004, letter (Metro record, p. 2869), nor in its May 5, 2004, letter (record, p. 2867), nor in its June 1, 2004, letter (record, p. 1942), nor in its June 10, 2004, letter (record, p. 1221) did the city tell Metro that inclusion of the area would be inconsistent with the city's comprehensive plan.

In its objections, the city claims that inclusion of Helvetia was "a forced urban growth boundary change over the objections of an affected city" This is a curious objection given the position of the city while the matter was before Metro. By letter of May 5, 2004, Hillsboro Mayor Hughes wrote to Council President Bragdon: "We do not oppose adding the 'Helvetia Study Area' to the UGB." Perhaps the discrepancy between what the city told Metro before the UGB decision, and the city's objections after Metro's decision, can be better understood by considering a statement made by Mayor Hughes at the last MPAC meeting on the industrial land UGB expansion prior to Metro's decision (June 9, 2004). MPAC was formulating its final recommendation to the Council on the UGB. Members asked Mayor Hughes about the Helvetia and Evergreen areas. Mayor Hughes said the city did want Evergreen, but the city had "sort of adopted a kind of a 'briar patch' strategy: 'don't give us Evergreen.' We thought that would be a good strategy."

The burden of coordination lies upon both units of government. If the city believed that inclusion of Helvetia would be inconsistent with its comprehensive plan, and that Metro was "forcing" it to accept Helvetia, it should have said so during the time for coordination. It seems that the City of Hillsboro, not Metro, has violated Goal 2.

In the end, the Council did not add land in the Evergreen Study Area. Goal 2 does not require Metro to accept a proposal made in the process of coordination. (LCDC applied this interpretation of Goal 2 when, at an earlier stage of Task 2, it approved Metro's inclusion of Study Area 37 over the objection of the City of West Linn; Partial Approval and Remand Order 03-WKTASK-001524, p. 32). Again, where is the Goal 2 coordination issue in this case?

Though the department does not say expressly, Metro understands the department to believe that the coordination section of Goal 2 requires Metro to choose Hillsboro's Evergreen proposal over Helvetia because, other things being equal between Evergreen and Helvetia, Metro must "accommodate" Hillsboro "as much as possible" [Goal 2 definition of "coordinated" by reference to ORS 197.015(5)].

Who determines whether the rejected portion of Evergreen is "equal" to the included portion of Helvetia? This is a Metro call. Given that the two areas fall within the same priority under ORS 197.298 (Class II farmland), Metro makes the comparison between Evergreen and Helvetia, applying the locational factors of Goal 14 and Metro policies. If Metro concludes that inclusion of a portion of Helvetia complies with Goal 14, and the determination is supported by substantial evidence in the record, the matter is closed. This brings us to the department's contention that Metro's record on the two areas does not provide an adequate factual base for Metro's decision.

B. Adequate Factual Base

The department sets forth a portion of the Council's findings on Helvetia and concludes "[t]hese findings, with the supporting information, do not constitute an adequate factual base for Metro's decision under Goal 2 – substantial evidence." The findings, says the department, do not make "an adequate comparison because a smaller portion of the Evergreen site could have been considered." (p. 14.)

Metro began its consideration with a 985-acre Evergreen Study Area. (Industrial Land Alternative Analysis Study, pp. 100-103, Record, 270-73). The Staff Report that accompanied the April 15, 2004, recommendation by the Chief Operating Officer (COO) to the Council, discussed different consequences from inclusion of different portions of the Evergreen Study Area:

"The southeast corner of the area can be served by gravity to two existing lines 1,400 feet to the south. There are no existing large diameter sewers available to serve the remainder of the area. Thus extensive downstream improvements or construction of new sewers through a developed residential area is required. Overall urbanization of the area would have a moderate impact on adjacent agricultural land to the west which could be minimized or increase depending on the amount and location of UGB expansion. For instance, exception land along NW Sewell Road could provide a buffer for the agricultural land to the west if it remained outside the UIGB and the resource land to the east was included in the UGB. ON the other hand if only a portion of the resources land was

included in the UGB the remained resource land may have greater impacts, as it would be isolate from the larger farming community. Similarly impacts to environmental resources will vary based on the amount and location of the land included in the UGB. Therefore, depending on the expansion area boundaries and the resulting impact to agricultural activities and environmental resources, this area my be considered for inclusion in the UGB." (p. 28.)

