

A G E N D A

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TEL 503 797 1542 | FAX 503 797 1793



**METRO**

**Agenda**

MEETING: METRO COUNCIL REGULAR MEETING – revised 10/28/04  
DATE: November 4, 2004  
DAY: Thursday  
TIME: 2:00 PM  
PLACE: Metro Council Chamber

**CALL TO ORDER AND ROLL CALL**

**1. INTRODUCTIONS**

**2. CITIZEN COMMUNICATIONS**

**3. EXTERNAL QUALITY CONTROL REVIEW** Dow

**4. FIRST QUARTER FINANCIAL REPORT** Short

**5. CONSENT AGENDA**

5.1 Consideration of Minutes for the October 28, 2004 Metro Council Regular Meeting.

**6. ORDINANCES – FIRST READING**

6.1 **Ordinance No. 04-1062**, For the Purpose of Amending the FY 2004-05 Budget and Appropriations Schedule Recognizing \$1,586,918 in Grant Funds and Private Contributions for a Series of Specific Projects in the Regional Parks Operating Fund; Transferring \$19,765 from Contingency to Operating Expenses in the Regional Parks Operating Fund; Amending the FY 2004-05 Through FY 2008-09 Capital Improvement Plan; and Declaring an Emergency.

**7. RESOLUTIONS**

7.1 **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. Park

**8. CONTRACT REVIEW BOARD**

- 8.1 **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. Monroe
- 8.2 **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. Monroe

**9. CHIEF OPERATING OFFICER COMMUNICATION**

**10. COUNCILOR COMMUNICATION**

**ADJOURN**

**Television schedule for November 4, 2004 Metro Council meeting**

<p><b>Clackamas, Multnomah and Washington counties, and Vancouver, Wash.</b>          Channel 11 -- Community Access Network  <a href="http://www.yourtv.org">www.yourtv.org</a> -- (503) 629-8534          Thursday, November 4 at 2 p.m. (live)</p>	<p><b>Washington County</b>          Channel 30 -- TVTV  <a href="http://www.yourtv.org">www.yourtv.org</a> -- (503) 629-8534          Saturday, November 6 at 11 p.m.          Sunday, November 7 at 11 p.m.          Tuesday, November 9 at 6 a.m.          Wednesday, November 10 at 4 p.m.</p>
<p><b>Oregon City, Gladstone</b>          Channel 28 -- Willamette Falls Television  <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> -- (503) 650-0275          Call or visit website for program times.</p>	<p><b>West Linn</b>          Channel 30 -- Willamette Falls Television  <a href="http://www.wftvaccess.com">www.wftvaccess.com</a> -- (503) 650-0275          Call or visit website for program times.</p>
<p><b>Portland</b>          Channel 30 (CityNet 30) -- Portland Community Media  <a href="http://www.pcatv.org">www.pcatv.org</a> -- (503) 288-1515          Sunday, November 7 at 8:30 p.m.          Monday, November 8 at 2 p.m.</p>	

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

Agenda items may not be considered in the exact order. For questions about the agenda, call Clerk of the Council, Chris Billington, (503) 797-1542. Public Hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Clerk of the Council to be considered included in the decision record. Documents can be submitted by e-mail, fax or mail or in person to the Clerk of the Council. For additional information about testifying before the Metro Council please go to the Metro website [www.metro-region.org](http://www.metro-region.org) and click on public comment opportunities. For assistance per the American Disabilities Act (ADA), dial TDD 797-1804 or 797-1540 (Council Office).

**EXTERNAL QUALITY CONTROL REVIEW**

*Auditor Report*

Metro Council Meeting  
Thursday, November 4, 2004  
Metro Council Chamber

Agenda Item Number 5.1

Consideration of Minutes of the October 28, 2004 Regular Council meeting.

Metro Council Meeting  
Thursday, November 4, 2004  
Metro Council Chamber

**Ordinance No. 04-1062**, For the Purpose of Amending the FY 2004-05 Budget and Appropriations Schedule Recognizing \$1,586,918 in Grant Funds and Private Contributions for a Series of Specific Projects in the Regional Parks Operating Fund; Transferring \$19,765 from Contingency to Operating Expenses in the Regional Parks Operating Fund; Amending the FY 2004-05 Through FY 2008-09 Capital Improvement Plan; and Declaring an Emergency.

*First Reading*

Metro Council Meeting  
Thursday, November 4, 2004  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE FY	)	ORDINANCE NO. 04-1062
2004-05 BUDGET AND APPROPRIATIONS	)	
SCHEDULE RECOGNIZING \$1,586,918 IN	)	Introduced by Mike Jordan, Chief Operating
GRANT FUNDS AND PRIVATE	)	Officer, with the concurrence of the Council
CONTRIBUTIONS FOR A SERIES OF SPECIFIC	)	President
PROJECTS IN THE REGIONAL PARKS	)	
OPERATING FUND; TRANSFERRING \$19,765	)	
FROM CONTINGENCY TO OPERATING	)	
EXPENSES IN THE REGIONAL PARKS	)	
OPERATING FUND; AMENDING THE FY 2004-	)	
05 THROUGH FY 2008-09 CAPITAL	)	
IMPROVEMENT PLAN; AND DECLARING AN	)	
EMERGENCY	)	

WHEREAS, the Metro Council has reviewed and considered the need to transfer appropriations within the FY 2004-05 Budget; and

WHEREAS, Oregon Budget Law ORS 294.326(3) allows for the expenditure in the year of receipt of grants, gifts, bequests, and other devices received by a municipal corporation in trust for a specific purpose; and

WHEREAS, the need for the transfer of appropriation has been justified; and

WHEREAS, adequate funds exist for other identified needs; 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 recognizing \$1,586,918 in grant funds and private contributions for a series of specific projects and transferring \$19,765 from contingency to operating expenses in the Regional Parks Operating Fund.
2. That the FY 2004-05 through FY 2008-09 Capital Improvement Plan is hereby amended to include the projects shown in Exhibit C to this Ordinance.
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. 04-1062**

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
<b>Regional Parks Operating Fund</b>							
<b><u>Resources</u></b>							
BEGBAL	Beginning Fund Balance		3,700,311		0		3,700,311
GRANTS	Grants						
4100	Federal Grants - Direct		196,200		108,443		304,643
4110	State Grants - Direct		0		149,475		149,475
LGSHRE	Local Gov't Share Revenues						
4135	Marine Board Fuel Tax		115,000		0		115,000
4139	Other Local Govt Shared Rev.		288,975		0		288,975
GVCNTB	Gov't Contributions						
4145	Government Contributions		40,300		0		40,300
CHGSVC	Charges for Service						
4165	Boat Launch Fees		167,495		0		167,495
4230	Product Sales		1,500		0		1,500
4280	Grave Openings		175,000		0		175,000
4285	Grave Sales		128,100		0		128,100
4500	Admission Fees		638,600		0		638,600
4510	Rentals		480,380		0		480,380
4550	Food Service Revenue		19,207		0		19,207
4560	Retail Sales		3,000		0		3,000
4580	Utility Services		750		0		750
4610	Contract Revenue		947,303		0		947,303
4650	Miscellaneous Charges for Svc		31,000		0		31,000
INTRST	Interest Earnings						
4700	Interest on Investments		60,000		0		60,000
DONAT	Contributions from Private Sources						
4750	Donations and Bequests		22,000		1,329,000		1,351,000
MISCRV	Miscellaneous Revenue						
4890	Miscellaneous Revenue		11,500		0		11,500
INTSRV	Internal Service Transfers						
4980	Transfer for Direct Costs						
	* from Solid Waste Revenue Fund		3,150		0		3,150
EQTREV	Fund Equity Transfers						
4970	Transfer of Resources						
	* from General Fund (general allocation)		476,847		0		476,847
	* from General Fund (1% on SW revenues)		730,198		0		730,198
	* from General Fund (\$1 per ton)		1,235,149		0		1,235,149
	* from General Fund (\$1.50 per ton)		1,512,917		0		1,512,917
	* from General Fund (landbanking)		231,008		0		231,008
<b>TOTAL RESOURCES</b>			<b>\$11,215,890</b>		<b>\$1,586,918</b>		<b>\$12,802,808</b>

**Exhibit B**  
**Ordinance No. 04-1062**  
**FY 2004-05 SCHEDULE OF APPROPRIATIONS**

	<u>Current Appropriation</u>	<u>Revision</u>	<u>Amended Appropriation</u>
<b>REGIONAL PARKS OPERATING FUND</b>			
Operating Expenses (PS & M&S)	\$4,879,860	\$1,597,408	\$6,477,268
Interfund Transfers	2,902,040	0	2,902,040
Contingency	493,908	(19,765)	474,143
Unappropriated Balance	2,940,082	9,275	2,949,357
<b>Total Fund Requirements</b>	<b>\$11,215,890</b>	<b>\$1,586,918</b>	<b>\$12,802,808</b>

*All Other Appropriations Remain as Previously Adopted*

**EXHIBIT C  
Ordinance 04-1062**

**Capital Project Request - Project Detail**

Project Title: Clackamas River Fish Channel Fund: Regional Parks Fund  
 Project Status: Incomplete Funding Status: Funded FY First Authorized: 2004-05 Department: Regional Parks and Greenspaces  
 Project Number: 70344 Active:  Dept. Priority: 0 Facility: \_\_\_\_\_ Division: \_\_\_\_\_  
 Source Of Estimate Preliminary Source: \_\_\_\_\_ Start Date: 7/04 Date: 10/14/2004  
 Type of Project: Replacement Request Type Initial Completion Date: 6/05 Prepared By: Jeff Tucker

Project Estimates	Actual	Budget/Est	Prior						
Capital Cost:	Expend	2003-2004	Years	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	Total
Restoration	\$0	\$0	\$0	\$1,200,000	\$0	\$0	\$0	\$0	\$1,200,000
<b>Total:</b>	\$0	\$0	\$0	\$1,200,000	\$0	\$0	\$0	\$0	\$1,200,000
<b>Funding Source:</b>									
Donations	\$0	\$0	\$0	\$1,200,000	\$0	\$0	\$0	\$0	\$1,200,000
<b>Total:</b>	\$0	\$0	\$0	\$1,200,000	\$0	\$0	\$0	\$0	\$1,200,000

**Annual Operating Budget Impact:**

Project Description / Justification: \_\_\_\_\_ Estimated Useful Life (yrs) 0 First Full Fiscal Year of Operation: 2005-06

This project was approved through resolution 04-3474 on July 8, 2004. The focus of the project is to re-establish and create side channels off the Clackamas River to restore valuable rearing, forage and refuge habitat for juvenile salmon and steelhead.

**EXHIBIT C  
Ordinance 04-1062**

**Capital Project Request - Project Detail**

Project Title: Salmon Habitat Improvement - Smith & Bybee Lakes Wildlif Fund: Regional Parks Fund  
 Project Status: Incomplete Funding Status: Funded FY First Authorized: 2004-05 Department: Regional Parks and Greenspaces  
 Project Number: 71822 Active:  Dept. Priority: 0 Facility: \_\_\_\_\_ Division: \_\_\_\_\_  
 Source Of Estimate Preliminary Source: \_\_\_\_\_ Start Date: 7/04 Date: 10/14/2004  
 Type of Project: Replacement Request Type Initial Completion Date: 6/05 Prepared By: Jeff Tucker

Project Estimates	Actual	Budget/Est	Prior						
Capital Cost:	Expend	2003-2004	Years	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	Total
Restoration	\$0	\$0	\$0	\$68,000	\$0	\$0	\$0	\$0	\$68,000
<b>Total:</b>	\$0	\$0	\$0	\$68,000	\$0	\$0	\$0	\$0	\$68,000
<b>Funding Source:</b>									
Donations	\$0	\$0	\$0	\$68,000	\$0	\$0	\$0	\$0	\$68,000
<b>Total:</b>	\$0	\$0	\$0	\$68,000	\$0	\$0	\$0	\$0	\$68,000

**Annual Operating Budget Impact:**

Project Description / Justification: \_\_\_\_\_ Estimated Useful Life (yrs) 0 First Full Fiscal Year of Operation: 2005-06

This project is to improve rearing and refugia habitat for juvenile salmonids that use the lower Columbia Slough and Smith-Bybee's wetlands. Large woody debris will be installed at strategic locations and anchored as appropriate.

## STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1062, FOR THE PURPOSE OF AMENDING THE FY 2004-05 BUDGET AND APPROPRIATIONS SCHEDULE RECOGNIZING \$1,586,918 IN GRANT FUNDS AND PRIVATE CONTRIBUTIONS FOR A SERIES OF SPECIFIC PROJECTS IN THE REGIONAL PARKS OPERATING FUND; TRANSFERRING \$19,765 FROM CONTINGENCY TO OPERATING EXPENSES IN THE REGIONAL PARKS OPERATING FUND; AMENDING THE FY 2004-05 THROUGH FY 2008-09 CAPITAL IMPROVEMENT PLAN; AND DECLARING AN EMERGENCY

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Date: October 14, 2004

Prepared by: Jeff Tucker

### BACKGROUND

The FY 2004-05 budget was presented including only those grants and contributions that the department already had been awarded. During the first quarter of FY 2004-05, the Regional Parks and Greenspaces Department has been awarded several state & federal grants and contributions from private sources that it was not aware it would get when the budget was presented and adopted. This Ordinance recognizes these new revenues and increases expenditure authority to carry out the requirements under the grants.

#### **Clackamas River Fish Channel Project**

This project was presented to Council in work session and approved through Resolution 04-3474 on July 8, 2004. The focus of the project is to re-establish and create side channels off the Clackamas River to restore valuable rearing, forage and refuge habitat for juvenile salmon and steelhead. Total channel length to be restored is 8650 feet, including the placement of logjams, vegetation, boulders, streambed substrate, large woody debris, with constructed pools and riffles. This project is completely on Metro-owned property. For this project, Metro has partnered with the Oregon Wildlife Heritage Foundation, Portland General Electric, and the Oregon Department of Fish and Wildlife. The contract work is being overseen by the Foundation. Metro does not have any financial obligations under this partnership. The increase in budget is necessary to record the improvements in the General Ledger, upon completion. Although this project will not be capitalized on an accounting basis, it will be included in the capital improvement plan as a major capital maintenance project. This action will also amend the CIP for this project.

#### ***Regional Parks Operating Fund***

Revenues - Contributions (Private): \$1,200,000

Expenditures - Contracted Services: \$1,200,000

#### **Turtle Nesting Habitat and Salmon Habitat Improvement Projects – Smith & Bybee Lakes Wildlife Area**

As part of a settlement with the Oregon Department of Environmental Quality from a diesel fuel spill at the Port of Portland Terminal 6, Metro has been awarded proceeds for 2 projects. The first project is to improve nesting habitat for painted turtles and other wildlife at Smith and Bybee Lakes Wildlife Area. Project tasks include removal of sandy dredge spoils, importing topsoil, and establishing appropriate native plants. Total project area is approximately 0.47 acres. The second project is to improve rearing and refugia habitat for juvenile salmonids (primarily Coho and Chinook) that use the lower Columbia

Slough and Smith-Bybee's wetlands. Large woody debris will be installed at strategic locations and anchored as appropriate. Although this project will not be capitalized on an accounting basis, it will be included in the capital improvement plan as a major capital maintenance project. This action will also amend the CIP for this project

<b><i>Regional Parks Operating Fund</i></b>		<u>Project 1</u>	<u>Project 2</u>
Revenues - Contributions (Private):		\$46,000	\$68,000
Expenditures - Contracted Services:		\$46,000	\$68,000

**Knotweed Crew Continuation (OWEB Grant)**

In October 2003, Metro applied for its 3<sup>rd</sup> Oregon Watershed Enhancement Board (OWEB) grant addressing an ongoing Japanese knotweed (*Polygonum cuspidatum*) control project in the Clackamas Watershed. OWEB provided funding for prior phases of this project through grants submitted in 2001 and 2002. This project has been very successful and helped develop a strong partnership between Metro and other groups and agencies in the Clackamas Basin.

This grant covers a 2-year period beginning August 2004 and ending December 2005. In this grant Metro partnered with, among other groups, the Clackamas River Basin Council (CRBC). This partnership will lead to a transfer of leadership responsibility for the knotweed project from Metro to the CRBC in early 2005. Metro will administer the entire grant and subcontract with the CRBC for part of the project's costs. Metro will perform monitoring required by the grant through 2009 as part of its regular maintenance of open space properties purchased along the Clackamas River.

Metro is providing the required 25% match through donated volunteer time and through staff oversight and overhead contributions that are already included as part of the FY 2004-05 budget.

***Regional Parks Operating Fund***

Revenues - State Direct Grant:		\$149,475
Expenditures - Temporary Employees:		\$50,464
Fringe:		\$17,198
Contracted Services:		\$61,338
Payments to other Agencies:		\$8,800
Other M&S:		\$2,400
Regional Parks Ending Fund Balance		\$9,275

(This grant pays for some salary & benefits of permanent employees, thus positively contributing to the ending fund balance of the Regional Parks Fund.)

**Regional Mitigation Banking Study (EPA Grant)**

EPA awarded a grant to Metro in August 2004 for 3 projects. The first project is designed to research the biological feasibility, market demand, economic feasibility and policy ramifications of developing a regional wetland mitigation bank in the Metro region. The second project will evaluate the effectiveness of the Smith-Bybee water control structure at achieving multiple objectives: providing off-channel habitat for juvenile salmon, controlling reed canarygrass, and supporting native plant communities in the wetlands. Project tasks include monitoring plants and fish, and integrating the results for adaptive management. The third project, not included in this amendment, is a partnership between EPA, Metro

and PSU on a transportation modeling project in the Damascus area. This portion of the grant is for \$12,000 and will be recorded in the Planning Fund. The Planning Department currently has sufficient expenditure authority in its budget and has not requested an amendment at this time.

***Regional Parks Operating Fund***

	<u>Project 1</u>	<u>Project 2</u>
Revenues - Federal Direct Grant:	\$37,755	\$55,000
Expenditures - Salary:	\$5,840	
Fringe:	\$1,915	
Contracted Services:	\$29,500	\$41,767
<u>Other M&amp;S:</u>	<u>\$500</u>	<u>\$13,233</u>
Total Expenditures	\$37,755	\$55,000

**Forest Service improvements on Metro Properties (USDA Grant)**

The USDA-US Forest Service-Mount Hood National Forest has contracted with Metro to restore in-stream hiding cover for juvenile and possibly adult salmonids on Lower Richardson Creek (a tributary of the Clackamas River). The project will be procured and managed by the US Forest Service. The project consists of the placement of 7-9 large woody debris structures in the stream and willow planting on the banks. The budget increase for both the revenue and expenditure are necessary to record the work in Metro’s General Ledger. There is no impact on current staff work plans, as well as no impact on future maintenance costs of Metro properties on the Clackamas River as a result of this project.

***Regional Parks Operating Fund***

Revenues - Federal Direct Grant:	\$15,688	(part of the “Payments to Counties, title II program)
Expenditures - Contracted Services:	\$15,688	

There are no matching requirements for the grant.

**Smith & Bybee Lakes Trail Alignment Study**

The purpose of the study is to provide an objective and factual analysis of potential trail alignments and trail design parameters to provide future connections between the Smith and Bybee Lakes Wildlife Area and nearby existing local and regional trails, parks and neighborhoods. The study will involve several tasks including establishing evaluation criteria and measures, conducting a land inventory, performing an alternative alignment analysis, identifying trail design parameters, estimating project costs and phasing. We are working with a group of stakeholders throughout the process and will bring results of the study to the Metro Council and City of Portland for consideration and action. Metro Solid Waste and Recycling Department has budgeted \$15,000 toward this project.

***Regional Parks Operating Fund***

Resources - Gov’t Contributions	\$15,000	(City of Portland Parks & Recreation)
Regional Parks Operating Fund	<u>\$19,765</u>	(move from contingency to Contracted Services)
	<b>\$34,765</b>	
Expenditures - Contracted Services:	\$33,765	
Other M&S:	<u>\$1,000</u>	
	<b>\$34,765</b>	

## 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 and bequests received by a municipal corporation in trust for a specific purpose. ORS 294.450 provides for transfers of appropriations within a fund, including transfers from contingency, if such transfers are authorized by official resolution or ordinance of the governing body for the local jurisdiction.
3. **Anticipated Effects** This action allows the department to recognize the grants dedicated to the projects described in this staff report and either make expenditures to fulfill the terms of the grant or to make accounting entries to record the improvements and expenditures made on Metro property by other entities.
4. **Budget Impacts** This action requests the recognition of \$1,586,918 in Federal Direct Grants, State Direct Grants, and private contributions, according to Exhibit A. This action also increases appropriation authority in the Regional Parks Fund Operating Expenditures by \$1,597,408 as described in Exhibit B Schedule of Appropriations.

## RECOMMENDED ACTION

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

**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

Metro Council Meeting  
Thursday, November 4, 2004  
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DIRECTING THE ) RESOLUTION NO. 04-3506  
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, ) Introduced by Metro President David Bragdon  
PERFORMANCE-BASED REGULATIONS ) and Metro Councilor Rod Park

WHEREAS, Oregonians have a long tradition of understanding the interdependent values of economic prosperity and environmental quality, both of which constitute important elements of the livability that distinguishes this state and the Portland metropolitan region; and

WHEREAS, citizens of the Metro region value living in a place that, within the built environment, provides access to greenspaces and habitat for fish and wildlife species; and

WHEREAS, citizens representing a range of economic and environmental interests have stated that wildlife habitat and water quality need to be more consistently protected and improved across the region, as part of an ongoing regional commitment to planning for the future; and

WHEREAS, the Metro Policy Advisory Committee (MPAC), comprised of elected officials representing the region's cities and counties, adopted a "Vision Statement" in 2000 to enunciate the region's commitment to improve the ecological health and functionality of the region's fish and wildlife habitat; and

WHEREAS, that Vision Statement set an overall goal "to conserve, protect and restore a continuous ecologically viable streamside corridor system, from the streams' headwaters to their confluence with other streams and rivers, and with their floodplains in a manner that is integrated with the surrounding urban landscape . . . [to be] achieved through conservation, protection and appropriate restoration of streamside corridors through time;" and

WHEREAS, Metro has pursued the development of a regional fish and wildlife habitat and water quality protection program consistent with Statewide Planning Goal 5, one of 19 state land use planning goals, thereby producing a region-wide inventory of habitat comprising over 80,000 acres that has been located and classified for its ecosystem values and mapped to provide an information system for developing the region-wide program; and

WHEREAS, by developing the habitat inventory, Metro now has extensive and comprehensive information on the ecological health of the region's fish and wildlife habitat, and an important role for Metro to play in the future will be to keep the inventory up to date, to continue to monitor the state of habitat in the region, and to share such information with local governments in the region to help them develop effective habitat protection and restoration programs; and

WHEREAS, fish and wildlife habitat depends on healthy functioning watersheds and follows the natural contours of the landscape, while political boundaries frequently split watersheds and divide the natural landscape, and Metro, as a regional government, can play an important role to help ensure a

consistent level of habitat protection and restoration across the region's political boundaries, in an ecologically-based manner that respects watersheds and the natural landscape; and

WHEREAS, access to resources for protecting and conserving habitat varies widely among the region's communities and Metro also can provide technical assistance to communities with fewer resources to help them develop protection and conservation approaches that are appropriate for their communities, such as tools to allow and encourage lowest impact development or the conservation of critical wildlife habitat through purchase or the use of creative land-trust instruments; and

WHEREAS, the rights of private property owners and their commitments to community goals and environmental protection should be recognized and honored, and that doing so will help us attain and sustain a high quality of life for both humans and wildlife; and

WHEREAS, the types of actions that affect the quality and quantity of the region's fish and wildlife habitat vary widely, including thousands of small decisions made each day by individuals, such as whether to use pesticides on their lawns, as well as bigger decisions, such as how development of these properties occurs; and

WHEREAS, to produce desired, measurable outcomes of cumulative improvements to fish and wildlife habitat throughout the region, the fish and wildlife habitat protection and restoration program must enlist the broad support of hundreds of thousands of people across the region, making habitat property owners participants in a regional program that includes education and incentives for lowest-impact development practices, restoration initiatives directed by watershed councils, and purchase of the most ecologically valuable habitat areas from willing sellers through the funds generated by a bond measure; and

WHEREAS, by making a concerted effort to provide the region's citizens with additional fish and wildlife habitat education, incentive, restoration and willing-seller property acquisition programs the region can potentially make substantial progress toward improving the quality and quantity of its fish and wildlife habitat; and

WHEREAS, Metro, local governments, and the citizens of the region should make such a concerted effort to meet the goals of the Vision Statement using non-regulatory strategies, and our progress toward meeting those goals should be measured, before local governments are required to comply with any new rules or regulations; now therefore,

BE IT RESOLVED that the Metro Council hereby directs the Chief Operating Officer to develop a fish and wildlife habitat protection and restoration program consistent with the following provisions:

1. Metro's Program Shall Rely Primarily on Education, Incentive, Restoration and Acquisition Programs

Metro, other government agencies and volunteer-based non-governmental organizations across the region already have in place extensive education, restoration and acquisition programs designed to protect and enhance the quality and quantity of well-functioning fish and wildlife habitat. Metro's parks and solid waste and recycling departments and the Oregon Zoo, for example, have already developed education programs to teach individuals about fish and wildlife habitat, water quality, natural gardening, and what we all can do to improve fish and wildlife habitat. Many local governments (e.g. Portland's Bureau of Environmental Services), special districts (e.g. Clean Water Services in the Tualatin Basin), and non-governmental organizations (e.g. Friends of Trees) already engage in extensive natural area restoration programs and

neighborhood tree planting programs that improve habitat. Metro, local governments, and non-governmental organizations (e.g. the Wetlands Conservancy) are all engaged in willing-seller land acquisition programs designed to purchase, preserve, and restore the region's highest-quality fish and wildlife habitat. Many of these efforts only take place thanks to the strong support of the region's private businesses and the efforts of many individuals. The region's vision of protecting and restoring a "continuous ecologically viable streamside corridor system" will only be achieved by harnessing the collective power of regional and local governments, non-profits, citizen volunteers, and private business to expand these programs. Such an effort should include:

a. Education and Incentive Programs

Metro's program shall be focused, first and foremost, on creating citizen education and incentive programs to help the citizens of the region voluntarily make the best choices for the protection and enhancement of fish and wildlife habitat. In addition, existing incentive programs that have not yet been implemented at the local level, such as Oregon's riparian and wildlife habitat property tax incentive programs that are ready for use by local governments, shall be identified and efforts made to ensure that such programs are available to, and used by, the citizens of the region.

b. A Regional Habitat Acquisition and Restoration Program

The Metro Council intends to develop, and take before the voters for approval, a fish and wildlife property acquisition and restoration bond measure to purchase from willing sellers those properties, or conservation easements on those properties, that are deemed to be of the greatest ecological importance for fish and wildlife habitat, and to fund habitat restoration efforts that could provide even higher quality habitat.

2. Development of Local Program Performance Standards and Timeline for Compliance

The regional fish and wildlife habitat protection and restoration program shall establish local program performance standards to be achieved by the local fish and wildlife habitat protection and restoration efforts adopted by local jurisdictions in the region. Local jurisdictions will be required to show that their programs will meet the local program performance standards, and Metro shall make such local program performance standards as clear and objective as possible to provide local governments with a clear understanding of what programs will be sufficient to meet such standards. For example, such standards could include calculations of the amount of habitat that is protected through public ownership, a tree protection ordinance, regulatory buffers, easements, or other tools, and an assessment of the potential to minimize or mitigate impacts to fish and wildlife habitat through the use of low-impact, habitat friendly design approaches. Local governments will have the option of retaining their existing programs, developing their own new programs, or using a model program approach to be developed by Metro. Local program performance standards will be broad and flexible enough to allow for local programs to take very different approaches, and Metro shall review and give equal credence to all approaches when determining whether local governments are in substantial compliance with those standards. The model program developed by Metro shall be based on the use of best management practices for low-impact, habitat-friendly, environmentally sensitive land development. Local governments shall be required to be in compliance with the local program performance standards no later than June 1, 2012, subject to the provisions of paragraph 4 of this resolution.

3. Regional Outcome Measures and Metro Monitoring of Habitat Conditions

Metro shall develop regional outcome measures to evaluate the region's progress toward meeting the vision of conserving, protecting and restoring fish and wildlife habitat in the region. Upon Metro's adoption of a fish and wildlife habitat protection and restoration program, Metro shall begin immediate implementation of the non-regulatory program components described in paragraph 2, above, and paragraph 5, below. The Chief Operating Officer shall periodically assess the region's progress toward meeting the regional outcome measures. Not later than March 1, 2010, the Chief Operating Officer shall prepare and present to the Metro Council a written report on the region's progress toward meeting the regional outcome measures. Such report shall include a new analysis of habitat inventory in the region, using the same methodological approaches used to create the habitat inventory adopted by the Metro Council in Resolution No. 02-3218A, but allowing for the use of analytic and data improvements developed in the interim. The Metro Council shall hold at least three public hearings to review and consider the Chief Operating Officer's report. Not later than June 1, 2010, the Metro Council may adopt an ordinance to extend the time by which local governments are required to comply with the local program performance standards if the Metro Council concludes that the region has made substantial progress toward achieving the regional outcome measures described above.

4. Metro Technical Assistance to Local Governments

To help the region meet the regional outcome measures, as Metro implements the non-regulatory approaches described in paragraph 2, above, it shall provide technical assistance to local governments to help them develop and improve their local fish and wildlife habitat protection and restoration 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.

5. This Resolution is Not a Final Action

This resolution is not a final action. The Metro Council's action in this resolution is not a final action on an ESEE analysis, a final action on whether and where to allow, limit, or prohibit conflicting uses on regionally significant habitat and impact areas, or a final action to protect regionally significant habitat through OAR 660-023-0050 (Programs to Achieve Goal 5).

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

---

David Bragdon, Council President

Approved as to Form:

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Daniel B. Cooper, Metro Attorney

Agenda Item Number 8.1

**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

*Contract Review Board*

Metro Council Meeting  
Thursday, November 4, 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	)	Introduced by Chief Operating Officer
FOR OPERATION OF THE METRO SOUTH	)	Michael J. Jordan, with the concurrence of
AND METRO CENTRAL TRANSFER	)	Council President David Bragdon”
STATIONS	)	

WHEREAS, Metro intends to enter into a new contract for the operation of Metro’s transfer station; and,

WHEREAS, In order to provide the new Contractor with sufficient time for mobilization, and in particular for the acquisition of new rolling stock, an extension of the existing contract is required; and,

WHEREAS, As described in the accompanying staff report, Metro and BFI Waste Systems of North America, Inc., wish to amend the current Contract for the Operation of the Metro South and Metro Central Transfer Stations, Metro Contract No. 905690 (the “Contract”), to provide for the reloading of source-separated organic waste received at Metro Central Station, to implement recent changes in law regarding employees’ overtime pay, and to provide for the maintenance of existing equipment during the extension; now therefore,

BE IT RESOLVED that the Metro Council, sitting as the Metro Contract Review Board, authorizes the Chief Operating Officer to execute Change Order No. 6 to Contract No. 905690, in a form substantially similar to that set forth as the attached Exhibit “A”.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
David Bragdon, Council President

Approved as to Form:

\_\_\_\_\_  
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. Organic Waste Recovery. 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

## **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

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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.

Agenda Item Number 8.2

**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, November 4, 2004  
Metro Council Chamber

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING THE ) RESOLUTION NO. 04-3503  
CHIEF OPERATING OFFICER TO EXECUTE )  
CONTRACT NO. 926063 FOR OPERATION OF ) Introduced by Chief Operating Officer  
THE METRO SOUTH AND METRO CENTRAL ) Michael J. Jordan, with the concurrence of  
TRANSFER STATIONS ) Council President David Bragdon  
)

WHEREAS, The Metro Council authorized release of a request for proposals for the operation of the Metro South and/or Metro Central transfer stations (RFP #04-1091 SWR); and,

WHEREAS, Metro staff followed the process provided in the request for proposals for selecting a responsible proposer and negotiating a contract; and,

WHEREAS, Metro staff successfully negotiated a contract with Browning-Ferris Industries, Inc.; now therefore,

BE IT RESOLVED that the Metro Council, sitting as the Metro Contract Review Board, authorizes the Chief Operating Officer to execute Contract No. 926063, in a form substantially similar to that set forth as the attached Exhibit "A".

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
David Bragdon, Council President

Approved as to Form:

\_\_\_\_\_  
Daniel B. Cooper, Metro Attorney

**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**

By: \_\_\_\_\_

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 30<sup>th</sup>) 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	<b><u>\$344,556</u></b>

**METRO 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	<b><u>\$344,556</u></b>

**Items for Both Stations**

1. Per Ton Bonus Recovery Credit	\$13.72
2. Percentage of CPI proposed (cannot exceed 75%)	75%

Other Payments

A. Per Ton Compaction Bonus	\$ 8.01
B. Per Ton Compaction Deduction	\$16.02
C. Per Load Overload Adjustment	\$19.58
D. Per Ton Recovery Credit/(Disposal Cost Reimbursement)	\$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 well-known meaning, recognized by solid waste and transportation professionals, engineers and trades.
- D. The Contract and each of the Contract Documents are complementary, and they shall be interpreted so that what is called for by one shall be as binding as if called for by all. Should Contractor observe any conflicts between or duplications of any provisions of the Contract, it shall bring them to Metro's attention for decision and revision immediately after originally observed. In the event of duplications

of, or conflicts between, any provisions of the Contract after the Contract has been executed, the following priority of documents shall be used to resolve such duplications or conflicts (from highest to lowest):

1. Agreement;
2. Specifications, including Metro's *Transfer Station Contractor's Procedures Manual* attached thereto;
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
  - 1. 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:
1. Equitable Remedies: For each default under Article 11A, Metro shall be entitled to all equitable remedies available to it including, but not limited to, injunctive relief 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 for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such an event could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Metro shall be entitled to make written request of Contractor, Contractor's successor in interest and Contractor's Surety for adequate assurance of future performance in accordance with the terms and conditions hereof. Failure of Contractor, Contractor's Surety or Contractor's successor in interest to comply with such request within ten (10) calendar days of its service shall entitle Metro to terminate or suspend Contractor's performance of the Contract pursuant to Section C of Article 11 of these General Conditions. This Contract shall not survive, but instead shall be immediately terminated by, the appointment of any trustee or receiver for Contractor, which appointment rests upon the insolvency of Contractor.

- E. Procedures and Remedies for Termination Under Force Majeure:
1. In the event that any force majeure event results in the closure of the facility for more 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 25<sup>th</sup> 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:

1. 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  
CPI<sub>X</sub> = Consumer Price Index average for the current year  
CPI<sub>B</sub> = 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, CPI<sub>X</sub> 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 CPI<sub>B</sub> 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:
  - 1. 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:  
$$\text{Base Tonnage (BT)} = 29 \text{ tons} \times (\text{Number of loads of waste transported for disposal at the Disposal Site in the previous month})$$
$$\text{Tons Transported (TT)} = (\text{Number of tons of waste transported for disposal in the previous month})$$
$$\text{Adjustment Tons (AT)} = \text{TT} - \text{BT}$$
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:
  1. 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.
  3. No Change Order to this Contract shall be enforceable unless made in writing and signed by Contractor and Metro. All Change Orders shall be numbered consecutively in chronological order.
  4. Nothing in this Article is intended to negate or lessen any other preconditions or procedures for payment or reimbursement as provided by any other provisions of the Contract.
- B. Request for Proposal for Additional Work:
  1. Within fourteen (14) calendar days after receipt of a RFP for additional work from Metro, Contractor shall submit to Metro an itemized proposal stating the actual and reasonable costs to

Contractor for performing such additional work, a schedule for performing such work, and the effect, if any, on Contractor's performance of the existing Contract work by reason of the additional work. Contractor's proposal shall be based on the least costly method for performing the additional work in accordance with all provisions of the Contract.

2. No RFP by Metro shall be construed as authorization for Contractor to perform the additional work covered by such RFP. To obtain authorization to perform any additional work, Contractor must be notified in writing by Metro that Contractor is ordered to proceed with the relevant additional work. In any such written notification Metro shall indicate whether it accepts or rejects Contractor's proposal. If Metro accepts Contractor's proposal then the parties shall enter into a written Change Order signed by both parties to document the amendment or modification of the Contract. If Metro rejects Contractor's proposal 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:

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

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:
1. To accept jurisdiction of the courts of the state of Oregon for the purposes of commencing, conducting and enforcing arbitration proceeding pursuant to Article 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.

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

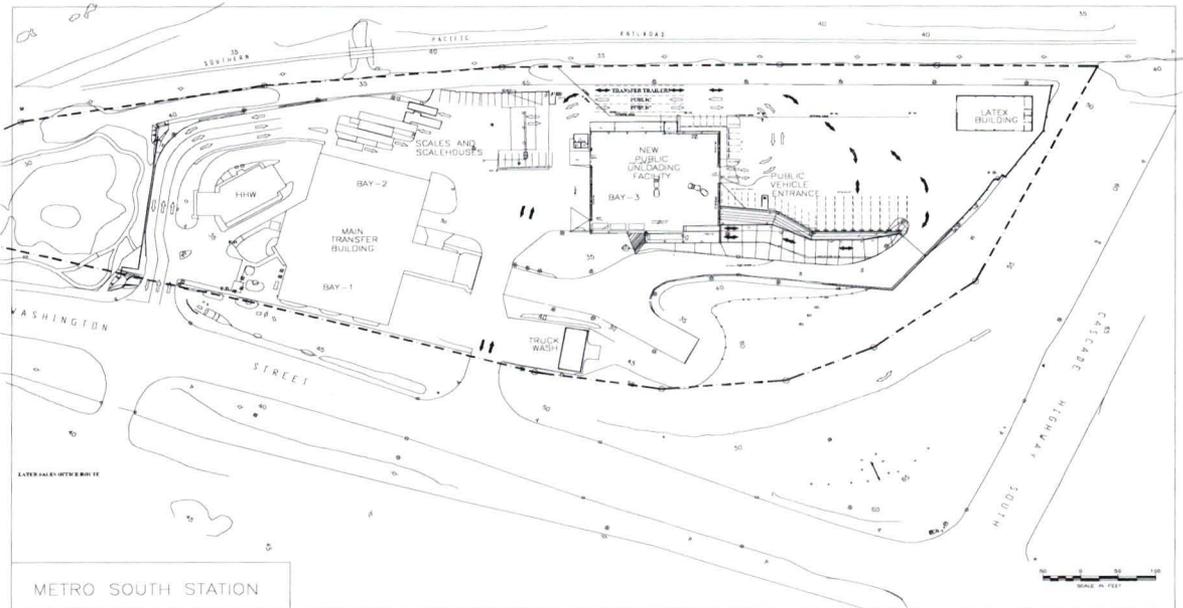


Fig. 1

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 #1 or #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. Staffing:** 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; and
  - 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. 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	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.

### **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](http://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(1) 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 pre-load 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 Contractor's 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 load 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;
  - 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 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/m<sup>3</sup> 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 primary 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 contaminants 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 Contractor-furnished 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 61<sup>st</sup> 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.

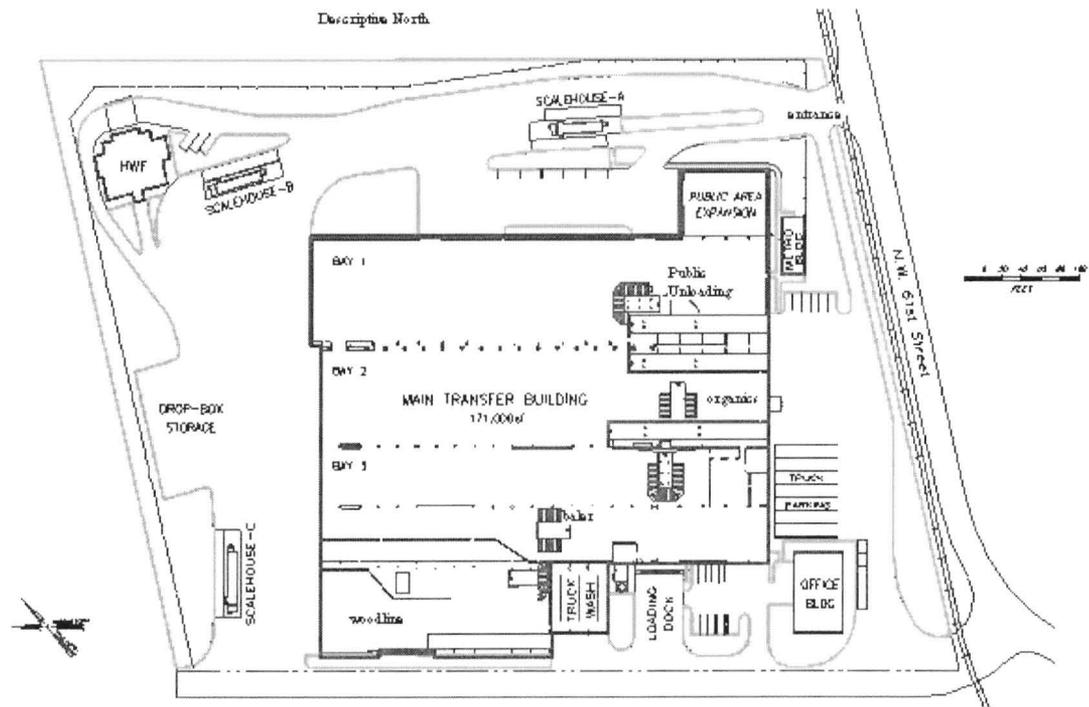


Fig. 1

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 61<sup>st</sup> 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 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 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. Staffing:** 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; and
  - 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'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.
- 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](http://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 pre-load 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 Contractor's 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 load 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 its 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/m<sup>3</sup> 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/61<sup>st</sup> 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 primary 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 contaminants 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-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 Contractor-furnished 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

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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 ultra-low 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:

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

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

*Probable Support.*

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

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

### **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 public 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 28, 2004  
Metro Council Chamber

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

Councilors Absent: Rod Park (excused)

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

**1. INTRODUCTIONS**

There were none.

**2. CITIZEN COMMUNICATIONS**

There were none.

**3.1 NORTH PORTLAND ENHANCEMENT FUND 04-05 SLATE OF PROJECTS AND REPORT FROM PAST RECIPIENTS**

Councilor Burkholder talked about the North Portland Enhancement Fund current projects.

Alan Holzaphel, North Portland Enhancement Committee member (representing Arbor Lodge neighborhood) provided an overview of the North Portland Enhancement fund. The North Portland program serves the community affected by the now-closed St. Johns landfill. Funds are generated from a 50-cent surcharge collected on each ton of garbage disposed of at the landfill. Interest generated from the \$1.9 million fund supports the grant program. More than \$1.9 million has been awarded to 333 projects since the enhancement program began in 1987.

Senate Bill 662, Metro Code, and the bylaws for the North Portland Enhancement Committee defines the criteria for awarding grant funds. Criteria includes:

1. Rehabilitation and enhancement of the area affected by the solid waste facility
2. Improving economic and employment opportunities
3. Upgrading housing stock
4. Improving safety and
5. Benefiting low-income youth and seniors

Seven residents from the target area represent the interests of their respective neighborhoods on the committee, and share the responsibility of awarding grants. Metro Councilor Rex Burkholder serves as the committee chair. Mr. Holzaphel noted the importance of citizen input and participation, in that both provide accurate observations about the needs of community. He emphasized that it should be continued on in this manner, and asked for follow up on organizations to ensure oversight, etc. He commented on the slate of projects selected for the 2004-05 grant cycle. The committee reviewed and ranked (34) applications and interviewed applicants for clarity on proposals before selecting (19) projects to fund. The Metro Council asked the committee for guidance on distributing another \$11,000 to local businesses, residents and schools during the grant cycle.

Mr. Holzaphel stated that additional money was the result of a fine Metro imposed on American Compost and Recycling for accepting a shipment of spoiled lentils for composting at its facility, noting the company's license did not allow it to receive the lentils. He also thanked the Council for the confidence it placed in the committee to not only help define the most adversely affected areas, but also to determine how best to spend the proceeds from the fine. The committee decided to add the money to the grant fund "pot" and disburse it using grant program guidelines. This year's slate of projects reflects the priority placed on responding to the urgent needs of the youngest and oldest members of the community. Priorities include funding food distribution and nutritional education projects, health care clinics and screenings, and before- and after-school supervised care. Mr. Holzaphel noted they committee also earmarked monies to help support two promising start-up programs – a tool-lending library for low- to moderate-income residents and a science research seminar for Roosevelt High School's new POWER Academy. The performing arts got a slice of this year's pie as well with funds for free concerts in Cathedral Park, dance classes for children at the local community center and much more.

Mr. Holzaphel was delighted that two of grant recipients at the meeting today to tell the Council about their funded projects. They represent organizations that have been awarded several grants over the years. They have earned the respect and trust of the committee and admiration in the community for helping to make good things happen in North Portland. Mr. Holzaphel closed by thanking the Council for its support, and introduced the grant recipients, Beth White and Sarah Rosenberg.

Beth White, Neighborhood Project Coordinator for Friends of Trees and (a 2004-05-grant recipient), spoke about their tree planting efforts. She gave several examples of specific projects, and applauded the Council for helping to make these tree-planting projects possible.

Sarah Rosenberg, High School Mentor Program Coordinator for the Girl Scouts/Columbia River Council (and a 2004-05-grant recipient), talked about their grant projects. Ms. Rosenberg runs the high school mentoring project in which high school girls are recruited to mentor younger girls. She told a story about one student, Rose, who became a role model for younger girls through her work at Columbia Park. Ms. Rosenberg noted the benefits and challenges of the program, adding that before the school year began, she had calls from teachers requesting to enroll girls in the program.

Councilor Hosticka asked if these grants were given on a one-time basis. Mr. Holzaphel said they had both one-time and on-going grants. He noted that the committee looks at each and every grant every year. Councilor Burkholder thanked those who testified, noting that a similar committee functions in west Portland. He talked about the criteria for making choices on who received the grants, and spoke to the needs of the community. He felt it was an excellent program

#### **4. CONSENT AGENDA**

4.1 Consideration of minutes of the October 21, 2004 Regular Council Meetings.

4.2 **Resolution No. 04-3499**, For the Purpose of Confirming the Appointment Of Alison Cable 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.

Motion: 

Councilor Newman moved to adopt the meeting minutes of the October 21, Regular Metro Council and Resolution Nos. 04-3499, 04-3504 and 04-3505.
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Vote: 

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

Councilor McLain said they had just appointed a new member to SWAC as well as approved two non-system license renewals.

\*Note for the record: Amy Pepper was called out incorrectly on the agenda as the SWAC appointment, when Alison Cable should have been called out on the agenda.

**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.

Motion:	Councilor McLain moved to adopt Ordinance No. 04-1060.
Seconded:	Councilor Newman seconded the motion

Councilor McLain explained the ordinance. She said the Tax Supervision Conservation Commission (TSCC) reviewed Metro’s budget every year. The TSCC pointed out a change that was needed in order for Metro to follow its budget law. She further detailed the adjustment. The reason they were doing this was because TSCC indicated that it was a violation. Councilor McLain urged support for the ordinance.

Council President Bragdon opened a public hearing on Ordinance No. 04-1060. No one came forward. Council President Bragdon closed the public hearing.

Vote: 

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

- 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.

Motion:	Councilor McLain moved to adopt Ordinance No. 04-1061.
Seconded:	Councilor Monroe seconded the motion

Councilor McLain said they had gone over the 10% increase in the fund. Hence, Metro violated the 10% rule and had to remedy this by moving the funds. Kathy Rutkowski, Metro Budget Coordinator, explained the ordinance in more detail. Councilor McLain urged support.

Council President Bragdon opened a public hearing on Ordinance No. 04-1061. No one came forward. Council President Bragdon closed the public hearing.

Vote:

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

## 6. RESOLUTIONS

6.1 **Resolution No. 04-3496**, 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.

Motion:	Councilor Burkholder moved to adopt Resolution No. 04-3496.
Seconded:	Councilor Hosticka seconded the motion

Councilor Burkholder said Council had been having a series of discussions concerning the FY 2005-06 budget. Staff had put together a number of assumptions so that the departments could begin to draft their budget. He talked about the Public Employees Retirement System (PERS) contribution and issues surrounding this allocation. He noted predictions of revenue that we expected to receive. He said there was a request not to include Capital Improvement Plan (CIP) projects that were under \$100,000. The Council did not approve this, so the Budget Office had withdrawn the request. He noted additional materials provided by the Budget Manager. This authorized the Chief Operating Officer (COO) to give these assumptions to the departments to begin developing their budgets.

Vote:

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

## 7. CONTRACT REVIEW BOARD

7.1 **Resolution No. 04-3502**, 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.

Motion:	Councilor Monroe moved to adopt Resolution No. 04-3502.
Seconded:	Councilor Newman seconded the motion

Councilor Monroe said in March 2004, Metro released a request for proposals to operate Metro's transfer stations. Due to a variety of factors, Metro was unsuccessful in negotiating a contract with the highest-ranked firm. Metro extended negotiations and successfully completed a contract with the next highest-ranked firm, Browning-Ferris Industries. Because of the extended time period to evaluate and negotiate the contract, an extension of the existing operations contract was also needed. This change order also addresses the following issues: 1) Change in law related to

the payment of overtime, 2) Addition of organics reload services (anticipated to begin in January 2005) and 3) Reimbursement of the contractor for limited equipment maintenance expenses. Councilor Monroe urged support.

Councilor Hosticka wanted to know the relationship between the two resolutions. Councilor Monroe explained that if the Council did not approve the new contract, we would need to go out for another bid. Council President Bragdon said that Councilor Park requested that these decisions be delayed one week so he could be present for the vote. Councilor McLain indicated that the first resolution would be to extend the contract. Dan Cooper, Metro Attorney, said they could continue both resolutions until next week. Council President Bragdon opened a public hearing on Resolution Nos. 04-3502 and 04-3503.

Mike Huycke, BFI Allied Waste, expressed support for Resolutions 04-3502 and 04-3503. He spoke to BFI's ten-year relationship with Metro. He noted the standards that Metro had set forth in the new contract and explained their proposal in more detail. He underscored that one of BFI's highest priorities is environmental stewardship.