Just before release of the COO's recommendation on April 15 (but too late to be addressed in the recommendation), the City of Hillsboro suggested three different configurations of portions of the Evergreen Study Area [April 5, 2004, letter: 256 acres; 462 acres; 612 acres (Record, pp. 2869-2873). In the ten weeks between release of the recommendation and the Council's final decision on June 24, the Council received another three possible configurations, two from Hillsboro [June 1, 2004, letter: 372 acres; 519 acres (Record, pp. 1942-43)]; and one from MPAC [May 26, 2004: 372 acres (Record, pp. 2100-02)]. Councilors Newman (121, 357, 372 and 516 acres) (Record, pp. 1942, 1926-27) and McLain (121 acres) (Record, pp. 1924-25) responded to these recommendations in a series of motions for amendment to the COO's recommendation. Staff Reports of May 27, 2004, and June 2, 2004, briefly compared four of these configurations (Record, pp. 1893-1927). These proposals and staff reports were before the Council when it made its final changes to the COO recommendation (June 17, 2004) for adoption on June 24. The Council chose not to include any of the proposed configurations.

In short, the Council <u>did</u> consider small portions of the Evergreen Study Area. The Council <u>did</u> consider the consequences of different configurations of small portions of the study area. The Council <u>did not</u> enter findings that address all six of the different configurations and compare them individually with Helvetia and all the other areas of Class II soils under consideration by the Council, as the department believes it should. Here are the findings the Council did make to explain its choice of Helvetia over Evergreen and other areas of Class II soils. Please note that the findings compare an area of Evergreen (478 acres) smaller than the 985-acre Study Area of the April 15, 2004, COO recommendation:

"The farmland portion [of the Helvetia area] lies between the existing UGB (to the south and east) and the exception land portion to the west The Council includes this farmland because the exception land portion (87 acres) contains some land suitable for industrial use. Also, among farmlands considered, this farmland is already affected by nearby urban and rural residential use The Council considered including a portion of the Evergreen Study Area, which also contains a combination of exception land and Class II farmland, because it, too, contains several large parcels. The Council favored the Helvetia area because the farmland portion of the Evergreen area that lies between the UGB to the east, the exception land to the west and NW Meek Road to the north includes considerably more farmland

than the included portion of the Helvetia Area (478 acres versus 162 acres in Helvetia). Further, unlike the exception land portion of Helvetia, the exception land portion of the Evergreen Study Area does not contain land suitable for industrial use In short, of the Class II farmlands considered by the Council, this portion of the Helvetia Study Area best meets the identified need for industrial land and is most separated from nearby agricultural lands. Other than the exception lands that are part of this study area, there are no other exception lands that can help the region meet its need for larger parcels for industrial use.

"Adverse consequences and incompatibility from urbanization of the included portion will be much reduced, given that the UGB borders this portion on the east and south sides, West Union Road borders the portion on the north side, and much of this portion (87 acres) is exception land lying between the included farmland portion and the excluded farmland portion to the west." Ordinance No. 04-1040B, Exhibit G, Findings of Fact, p. 20-22.

As noted in these findings (and supported by staff reports referring to evidence in the record), several facts loomed large in the Council's choice to include the portion of Helvetia rather than a portion of Evergreen. These facts relate to the locational factors of Goal 14. They are more readily understood by reference to maps of the Helvetia and Evergreen areas, attached.