Dean Large, Waste Connections, noted that Eric Merrill could not attend the meeting today. He said felt the process was sufficiently flawed and asked that there be a rebid. Councilor Hosticka asked what the specific flaws were. Mr. Large said that Mr. Merrill would be contacting the Council with specifics. Councilor McLain asked about the process and the ability to reject a bid and do a rebid. Mr. Cooper explained the process, and had a memorandum concerning the Release For Proposal (RFP) process. The conclusion was that as a legal matter, the Council could approve the contract without a legal risk. Councilor McLain asked the following question: if there were other vendors that wanted to see Metro rebid, did they have a timeline? Mr. Cooper explained the appeal process, adding that no one had filed an appeal and the time period had lapsed. Council President Bragdon noted that Waste Connection had not bid the contract. Mr. Cooper said that Mr. Large was exercising his first amendment rights. Councilor Newman said he respected Mr. Merrill's request, but did not understand why he was weighing in at this time.

Vince Gilbert said he was here on behalf of ORR, which submitted the highest score to operate the transfer stations. He spoke to the contract costs. He also noted that Metro had held only two contracting meeting with ORR. He said ORR had agreed to provide a surety bond as well as a letter of credit for \$2 million. ORR had quoted a price for organics of about \$17.00 a ton. Metro had asked ORR to reduce the tonnage prices to about \$10. He continued talking about the contracting process, stating that they felt they were close to having an agreement. He said then Metro notified them that they were terminating their negotiations. He made some suggestions on how to improve the process.

Councilor Burkholder asked why ORR didn't appeal the decision. Mr. Gilbert said they did not appeal the decision because they were waiting for Metro to make a decision on another contractor. They did not anticipate Metro's decision. Councilor Burkholder asked about the contracting and appeal process. Mr. Cooper explained the process and the time period for filing an appeal. Council President Bragdon asked if ORR was not aware of the timeline for appeal. Mr. Gilbert said they wanted what was best for Metro, but he was concerned that the process needed to be looked at.

Councilor McLain asked Mr. Cooper about the negotiation period and what his understanding of the process was. Mr. Cooper said an RFP process was very different from a bid. With a RFP process, it is anticipated that after the best proposal is selected after the scoring process, negotiations would begin. The public entity can asked for a better deal than the RFP called for, but we are not allowed to have the bidder get a better deal at the cost of a better deal to Metro.

Warren Rosenvelt, ORR member, clarified the notice was sent to their partners in Montana. He came before Council as a matter of policy not to ask for rebid.

Council President Bragdon closed the public hearing. He stated that he was considering the request for delay. Councilor McLain concurred with that suggestion. She talked about the RFP process and the bid process. She felt it was important to talk about this next week prior to final consideration. In the long run, legal staff had indicated they had followed the proper procedures.

Councilor Newman asked Mr. Cooper about the requirement for a material change and the request for a corporate guarantee. Mr. Cooper said ORR was a new entity and the evaluation committee had some very real questions about ORR's ability to carry out the contract. The evaluation committee, which wanted to reject ORR's bid, was advised to seek a corporate guarantee. Councilors Newman and Burkholder agreed to the request for delay. Council President Bragdon asked about the difference between a corporate guarantee and a surety bond. Councilor Hosticka asked about the process for working with the highest scoring entity. Mr. Cooper responded to his question. Councilor Hosticka said he was trying to understand the negotiating process. He wanted to know what the typical negotiation process was.

Council President Bragdon announced that this item would be continued until November 4<sup>th</sup>.

7.2 **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

Motion:	Councilor Monroe moved to adopt Resolution No. 04-3503.
Seconded:	Councilor Newman seconded the motion

Councilor Monroe said the Metro Council is being asked to approve the contract negotiated with Browning-Ferris Industries to operate Metro's transfer stations. The contract is attached as Exhibit "A". The final contract contains the following features: 1) Term of 5 years beginning April 1, 2005, but Metro can terminate after three years, 2) Guaranteed recycling rate of 15% at Metro South and 17% at Metro Central, slightly higher than current recovery rates. 3) Provision for replacement of rolling stock and new material recovery line at Metro South to improve recovery of dry waste, 4) Staffing levels and training requirements are increased, 5) Provision for the reloading of source-separated organics at Metro Central, 6) Variety of sustainability features.

Two major changes from BFI's proposal were required: 1) Contractor withdrew its offer to install a compactor in Bay 3 at Metro South. This withdrawal did not affect the scoring or value of the contract and 2) In exchange, Metro received a reduction in the organics reload rate from \$19.50/ton to \$8.50/ton – a savings over the life of the contract of \$1.6 million. The overall value of the contract is \$30 million. Costs will increase approximately \$1/ton over the current contract. He urged adoption.

Council President Bragdon announced that this resolution would be continued until November 4<sup>th</sup>.

**8. CHIEF OPERATING OFFICER COMMUNICATION**

Michael Jordan, COO, asked if the Council wanted this item on Work Session agenda. Council President Bragdon said they had individual questions, which could be answered individually.

Mr. Jordan also noted that Senior Management was discussing the budget at a retreat today and tomorrow.

**9. COUNCILOR COMMUNICATION**

Councilor Newman reminded the public that November 2nd is Election Day, and noted where the public could drop off their ballot.

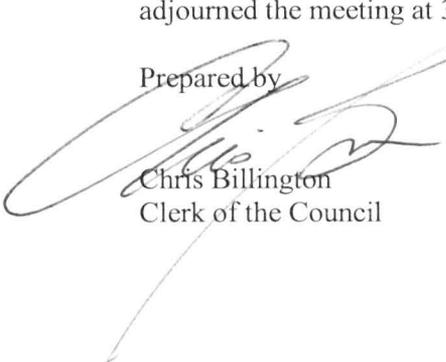
Councilor Newman asked Randy Tucker to walk through the Department of Land Conservation and Development (DLCD) report. Councilor McLain thought they should get copies of the decision. Councilor Newman said that there was no deviation from what the Council had asked. Councilor McLain commented about the process. Mr. Tucker said he had what Richard Benner had drafted. They had a meeting where they developed a strategy about how best to make the presentation to DLCD. He explained the details of who would speak at the presentation. Councilor Newman said he sensed there was anxiety. There was very strong direction from the Council to defend their position they made in June 2004. On Wednesday they had a 30-minute opportunity to make their case to DLCD. Appellants would also be asked to respond. Councilor Newman talked about his role at the hearing. Councilor McLain urged Councilor Newman to provide his talking points the day before DLCD. She felt this wasn't a one-person show. Councilor Newman said they were looking at a head nod today about how the process would go, adding they should have all of the presentations ready by Monday, at which time they would share them with the Council.

Councilor Burkholder asked if this was a time to lay out other concerns they had. Council President Bragdon said this was not the time. Councilor Burkholder suggested that they make some remarks about suggested changes. Councilor McLain made some suggestions about Councilor Newman remarks. Councilor Newman said that Council President Bragdon would give opening remarks, Andy Cotugno, Planning Director, would be presenting what the process was, and Councilor Newman would explain the big picture and the why. Councilor Hosticka asked about the process. Mr. Cooper explained the process and said things were compressed. They would be defending the decision vigorously.

#### **10. ADJOURN**

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 3:27 p.m.

Prepared by



Chris Billington  
Clerk of the Council

**ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF OCTOBER 28, 2004**

Item	Topic	Doc Date	Document Description	Doc. Number
4.1	Minutes	10/21/04	Minutes of the Metro Council Meeting of October 21, 2004	102804c-01
5.1	Memo	9/28/04	To: Metro Council From: Kathy Rutkowski, Budget Coordinator Re: Budget Assumptions Follow-up and Financial Assumptions for FY 05-06	102804c-02
3	Committee Roster and grant awards	2004-05	To: Metro Council From: Karen Blauer, Solid Waste and Recycling Department Re: North Portland Enhancement Committee Roster and Grant Program Awards for 2004-05 Grant Cycle	102804c-03
7.1 & 7.2	Memo	10/28/04	To: Metro Council From: Dan Cooper, Metro Attorney Re: Executive Summary of OMA Advice Provided During the Transfer Station RFP Process	102804c-04
7.1 & 7.2	Letter	10/28/04	To: Metro Council From: Dean Alterman, Lane Power Spears Lubersky Re: RFP No. 04-1091SWR	102804c-05
9	Memo	10/25/04	To: John Van Landingham Chair LCDC From: Metro Re: Exceptions to Department's October 13, 2004 Report on Metro's Task 3	102804c-06

110404c-02

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DANA L. KRAWCZUK

dkrawczuk@bjllp.com

November 3, 2004

BY FACSIMILE

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

Re: OHSU's Support of Resolution 04-3506 on Fish and Wildlife Habitat

Dear Metro Councilors:

On behalf of Oregon Health & Science University ("OHSU"), we appreciate the opportunity to comment on Resolution 04-3506. We commend Metro President David Bragdon's and Metro Councilor Rod Park's leadership and vision in proposing to redirect Metro's Goal 5 program towards a partnership with local governments that emphasizes education, incentives, restoration and land acquisition. We encourage the Metro Council to embrace this shift in approach and approve Resolution 04-3506.

With the passage of Measure 37, a top-down regulatory centered Goal 5 approach is unworkable. Now more than ever local governments, with Metro's guidance, must find creative ways to effectively protect and restore wildlife habitat. Resolution 04-3506 is a step in the right direction because it will build upon existing Goal 5 programs and allow local governments and the community to work collaboratively so that measurable performance objectives can be achieved.

Resolution 04-3506 will result in a habitat protection and restoration program that is more effective than a regulatory approach. We respectfully request that the Metro Council approve Resolution 04-3506.

Sincerely,



Dana L. Krawczuk

DLK:DLK

cc: Mr. Steven D. Stadum, OHSU  
Dr. Lesley M. Hallick, OHSU



OREGON DEW WQ6  
Oregon

John A. Kitzhaber, M.D., Governor

503 229 6037 P. 02

Department of Environmental Quality  
Northwest Region Portland Office  
2020 SW 4<sup>th</sup> Avenue, Suite 400  
Portland, OR 97201-4987  
(503) 229-5263  
FAX (503) 229-6945  
TTY (503) 229-5471

November 3, 2004

11/04/04 - 03

David Bragdon  
Presiding Officer, Metro  
600 N.E. Grand Avenue  
Portland, Oregon 97232-2736

Dear President Bragdon:

The Oregon Department of Environmental Quality appreciates having the opportunity to provide water quality technical assistance and comments on Metro's efforts to develop a regional program to protect and restore fish and wildlife habitat. We recommend that the Metro Council continue to develop the regional (Goal 5) fish and wildlife program that will help Metro and local governments meet water quality standards and Total Maximum Daily Loads (TMDLs).

As you may know, the Department is responsible under the Federal Clean Water Act for identifying waters of the state that do not meet water quality standards. For those waters, the Department is required to develop Total Maximum Daily Loads (TMDLs) and to work with local governments and entities to develop programs that will implement TMDLs. There are numerous streams in the Metro area that exceed state standards for temperature, bacteria, algal growth, and toxics. Many of these streams also have concerns related to sedimentation. The recently released Willamette Basin TMDL covers three widespread water quality problems in the Willamette Basin – temperature, mercury and bacteria. *(The Willamette Basin TMDLs and related fact sheets are available on the DEQ Web site at <http://www.deq.state.or.us/wq/willamette/WRBHome.htm>)* TMDLs have also been developed for the Tualatin River, Columbia Slough, and Sandy River watersheds.

The performance standards so far developed by the program include some of the more important Best Management Practices that Metro and local jurisdictions need to meet their TMDL load allocations. Protecting riparian and wetlands areas with adequate buffers and shade will be necessary to reduce stream temperatures. Riparian protection and restoration will also stabilize stream banks and reduce sediment input to streams.

In considering Resolution 04-3506, DEQ recommends that Metro Council retain both regulatory and non-regulatory program elements. An integrated approach is necessary to meet multiple objectives under the Federal Clean Water, the Endangered Species Act and the state land use planning program. The program is well underway in developing this integrated program and in proposing final program options.



Thank you for the opportunity to comment and we look forward to working with Metro and other stakeholders in this effort. We look forward to our continual assistance as an active member of the Metro Goal 5 Technical Advisory Committee (Goal 5 TAC) in the program development phase of Metro's Goal 5 program. Please feel free to contact Karen Williams at 503-229-6254 or Don Yon at 503-229-6850 if you have any questions regarding our comments.

Sincerely,

*Andrew T. Schaedel*

Andrew Schaedel  
Water Quality Manager,  
DEQ, Northwest Region



HO-2604011

FISCAL YEAR 2004-05

# Quarterly Report First Quarter

July through September 2004

Prepared by the Financial Planning Division of the  
Finance and Administrative Services Department



**METRO**

PEOPLE PLACES  
OPEN SPACES

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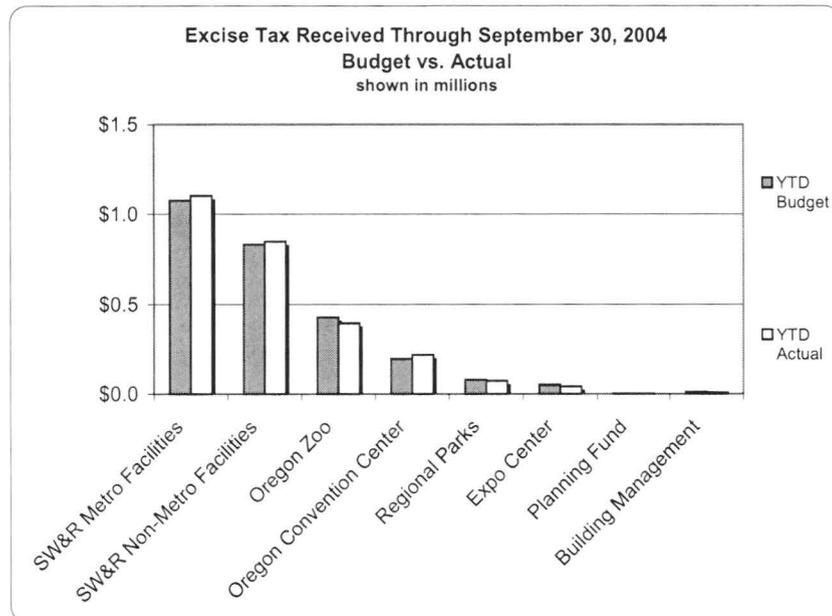
## TRANSMITTAL LETTER

November 4, 2004

The Honorable David Bragdon  
Metro Council President  
600 NE Grand Avenue  
Portland, OR 97232

Dear Council President Bragdon:

I am pleased to present Metro's Quarterly Financial Report for the first quarter of the 2004-05 fiscal year. The report summarizes the year's revenue and expenditure performance for each fund through September 30, 2004.

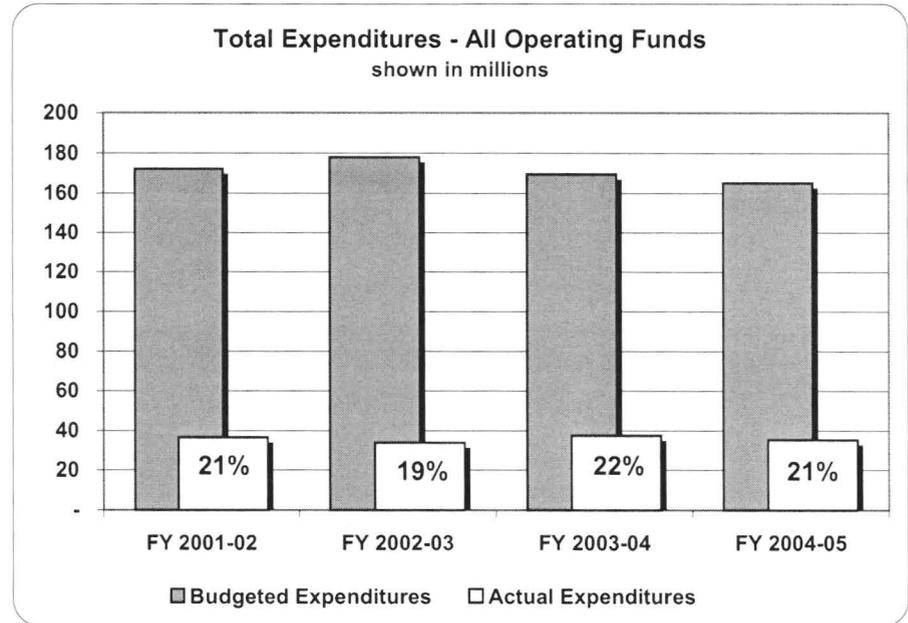
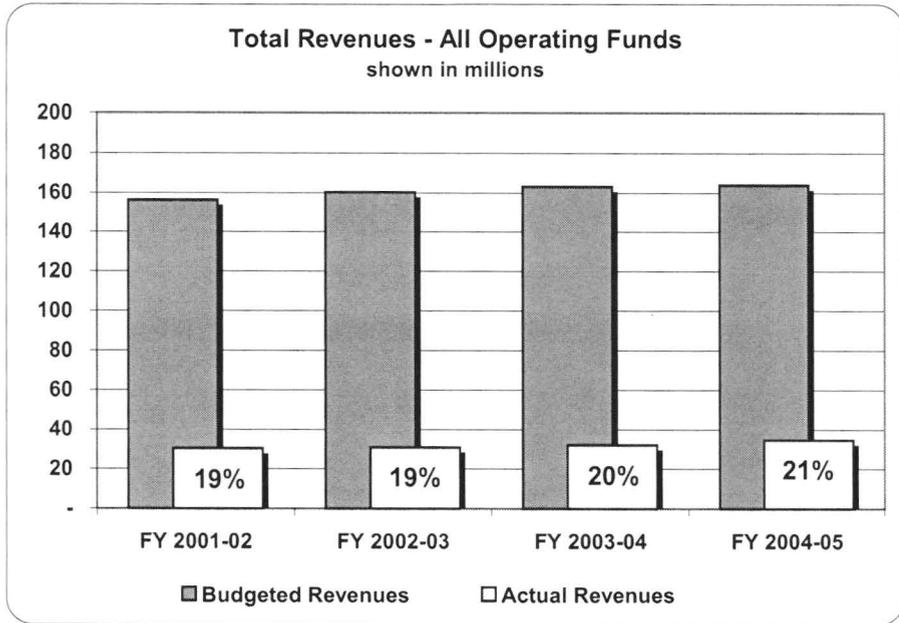


### Excise Tax

Overall excise tax revenue received through the end of the first quarter totaled \$2.69 million, which is 0.6 percent above year-to-date projections. While Solid Waste & Recycling, the Oregon Convention Center and Planning exceeded projections, the Zoo, Regional Parks, the Expo Center and Building Management fell short. The revised annual forecast, based on historical patterns and results from the first quarter, projects year-end excise tax collections above budget by \$677,000 overall. This includes additional year-end contributions of \$514,000 to the Rate Stabilization Reserve, \$193,000 to the Parks Department and \$38,000 to the Tourism Opportunity and Competitiveness Account. The net result is a projected reduction in discretionary excise tax available in the General Fund at year-end of \$68,000. The actual beginning balance in the General Fund was \$625,000 higher than budgeted with \$35,000 of this going toward the Recovery Rate Stabilization Reserve and \$2,500 in additional PERS Reserve contributions. The remaining \$588,000 more than offsets the projected shortfall from non-solid waste activity.

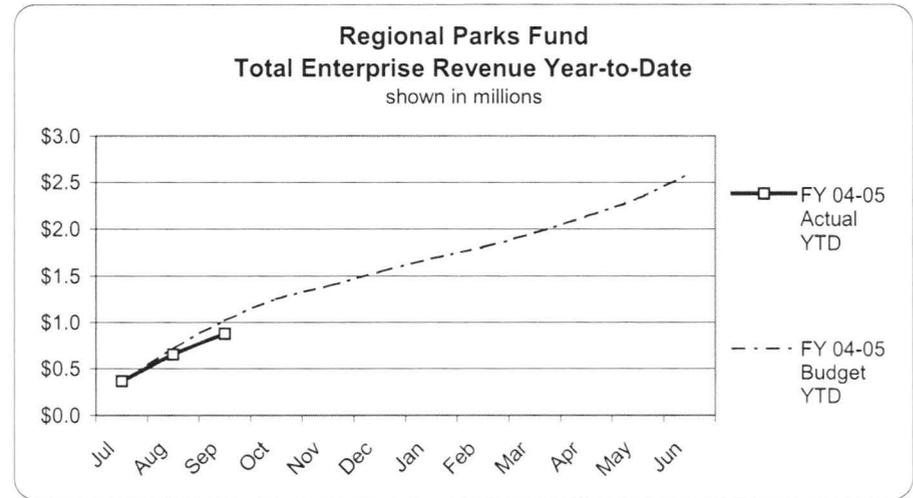
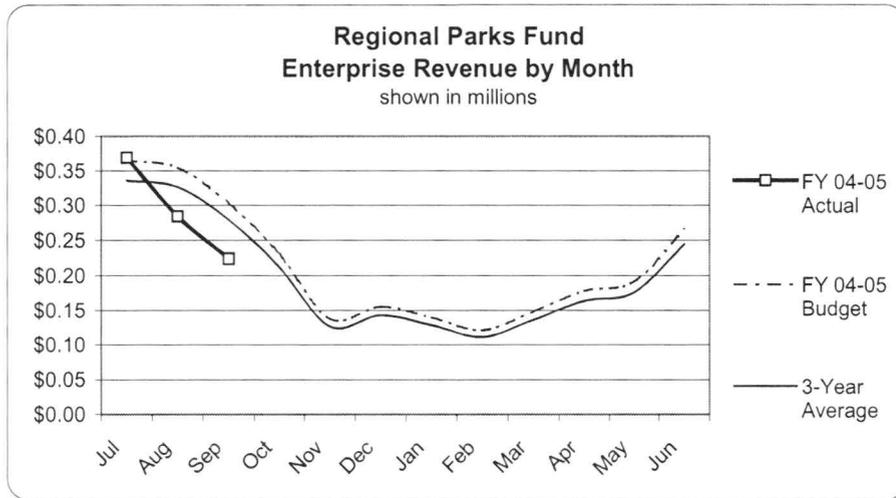
**Overview of Operating Funds**

Revenues for all of the operating funds totaled \$34.5 million, or 21 percent of budget in the first quarter. Expenditures totaled \$35.3 million against a budget of \$165.2 million. First quarter revenues and expenditures are both consistent with historical patterns.

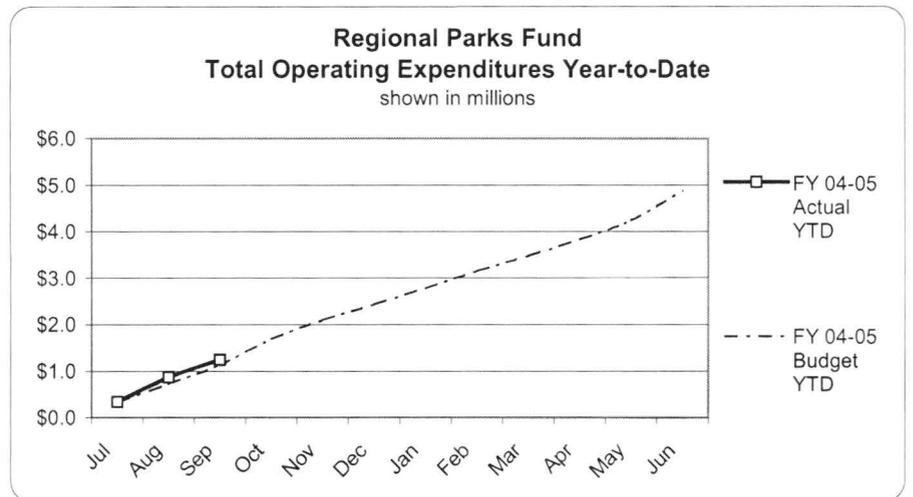
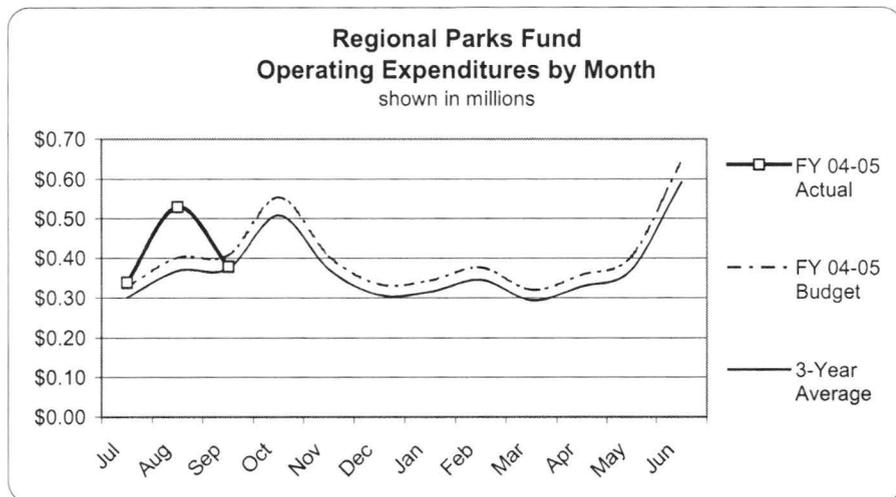


**Regional Parks Fund**

The first quarter of the fiscal year is typically the highest revenue generating quarter for the Parks Department. The revenue received to date, at approximately 34 percent of budget, is well below historical averages and expectations. Almost all areas except Grave Sales and Property Rentals experienced below average revenue generation.

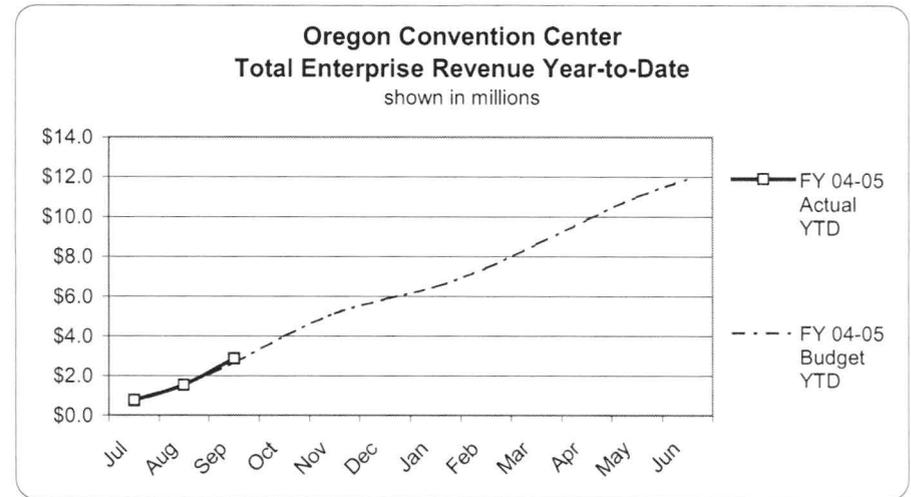
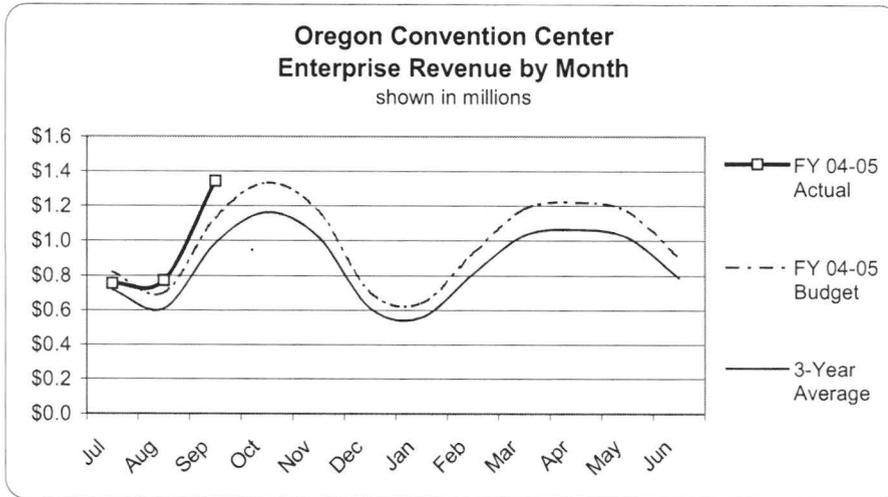


Parks operating expenditures for the first quarter were at 26% of budget. The spike in spending for the month of August was due to a one-time capital maintenance project costing almost \$90,000.

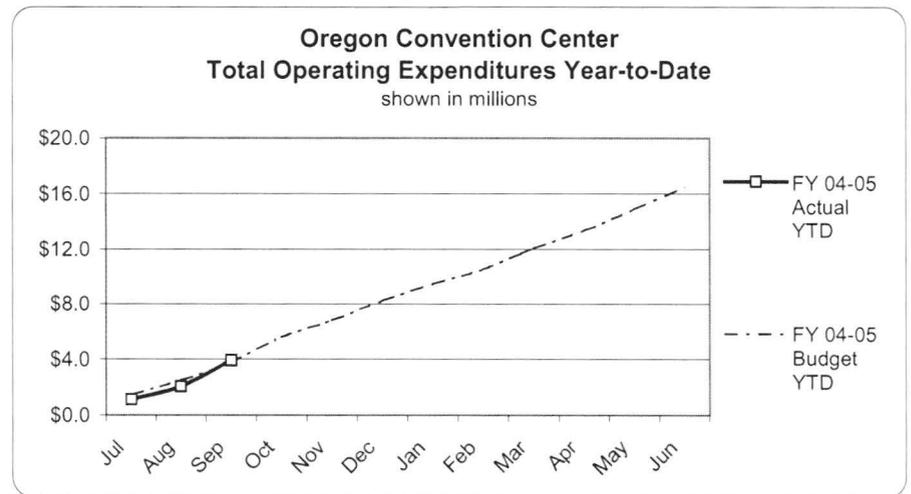
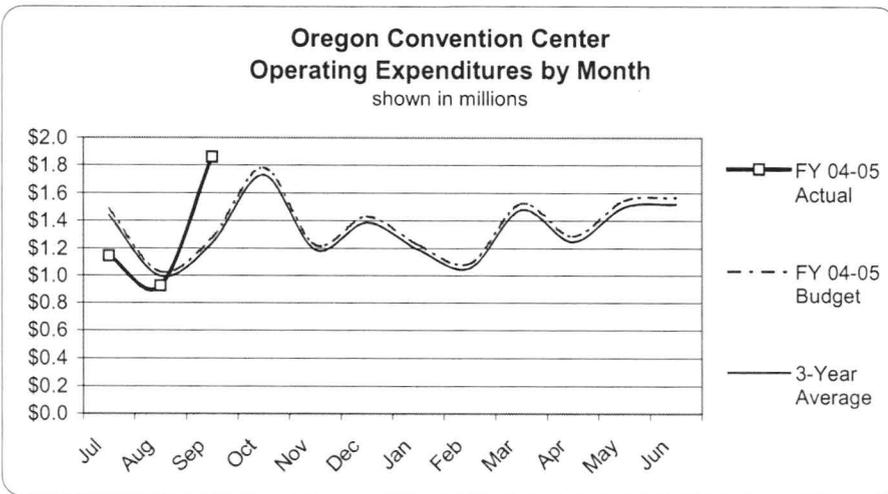


## Oregon Convention Center

Enterprise Revenues for the Convention Center were at 24 percent of budget for the first quarter. Overall revenues for the OCC are expected to be lower than the previous year due to reduced convention bookings in FY 2004-05.

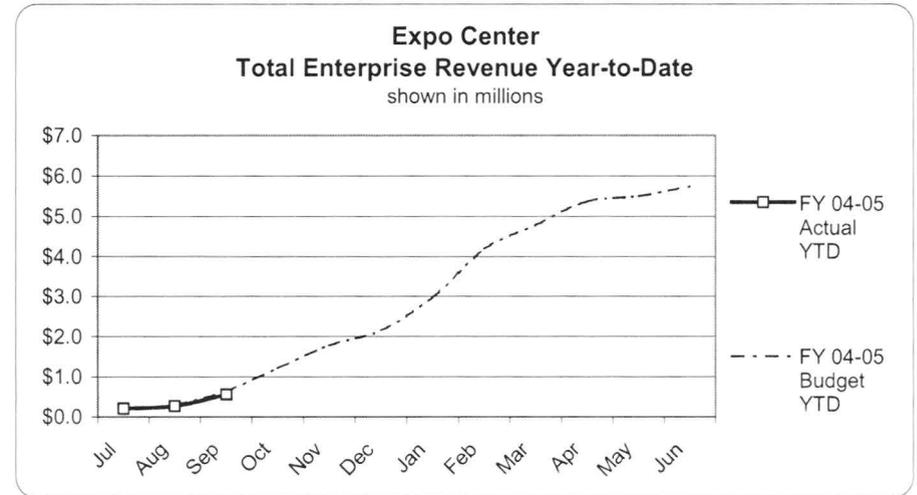
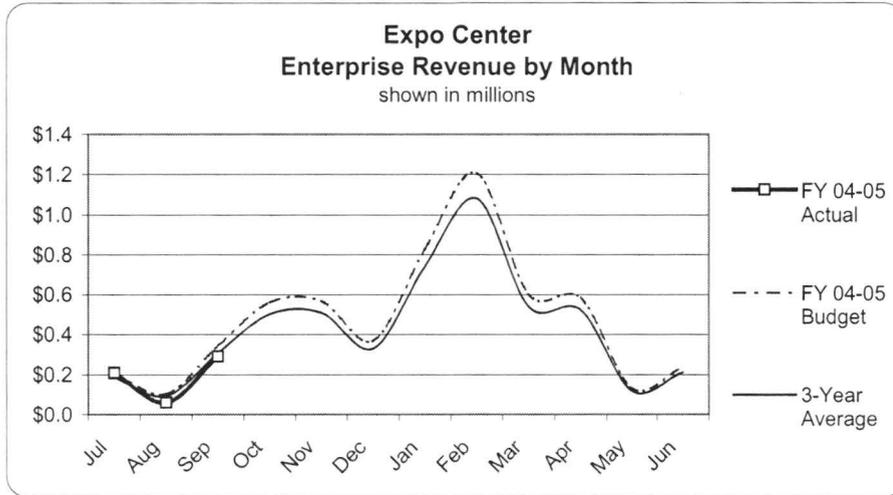


Operating Expenditures of \$3.9 million were at 24 percent of budget for the first quarter.

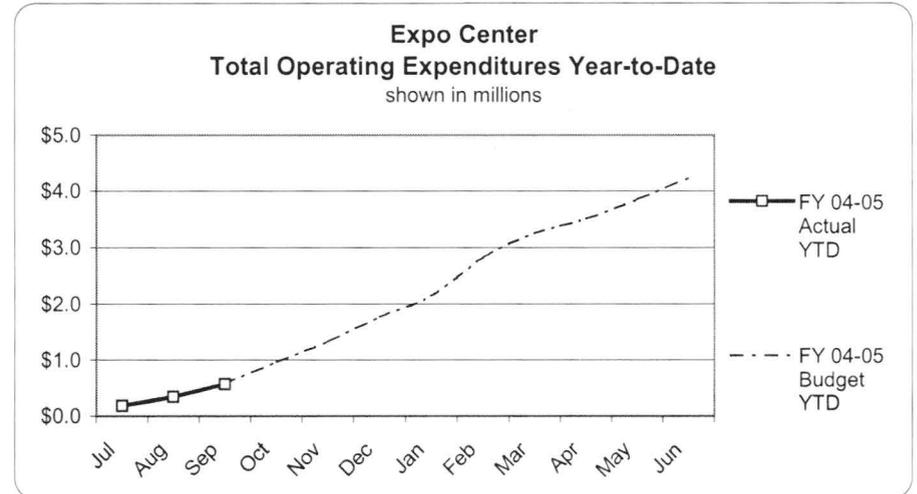
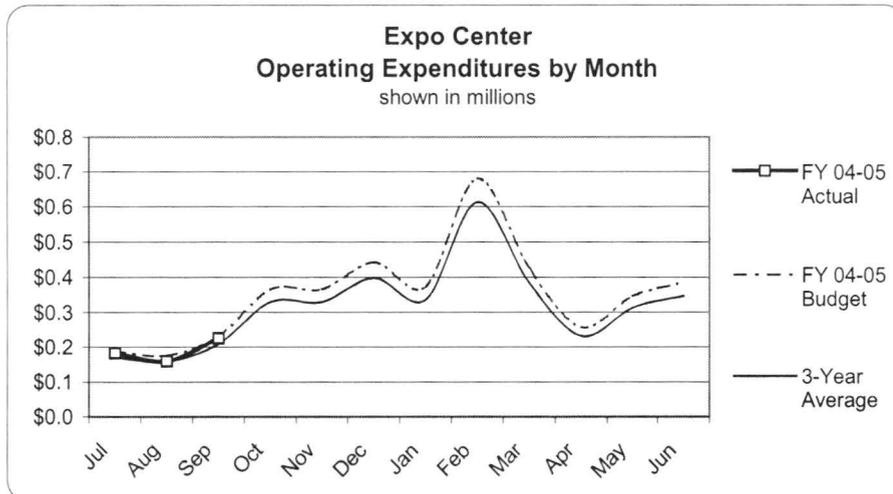


**Expo Center**

The first quarter is typically the slowest for the Expo Center. Enterprise Revenues were at 10 percent of budget, tracking closely to historical revenue patterns.

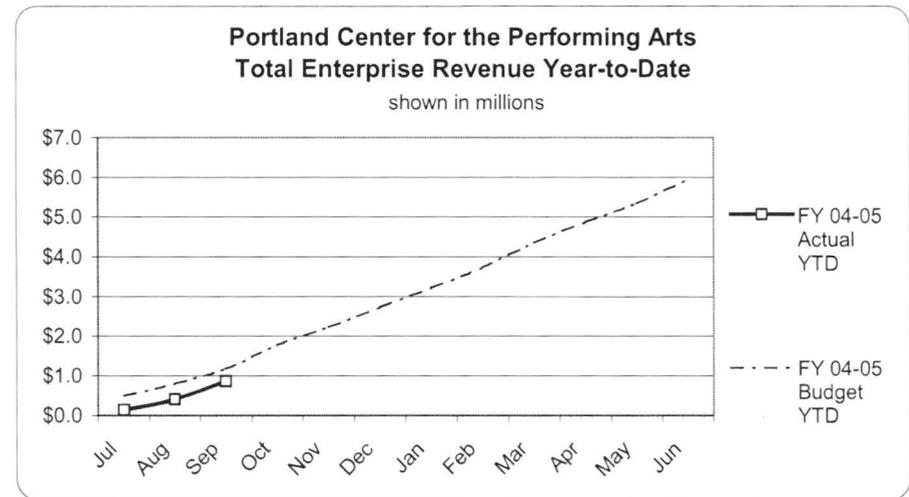
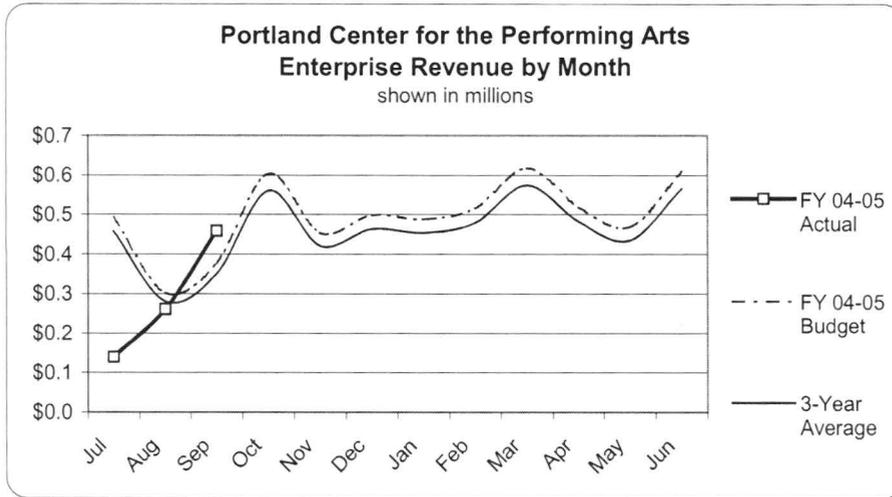


Operating Expenditures for the Expo Center were at 14 percent of budget through the end of the first quarter.

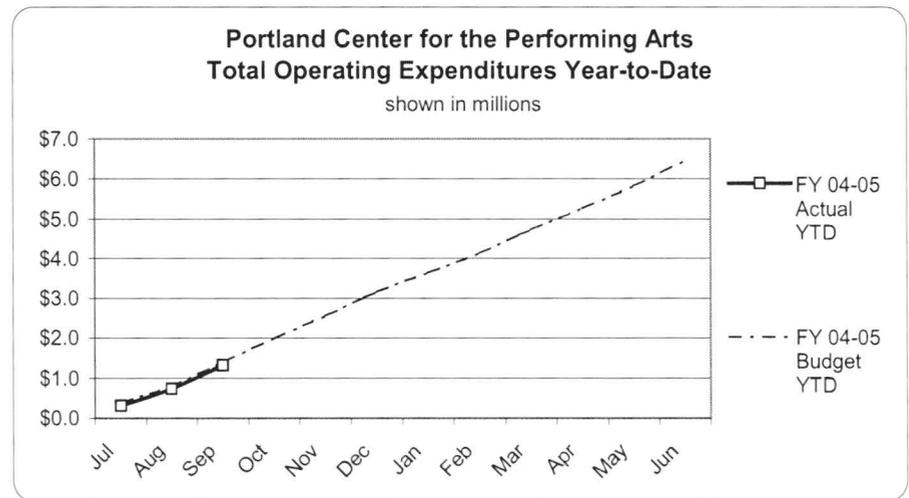
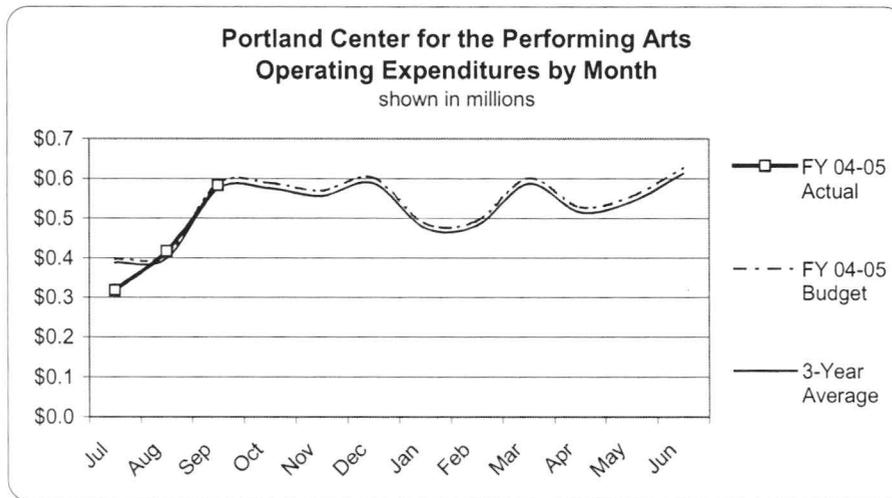


**Portland Center for the Performing Arts**

Enterprise Revenues were at 15 percent of budget in the first quarter, lower than the same period last year, but by year-end PCPA expects to meet budget projections.

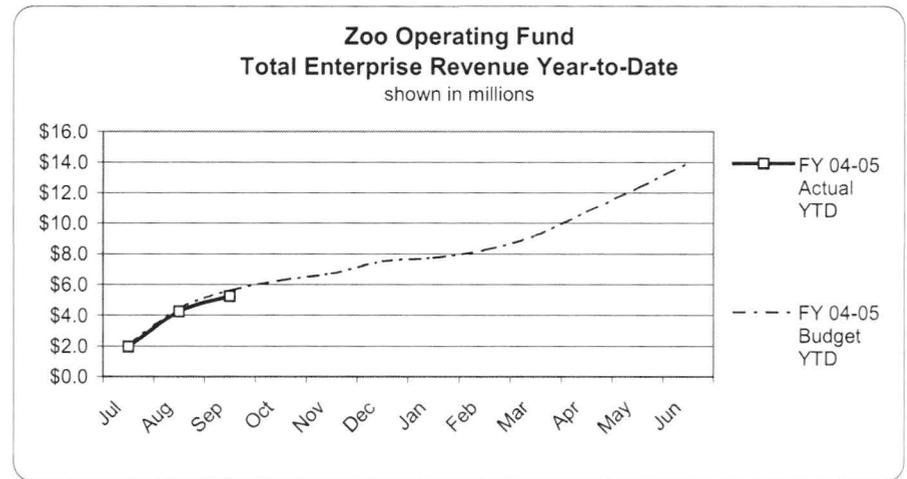
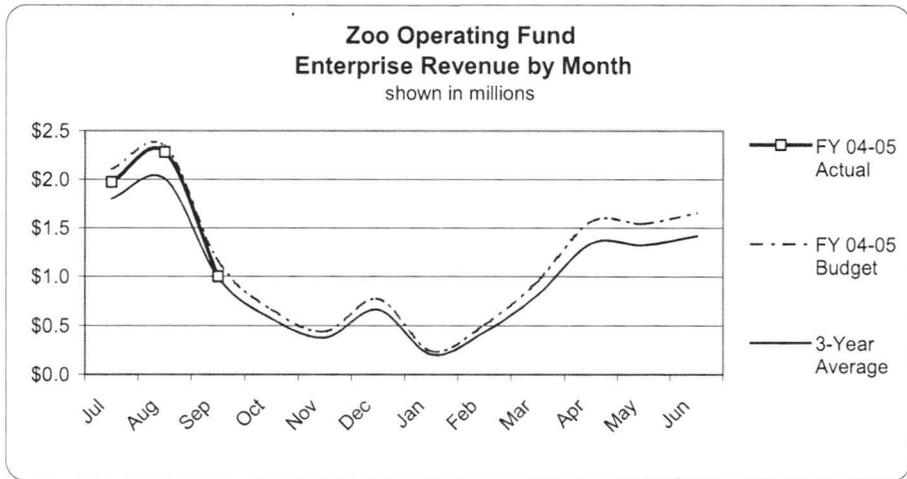


Operating Expenditures at PCPA were at 21 percent of budget, consistent with historical spending patterns.

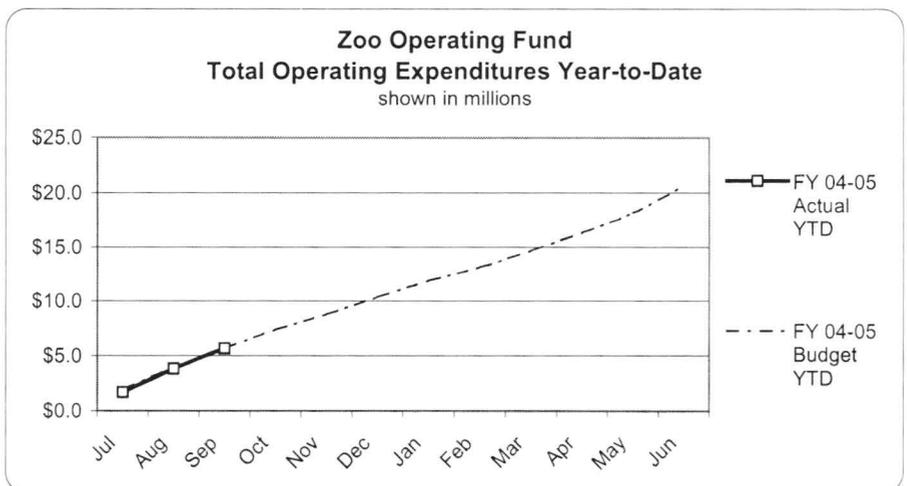
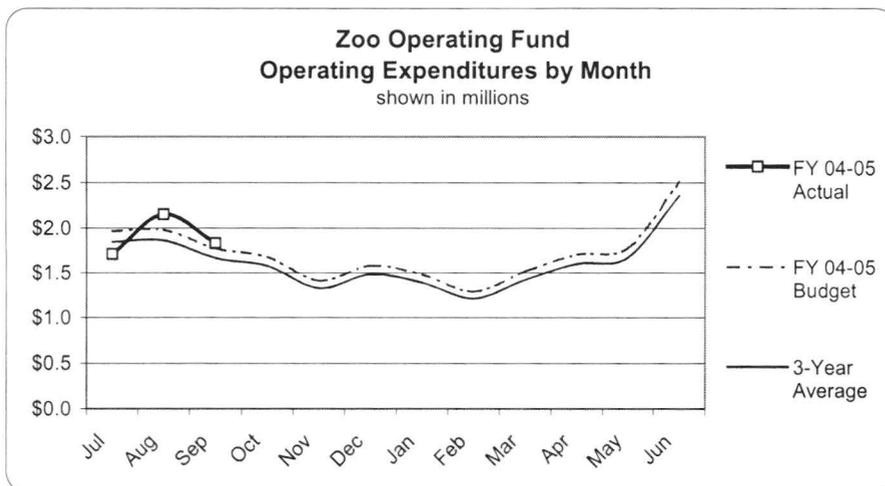


**Zoo Operating Fund**

At \$5.25 million, or 38 percent of budget, enterprise revenues are up from the first quarter of last year by nearly \$650,000.

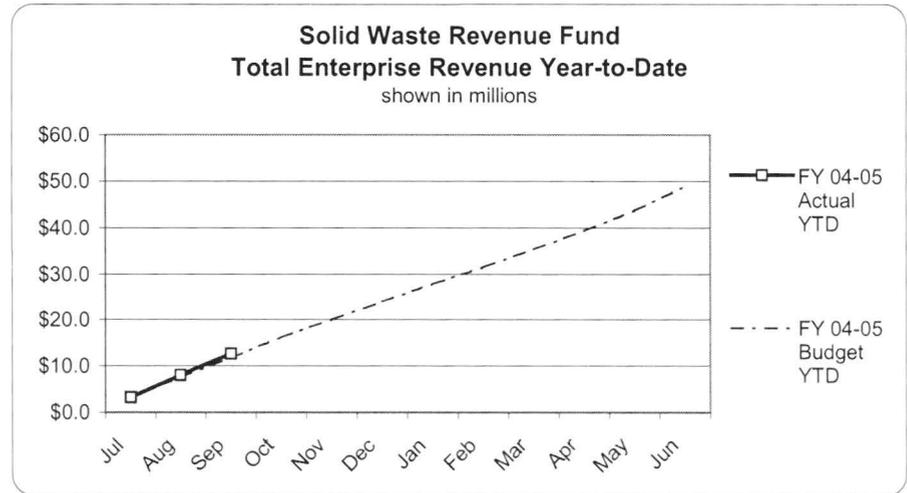
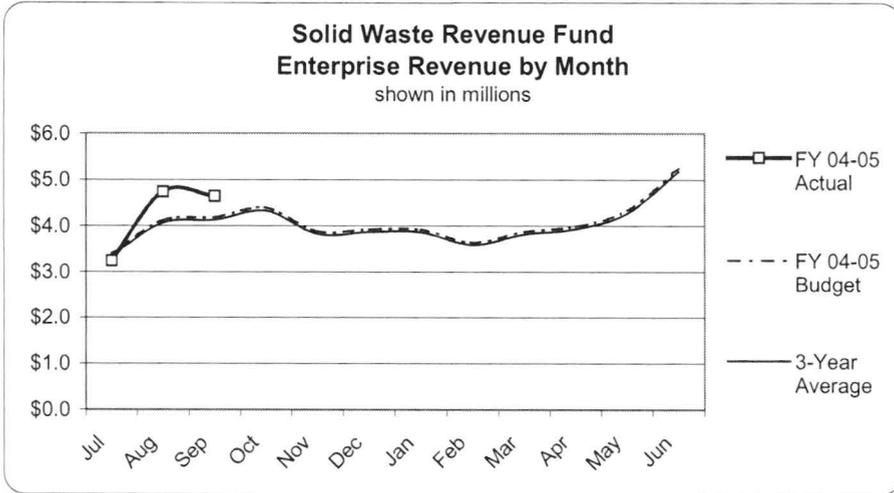


Zoo spending through the first quarter was at 27 percent of budget. Higher spending in the months of August and September are associated with the Aramark contract and a shift in the timing of the Summer Concert Series.