The Council found that, in comparison with other areas of Class II soils, the included farmland of the Helvetia area was more adversely affected by nonfarm development. A careful look at Map A shows the L-shaped exception area angling from the northwest portion into the heart of the included farmland. A close look will also reveal the mobile home park on the south boundary of the area, within the farm zone. This pattern was noted in the report of the Oregon Department of Agriculture ("Limited Choices"): "However, the work group could not ignore the land use pattern both within the area, the location of the area within a small notch of the current urban growth boundary and the two hard edges provided by Helvetia and West Union Roads." (P. 11.) This nonfarm development, the Council found, made the included farmland in the Helvetia area the "most separated" farmland among the areas considered. (Compare with Map B, south of Waible Creek, where the suggested configurations lie.)

The Council also found that West Union Road, on the north side of the included portion of Helvetia (see Map A) is a good border to reduce compatibility with farmland to the north. This "hard edge" is noted in "Limited Choices", quoted above. The Council believed this road is a better separator than Waible Creek (see Map B), an intermittent stream with no vegetative buffer for much of its run through the fields, at the north border of the various Evergreen configurations suggested. Observe that the creek runs amid several fields that are part of the same parcels.

The Council further found that the exception land included in the Helvetia area are more likely to convert from residential to industrial use over time, due to the size of the parcels and the configuration of the exception area, than the exception land to the west of the farmland portion of Evergreen south of Waible Creek (compare Maps A and B).

These findings, taken together, address factors 6 and 7 of Goal 14 and Policies 1.1 (Urban Form, sections 1 and 4), 1.4 (Economic Opportunity), 1.6 (Growth Management, sections 1 and 2) and 1.12.2 (Protection of Agriculture and Forest Resources). The findings are supported by substantial evidence in the record. Most important, in response to the Department's concerns, the same findings and the same facts apply regardless which portion of Evergreen is compared, the 478-acre portion of the Council's findings, the 372-acre portion last suggested by Hillsboro, or any of the portions suggested by MPAC, which all lie south of Waible Creek.

Given the Council's findings and the record that supports them, Metro believes there is an adequate factual base to support the Council's choice of Helvetia over Evergreen. The city and the department may have come to different conclusions, but that does not mean the Council's decision is not supported by an adequate factual base.

Metro has a further concern with the implications of the department's recommendation (that the factual base is inadequate because the Council failed to compare Helvetia with the last configuration of Evergreen suggested by Hillsboro). The recommendation implies that Metro must evaluate and make findings on each and every suggested configuration of areas under consideration and compare each with all other similar areas under consideration. Every city considering expansion of its UGB faces this problem. But the unique Metro experience - 27 local governments making suggestions, and scores of thousands of acres under consideration — exacerbates the problem. If Metro must analyze and make findings on every configuration proposed by a local government, however late in a lengthy process, this would indeed be a neverending process.

Finally, Metro believes it accommodated the City of Hillsboro as much as possible: (1) Metro added land adjacent to Hillsboro's industrial area, having been told by Hillsboro for many months that it was an acceptable choice; (2) Metro rejected the West Union Study Area, having been told by the city that it was unacceptable; and (3) Metro included land north of Cornelius, as Hillsboro as requested.

EXCEPTION 5

METRO TAKES EXCEPTION TO THE DEPARTMENT'S CONCLUSION (P. 30) THAT METRO DID NOT EXPLAIN HOW INCLUSION OF FARMLAND IN THE CORNELIUS AREA COMPLIES WITH RFP POLICY 1.12 AND THAT METRO'S REASONS FOR INCLUDING THE FARMLAND ARE NOT CONSISTENT WITH THE RECORD.

The department gives two grounds for Metro to reconsider addition of farmland north of Cornelius: (1) the Council failed to make findings to show that adding this Class II farmland

complies more fully with Policy 1.12 of the Council's own Regional Framework Plans ("RFP") than inclusion of other Class II farmland (Report, p. 27); and (2) the reasons offered by Metro for including farmland in the Cornelius area are not consistent with its record (Report, p. 30).