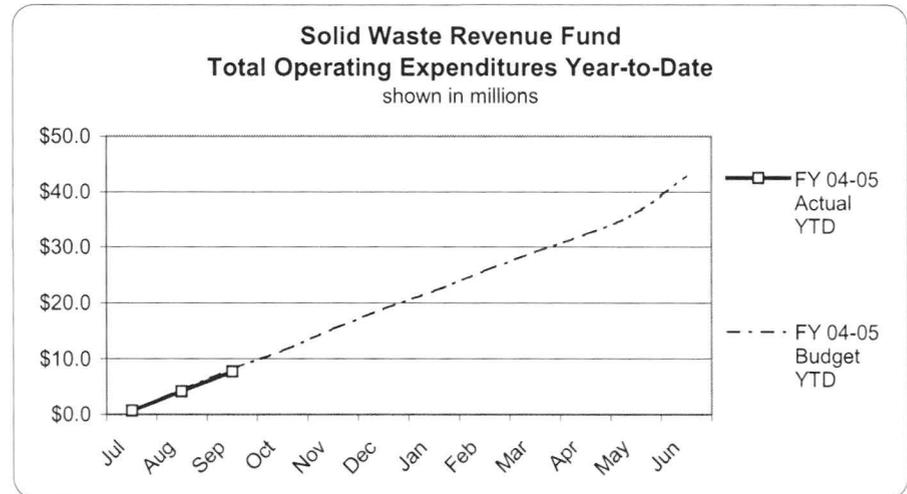
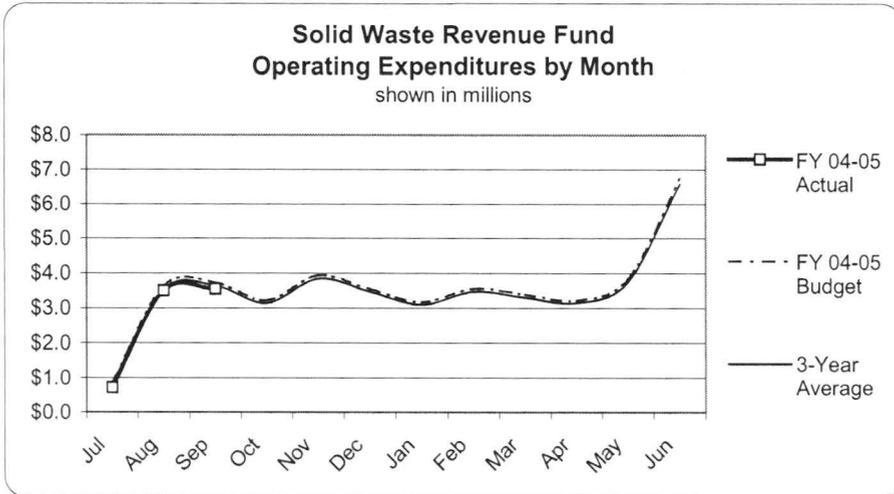


### Solid Waste Revenue Fund

Enterprise Revenues for the first quarter were higher than normal partially due to a 7 percent increase in tonnage. Also contributing to the increase is the shift in the rate structure from Regional System Fees to Disposal Fees.



Operating expenditures were 18 percent of budget for the first quarter.



Any comments or suggestions on how this summary, or the document in general, could be improved would be very welcome. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "William L. Stringer". The signature is written in a cursive style with a large initial "W".

William L. Stringer  
Chief Financial Officer & Director, Finance & Administrative Services Department

## **OPERATING FUNDS**

Operating funds are those funds that contain the revenues and expenditures associated with Metro services. As a general rule, they are the funds where personal services expenditures are charged. Contained within this section is a budget-to-actual summary providing information regarding each fund's activity through the end of the first quarter, FY 2004-05. Also included is the same information for the corresponding period for last fiscal year. Along with the numerical information there is a brief explanation, by classification, of the revenues and expenditures in each fund.

The funds have been grouped by type: general government, enterprise, or internal service to provide for a better understanding of the different operations at Metro. The general government funds are the General, Planning, and Regional Parks funds. The enterprise funds include MERC Operating, Solid Waste Revenue, and Zoo Operating funds. The internal service funds are the Building Management, Risk Management, and Support Services funds.

## General Fund

The General Fund was established to track revenues and expenditures for all general government functions. This includes the Metro Council and Public Affairs Department. The General Fund is supported by an excise tax on the purchase of Metro goods and services. Outlined below is an explanation of the activities in the General Fund through the first quarter, FY 2004-05.

### Revenues

**Excise Tax** – A tax upon the purchase of Metro goods and services. At 22 percent, the taxes received through the end of the first quarter exceeded budget in total, but were slightly below budget for discretionary revenue. Additional information regarding this tax is available in the Excise Tax section of this document, beginning on page 46.

**Interfund Transfers In** – Transfers come from departments for allocated costs in the Council Office. In the current fiscal year, these costs include the salary for the Chief Operating Officer and the Archives program. The total transfers are determined through the cost allocation plan. Through the end of the first quarter, transfers in are at 25 percent of budget.

### Expenditures

**Council Office** – The Council Office is at 21 percent of budget through the end of the first quarter. Year-to-date spending on materials and services is only at 6 percent of budget.

**Public Affairs Department** – Through the end of the first quarter, the Public Affairs Department is at 18 percent of budget. Year-to-date spending on materials and services is only 4 percent of budget.

**Special Appropriations** – Budgeted expenditures in this category include a \$125,000 special appropriation for election costs, \$100,000 for public notice costs required by ballot measure or Metro code, \$15,000 for Water Consortium dues, and a \$25,000 contribution to the Regional Arts & Culture Council (RACC). Actual expenditures in the first quarter totaled \$40,600 consisting of \$15,600 in Water Consortium dues and the \$25,000 contribution to RACC.

**Interfund Transfers Out** – This category includes transfers to the central service funds to pay for services allocated through the cost allocation plan. Central service transfers are made monthly, quarterly, or semi-annually depending on the type. Also included in this category are monthly transfers of excise tax to various operating funds. The General Fund is monitored to ensure there is sufficient cash balance before excise tax transfers are made. Through the end of the first quarter, transfers out were at 26% of budget.

# General Fund

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$2,035,545		\$2,660,496	131%	\$1,277,550		\$1,648,753	129%
<b>Current Revenues</b>								
Metro Excise Tax	12,083,153	2,685,602	2,685,602	22%	10,019,954	2,327,398	2,327,398	23%
Earnings on Investments	25,000	16,502	16,502	66%	25,000	8,654	8,654	35%
Other Miscellaneous Revenue	0	552	552	0%	0	5	5	0%
Interfund Transfers In	291,550	72,885	72,885	25%	248,114	62,034	62,034	25%
<b>Subtotal Current Revenues</b>	<b>12,399,703</b>	<b>2,775,541</b>	<b>2,775,541</b>	<b>22%</b>	<b>10,293,068</b>	<b>2,398,091</b>	<b>2,398,091</b>	<b>23%</b>
<b>Total Resources</b>	<b>\$14,435,248</b>	<b>\$2,775,541</b>	<b>\$5,436,037</b>	<b>38%</b>	<b>\$11,570,618</b>	<b>\$2,398,091</b>	<b>\$4,046,844</b>	<b>35%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Council Office	\$1,435,201	\$303,242	\$303,242	21%	\$1,400,107	\$291,120	\$291,120	21%
Public Affairs Department	665,991	133,147	133,147	20%	652,445	92,359	92,359	14%
Special Appropriations	265,000	40,600	40,600	15%	340,000	40,611	40,611	12%
<b>Subtotal Operating Expenditures</b>	<b>2,366,192</b>	<b>476,988</b>	<b>476,988</b>	<b>20%</b>	<b>2,392,552</b>	<b>424,090</b>	<b>424,090</b>	<b>18%</b>
<b>Non-Operating Expenditures</b>								
Interfund Transfers Out	9,542,038	2,510,085	2,510,085	26%	8,041,194	1,992,486	1,992,486	25%
Contingency	1,212,615	0	0	0%	443,930	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>10,754,653</b>	<b>2,510,085</b>	<b>2,510,085</b>	<b>23%</b>	<b>8,485,124</b>	<b>1,992,486</b>	<b>1,992,486</b>	<b>23%</b>
<b>Subtotal Current Expenditures</b>	<b>\$13,120,845</b>	<b>\$2,987,073</b>	<b>\$2,987,073</b>	<b>23%</b>	<b>\$10,877,676</b>	<b>\$2,416,576</b>	<b>\$2,416,576</b>	<b>22%</b>
<i>Unappropriated Balance</i>	1,314,403		2,448,963		692,942		1,630,267	
<b>Total Requirements</b>	<b>\$14,435,248</b>		<b>\$5,436,037</b>		<b>\$11,570,618</b>		<b>\$4,046,844</b>	

## Planning Fund

The Planning Fund was established to track the revenues and expenditures associated with the Transportation and Growth Management activities. As outlined in the Metro Charter, growth management and land-use planning are the primary missions of the agency. The information outlined below provides an explanation of the activities in the Planning Fund through the first quarter of FY 2004-05.

### Revenues

**Grants** – The majority of funding comes from federal, state, and local grants. Revenues are recorded based on the prior month's expenditure reports. Funds are received on a reimbursement basis and typically lag one to two months behind expenditures. Revenues recorded to date reflect only one month of grant billings.

**Local Government Shared Revenues** – Represents fees received for boundary mapping services provided by the department.

**Enterprise Revenue** – Historically this category primarily includes revenues generated through the Data Resource Center. Revenues are the result of contracts with private entities, local jurisdictions and storefront sales. Most of the contracts are invoiced quarterly. Revenues received through the first quarter represent billings for services and sales on a reimbursement basis. Recording of revenues typically lags one to two months behind expenditures. In FY 2004-05 this category also includes \$4.63 million in contract revenue to be received from TriMet for the TOD program.

**Interfund Transfers** – Includes transfers of excise tax from the General Fund as well as transfers for direct services from other Metro departments. Excise tax transfers are received monthly providing the General Fund cash flow permits. Direct transfers are made as expenses are incurred. Through the first quarter three months of excise tax transfers have been received.

### Expenditures

**Personal Services** - Expenditures are as expected through the end of the first quarter at 23 percent.

**Materials & Services** – The majority budgeted for this expenditure category is tied to the purchase of TOD lands (\$4.4 million) or the direct receipt of grant funds. TOD land purchases are made as appropriate lands become available. No TOD lands were purchased in the first quarter. All other expenditures were as expected in this quarter.

**Capital Outlay (CIP)** – Capital expenditures are for replacement of components of the Travel Forecasting and Data Resource Center computer systems.

**Interfund Transfers Out** – This category includes transfers to the central service funds to pay for services allocated through the cost allocation plan. Central service transfers are made monthly, quarterly, or semi-annually depending on the type. These transfers are as anticipated through the end of the first quarter.

# Planning Fund

As of September, 30 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$627,552		\$1,411,661	225%	\$654,431		\$1,950,893	298%
<b>Current Revenues</b>								
Grants	8,333,645	317,586	317,586	4%	12,895,064	503,466	503,466	4%
Local Gov't Shared Revenue	0	12,150	12,150	0%	0	5,550	5,550	0%
Enterprise Revenue	5,184,088	29,903	29,903	1%	543,480	33,131	33,131	6%
Earnings on Investments	0	26,433	26,433	0%	0	16,414	16,414	0%
Other Miscellaneous Revenue	31,000	6,636	6,636	21%	14,536	0	0	0%
Interfund Transfers In	4,599,990	1,148,578	1,148,578	25%	4,643,456	1,160,141	1,160,141	25%
<b>Subtotal Current Revenues</b>	<b>18,148,723</b>	<b>1,541,286</b>	<b>1,541,286</b>	<b>8%</b>	<b>18,096,536</b>	<b>1,718,701</b>	<b>1,718,701</b>	<b>9%</b>
<b>Total Resources</b>	<b>\$18,776,275</b>	<b>\$1,541,286</b>	<b>\$2,952,947</b>	<b>16%</b>	<b>\$18,750,967</b>	<b>\$1,718,701</b>	<b>\$3,669,595</b>	<b>20%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	\$6,866,929	\$1,566,862	\$1,566,862	23%	\$7,262,224	\$1,607,305	\$1,607,305	22%
Materials and Services	8,795,515	484,692	484,692	6%	8,561,505	96,800	96,800	1%
<b>Subtotal Operating Expenditures</b>	<b>15,662,444</b>	<b>2,051,554</b>	<b>2,051,554</b>	<b>13%</b>	<b>15,823,729</b>	<b>1,704,105</b>	<b>1,704,105</b>	<b>11%</b>
<b>Non-Operating Expenditures</b>								
Debt Service	0	0	0	0%	44,212	1,037	1,037	2%
Capital Outlay Projects (CIP)	47,000	0	0	0%	54,200	44,653	44,653	82%
Interfund Transfers Out	2,189,991	764,026	764,026	35%	2,437,286	708,913	708,913	29%
Contingency	786,840	0	0	0%	301,540	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>3,023,831</b>	<b>764,026</b>	<b>764,026</b>	<b>25%</b>	<b>2,837,238</b>	<b>754,602</b>	<b>754,602</b>	<b>27%</b>
<b>Subtotal Current Expenditures</b>	<b>\$18,686,275</b>	<b>\$2,815,580</b>	<b>\$2,815,580</b>	<b>15%</b>	<b>\$18,660,967</b>	<b>\$2,458,707</b>	<b>\$2,458,707</b>	<b>13%</b>
<i>Unappropriated Balance</i>	90,000		137,367		90,000		1,210,887	
<b>Total Requirements</b>	<b>\$18,776,275</b>		<b>\$2,952,947</b>		<b>\$18,750,967</b>		<b>\$3,669,595</b>	

## Regional Parks Operating Fund

The Regional Parks Operating Fund was established to track the revenues and expenditures related to the operations of the parks, golf courses, marine facilities, pioneer cemeteries and open spaces managed by Metro. The information listed below provides an explanation of the activities in this fund through the first quarter of FY 2004-05.

### Revenues

**Grants** – For FY 2004-05, budgeted revenues in the operating fund reflect only those grants anticipated for the Greenspaces restoration/education grant program. All other grants related to capital projects formerly budgeted in the Regional Parks Fund have been moved to the Regional Parks Capital Fund. Grant billing for first quarter expenditures will not be recorded until the second quarter. The negative revenue received through the end of the first quarter is the result of transactions processed by Accounting to reverse grant revenue accruals made at the end of last fiscal year.

**Intergovernmental Revenues** – The funds received are Metro's share of the revenues received by the State from the registration fees for recreational vehicles and County marine fuel taxes. Receipts from the State may lag one to two months.

**Enterprise Revenues** – This category represents revenues received for the use of Metro Regional Parks and golf course. The first quarter of the fiscal year is typically the highest revenue generating quarter. The revenue received to date, at approximately 34 percent of budget, is well below historical averages and expectations. Almost all areas except Grave Sales and Property Rentals are experiencing below average revenue generation. Most Regional Parks' revenues are sensitive to weather fluctuations. A week of rain in August plus weeks of very hot weather in July and August combined to significantly reduce rounds of golf played at Glendoveer Golf Course. Unfortunately, the nice weather in September did not correlate to an upturn in golf rounds. In addition to the weather, environmental issues with the lake at Blue Lake Park resulted in low attendance during August, typically one of the two highest revenue months of the year. Attendance revenues did pick up again in September so it appears the "lake issues" caused only a temporary effect on attendance. A

one-time block of grave sales in July will partially offset some of the loss in revenues in other areas.

**Contributions and Donations** – The FY 2004-05 budget assumed contributions from the Oregon Historical Society for operational support of Bybee House and from Portland Parks & Recreation for technical support on the three bridges project. Through the first quarter, the department has received approximately \$17,000 in support of the planning phase of the three bridges project.

**Interfund Transfers In** – Interfund transfers received include excise tax revenue from the General Fund and transfers from the Open Spaces Fund for former Multnomah County local share projects managed by the Regional Parks Department. Excise tax transfers are made on a monthly basis, as cash flow in the General Fund permits. Through the first quarter, the department has received three months of excise tax transfers from the General Fund. Transfers from the Open Spaces Fund are made quarterly as expenditures for the Multnomah County local share projects are incurred; there were no such transfers in the first quarter.

### Expenditures

**Personal Services** – Expenditures were as expected through the end of the first quarter at slightly over 26 percent of budget. The first quarter is Parks' busy season, with part-time and seasonal employees contributing to personnel costs that are higher than average.

**Materials and Services** – This expenditure is at 24 percent of budget through the first quarter. While, as a percentage of budget, spending is higher than historical averages, it is still within an expected range. Expenditures contributing to the higher than normal spending include approximately \$19,000 for insurance on rental properties originally purchased through the open spaces

bond measure; \$25,000 to Fairview for police services at Chinook Landing and Blue Lake Regional Park incurred during last fiscal year but not invoiced until this fiscal year; and \$19,000 in capital maintenance renewal & replacement expenditures that should be charged against the Regional Parks Capital Fund.

**Capital Outlay (Non CIP)** – No capital expenditures are budgeted in the operating fund in FY 2004-05.

**Capital Outlay (CIP)** – All capital projects have been moved to the Regional Parks Capital Fund beginning 7/01/04.

**Interfund Transfers Out** – Interfund transfer expense includes three primary categories – transfer of excise tax and other funding support to the Regional Parks Capital Fund for the development of four open space sites into accessible natural areas; transfers to central service fund for allocated costs such as accounting services, legal services, risk management, building rent, information technology services, and human resource services; and transfers to other funds such as the Planning Fund for reimbursement of services received on a variety of projects. Central Service transfers are made monthly, quarterly or semi-annually depending on type. Excise tax and other transfers are made as requested. Expenditures through the first quarter are as expected.

## Regional Parks Operating Fund

*As of September 30, 2004*

	Amended Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$3,700,311		\$3,496,776	94%	\$3,158,426		\$3,596,811	114%
<b>Current Revenues</b>								
Grants	196,200	(49,873)	(49,873)	-25%	698,353	7,350	7,350	1%
Intergovernmental Revenues	403,975	36,713	36,713	9%	414,361	69,464	69,464	17%
Enterprise Revenues	2,614,335	879,703	879,703	34%	2,458,663	920,718	920,718	37%
Earnings on Investments	60,000	24,729	24,729	41%	58,998	19,768	19,768	34%
Contributions and Donations	40,300	16,699	16,699	41%	277,640	17,375	17,375	6%
Other Miscellaneous Revenues	11,500	3,915	3,915	34%	11,500	12,619	12,619	110%
Interfund Transfers In	4,189,269	1,046,529	1,046,529	25%	3,168,349	664,635	664,635	21%
<b>Subtotal Current Revenues</b>	<b>7,515,579</b>	<b>1,958,415</b>	<b>1,958,415</b>	<b>26%</b>	<b>7,087,864</b>	<b>1,711,930</b>	<b>1,711,930</b>	<b>24%</b>
<b>Total Resources</b>	<b>\$11,215,890</b>	<b>\$1,958,415</b>	<b>\$5,455,191</b>	<b>49%</b>	<b>\$10,246,290</b>	<b>\$1,711,930</b>	<b>\$5,308,741</b>	<b>52%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	\$3,334,469	\$883,252	\$883,252	26%	\$3,063,164	\$811,237	\$811,237	26%
Materials and Services	1,545,391	364,855	364,855	24%	2,003,468	297,352	297,352	15%
Capital Outlay Projects (non-CIP)	0	0	0	0%	26,400	25,520	25,520	97%
<b>Subtotal Operating Expenditures</b>	<b>4,879,860</b>	<b>1,248,107</b>	<b>1,248,107</b>	<b>26%</b>	<b>5,093,032</b>	<b>1,134,109</b>	<b>1,134,109</b>	<b>22%</b>
<b>Non-Operating Expenditures</b>								
Capital Outlay Projects (CIP)	0	0	0	0%	1,073,311	1,020	1,020	0%
Interfund Transfers Out	2,902,040	501,701	501,701	17%	1,294,707	289,705	289,705	22%
Contingency	493,908	0	0	0%	86,390	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>3,395,948</b>	<b>501,701</b>	<b>501,701</b>	<b>15%</b>	<b>2,454,408</b>	<b>290,725</b>	<b>290,725</b>	<b>12%</b>
<b>Subtotal Current Expenditures</b>	<b>\$8,275,808</b>	<b>\$1,749,808</b>	<b>\$1,749,808</b>	<b>21%</b>	<b>\$7,547,440</b>	<b>\$1,424,835</b>	<b>\$1,424,835</b>	<b>19%</b>
<i>Unappropriated Balance</i>	2,940,082		3,705,383		2,698,850		3,883,907	
<b>Total Requirements</b>	<b>\$11,215,890</b>		<b>\$5,455,191</b>		<b>\$10,246,290</b>		<b>\$5,308,741</b>	

## MERC Operating Fund

The MERC Operating Fund contains the operating revenues and expenditures of the facilities managed by the Metro Exposition-Recreation Commission (MERC). These facilities include the Oregon Convention Center (OCC), the Portland Metropolitan Exposition Center (Expo), and the Portland Center for the Performing Arts (PCPA). The fund also includes MERC Administration. The information outlined below provides an explanation of the activities in this fund through the end of the first quarter of FY 2004-05. MERC's overall results were not as good as budgeted in OCC and Expo operations. This is the result of the stressed lodging industry and convention business.

### Revenues

**Intergovernmental Revenue** – The FY 04-05 Budget includes \$7.0 million in Multnomah County Lodging Tax, with \$5.74 million for Convention Center operations and \$1.26 million for PCPA. As of the end of the first quarter, none of the Lodging Tax has been received from Multnomah County.

**Enterprise Revenue** – This classification consists of revenue that is received for the services provided by the different facilities. The \$4.3 million received for the year is 18% of budget, down 1% from the prior year. This coupled with a lower budget equates to a half million-dollar reduction.

*Expo Center* – Enterprise revenue of about 10% of budget.

*Oregon Convention Center* – At about 24% of budget, enterprise revenues are down from the prior year but up as a percentage of budget. Overall revenues for OCC are expected to be lower than the previous year. This reduction is the result of a decrease in expected convention bookings for FY 2004-05.

*Portland Center for the Performing Arts* – Year-to-date revenues are over 15% of budget. PCPA expects to meet budget projections. Bookings have fallen into different periods.

**Contributions and Donations** – Included in this classification are contributions from the City of Portland to support the operation of PCPA for \$315,000.

### Expenditures

**Expo Center** – With Operating Revenues at .5 million (10% of budget) and Operating Expenditures at .6 million (11% of budget), and administrative overhead, Expo experienced a decline in Fund Balance of about \$84,000 for the first quarter. The first quarter is historically low for Expo

**Oregon Convention Center** – Operating Revenues of \$2.8 million, not including hotel/motel tax receipts (23.4% of budget) were insufficient to fully fund operating expenditures of \$4.2 million. The result is a reduction in ending fund balance of \$1.4 million at the end of the first quarter. This is an improvement over the prior year.

**Portland Center for the Performing Arts** – With Operating Revenues of \$.8 million, Operating Expenditures of \$1.5 million, fund balance declined .7 million.

**MERC Administration** – Expenditures year-to-date are as expected.

**Interfund Transfers Out** – Expenditures are as expected.

**Debt Service** – Expenditures are as expected.

## MERC Operating Fund

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$10,806,745		\$10,955,113	101%	\$9,986,094		\$9,771,540	98%
<b>Current Revenues</b>								
Intergovernmental Revenue	7,000,663	0	0	0%	7,988,680	0	0	0%
Enterprise Revenue	23,856,990	4,340,849	4,340,849	18%	25,461,276	4,823,107	4,823,107	19%
Earnings on Investments	69,503	54,365	54,365	78%	206,281	20,361	20,361	10%
Contributions and Donations	331,128	0	0	0%	324,635	22,000	22,000	7%
Other Miscellaneous Revenue	80,000	26,892	26,892	34%	100,000	24,294	24,294	24%
Interfund Transfers In	536,129	45,531	45,531	8%	173,939	0	0	0%
<b>Subtotal Current Revenues</b>	<b>31,874,413</b>	<b>4,467,637</b>	<b>4,467,637</b>	<b>14%</b>	<b>34,254,811</b>	<b>4,889,762</b>	<b>4,889,762</b>	<b>14%</b>
<b>Total Resources</b>	<b>\$42,681,158</b>	<b>\$4,467,637</b>	<b>\$15,422,749</b>	<b>36%</b>	<b>\$44,240,905</b>	<b>\$4,889,762</b>	<b>\$14,661,302</b>	<b>33%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Expo Center	\$3,955,335	\$567,799	\$567,799	14%	\$4,238,676	\$609,052	\$609,052	14%
Oregon Convention Center	16,466,171	3,932,879	3,932,879	24%	18,318,119	4,707,290	4,707,290	26%
Portland Center for the Performing Arts	6,448,123	1,330,681	1,330,681	21%	6,828,639	1,432,696	1,432,696	21%
MERC Administration	1,214,749	285,363	285,363	23%	1,134,664	252,234	252,234	22%
<b>Subtotal Operating Expenditures</b>	<b>28,084,378</b>	<b>6,116,721</b>	<b>6,116,721</b>	<b>22%</b>	<b>30,520,098</b>	<b>7,001,272</b>	<b>7,001,272</b>	<b>23%</b>
<b>Non-Operating Expenditures</b>								
Debt Service	22,809	10,064	10,064	44%	22,809	11,235	11,235	49%
Capital Outlay Projects (CIP)	0	0	0	0%	0	0	0	0%
Interfund Transfers Out	3,666,545	540,486	540,486	15%	3,694,943	513,161	513,161	14%
Contingency	2,479,849	0	0	0%	1,222,561	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>6,169,203</b>	<b>550,550</b>	<b>550,550</b>	<b>9%</b>	<b>4,940,313</b>	<b>524,396</b>	<b>524,396</b>	<b>11%</b>
<b>Subtotal Current Expenditures</b>	<b>\$34,253,581</b>	<b>\$6,667,272</b>	<b>\$6,667,272</b>	<b>19%</b>	<b>\$35,460,411</b>	<b>\$7,525,668</b>	<b>\$7,525,668</b>	<b>21%</b>
<i>Unappropriated Balance</i>	8,427,577		8,755,478		8,780,494		7,135,634	
<b>Total Requirements</b>	<b>\$42,681,158</b>		<b>\$15,422,749</b>		<b>\$44,240,905</b>		<b>\$14,661,302</b>	

# Expo Center

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$3,204,397		\$2,539,442	79%	\$2,774,973		\$2,602,491	94%
<b>Current Revenues</b>								
Enterprise Revenue	5,738,321	560,971	560,971	10%	6,394,466	604,414	604,414	9%
Earnings on Investments	35,000	18,422	18,422	53%	52,269	9,990	9,990	19%
Other Miscellaneous Revenue	0	8,391	8,391	0%	0	(61)	(61)	0%
Interfund Transfers In	(182,064)	(45,516)	(45,516)	25%	(153,647)	(38,412)	(38,412)	25%
<b>Subtotal Current Revenues</b>	<b>5,591,257</b>	<b>542,268</b>	<b>542,268</b>	<b>10%</b>	<b>6,293,088</b>	<b>575,932</b>	<b>575,932</b>	<b>9%</b>
<b>Total Resources</b>	<b>\$8,795,654</b>	<b>\$542,268</b>	<b>\$3,081,710</b>	<b>35%</b>	<b>\$9,068,061</b>	<b>\$575,932</b>	<b>\$3,178,423</b>	<b>35%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	1,278,644	272,481	272,481	21%	1,301,286	263,989	263,989	20%
Materials and Services	2,676,691	295,318	295,318	11%	2,937,390	345,063	345,063	12%
<b>Subtotal Operating Expenditures</b>	<b>3,955,335</b>	<b>567,799</b>	<b>567,799</b>	<b>14%</b>	<b>4,238,676</b>	<b>609,052</b>	<b>609,052</b>	<b>14%</b>
<b>Non-Operating Expenditures</b>								
Interfund Transfers Out	1,560,907	58,764	58,764	4%	1,451,631	55,723	55,723	4%
Contingency	296,675	0	0	0%	169,632	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>1,857,582</b>	<b>58,764</b>	<b>58,764</b>	<b>3%</b>	<b>1,621,263</b>	<b>55,723</b>	<b>55,723</b>	<b>3%</b>
<b>Subtotal Current Expenditures</b>	<b>\$5,812,917</b>	<b>\$626,563</b>	<b>\$626,563</b>	<b>11%</b>	<b>\$5,859,939</b>	<b>\$664,775</b>	<b>\$664,775</b>	<b>11%</b>
<i>Unappropriated Balance</i>	2,982,737		2,455,147		3,208,122		2,513,648	
<b>Total Requirements</b>	<b>\$8,795,654</b>		<b>\$3,081,710</b>		<b>\$9,068,061</b>		<b>\$3,178,423</b>	

## Oregon Convention Center

*As of September 30, 2004*

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$4,328,256		\$4,611,340	107%	\$4,485,334		\$4,143,194	92%
<b>Current Revenues</b>								
Intergovernmental Revenue	5,740,961	0	0	0%	6,250,134	0	0	0%
Enterprise Revenue	11,999,695	2,876,509	2,876,509	24%	13,243,027	3,103,413	3,103,413	23%
Earnings on Investments	15,000	14,499	14,499	97%	102,000	21	21	0%
Other Miscellaneous Revenue	80,000	6,453	6,453	8%	100,000	7,875	7,875	8%
Interfund Transfers In	(69,179)	(105,795)	(105,795)	153%	(396,751)	(142,673)	(142,673)	36%
<b>Subtotal Current Revenues</b>	<b>17,766,477</b>	<b>2,791,665</b>	<b>2,791,665</b>	<b>16%</b>	<b>19,298,410</b>	<b>2,968,637</b>	<b>2,968,637</b>	<b>15%</b>
<b>Total Resources</b>	<b>\$22,094,733</b>	<b>\$2,791,665</b>	<b>\$7,403,006</b>	<b>34%</b>	<b>\$23,783,744</b>	<b>\$2,968,637</b>	<b>\$7,111,831</b>	<b>30%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	6,874,627	1,738,964	1,738,964	25%	7,808,193	1,838,182	1,838,182	24%
Materials and Services	9,591,544	2,193,914	2,193,914	23%	10,509,926	2,869,108	2,869,108	27%
<b>Subtotal Operating Expenditures</b>	<b>16,466,171</b>	<b>3,932,879</b>	<b>3,932,879</b>	<b>24%</b>	<b>18,318,119</b>	<b>4,707,290</b>	<b>4,707,290</b>	<b>26%</b>
<b>Non-Operating Expenditures</b>								
Debt Service	22,809	10,064	10,064	44%	22,809	11,235	11,235	49%
Interfund Transfers Out	1,392,879	303,534	303,534	22%	1,570,801	289,308	289,308	18%
Contingency	1,347,698	0	0	0%	734,127	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>2,763,386</b>	<b>313,598</b>	<b>313,598</b>	<b>11%</b>	<b>2,327,737</b>	<b>300,543</b>	<b>300,543</b>	<b>13%</b>
<b>Subtotal Current Expenditures</b>	<b>\$19,229,557</b>	<b>\$4,246,477</b>	<b>\$4,246,477</b>	<b>22%</b>	<b>\$20,645,856</b>	<b>\$5,007,832</b>	<b>\$5,007,832</b>	<b>24%</b>
<i>Unappropriated Balance</i>	2,865,176		3,156,529		3,137,888		2,103,999	
<b>Total Requirements</b>	<b>\$22,094,733</b>		<b>\$7,403,006</b>		<b>\$23,783,744</b>		<b>\$7,111,831</b>	

## Portland Center for the Performing Arts

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$3,219,962		\$3,721,692	116%	\$2,572,341		\$2,866,612	111%
<b>Current Revenues</b>								
Intergovernmental Revenue	1,259,702	0	0	0%	1,738,546	0	0	0%
Enterprise Revenue	5,946,394	897,925	897,925	15%	5,819,783	1,114,362	1,114,362	19%
Earnings on Investments	19,503	22,516	22,516	115%	48,940	8,952	8,952	18%
Contributions and Donations	331,128	0	0	0%	324,635	22,000	22,000	7%
Other Miscellaneous Revenue	0	11,599	11,599	0%	0	16,480	16,480	0%
Interfund Transfers In	(404,824)	(101,205)	(101,205)	25%	(373,143)	(93,286)	(93,286)	25%
<b>Subtotal Current Revenues</b>	<b>7,151,903</b>	<b>830,835</b>	<b>830,835</b>	<b>12%</b>	<b>7,558,761</b>	<b>1,068,508</b>	<b>1,068,508</b>	<b>14%</b>
<b>Total Resources</b>	<b>\$10,371,865</b>	<b>\$830,835</b>	<b>\$4,552,527</b>	<b>44%</b>	<b>\$10,131,102</b>	<b>\$1,068,508</b>	<b>\$3,935,119</b>	<b>39%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	3,949,998	905,155	905,155	23%	4,326,018	921,547	921,547	21%
Materials and Services	2,498,125	425,526	425,526	17%	2,502,621	511,149	511,149	20%
<b>Subtotal Operating Expenditures</b>	<b>6,448,123</b>	<b>1,330,681</b>	<b>1,330,681</b>	<b>21%</b>	<b>6,828,639</b>	<b>1,432,696</b>	<b>1,432,696</b>	<b>21%</b>
<b>Non-Operating Expenditures</b>								
Interfund Transfers Out	712,759	178,188	178,188	25%	672,511	168,130	168,130	25%
Contingency	696,561	0	0	0%	273,418	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>1,409,320</b>	<b>178,188</b>	<b>178,188</b>	<b>13%</b>	<b>945,929</b>	<b>168,130</b>	<b>168,130</b>	<b>18%</b>
<b>Subtotal Current Expenditures</b>	<b>\$7,857,443</b>	<b>\$1,508,869</b>	<b>\$1,508,869</b>	<b>19%</b>	<b>\$7,774,568</b>	<b>\$1,600,826</b>	<b>\$1,600,826</b>	<b>21%</b>
<i>Unappropriated Balance</i>	2,514,422		3,043,659		2,356,534		2,334,293	
<b>Total Requirements</b>	<b>\$10,371,865</b>		<b>\$4,552,527</b>		<b>\$10,131,102</b>		<b>\$3,935,119</b>	

## Solid Waste Revenue Fund

The Solid Waste Revenue Fund was established to track revenues and expenditures associated with the collection, recovery, and disposal of waste within the Metro boundary. The Solid Waste and Recycling department manages this fund. The information listed below provides an explanation of the activities in this fund through the first quarter of FY 2004-05.

### Revenues

**Enterprise Revenue** – Enterprise revenue for the first quarter of the 04-05 fiscal year is higher than the prior fiscal year. This increase is due to an increase in tonnage in the first quarter of almost 7 percent and the shift in the rate structure from historical Regional System Fee charges to Disposal Fees.

**Miscellaneous Revenue** – This classification mainly includes pass-through debt service receipts, cash over and short, and fines.

**Interfund Transfers In** – Budgeted Interfund Transfers are for direct costs related to the Rehabilitation and Enhancement Fund. No transfers were made in the first quarter.

### Expenditures

**Personal Services** – These expenditures are as expected at 24 percent of budget.

**Materials and Services** – These expenditures are as expected for the first quarter at 17 percent.

**Capital Outlay (Non CIP)** – Expenditures in this classification are for minor repairs to Solid Waste and Recycling facilities as well as the purchase of equipment for use by the department. Expenditures are as expected.

**Debt Service** – Funds are for the repayment of the bonds sold to finance the construction of the Metro Central Transfer Station and the Riedel Compost Facility.

**Capital Outlay (CIP)** – Capital project expenditures are lower than expected. The emphasis of spending in the first quarter of this fiscal year was on bidding and bid analysis. Over \$1 million of contracts will be executed in the second quarter. The bid for one project, the Latex Paint Facility, came in much higher than expected.

**Interfund Transfers Out** – The planned transfers to central service funds for allocated costs are within expectations for the year.

**Contingency** – No expenditures in the first quarter.

# Solid Waste Revenue Fund

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$30,014,392		\$32,716,644	109%	\$31,239,138		\$34,800,955	111%
<b>Current Revenues</b>								
Grants	0	0	0	0%	0	80,366	80,366	0%
Enterprise Revenue	48,964,852	12,608,930	12,608,930	26%	49,596,153	11,835,694	11,835,694	24%
Earnings on Investments	433,084	212,587	212,587	49%	678,896	157,128	157,128	23%
Other Miscellaneous Revenue	365,000	30,973	30,973	8%	365,000	33,714	33,714	9%
Interfund Transfers In	26,630	0	0	0%	130,023	0	0	0%
<b>Subtotal Current Revenues</b>	<b>49,789,566</b>	<b>12,852,490</b>	<b>12,852,490</b>	<b>26%</b>	<b>50,770,072</b>	<b>12,106,901</b>	<b>12,106,901</b>	<b>24%</b>
<b>Total Resources</b>	<b>\$79,803,958</b>	<b>\$12,852,490</b>	<b>\$45,569,134</b>	<b>57%</b>	<b>\$82,009,210</b>	<b>\$12,106,901</b>	<b>\$46,907,856</b>	<b>57%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	\$8,585,228	\$2,052,977	\$2,052,977	24%	\$8,680,433	\$2,020,945	\$2,020,945	23%
Materials and Services	34,288,136	5,708,227	5,708,227	17%	36,059,674	5,758,226	5,758,226	16%
Capital Outlay Projects (non-CIP)	187,900	27,477	27,477	15%	261,600	44,196	44,196	17%
<b>Subtotal Operating Expenditures</b>	<b>43,061,264</b>	<b>7,788,680</b>	<b>7,788,680</b>	<b>18%</b>	<b>45,001,707</b>	<b>7,823,367</b>	<b>7,823,367</b>	<b>17%</b>
<b>Non-Operating Expenditures</b>								
Debt Service	1,601,412	139,743	139,743	9%	1,861,426	4,052,545	4,052,545	218%
Capital Outlay Projects (CIP)	2,689,000	31,748	31,748	1%	5,010,600	1,302,645	1,302,645	26%
Interfund Transfers Out	4,308,854	1,136,649	1,136,649	26%	4,209,801	1,045,981	1,045,981	25%
Contingency	13,695,368	0	0	0%	10,908,338	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>22,294,634</b>	<b>1,308,140</b>	<b>1,308,140</b>	<b>6%</b>	<b>21,990,165</b>	<b>6,401,171</b>	<b>6,401,171</b>	<b>29%</b>
<b>Subtotal Current Expenditures</b>	<b>\$65,355,898</b>	<b>\$9,096,820</b>	<b>\$9,096,820</b>	<b>14%</b>	<b>\$66,991,872</b>	<b>\$14,224,538</b>	<b>\$14,224,538</b>	<b>21%</b>
<i>Unappropriated Balance</i>	14,448,060		36,472,313		15,017,338		32,683,318	
<b>Total Requirements</b>	<b>\$79,803,958</b>		<b>\$45,569,134</b>		<b>\$82,009,210</b>		<b>\$46,907,856</b>	

## Zoo Operating Fund

The Zoo Operating Fund tracks the revenues and expenditures of the Oregon Zoo. Capital projects at the Zoo are budgeted in the Zoo Capital Fund. The information below provides some detail on the financial activity of this fund through the first quarter of FY 2004-05.

### Revenues

**Real Property Taxes** – Revenues from Metro’s voter-approved permanent rate levy. Historically, around 87 percent of property tax revenues are received in the second quarter.

**Grants** – Grant revenues budgeted in the current fiscal year include \$72,000 from the Institute of Museum and Library Services for the ZAP program and \$5,000 from the Bureau of Land Management.

**Enterprise Revenues** – Revenues received from admissions, catering, concessions, and other enterprise activities. Attendance for the first quarter was 486,214, coming in under budget by 6 percent. Most major revenue categories fell short of budget, though all except Concessions and Railroad improved from the first quarter of the prior year:

	1 <sup>st</sup> Quarter Budget	1 <sup>st</sup> Quarter Actual	% of Budget
Admissions	\$2,428,713	\$2,369,523	97.6%
Concessions	1,450,895	1,349,588	93.0%
Catering	567,302	548,751	96.7%
Railroad	234,975	204,076	86.9%
Retail	780,546	442,755	56.7%
Education	42,020	48,866	116.3%
Other	286,529	286,529	100.0%
<b>Total</b>	<b>\$5,790,980</b>	<b>\$5,250,088</b>	<b>90.7%</b>

Under the Gift Shop management agreement with Aramark, there is a month lag in the recognition of revenues and as a result retail year-to-date only includes two months of sales.

“Other” includes revenue from the Simulator and Birds of Prey show. Also included with other is revenue from Reimbursed Services and Rentals, both associated with catering operations.

**Donations** – Donations are at 27% of budget. This includes three months of regular OZF support at \$40,000 per month. In last year’s budget, the net revenue from the Simulator was included as a donation. This year, Simulator revenue is being recorded as enterprise revenue.

### Expenditures

**Personal Services** – Personal Services expenditures were 27 percent of budget, slightly higher than the same period last year.

**Materials & Services** – Materials and Services are at 28% of budget for the first quarter, significantly higher than the same period last year. First quarter spending for this year includes \$293,000 in Operations Contracts expenditures for the Aramark contract. In the previous year these expenditures were not recorded until the second quarter. This year’s summer concert series had fewer shows in June and more shows in July and August resulting in higher spending for contracted professional services in the first quarter.

**Capital Outlay** – The budget includes \$85,700 for various capital maintenance projects. All CIP projects are budgeted in the Zoo Capital Fund.

**Interfund Transfers Out** – This category represents transfers for central services, risk management for liability and workers compensation, and transfers to the General Revenue Bond Fund for debt service. Included in the first quarter is a semi-annual debt service transfer of \$260,000. In previous years, debt service payments were made annually in the second quarter. As a result, transfers year-to-date appear higher than last year.

## Zoo Operating Fund

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$6,005,062		\$6,303,382	105%	\$5,202,233		\$5,902,062	113%
<b>Current Revenues</b>								
Real Property Taxes	8,933,904	31,925	31,925	0%	8,822,490	37,639	37,639	0%
Grants	77,000	5,000	5,000	6%	0	14,063	14,063	0%
Enterprise Revenue	13,975,534	5,250,088	5,250,088	38%	13,114,025	4,603,864	4,603,864	35%
Earnings on Investments	90,076	46,479	46,479	52%	104,045	38,188	38,188	37%
Contributions and Donations	912,500	243,966	243,966	27%	1,232,000	260,329	260,329	21%
Other Miscellaneous Revenue	49,907	18,903	18,903	38%	29,756	7,242	7,242	24%
<b>Subtotal Current Revenues</b>	<b>24,038,921</b>	<b>5,596,362</b>	<b>5,596,362</b>	<b>23%</b>	<b>23,302,316</b>	<b>4,961,323</b>	<b>4,961,323</b>	<b>21%</b>
<b>Total Resources</b>	<b>\$30,043,983</b>	<b>\$5,596,362</b>	<b>\$11,899,744</b>	<b>40%</b>	<b>\$28,504,549</b>	<b>\$4,961,323</b>	<b>\$10,863,386</b>	<b>38%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	\$12,313,752	\$3,378,287	\$3,378,287	27%	\$13,032,647	\$3,408,875	\$3,408,875	26%
Materials and Services	8,341,475	2,314,278	2,314,278	28%	7,602,026	1,854,189	1,854,189	24%
Capital Outlay Projects (non-CIP)	85,700	81	81	0%	268,600	12,337	12,337	5%
<b>Subtotal Operating Expenditures</b>	<b>20,740,927</b>	<b>5,692,645</b>	<b>5,692,645</b>	<b>27%</b>	<b>20,903,273</b>	<b>5,275,401</b>	<b>5,275,401</b>	<b>25%</b>
<b>Non-Operating Expenditures</b>								
Capital Outlay Projects (CIP)	0	330	330	0%	0	0	0	0%
Interfund Transfers Out	2,790,366	852,515	852,515	31%	2,600,295	541,243	541,243	21%
Contingency	2,030,595	0	0	0%	749,744	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>4,820,961</b>	<b>852,845</b>	<b>852,845</b>	<b>18%</b>	<b>3,350,039</b>	<b>541,243</b>	<b>541,243</b>	<b>16%</b>
<b>Subtotal Current Expenditures</b>	<b>\$25,561,888</b>	<b>\$6,545,490</b>	<b>\$6,545,490</b>	<b>26%</b>	<b>\$24,253,312</b>	<b>\$5,816,644</b>	<b>\$5,816,644</b>	<b>24%</b>
<i>Unappropriated Balance</i>	4,482,095		5,354,253		4,251,237		5,046,742	
<b>Total Requirements</b>	<b>\$30,043,983</b>		<b>\$11,899,744</b>		<b>\$28,504,549</b>		<b>\$10,863,386</b>	

## **Building Management Fund**

The Building Management Fund was established to track the revenues and expenditures related to the operations of the Metro Regional Center and attached parking structure. This fund is an internal service fund and as such receives transfers from other portions of the agency as its primary revenue source. The information listed below provides an explanation of the activities in this fund through the first quarter, FY 2004-05.

### **Revenues**

**Enterprise Revenues** – These revenues are received from parking fees and rental income. Through the end of November 2003, the parking structure at the Metro Regional Center had been managed by MERC. Under the agreement, MERC collected all of the parking fees and paid rent monthly to Metro. Under the current agreement, Metro receives all of the parking revenues and pays MERC to administer a contract for third party management of the parking structure. While rental income received in the first quarter was at 25 twenty-five percent of budget, parking revenues were only at twenty percent. Under the parking structure management agreement there is a lag in the recognition of revenues. Revenue for the first quarter will be higher once September parking revenues have been fully reconciled and recorded.

**Interfund Transfers In** – This category includes indirect transfers for operations and debt service related to the Metro Regional Center. Transfers are made semi-annually for debt service and monthly for operations.

### **Expenditures**

**Personal Services** – Expenditures are as anticipated through the end of the first quarter.

**Materials and Services** – Expenditures in this category provide for operations of Metro Regional Center and include utilities, repairs and cleaning services. First quarter expenditures also include fees for management of the parking structure that were not included in FY 2003-04.

**Capital Outlay** – This classification includes appropriations for minor repair and remodeling for Metro Regional Center and acquisition of building maintenance equipment. None of this money was needed in the first quarter.

**Interfund Transfers Out** – These transfers are made to the General Revenue Bond Fund to cover the debt service requirements for the Metro Regional Center and attached parking structure. The first quarter included one transfer to cover the September principal and interest payment. In October 2003, this debt was refinanced with Full Faith & Credit refunding bonds. Because of the refinancing, there were no transfers to the General Revenue Bond fund made in the first quarter of FY 2003-04.

# Building Management Fund

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$1,659,770		\$1,684,394	101%	\$1,541,439		\$1,570,356	102%
<b>Current Revenues</b>								
Enterprise Revenue	526,834	108,689	108,689	21%	562,556	154,827	154,827	28%
Earnings on Investments	25,000	13,152	13,152	53%	30,000	10,856	10,856	36%
Other Miscellaneous Revenue	0	10	10	0%	0	9	9	0%
Interfund Transfers In	2,119,904	1,311,817	1,311,817	62%	2,209,499	995,263	995,263	45%
<b>Subtotal Current Revenues</b>	<b>2,671,738</b>	<b>1,433,669</b>	<b>1,433,669</b>	<b>54%</b>	<b>2,802,055</b>	<b>1,160,955</b>	<b>1,160,955</b>	<b>41%</b>
<b>Total Resources</b>	<b>\$4,331,508</b>	<b>\$1,433,669</b>	<b>\$3,118,063</b>	<b>72%</b>	<b>\$4,343,494</b>	<b>\$1,160,955</b>	<b>\$2,731,311</b>	<b>63%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	\$311,440	\$68,628	\$68,628	22%	\$306,549	\$68,389	\$68,389	22%
Materials and Services	672,345	126,448	126,448	19%	596,510	91,540	91,540	15%
Capital Outlay	15,000	0	0	0%	15,000	0	0	0%
<b>Subtotal Operating Expenditures</b>	<b>998,785</b>	<b>195,076</b>	<b>195,076</b>	<b>20%</b>	<b>918,059</b>	<b>159,929</b>	<b>159,929</b>	<b>17%</b>
<b>Non-Operating Expenditures</b>								
Interfund Transfers Out	1,607,314	1,166,732	1,166,732	73%	1,755,696	0	0	0%
Contingency	66,259	0	0	0%	40,000	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>1,673,573</b>	<b>1,166,732</b>	<b>1,166,732</b>	<b>70%</b>	<b>1,795,696</b>	<b>0</b>	<b>0</b>	<b>0%</b>
<b>Subtotal Current Expenditures</b>	<b>\$2,672,358</b>	<b>\$1,361,808</b>	<b>\$1,361,808</b>	<b>51%</b>	<b>\$2,713,755</b>	<b>\$159,929</b>	<b>\$159,929</b>	<b>6%</b>
<i>Unappropriated Balance</i>	1,659,150		1,756,255		1,629,739		2,571,382	
<b>Total Requirements</b>	<b>\$4,331,508</b>		<b>\$3,118,063</b>		<b>\$4,343,494</b>		<b>\$2,731,311</b>	

## **Risk Management Fund**

The Risk Management Fund was established to track the revenues and expenditures of insurance related activities at Metro. This fund is an internal service fund and as such receives transfers from other portions of the agency as its primary revenue source. The information listed below provides an explanation of the activities through the first quarter FY 2004-05.