Before discussing Metro's findings, it is important to explain the context for Metro's decision to include the Cornelius area. First, Metro followed the priorities of ORS 197.298, looking to exception land to satisfy the need for industrial land. After exhausting land in this highest priority, Metro turned to less capable resource land. Metro added the small amount of Class IV and III farmland suitable for industrial use. With need for land remaining, Metro turned to Class II farmland. Metro had studied more Class II farmland than the remaining need for industrial land. So Metro turned to the locational factors of Goal 14 and its own RFP policies to choose from among the Class II farmland sites it studied. Both LCDC and the Court of Appeals have endorsed this approach to applying the statutory priorities and the locational factors of Goal 14 to the choice of land.

A. Metro Policy 1.12

The department recognizes the work Metro did to compare the Cornelius area, under the locational factors, with others under consideration. The department found no fault with Metro's weighing of these factors. In response to an objection, the department focuses on Metro's Policy 1.12 (Protection of Agriculture and Forest Resources). But Metro wants the department and the Commission to understand that more RFP policies than just Policy 1.12 apply to Metro's choice. As LCDC often must balance and reconcile apparently conflicting goals, so must Metro reconcile and balance policies in the RFP. Metro's April 15, 2004, Staff Report (Ordinance No. 04-1040B, Appendix A, item (a), pp. 5-8) sets forth all of the policies from the RFP that apply to UGB decisions. With respect to the Cornelius area in particular, the Council addressed not only Policy 1.12, but also Policies 1.2 (Built Environment), 1.3.1 (Housing and Affordable Housing, section 4), 1.4 (Economic Opportunity) and 1.6 (Growth Management). Thus, the Council's findings demonstrate consideration and weighing all four of these policies, not just Policy 1.12.

The Council <u>did</u> make findings to address Policy 1.12, and <u>did</u> compare the Class II farmland in the Cornelius area with other areas of Class II farmland (Evergreen and Wilsonville South). Here are the relevant Council findings:

"G. Cornelius

"The Council relies upon the facts and analysis in the Industrial Land Alternative Analyses Study [Appendix A, Item(c) in Ordinance No. 04-1040B, pp. 84-87; 111; A-1 to A-4] and the Staff Reports [Appendix A, Item (a), p. 27] to support its conclusion that addition of this 262-acre portion of the Cornelius Study Area will provide for an orderly and efficient transition from rural to urban land use. Slightly more than half (56 percent) of the included portion is designated for agriculture in Washington County's comprehensive plan (predominantly Class II soil). The

farmland portion lies in two tracts separated by an exception area. A second tract of exception land borders the farmland on the east side. Together, these four adjacent tracts comprise the portion of the study area included in the UGB.

A

"The Council chose this portion of the study area because it has characteristics that render it suitable for industrial use: large and mid-sized parcels and relatively flat land. The Urban Growth Report-Employment (UGR-E) identifies a specific need for large parcels (50 acres or larger) (Ordinance No. 02-969B, Appendix A, Item 4, page 25). The included portion of the study area contains one parcel between 50 and 100 acres [Appendix A, Item (a), p.30].

"The Council also chose this area to help achieve Policies 1.2, 1.3.1 and 1.4 of the Regional Framework Plan (RFP), which call, among other things, for an equitable and balanced distribution of employment opportunities, income, investment and tax capacity throughout the region. The Council considered the fiscal and equity effects of including this area on the City of Cornelius. Given that the city has the highest poverty rate, the lowest property tax revenue per capita, the lowest land improvement market value and the longest average commute in the region, the Council concluded that industrial development in this area would help achieve these policies better than inclusion of any other Class II agricultural land.

"The Council considered including a portion of the Evergreen Study Area, which also contains a combination of exception land and Class II farmland, because it, too, contains several large parcels. The Council favored the Cornelius area for the reasons stated above, and because the farmland portion of the Evergreen area that lies between the UGB to the east, the exception land to the west and NW Meek Road to the north includes considerably more farmland than the included portion of the Cornelius Study Area (478 acres versus 147 acres in the Cornelius area).