### **Revenues**

**Grants** – The \$10,000 grant budgeted for this fund is from the State of Oregon to assist with certain Worker’s Compensation claims for injured employees. No grant funds were requested in the first quarter.

**Enterprise Revenues** – Payments from departments for unemployment and health and welfare insurance. Departments pay these charges as a part of the fringe benefits paid per employee.

**Interfund Transfers In** – Interfund transfers include costs associated with the liability, property and workers compensation programs that are allocated through the cost allocation plan. Transfers are made on a quarterly basis.

### **Expenditures**

**Personal Services** – The expenditures in this classification are for the staff that administers the Risk Management programs. Personal Services, as a percentage of budget, appear high for the first quarter. This is primarily due to unexpected legal work being performed by Metro Attorney’s Office staff and being charging directly to the fund. Beginning in FY 2004-05, staff administering the benefits program were moved to the Human Resource Department and charged through the cost allocation plan rather than to the Risk Management Fund. Overall personal services expenditures are lower than the previous year as a result.

**Materials and Services** – Included in this classification are the payments of insurance premiums and other costs associated with the Risk Management functions of the agency overall. Major expenses through the first quarter included the purchase of liquor liability and property insurance, premium payments for the health and welfare program, workers compensation, and liability and property programs. Expenses are as expected through the end of the first quarter.

## Risk Management Fund

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$5,596,030		\$5,390,399	96%	\$6,442,134		\$6,018,564	93%
<b>Current Revenues</b>								
Grants	10,000	0	0	0%	10,000	0	0	0%
Enterprise Revenue	5,901,190	1,019,982	1,019,982	17%	5,312,168	328,705	328,705	6%
Earnings on Investments	100,912	52,184	52,184	52%	140,000	43,411	43,411	31%
Other Miscellaneous Revenue	0	1,345	1,345	0%	0	0	0	0%
Interfund Transfers In	1,352,998	332,007	332,007	25%	1,000,000	250,004	250,004	25%
<b>Subtotal Current Revenues</b>	<b>7,365,100</b>	<b>1,405,518</b>	<b>1,405,518</b>	<b>19%</b>	<b>6,462,168</b>	<b>622,120</b>	<b>622,120</b>	<b>10%</b>
<b>Total Resources</b>	<b>\$12,961,130</b>	<b>\$1,405,518</b>	<b>\$6,795,917</b>	<b>52%</b>	<b>\$12,904,302</b>	<b>\$622,120</b>	<b>\$6,640,685</b>	<b>51%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	\$127,500	\$33,198	\$33,198	26%	\$303,521	\$83,490	\$83,490	28%
Materials and Services	8,038,881	1,637,765	1,637,765	20%	7,318,836	869,445	869,445	12%
<b>Subtotal Operating Expenditures</b>	<b>8,166,381</b>	<b>1,670,962</b>	<b>1,670,962</b>	<b>20%</b>	<b>7,622,357</b>	<b>952,935</b>	<b>952,935</b>	<b>13%</b>
<b>Non-Operating Expenditures</b>								
Contingency	534,547	0	0	0%	500,000	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>534,547</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>500,000</b>	<b>0</b>	<b>0</b>	<b>0%</b>
<b>Subtotal Current Expenditures</b>	<b>\$8,700,928</b>	<b>\$1,670,962</b>	<b>\$1,670,962</b>	<b>19%</b>	<b>\$8,122,357</b>	<b>\$952,935</b>	<b>\$952,935</b>	<b>12%</b>
<i>Unappropriated Balance</i>	4,260,202		5,124,954		4,781,945		5,687,750	
<b>Total Requirements</b>	<b>\$12,961,130</b>		<b>\$6,795,917</b>		<b>\$12,904,302</b>		<b>\$6,640,685</b>	

## Support Services Fund

The Support Services Fund is an internal service fund established to track the revenues and expenditures of the departments and programs that provide services to the entire agency. As an internal service fund, transfers from other funds, as determined through the cost allocation plan, support the activities in this fund. The information outlined below provides an explanation of the activities in this fund through the first quarter FY 2004-05.

### Revenues

**Enterprise Revenue** – This revenue is received from the Contractors Business License program. Revenues for this program are at 20 percent of budget through the end of the first quarter.

**Interfund Transfers In** – Transfers from other funds to support the activities in this fund. The total amount, as determined through the cost allocation plan and transfers are made on a monthly basis.

### Expenditures

**Finance and Administrative Services** – This department includes the Accounting, Financial Planning, Risk Management, Contract Services, Property Services and Information Technology divisions. Expenditures for this department are as expected through the first quarter.

**Finance and Administrative Services – Information Technology Division** – This division manages Information Technology services throughout Metro. While expenses through the first quarter appear high as a percentage of budget, the majority of service agreements for the agency are paid in the first quarter. Personal services costs through September are in line at 23 percent of budget while materials and services expenses are considerably greater at 52 percent. Overall, IT expenses are as expected through the first quarter.

**Human Resources** – This department provides human resource services for the entire agency. Expenditures for this department were as expected through the end of the first quarter.

**Public Affairs – Creative Services** – This division of the Public Affairs department provides communications products and tools to the agency. Expenditures were as expected through the end of the first quarter.

**Office of the Metro Attorney** – This department provides legal counsel to the Metro Council and all departments within the agency. Expenditures in this department were as expected through the end of the first quarter.

**Office of the Auditor** – This office provides auditing services to the agency. Expenditures in this department were as expected through the end of the first quarter.

**Capital Outlay (CIP)** – Capital expenditures budgeted in this fund include \$36,000 in the Property Services division for the purchase of two new satellite copiers and \$139,000 in the IT division for upgrades to network infrastructure and server management. All of the \$32,132 spent in the first quarter was for satellite copier purchases.

**Interfund Transfers Out** – These include transfers for indirect costs as allocated through the cost allocation plan for the Support Services departments' use of Building Management and Risk Management services.

# Support Services Fund

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$1,050,873		\$1,147,517	109%	\$678,272		\$772,198	114%
<b>Current Revenues</b>								
Enterprise Revenue	418,868	83,053	83,053	20%	432,000	89,595	89,595	21%
Earnings on Investments	3,500	14,837	14,837	424%	12,960	11,544	11,544	89%
Other Miscellaneous Revenue	0	2,175	2,175	0%	0	4,250	4,250	0%
Interfund Transfers In	9,679,671	2,419,926	2,419,926	25%	9,687,849	2,367,195	2,367,195	24%
<b>Subtotal Current Revenues</b>	<b>10,102,039</b>	<b>2,519,990</b>	<b>2,519,990</b>	<b>25%</b>	<b>10,132,809</b>	<b>2,472,585</b>	<b>2,472,585</b>	<b>24%</b>
<b>Total Resources</b>	<b>\$11,152,912</b>	<b>\$2,519,990</b>	<b>\$3,667,508</b>	<b>33%</b>	<b>\$10,811,081</b>	<b>\$2,472,585</b>	<b>\$3,244,783</b>	<b>30%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Finance and Administrative Services	\$3,445,949	\$674,355	\$674,355	20%	\$3,683,245	\$736,343	\$736,343	20%
Finance and Administrative Services - IT	2,187,235	634,211	634,211	29%	2,186,329	631,578	631,578	29%
Human Resources	1,077,057	192,035	192,035	18%	953,682	178,152	178,152	19%
Public Affairs - Creative Services	541,122	122,870	122,870	23%	538,375	126,878	126,878	24%
Office of the Metro Attorney	1,083,292	254,786	254,786	24%	1,153,083	243,999	243,999	21%
Office of the Auditor	645,956	106,891	106,891	17%	654,940	122,872	122,872	19%
<b>Subtotal Operating Expenditures</b>	<b>8,980,611</b>	<b>1,985,148</b>	<b>1,985,148</b>	<b>22%</b>	<b>9,169,654</b>	<b>2,039,823</b>	<b>2,039,823</b>	<b>22%</b>
<b>Non-Operating Expenditures</b>								
Debt Service	0	0	0	0%	34,620	812	812	2%
Capital Outlay Projects (CIP)	175,000	32,132	32,132	18%	280,000	87,729	87,729	31%
Interfund Transfers Out	705,540	413,933	413,933	59%	756,557	314,999	314,999	42%
Contingency	1,052,261	0	0	0%	418,276	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>1,932,801</b>	<b>446,065</b>	<b>446,065</b>	<b>23%</b>	<b>1,489,453</b>	<b>403,539</b>	<b>403,539</b>	<b>27%</b>
<b>Subtotal Current Expenditures</b>	<b>\$10,913,412</b>	<b>\$2,431,214</b>	<b>\$2,431,214</b>	<b>22%</b>	<b>\$10,659,107</b>	<b>\$2,443,362</b>	<b>\$2,443,362</b>	<b>23%</b>
<i>Unappropriated Balance</i>	239,500		1,236,294		151,974		801,421	
<b>Total Requirements</b>	<b>\$11,152,912</b>		<b>\$3,667,508</b>		<b>\$10,811,081</b>		<b>\$3,244,783</b>	

## **CAPITAL FUNDS**

## **Capital Funds**

There are five capital funds included in this section: the Regional Parks Capital Fund, the Open Spaces Fund, the Zoo Capital Fund, the Convention Center Project Capital Fund and the MERC Pooled Capital Fund. Each of these funds was established to track the revenues and expenditures related to major capital projects or capital improvements at Metro facilities.

- Regional Parks Capital Fund – Parks capital projects
- Open Spaces Fund – open spaces land purchases
- Zoo Capital Fund – Great Northwest Project, as well as other Zoo capital projects
- Convention Center Capital Fund – original construction of OCC and the expansion project
- MERC Pooled Capital Fund – major capital renewal and replacement needs for all the MERC facilities

## Regional Parks Capital Fund

The Regional Parks Capital Fund was established in FY 2004-05 to account for all major capital development projects as well as renewal and replacement of the extensive regional park infrastructure. The information outlined below provides an explanation of the activities of the fund through the first quarter of FY 2004-05.

### Revenues

**Grants** – The budget anticipates the receipt of approximately \$634,000 in grant funding for various projects. Significant grant funded projects include \$300,000 for M. James Gleason Boat Ramp Renovation Phase I and approximately \$334,000 for the Gales Creek/Tualatin River Confluence Restoration Project. Grants are received on a reimbursement basis. Grant billings based on first quarter expenditures will be recorded in the second quarter.

**Donations** – The budget anticipates the receipt of about \$34,000 in donations related to the Gales Creek/Tualatin River Confluence Restoration Project. No donations have been received to date.

**Interfund Transfer In** – This category represents transfers from two primary categories – excise taxes levied in support of development of four open space sites to accessible natural areas and transfers from other funds of funding dedicated to specific projects (i.e. the Multnomah County local share funding transferred from the Open Spaces Fund). Transfers are made as requested.

### Expenditures

**Materials and Services** – This category represents the amount budgeted for renewal and replacement projects during FY 2004-05. Through the first quarter, approximately \$88,000 has been spent on the Glendoveer Fence replacement project.

**Capital Outlay (CIP)** – Significant capital projects anticipated in FY 2004-05 include \$300,000 for M. James Gleason Boat Ramp Renovation Project, \$367,740 for the Gales Creek/Tualatin River Confluence Restoration Project, \$140,000 for a water play area at Blue Lake Park, and \$225,000 to begin design and engineering at two to of the open space sites to be developed into public parks. No capital expenditures have been recorded through the first quarter of FY 2004-05.

# Regional Parks Capital Fund

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$0		\$0	0%	\$0		\$0	0%
<b>Current Revenues</b>								
Grants	633,749	0	0	0%	0	0	0	0%
Earnings on Investments	0	445	445	0%	0	0	0	0%
Donations	33,991	0	0	0%	0	0	0	0%
Interfund Transfers In	1,804,822	170,000	170,000	9%	0	0	0	0%
<b>Subtotal Current Revenues</b>	<b>2,472,562</b>	<b>170,445</b>	<b>170,445</b>	<b>7%</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0%</b>
<b>Total Resources</b>	<b>\$2,472,562</b>	<b>\$170,445</b>	<b>\$170,445</b>	<b>7%</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>0%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Materials and Services	620,000	88,439	88,439	14%	0	0	0	0%
<b>Subtotal Operating Expenditures</b>	<b>620,000</b>	<b>88,439</b>	<b>88,439</b>	<b>14%</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0%</b>
<b>Non-Operating Expenditures</b>								
Capital Outlay Projects (CIP)	1,087,740	0	0	0%	0	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>1,087,740</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0%</b>
<b>Subtotal Current Expenditures</b>	<b>\$1,707,740</b>	<b>\$88,439</b>	<b>\$88,439</b>	<b>5%</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>0%</b>
<i>Unappropriated Balance</i>	764,822		82,006		0		0	
<b>Total Requirements</b>	<b>\$2,472,562</b>		<b>\$170,445</b>		<b>\$0</b>		<b>\$0</b>	

## Open Spaces Fund

This fund is used to account for bond proceeds and expenditures related to the open spaces, parks and streams bonds. The information outlined below provides an explanation of the activities in this fund through the first quarter of FY 2004-05.

### Revenues

**Grants** – The budget represents anticipated contributions from the National Fish & Wildlife Foundation for stabilization projects on Open Spaces properties. No grant revenues have been received during the first quarter.

**Enterprise Revenue** – This represents revenue received from other jurisdictions for providing real estate services. The department currently has contracts with several local jurisdictions. Revenue generated from the contracts funds the salary of one real estate negotiator.

**Interest Earnings** – The interest earned on the remaining bond proceeds provides a portion of the resources that support the open spaces program.

### Expenditures

**Personal Services** – Expenditures in this classification are for the staffing that is required for the open space acquisition services, including the due diligence staff. Expenditures are as anticipated through the first quarter.

**Materials and Services** – The major expenditures in this classification, payments of local share funds to local jurisdictions, are paid as requests are received for reimbursement. At the end of FY 2003-04, approximately \$284,000 in outstanding local share projects remained (not including Multnomah County local share managed by Metro). Other major projects are related to stabilization activities on purchased properties.

**Capital Outlay (CIP)** – Expenditures are for the purchase of land. Actual expenditures are subject to negotiations with landowners.

**Interfund Transfers Out** – Transfers out of the Open Spaces Fund include expenditures for Multnomah County local share projects and for central services. Local share transfers are made quarterly as expenses are incurred. Central service transfers are made monthly, quarterly, or semi-annually depending on type.

# Open Spaces Fund

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$6,678,356		\$5,595,102	84%	\$10,851,057		\$9,415,427	87%
<b>Current Revenues</b>								
Grants	200,000	0	0	0%	200,000	0	0	0%
Enterprise Revenue	55,000	16,734	16,734	30%	0	4,566	4,566	0%
Earnings on Investments	91,600	32,695	32,695	36%	85,000	10,511	10,511	12%
Donations	0	5,000	5,000	0%	0	0	0	0%
Interfund Transfers In	0	0	0	0%	0	4,657	4,657	0%
<b>Subtotal Current Revenues</b>	<b>346,600</b>	<b>54,429</b>	<b>54,429</b>	<b>16%</b>	<b>285,000</b>	<b>19,735</b>	<b>19,735</b>	<b>7%</b>
<b>Total Resources</b>	<b>\$7,024,956</b>	<b>\$54,429</b>	<b>\$5,649,531</b>	<b>80%</b>	<b>\$11,136,057</b>	<b>\$19,735</b>	<b>\$9,435,162</b>	<b>85%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	\$494,137	\$113,854	\$113,854	23%	\$520,617	\$125,904	\$125,904	24%
Materials and Services	1,270,395	64,569	64,569	5%	2,112,643	95,202	95,202	5%
<b>Subtotal Operating Expenditures</b>	<b>1,764,532</b>	<b>178,423</b>	<b>178,423</b>	<b>10%</b>	<b>2,633,260</b>	<b>221,106</b>	<b>221,106</b>	<b>8%</b>
<b>Non-Operating Expenditures</b>								
Capital Outlay Projects (CIP)	3,096,940	228,252	228,252	7%	5,137,300	59,668	59,668	1%
Interfund Transfers Out	608,749	87,860	87,860	14%	1,009,078	85,738	85,738	8%
Contingency	174,735	0	0	0%	250,000	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>3,880,424</b>	<b>316,112</b>	<b>316,112</b>	<b>8%</b>	<b>6,396,378</b>	<b>145,406</b>	<b>145,406</b>	<b>2%</b>
<b>Subtotal Current Expenditures</b>	<b>\$5,644,956</b>	<b>\$494,535</b>	<b>\$494,535</b>	<b>9%</b>	<b>\$9,029,638</b>	<b>\$366,512</b>	<b>\$366,512</b>	<b>4%</b>
<i>Unappropriated Balance</i>	1,380,000		5,154,996		2,106,419		9,068,650	
<b>Total Requirements</b>	<b>\$7,024,956</b>		<b>\$5,649,531</b>		<b>\$11,136,057</b>		<b>\$9,435,162</b>	

## **Zoo Capital Fund**

This fund is used to account for expenditures related to capital projects at the Oregon Zoo. The information outlined below provides an explanation of the activities in this fund through the first quarter FY 2004-05.

### **Revenues**

**Contributions and Donations** – Major Contributions and Donations in the first quarter included a \$38,500 contribution from Coca-Cola going toward the completion of the Great Northwest project and over \$21,000 in donations to fund the Condor Creek Conservation Facility.

### **Expenditures**

**Personal Services** – Personal Services spending in the first quarter was for the salary of the Capital Projects Designer.

**Capital Outlay (CIP)** – First quarter capital spending was primarily for completion of the final tasks on the Family Farm and Eagle Salmon exhibits.

## Zoo Capital Fund

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$3,698,288		\$4,640,828	125%	\$6,110,661		\$6,407,568	105%
<b>Current Revenues</b>								
Grants	0	0	0	0%	0	120,000	120,000	0%
Earnings on Investments	55,474	33,046	33,046	60%	122,213	38,773	38,773	32%
Contributions and Donations	1,100,000	62,460	62,460	6%	2,000,000	20,505	20,505	1%
<b>Subtotal Current Revenues</b>	<b>1,155,474</b>	<b>95,506</b>	<b>95,506</b>	<b>8%</b>	<b>2,122,213</b>	<b>179,278</b>	<b>179,278</b>	<b>8%</b>
<b>Total Resources</b>	<b>\$4,853,762</b>	<b>\$95,506</b>	<b>\$4,736,334</b>	<b>98%</b>	<b>\$8,232,874</b>	<b>\$179,278</b>	<b>\$6,586,846</b>	<b>80%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	\$71,083	\$11,151	\$11,151	16%	\$96,819	\$48,380	\$48,380	50%
Materials and Services	0	0	0	0%	0	0	0	0%
<b>Subtotal Operating Expenditures</b>	<b>71,083</b>	<b>11,151</b>	<b>11,151</b>	<b>16%</b>	<b>96,819</b>	<b>48,380</b>	<b>48,380</b>	<b>50%</b>
<b>Non-Operating Expenditures</b>								
Capital Outlay Projects (CIP)	3,000,000	79,666	79,666	3%	4,742,862	496,737	496,737	10%
Contingency	505,648	0	0	0%	500,000	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>3,505,648</b>	<b>79,666</b>	<b>79,666</b>	<b>2%</b>	<b>5,242,862</b>	<b>496,737</b>	<b>496,737</b>	<b>9%</b>
<b>Subtotal Current Expenditures</b>	<b>\$3,576,731</b>	<b>\$90,817</b>	<b>\$90,817</b>	<b>3%</b>	<b>\$5,339,681</b>	<b>\$545,117</b>	<b>\$545,117</b>	<b>10%</b>
<i>Unappropriated Balance</i>	1,277,031		4,645,518		2,893,193		6,041,729	
<b>Total Requirements</b>	<b>\$4,853,762</b>		<b>\$4,736,334</b>		<b>\$8,232,874</b>		<b>\$6,586,846</b>	

### **Convention Center Project Capital Fund**

This fund is used to account for revenues and expenditures related to the expansion of the Oregon Convention Center. The information outlined below provides an explanation of the activities in this fund through the second close of the first quarter FY 2004-05. This project finished on schedule and opened April 2003 and the fund will be closed as soon as the audit is complete.

#### **Revenues**

***Interest Earnings*** – The interest earned on the revenue received from various sources.

#### **Expenditures**

***Interfund Transfers Out*** – A budget of \$385,000 was created to allow this fund to close at the beginning of FY 2004-05. As soon as the audit is complete all funds will be transferred to the MERC Pooled Capital Fund and devoted to any residual claims from the Convention Center expansion.

## Convention Center Project Capital Fund

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$385,000		\$275,496	72%	\$1,564,870		\$1,939,119	124%
<b>Current Revenues</b>								
Earnings on Investments	0	1,984	1,984	0%	130	19,273	19,273	14826%
Interfund Transfers In	0	0	0	0%	260,000	0	0	0%
<b>Subtotal Current Revenues</b>	<b>0</b>	<b>1,984</b>	<b>1,984</b>	<b>0%</b>	<b>260,130</b>	<b>19,273</b>	<b>19,273</b>	<b>7%</b>
<b>Total Resources</b>	<b>\$385,000</b>	<b>\$1,984</b>	<b>\$277,480</b>	<b>72%</b>	<b>\$1,825,000</b>	<b>\$19,273</b>	<b>\$1,958,393</b>	<b>107%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	\$0	\$0	\$0	0%	\$116,300	\$72,815	\$72,815	63%
Materials and Services	0	0	0	0%	2,300	290	290	13%
<b>Subtotal Operating Expenditures</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>118,600</b>	<b>73,106</b>	<b>73,106</b>	<b>62%</b>
<b>Non-Operating Expenditures</b>								
Interfund Transfers Out	385,000	0	0	0%	0	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>385,000</b>	<b>0</b>	<b>0</b>	<b>0%</b>	<b>1,706,400</b>	<b>348,196</b>	<b>348,196</b>	<b>20%</b>
<b>Subtotal Current Expenditures</b>	<b>\$385,000</b>	<b>\$0</b>	<b>\$0</b>	<b>0%</b>	<b>\$1,825,000</b>	<b>\$421,301</b>	<b>\$421,301</b>	<b>23%</b>
<i>Unappropriated Balance</i>	0		277,480		0		1,537,091	
<b>Total Requirements</b>	<b>\$385,000</b>		<b>\$277,480</b>		<b>\$1,825,000</b>		<b>\$1,958,393</b>	

## MERC Pooled Capital Fund

This fund is used as a reserve fund for future major capital renewal and replacement needs for all the MERC facilities. The MERC Pooled Capital Fund budgets and accounts for those projects authorized and funded through MERC's capital planning process that identifies the mission, direction, and future facility needs of all MERC facilities. The information outlined below provides an explanation of the activities in this fund through the first quarter of FY 2004-05.

### Revenues

**Contributions from Other Governments** – The revenues in this classification consist of contributions from the City of Portland to support the capital needs of PCPA.

**Interest Earnings** – The interest earned on fund balance.

**Interfund Transfers In** – These are transfers from the three MERC facilities to cover planned capital improvements.

### Expenditures

**Personal Services** – Expenditures in this classification are for staffing required to manage the capital projects. Expenses in this category are 20% of budget, about what is expected.

**Materials and Services** – These expenditures represent the renewal and replacement projects that are not classified as capital outlay.

**Capital Outlay (non-CIP)** – These are small projects the facilities will complete during the year. No expenditures have been made as of the first quarter.

**Capital Outlay (CIP)** –MERC has budgeted a variety of projects for its facilities in this fiscal year's CIP. About \$1.2 million is for renewal and replacement and upgrade projects for PCPA facilities. OCC budgeted for three projects in the CIP. OCC has completed the Video Signage System. Expo has two projects in the adopted CIP. The \$750,000 electrical project was cancelled and a small amount was spent on Parking Lot Maintenance.