"The Council also considered inclusion of the West Union Study Area, which contains farmland of Class II and III soils. The Council chose the Cornelius area rather that the West Union area because the portion of the West Union area with higher-priority Class III soils is not suitable for industrial use (slopes greater than 10 percent), and this portion lies to the north of the portion with predominantly Class II soils (adjacent to the UGB).

"The Council also considered Class II farmland in the Wilsonville East Study Area in order to find large parcels suitable for industrial use. The Council chose the Cornelius area over the Wilsonville area for the reasons stated above, and because the former will be considerably easier to provide with public facilities and services (p. 111). As a result, inclusion of the Cornelius area has the support of the City of Cornelius, while the City of Wilsonville opposes inclusion of the Wilsonville East area.

"The Council considered two other study areas composed predominantly of Class II soils: the Noyer Creek and South Hillsboro areas. The Cornelius area is easier to provide with public services than either Noyer Creek or South Hillsboro. Inclusion of industrial land in the Cornelius area will better accomplish Policies 1.2, 1.3.1 and 1.4 of the RFP than inclusion of Noyer Creek or South Hillsboro.

"Finally, the Council considered Class II farmland south of Wilsonville, near the I-5 corridor on the south side of the Willamette River. The Council rejected this farmland because inclusion would constitute a projection away from the urbanization portion of the metropolitan region, toward Marion County to the south. Industrial development south of the river would also be separated from the services of the City of Wilsonville and the rest of the metropolitan region, connected only by a limited access (interstate highway) bridge across the river. Inclusion of the Cornelius area would better achieve the compact urban form sought by Policies 1 and 1.6 of the RFP and Policy 3 of the Regional Transportation Plan. The Oregon Department of Agriculture urged the Council not to add farmland south of the Willamette River because it would further introduce urban uses into that core area of the Willamette Valley's commercial agriculture. Although the department also expressed concern for expansion of the UGB north of Council Creek in the Cornelius area (part of the included area lies north of Council Creek; part lies south), it placed a higher priority on protection of farmland south of the Willamette River. The Council concludes that inclusion of the Cornelius area rather than the Wilsonville South Study Area farmland better achieves Policy 1.12.2 of the RFP." Findings, pp. 24-25.

These findings showing that the Council evaluated and weighed the application of its policies to the decision whether or not to include the Cornelius area. It is up to the Council to weigh its policies and strike a balance among them. Policy 1.12 itself describes this balancing:

"1.12.1 Agricultural and forest land outside the UGB shall be protected from urbanization, and accounted for in regional economic and development plans, consistent with this Plan. However, Metro recognizes that all the statewide goals, including Statewide Goal 10, Housing, and Goal 14, Urbanization, are of equal importance to Goals 3 and 4, which protect agriculture and forest resource lands. These goals represent competing and, some times, conflicting policy interests which need to be balanced."

Unless the balance struck by the Council violates a requirement of the statewide planning goals, Metro believes the Commission should defer to the Council the interpretation and application of Metro's own policies.

The second department concern is whether Metro's findings and reasoning are consistent with Metro's record. The department refers particularly to an analysis ("Limited Choices") done by the Metro Agricultural Lands Technical Work Group, organized by Oregon Department of Agriculture at Metro's request. The analysis ranked areas of farmland under consideration for possible inclusion in the UGB, including the Cornelius, into four groups of increasing importance to commercial agriculture. The work group placed farmland in the Cornelius area in the fourth group, the most important of the areas considered. The Council found this evaluation very helpful to its difficult choices and, for the most part, followed the work group's recommendation. But the Council, as noted above, weighed the analysis and Policy 1.12 with other policies in its Regional Framework Plan, relying upon an enormous volume of information, to reach its decision [the Industrial Land Alternative Analyses Study, pp. 84-87; 111; A-1 to A-4 and Staff Reports, Appendix A, Item (a), p. 27 and Item (y), pp. 6, 27]. As argued above, unless the balance struck by the Council violates a requirement of the statewide planning goals, Metro believes the Commission should defer to the Council the interpretation and application of Metro's own policies.

EXCEPTION 6 METRO TAKES EXCEPTION TO THE DEPARTMENT'S CONCLUSION (P. 8) THAT METRO FAILED TO ADD ENOUGH LAND TO MEET THE NEED FOR INDUSTRIAL USE.

The department concludes that Metro's expansion of the UGB left the region 133 acres short of the identified need for industrial land (report, p. 8). Here is the Metro Council's explanation for the amount of land it added for industrial use:

"Inclusion of these areas added 1,920 acres (1,047 net acres) to the UGB for industrial use. Combined with the efficiency measures described in Section D of these Finding, and actions taken in December, 2002, these additions to the UGB accommodate approximately 99 percent of the need for industrial land [identified in the 2002-2022 Urban Growth Report: An Employment Land Need Analysis (9,366 net acres)]. Given the unavoidable imprecision of the many assumptions that underlie the

determination of need for industrial land – the population forecast; the employment capture rate; the industrial refill rate; employment density (particularly given changes in building types used by industry over time); the rate of encroachment by non-industrial uses; and the vintage industrial relocation rate – the Council concludes that its action in the December, 2002, ordinances and in the Ordinance No. 04-1040B provide a 20-year supply of industrial land for the region" Findings of Fact, Rec. 42-43.

The Commission should accept this UGB expansion and this rationale to conclude that that Metro complies with Goal 14 as compliance is defined in ORS 197.747 ("any failure to meet individual goal requirements is technical or minor in nature"). Certainly, a one-percent shortfall is "minor in nature", particularly given the imprecision in calculation of need noted in Metro's findings.

Metro reminds the Commission that the Commission cited ORS 197.747 when it approved a small surplus in the amount of land Metro added to the UGB for residential use (land for over 650 units) in the December, 2002, Task 2 decisions (Order, July 7, 2003, p. 27).

Metro also wants the Commission to understand that any additional land Metro brings into the UGB will be farmland, a shift of land from one industry to another. The Council found it especially difficult to add high-value agricultural land to the UGB in the face of much testimony from industry and industrial brokers that they do not know what their needs will be two years into the future, much less 20 years ahead.

EXCEPTION 7 METRO TAKES EXCEPTION TO THE DEPARTMENT'S CONCLUSION (P. 5) THAT METRO SHOULD BRING ADDITIONAL LAND INTO THE UGB TO ACCOUNT FOR INFRASTRUCTURE.

The department concludes that Metro's "has not demonstrated that it has provided sufficient industrial land, considering that some of that land added to the UGB will likely be consumed by infrastructure." (Report, p. 5.) The department is correct that, although Metro deducted constrained land (slopes, wetlands, floodplains, etc.) from gross vacant land, in areas newly added to the UGB in June, Metro did not deduct land for infrastructure from these areas. As explained in the 2003 Industrial Land Alternative Analysis Study, the analysis did not reduce the net acreage to account for infrastructure because specific types of industrial land have not been identified for each area included in the UGB: "Therefore, internal traffic patterns, which will differ for different uses, are not known and it is expected that schools, parks and churches would be excluded from the areas." (P. 4.) We note, however, that Metro also did not account for re-development of small parcels in added areas from non-industrial (principally residential) to industrial uses; such redevelopment will increase the industrial yield of newly added territory. We expect these two factors to compensate for each other to a degree that will become clearer as cities and counties adopt comprehensive plan and zoning provisions pursuant to Title 11 of the Urban Growth Management Plan for the territory, and as it develops.

CONCLUSION

Metro has been laboring through Task 2 of periodic review four years, since LCDC approval of the work program on July 28, 2000. Its effort to address and balance scores of applicable criteria and factors from state and local planning laws, to coordinate with many local governments, and to involve many thousands of the region's people in decisions to expand the UGB has been a monumental effort. For the good of the region, for the good of the statewide planning program, this long effort must come to an end so Metro can attend to other important work, especially how the region grows within the UGB.

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