# MERC Pooled Capital Fund

As of September 30, 2004

	Adopted Budget 2004-05	Actuals Qtr 1 2004-05	Actuals YTD 2004-05	YTD as % Budget 2004-05	Amended Budget 2003-04	Actuals Qtr 1 2003-04	Actuals YTD 2003-04	YTD as % Budget 2003-04
<b>Resources</b>								
<i>Beginning Fund Balance</i>	\$4,714,622		\$3,510,684	74%	\$2,017,297		\$4,479,447	222%
<b>Current Revenues</b>								
Charges for Service	88,000	0	0	0%	0	0	0	0%
Contributions from Governments	321,484	0	0	0%	3,208,931	0	0	0%
Earnings on Investments	67,779	23,438	23,438	35%	98,220	26,241	26,241	27%
Donations	627,775	0	0	0%	527,520	0	0	0%
Interfund Transfers In	681,106	0	0	0%	253,580	0	0	0%
<b>Subtotal Current Revenues</b>	<b>1,786,144</b>	<b>23,438</b>	<b>23,438</b>	<b>1%</b>	<b>4,088,251</b>	<b>26,241</b>	<b>26,241</b>	<b>1%</b>
<b>Total Resources</b>	<b>\$6,500,766</b>	<b>\$23,438</b>	<b>\$3,534,122</b>	<b>54%</b>	<b>\$6,105,548</b>	<b>\$26,241</b>	<b>\$4,505,688</b>	<b>74%</b>
<b>Requirements</b>								
<b>Operating Expenditures</b>								
Personal Services	\$406,287	\$79,328	\$79,328	20%	\$493,048	\$85,296	\$85,296	17%
Materials and Services	10,000	0	0	0%	35,000	7	7	0%
Capital Outlay Projects (non-CIP)	355,600	0	0	0%	449,580	12,599	12,599	3%
<b>Subtotal Operating Expenditures</b>	<b>771,887</b>	<b>79,328</b>	<b>79,328</b>	<b>10%</b>	<b>977,628</b>	<b>97,902</b>	<b>97,902</b>	<b>10%</b>
<b>Non-Operating Expenditures</b>								
Capital Outlay Projects (CIP)	2,786,750	222,241	222,241	8%	1,940,000	230,339	230,339	12%
Interfund Transfers Out	354,000	0	0	0%	0	0	0	0%
Contingency	537,581	0	0	0%	750,000	0	0	0%
<b>Subtotal Non-Operating Expenditures</b>	<b>3,678,331</b>	<b>222,241</b>	<b>222,241</b>	<b>6%</b>	<b>2,690,000</b>	<b>230,339</b>	<b>230,339</b>	<b>9%</b>
<b>Subtotal Current Expenditures</b>	<b>\$4,450,218</b>	<b>\$301,569</b>	<b>\$301,569</b>	<b>7%</b>	<b>\$3,667,628</b>	<b>\$328,240</b>	<b>\$328,240</b>	<b>9%</b>
<i>Unappropriated Balance</i>	2,050,548		3,232,553		2,437,920		4,177,448	
<b>Total Requirements</b>	<b>\$6,500,766</b>		<b>\$3,534,122</b>		<b>\$6,105,548</b>		<b>\$4,505,688</b>	

## **EXCISE TAX**

## Excise Tax Overview

Metro's excise tax is received from users of Metro facilities and services in accordance with the Metro Charter and Metro Code. The tax is recorded as revenue in the General Fund. This tax supports the general government activities of Metro, and also supports activities in the Planning and Regional Parks Departments. In FY 2004-05 it also began supporting the Oregon Convention Center to increase its competitiveness in the tourism market. The FY 2004-05 budget was adopted assuming an excise tax rate of 7.5 percent on all authorized revenues with the exception of the solid waste revenues, which are calculated on a per ton rate. For the first two months of FY 2004-05 the per ton rate was \$6.61. This rate included about \$1.03 per ton dedication to Regional Parks. On September 1, 2004 the rate increased to \$8.58 providing an additional \$1.50 per ton for Regional Parks and resetting the \$1.03 to \$1.00 as well as providing \$.50 per ton for a dedicated piece of General Fund Contingency to support competitiveness at the Oregon Convention Center by creating the Tourism Opportunity & Competitiveness Account.

Excise tax receipts exceeded budget for the first quarter of this fiscal year. The increase, however, was from Solid Waste, and expenditure of excise taxes derived from solid waste activities is limited by Code and certain amounts of the per ton increase are dedicated. First quarter projections indicate there will be a shortfall in unrestricted excise tax of \$68,144. This shortfall is the result of lower than projected revenues for The Oregon Zoo, Regional Parks and the Expo Center. These are partially offset by better than expected results at the Convention Center.

The table on page 50 is a forecast of the General Fund through the end of the fiscal year. The actual beginning fund balance was about \$625,000 higher than budgeted; \$590,000 of the increase is unrestricted and \$35,000 is restricted to the Solid Waste Recovery Rate Stabilization Reserve. Excise tax revenues are projected to be \$677,154 higher than budget at the end of the fiscal year. However, since about \$745,000 is projected to be generated by Solid Waste increased tonnage there is an actual net shortfall in the Excise Tax available for unrestricted use in the General Fund of about \$68,000.

The net result of the above coupled with full budgeted expenditures and a \$193,000 increase in Excise Tax Transfers to Regional Parks (based on the per ton dedications) is a projected \$1,109,105 increase, above budget, to the Ending Fund Balance: approximately \$520,000 to the unrestricted balance, \$549,000 to the Recovery Rate Stabilization Reserve, \$38,000 to the Tourism Opportunity and Competitiveness Account, and \$2,600 to the PERS Reserve.

## Excise Tax Year-to-Date

### *First Quarter:*

The excise taxes received through the first quarter are higher than budgeted as a result of higher than budgeted Solid Waste receipts. However, projections based on year-to-date actuals indicate excise taxes available for spending are 0.56 percent below budget. Solid Waste and Recycling, Planning, and the Oregon Convention Center generated more tax than budgeted, and all other departments had shortfalls. This projection is very early in the year. Convention Center revenues may not continue at their current pace.

- *Solid Waste and Recycling* – Actual excise tax came in higher than the budget resulting in an expected additional contribution to the General Fund Recovery Rate Stabilization Reserve on an annual basis of about \$514,298 and additional transfers to Regional Parks of \$193,000 and to the Oregon Convention Center Tourism Account of \$38,000.
- *Oregon Zoo* – The excise tax received from Zoo operations through the first quarter is about 8 percent lower than anticipated.
- *Oregon Convention Center* – The Convention Center had a good first quarter exceeding expectations by almost 12 percent.
- *Regional Parks* – The excise tax received through the first quarter is lower than expected due to lower greens fees and parks revenues from poor weather.
- *Expo Center* – The receipts are about 16 percent lower than what was anticipated through the first. This is the Expo Centers seasonally low period.
- *Planning Department* – The excise tax received from the Planning Department is mostly a result of the activities of the Data Resource Center (DRC), which is higher than budgeted.
- *Building Management* – The excise tax receipts from this fund are lower than budgeted.

**Actual Receipts through the First Quarter:** This chart represents actual excise tax receipts through September 30, 2004.

**EXCISE TAX RECEIVED ACTUAL YTD VS PLAN YTD  
As of September 30, 2004**

	<b>YTD Estimate</b>	<b>Actual</b>	<b>Difference</b>	<b>% Difference</b>
SW&R Metro Facilities	1,076,555	1,102,648	26,093	2.42%
SW&R Non Metro Facilities	832,601	848,521	15,920	1.91%
Oregon Zoo	427,149	394,680	(32,469)	-7.60%
Oregon Convention Center	194,161	216,293	22,132	11.40%
Regional Parks	77,203	71,205	(5,998)	-7.77%
Expo Center	50,119	41,875	(8,244)	-16.45%
Planning Fund	1,803	2,229	426	23.64%
Building Management	9,878	8,153	(1,725)	-17.47%
<b>Total YTD</b>	<b>\$ 2,669,469</b>	<b>\$ 2,685,604</b>	<b>\$ 16,135</b>	<b>0.60%</b>

**Revised Annual Forecast  
as of month ending September 30, 2004**

<b>Facility/Function</b>	<b>FY 2004-05 Budget</b>	<b>Revised Annual Forecast</b>	<b>Difference</b>	<b>% Difference</b>
SW&R Metro Facilities	4,011,796	4,109,031	97,235	2.42%
SW&R Non Metro Facilities**	5,455,071	6,103,133	648,062	11.88%
Oregon Zoo	1,048,165	968,490	(79,675)	-7.60%
Oregon Convention Center	893,158	994,968	101,810	11.40%
Regional Parks	194,425	179,321	(15,104)	-7.77%
Expo Center	430,374	359,583	(70,791)	-16.45%
Planning Fund	10,651	13,169	2,518	23.64%
Building Management	39,513	32,612	(6,901)	-17.47%
<b>Total YTD</b>	<b>\$ 12,083,153</b>	<b>\$ 12,760,307</b>	<b>\$ 677,154</b>	<b>5.60%</b>
Recov Rate Stabilization Res	0	514,298	514,298	
Extra to Parks thru Aug		193,000	193,000	
Extra to Tourism Opp & Comp		38,000	38,000	
<b>Net Available Excise Tax</b>	<b>\$ 12,083,153</b>	<b>\$ 12,015,009</b>	<b>\$ (68,144)</b>	<b>-0.56%</b>

\*Based upon Tonnage, not collections.

**GENERAL FUND**  
**through September 30, 2004 - First Quarter with Adjustments**

	Amended Budget	Estimated Actuals	\$ Change from Budget	% Change	
<b><u>RESOURCES</u></b>					
Beginning Fund Balance					
Undesignated Carryover	1,223,246	1,811,051 <sup>(1)</sup>	587,805	48.05%	(1) Beginning fund balance has been adjusted to reflect the final audited FY 2003-04 ending fund balance.
Project Carryover	50,000	50,000 <sup>(2)</sup>	-	0.00%	
Rate Stabilization Reserve	640,749	675,340	34,591	5.40%	
Zoo Project	63,000	63,000	-	0.00%	(2) \$50,000 carried forward for Strategic Planning
Prior Year PERS Reserve	58,550	61,105 <sup>(3)</sup>	2,555	4.36%	(3) Prior year PERs Reserve adjusted to actual.
Total Beginning Fund Balance	<u>2,035,545</u>	<u>2,660,496</u>	<u>624,951</u>	<u>30.70%</u>	
<b>Current Revenues</b>					(4) Projected Excise Tax as of First Quarter. Excise tax generated from solid waste is higher than budget contributing an additional \$745,297 to the fund.
Excise Taxes	12,083,153	12,760,307 <sup>(4)</sup>	677,154	5.60%	Approximately \$231,000 of this amount is dedicated to either the Regional Parks department or the Tourism Opportunity & Competitiveness Account in the form of dedicated per ton transfers. The remaining will be deposited in the General Fund Recovery Rate Stabilization Reserve (RRSR) per Metro Code. Excise tax generated at all other facilities is currently forecasted below budget approximately \$68,000 resulting in a reduction in the undesignated reserve.
Interest	25,000	25,000	-	0.00%	
Transfers In	291,550	291,550	-	0.00%	
<b>Subtotal Current Revenues</b>	<u>12,399,703</u>	<u>13,076,857</u>	<u>677,154</u>	<u>5.46%</u>	
<b>TOTAL RESOURCES</b>	<u><u>14,435,248</u></u>	<u><u>15,737,353</u></u>	<u><u>1,302,105</u></u>	<u><u>9.02%</u></u>	
<b><u>REQUIREMENTS</u></b>					
Operating Expenditures					
Council Office	1,435,201	1,435,201 <sup>(5)</sup>	-	0.00%	(5) Operating Expenditures are as budgeted
Public Affairs Department	665,991	665,991	-	0.00%	
Special Appropriations	265,000	265,000 <sup>(6)</sup>	-	0.00%	(6) Special Appropriations are as budgeted
	<u>2,366,192</u>	<u>2,366,192</u>	<u>-</u>	<u>0.00%</u>	
Non-Op Subtotal Operating Expenditures					
Central Service Transfers	1,031,945	1,031,945 <sup>(7)</sup>	-	0.00%	(7) Central Service Transfers are as budgeted
Excise Tax Transfers	8,510,093	8,703,093 <sup>(8)</sup>	193,000	2.27%	(8) Excise Tax Transfers adjusted for estimated additional transfer to Regional Parks from additional tonnage.
	<u>9,542,038</u>	<u>9,735,038</u>	<u>193,000</u>	<u>2.02%</u>	
<b>Total Expenditures</b>	<u>11,908,230</u>	<u>12,101,230</u>	<u>193,000</u>	<u>1.62%</u>	
<i>Ending Fund Balance (Incl. Budgeted contingency)</i>					
Rate Stabilization Reserve	412,042	960,931 <sup>(9)</sup>	548,889	133.21%	(9) Actual beginning fund balance and projected activity through FY 2004-05.
Undesignated Reserve	1,465,361	1,984,968	519,607	35.46%	
Tourism Opportunity & Competitiveness	504,307	542,361 <sup>(10)</sup>	38,054	7.55%	(10) Estimated increase in per ton Excise Tax dedicated to this account from increased tonnage.
PERS Reserve	145,308	147,863	2,555	1.76%	
<b>TOTAL REQUIREMENTS</b>	<u><u>14,435,248</u></u>	<u><u>15,737,353</u></u>	<u><u>1,302,105</u></u>	<u><u>9.02%</u></u>	

## **SPENDING vs APPROPRIATIONS**

This section provides a comparison of the appropriation level with the actual spending through the end of the first quarter FY 2004-05. The appropriation level is the legal expenditure limit as prescribed in Oregon Budget Law. When expenditures are audited at the end of the fiscal year, compliance with this level of appropriations is one of the primary criteria audited.

**FY 2004-2005**  
**Budget Appropriations vs Expenditures**  
*As of September 30, 2004*

	<u>Adopted Budget</u>	<u>Year to Date Expenditures</u>	<u>% Expended</u>	<u>Balance Remaining</u>
<b>Building Management Fund</b>				
Operating Expenses (PS & M&S)	\$983,785	\$195,076	19.83%	\$788,709
Capital Outlay	15,000	0	0.00%	15,000
Interfund Transfers	1,607,314	1,166,732	72.59%	440,582
Contingency	66,259	0	0.00%	66,259
Unappropriated Balance	1,659,150	0	0.00%	1,659,150
<b>Total Fund Requirements</b>	<b>\$4,331,508</b>	<b>\$1,361,808</b>	<b>31.44%</b>	<b>\$2,969,700</b>
<b>Convention Center Capital Fund</b>				
Interfund Transfers	\$385,000	\$0	0.00%	\$385,000
<b>Total Fund Requirements</b>	<b>\$385,000</b>	<b>\$0</b>	<b>0.00%</b>	<b>\$385,000</b>
<b>General Fund</b>				
Council Office/Public Affairs				
Operating Expenses (PS & M&S)	\$2,101,192	\$436,388	20.77%	\$1,664,804
	2,101,192	436,388	20.77%	1,664,804
Special Appropriations				
Materials & Services	265,000	40,600	15.32%	224,400
	265,000	40,600	15.32%	224,400
General Expenses				
Interfund Transfers	9,542,038	2,510,085	26.31%	7,031,953
Contingency	1,212,615	0	0.00%	1,212,615
	10,754,653	2,510,085	23.34%	8,244,568
Unappropriated Balance	1,314,403	0	0.00%	1,314,403
<b>Total Fund Requirements</b>	<b>\$14,435,248</b>	<b>\$2,987,073</b>	<b>20.69%</b>	<b>\$11,448,175</b>

**FY 2004-2005**  
**Budget Appropriations vs Expenditures**  
*As of September 30, 2004*

	<u>Adopted Budget</u>	<u>Year to Date Expenditures</u>	<u>% Expended</u>	<u>Balance Remaining</u>
<b>General Obligation Debt Service Fund</b>				
Debt Service	\$18,174,887	\$9,805,643	53.95%	8,369,244
Unappropriated Balance	9,814,193	0	0.00%	9,814,193
<b>Total Fund Requirements</b>	<b>\$27,989,080</b>	<b>\$9,805,643</b>	<b>35.03%</b>	<b>\$18,183,437</b>
<b>General Revenue Bond Fund</b>				
Project Account				
Capital Outlay - Washington Park Parking Lot	178,988	0	0.00%	178,988
	178,988	0	0.00%	178,988
Debt Service Account				
Debt Service - Metro Regional Center	1,510,314	1,166,732	77.25%	343,582
Debt Service - Expo Center Hall D	1,208,508	0	0.00%	1,208,508
Debt Service - Washington Park Parking Lot	420,242	259,982	61.86%	160,260
	3,139,064	1,426,714	45.45%	1,712,350
General Expenses				
Contingency	300,000	0	0.00%	300,000
	300,000	0	0.00%	300,000
Unappropriated Balance	392,594	0	0.00%	392,594
<b>Total Fund Requirements</b>	<b>\$4,010,646</b>	<b>\$1,426,714</b>	<b>35.57%</b>	<b>\$2,583,932</b>
<b>MERC Operating Fund</b>				
Operating Expenses (PS & M&S)	\$28,084,378	\$6,116,721	21.78%	\$21,967,657
Debt Service	22,809	10,064	44.12%	12,745
Interfund Transfers	3,666,545	540,486	14.74%	3,126,059
Contingency	2,479,849	0	0.00%	2,479,849
Unappropriated Balance	8,427,577	0	0.00%	8,427,577
<b>Total Fund Requirements</b>	<b>\$42,681,158</b>	<b>\$6,667,272</b>	<b>15.62%</b>	<b>\$36,013,886</b>

**FY 2004-2005**  
**Budget Appropriations vs Expenditures**  
*As of September 30, 2004*

	<u>Adopted Budget</u>	<u>Year to Date Expenditures</u>	<u>% Expended</u>	<u>Balance Remaining</u>
<b>MERC Pooled Capital Fund</b>				
Operating Expenses (PS & M&S)	\$416,287	\$79,328	19.06%	\$336,959
Capital Outlay	3,142,350	222,241	7.07%	2,920,109
Interfund Transfers	354,000	0	0.00%	354,000
Contingency	537,581	0	0.00%	537,581
Unappropriated Balance	2,050,548	0	0.00%	2,050,548
<b>Total Fund Requirements</b>	<b>\$6,500,766</b>	<b>\$301,569</b>	<b>4.64%</b>	<b>\$6,199,197</b>
<b>Open Spaces Fund</b>				
Operating Expenses (PS & M&S)	\$1,764,532	\$178,423	10.11%	\$1,586,109
Capital Outlay	3,096,940	228,252	7.37%	2,868,688
Interfund Transfers	608,749	87,860	14.43%	520,889
Contingency	174,735	0	0.00%	174,735
Unappropriated Balance	1,380,000	0	0.00%	1,380,000
<b>Total Fund Requirements</b>	<b>\$7,024,956</b>	<b>\$494,535</b>	<b>7.04%</b>	<b>\$6,530,421</b>
<b>Pioneer Cemetery Perpetual Care Fund</b>				
Unappropriated Balance	\$133,173	\$0	0.00%	\$133,173
<b>Total Fund Requirements</b>	<b>\$133,173</b>	<b>\$0</b>	<b>0.00%</b>	<b>\$133,173</b>
<b>Planning Fund</b>				
Operating Expenses (PS & M&S)	\$15,662,444	\$2,051,554	13.10%	\$13,610,890
Capital Outlay	47,000	0	0.00%	47,000
Interfund Transfers	2,189,991	764,026	34.89%	1,425,965
Contingency	786,840	0	0.00%	786,840
Unappropriated Balance	90,000	0	0.00%	0
<b>Total Fund Requirements</b>	<b>\$18,776,275</b>	<b>\$2,815,580</b>	<b>15.00%</b>	<b>\$15,870,695</b>

**FY 2004-2005**  
**Budget Appropriations vs Expenditures**  
*As of September 30, 2004*

	<u>Adopted Budget</u>	<u>Year to Date Expenditures</u>	<u>% Expended</u>	<u>Balance Remaining</u>
<b>Regional Parks Capital Fund</b>				
Operating Expenses (PS & M&S)	\$620,000	\$88,439	14.26%	\$531,561
Capital Outlay	1,087,740	0	0.00%	1,087,740
Unappropriated Balance	764,822	0	0.00%	764,822
<b>Total Fund Requirements</b>	<b>\$2,472,562</b>	<b>\$88,439</b>	<b>3.58%</b>	<b>\$2,384,123</b>
<b>Regional Parks Operating Fund</b>				
Operating Expenses (PS & M&S)	\$4,879,860	\$1,248,107	25.58%	\$3,631,753
Interfund Transfers	2,902,040	501,701	17.29%	2,400,339
Contingency	493,908	0	0.00%	493,908
Unappropriated Balance	2,940,082	0	0.00%	2,940,082
<b>Total Fund Requirements</b>	<b>\$11,215,890</b>	<b>\$1,749,808</b>	<b>15.60%</b>	<b>\$9,466,082</b>
<b>Regional Parks Special Accounts Fund</b>				
Operating Expenses (PS & M&S)	\$225	\$0	0.00%	\$225
Interfund Transfers	70,000	0	0.00%	70,000
Unappropriated Balance	370,864	0	0.00%	370,864
<b>Total Fund Requirements</b>	<b>\$441,089</b>	<b>\$0</b>	<b>0.00%</b>	<b>\$441,089</b>
<b>Rehabilitation &amp; Enhancement Fund</b>				
Materials & Services	\$534,151	\$57,989	10.86%	\$476,162
Interfund Transfers	26,630	0	0.00%	26,630
Contingency	300,000	0	0.00%	300,000
Unappropriated Balance	1,482,986	0	0.00%	1,482,986
<b>Total Fund Requirements</b>	<b>\$2,343,767</b>	<b>\$57,989</b>	<b>2.47%</b>	<b>\$2,285,778</b>

**FY 2004-2005**  
**Budget Appropriations vs Expenditures**  
*As of September 30, 2004*

	<u>Adopted Budget</u>	<u>Year to Date Expenditures</u>	<u>% Expended</u>	<u>Balance Remaining</u>
<b>Risk Management Fund</b>				
Operating Expenses (PS & M&S)	\$8,166,381	\$1,670,962	20.46%	\$6,495,419
Contingency	534,547	0	0.00%	534,547
Unappropriated Balance	4,260,202	0	0.00%	4,260,202
<b>Total Fund Requirements</b>	<b>\$12,961,130</b>	<b>\$1,670,962</b>	<b>12.89%</b>	<b>\$11,290,168</b>
<b>Smith and Bybee Lakes Fund</b>				
Operating Expenses (PS & M&S)	\$20,148	\$1,532	7.60%	\$18,616
Capital Outlay	801,349	118,990	14.85%	682,359
Interfund Transfers	25,000	0	0.00%	25,000
Contingency	822	0	0.00%	822
Unappropriated Balance	3,594,145	0	0.00%	3,594,145
<b>Total Fund Requirements</b>	<b>\$4,441,464</b>	<b>\$120,522</b>	<b>2.71%</b>	<b>\$4,320,942</b>

**Budget Appropriations vs Expenditures**  
*As of September 30, 2004*

	<u>Adopted Budget</u>	<u>Year to Date Expenditures</u>	<u>% Expended</u>	<u>Balance Remaining</u>
<b>Solid Waste Revenue Fund</b>				
Operating Account				
Operating Expenses (PS & M&S)	\$41,994,564	\$7,744,491	18.44%	\$34,250,073
	41,994,564	7,744,491	18.44%	34,250,073
Debt Service Account				
Debt Service	1,251,412	123,531	9.87%	1,127,881
	1,251,412	123,531	9.87%	1,127,881
Landfill Closure Account				
Materials & Services	178,800	16,712	9.35%	162,088
Capital Outlay	401,900	160	0.04%	401,740
	580,700	16,872	2.91%	563,828
Renewal and Replacement Account				
Capital Outlay	1,514,000	45,443	3.00%	1,468,557
	1,514,000	45,443	3.00%	1,468,557
General Account				
Capital Outlay	961,000	13,622	1.42%	947,378
	961,000	13,622	1.42%	947,378
Master Project Account				
Debt Service	350,000	16,212	4.63%	333,788
	350,000	16,212	4.63%	333,788
Recycling Business Assistance Account				
Materials & Services	700,000	0	0.00%	700,000
	700,000	0	0.00%	700,000
General Expenses				
Interfund Transfers	4,308,854	1,136,649	26.38%	3,172,205
Contingency	13,695,368	0	0.00%	13,695,368
	18,004,222	1,136,649	6.31%	16,867,573
Unappropriated Balance	14,448,060	0	0.00%	14,448,060
<b>Total Fund Requirements</b>	<b>\$79,803,958</b>	<b>\$9,096,820</b>	<b>11.40%</b>	<b>\$70,707,138</b>

**FY 2004-2005**  
**Budget Appropriations vs Expenditures**  
*As of September 30, 2004*

	<u>Adopted Budget</u>	<u>Year to Date Expenditures</u>	<u>% Expended</u>	<u>Balance Remaining</u>
<b>Support Services Fund</b>				
Finance Department				
Operating Expenses (PS & M&S)	\$2,555,798	\$513,084	20.08%	\$2,042,714
	<u>2,555,798</u>	<u>513,084</u>	<u>20.08%</u>	<u>2,042,714</u>
Business Support Department				
Operating Expenses (PS & M&S)	4,149,443	987,517	23.80%	3,161,926
Capital Outlay	180,000	32,132	17.85%	147,868
	<u>4,329,443</u>	<u>1,019,649</u>	<u>23.55%</u>	<u>3,309,794</u>
Public Affairs - Creative Services				
Operating Expenses (PS & M&S)	541,122	122,870	22.71%	418,252
	<u>541,122</u>	<u>122,870</u>	<u>22.71%</u>	<u>418,252</u>
Office of Metro Attorney				
Operating Expenses (PS & M&S)	1,083,292	254,786	23.52%	828,506
	<u>1,083,292</u>	<u>254,786</u>	<u>23.52%</u>	<u>828,506</u>
Office of the Auditor				
Operating Expenses (PS & M&S)	645,956	106,891	16.55%	539,065
	<u>645,956</u>	<u>106,891</u>	<u>16.55%</u>	<u>539,065</u>
General Expenses				
Interfund Transfers	705,540	413,933	58.67%	291,607
Contingency	1,052,261	0	0.00%	1,052,261
	<u>1,757,801</u>	<u>413,933</u>	<u>23.55%</u>	<u>1,343,868</u>
Unappropriated Balance	239,500	0		
<b>Total Fund Requirements</b>	<b><u>\$11,152,912</u></b>	<b><u>\$2,431,214</u></b>	<b><u>21.80%</u></b>	<b><u>\$8,482,198</u></b>

**FY 2004-2005**  
**Budget Appropriations vs Expenditures**  
*As of September 30, 2004*

	<u>Adopted Budget</u>	<u>Year to Date Expenditures</u>	<u>% Expended</u>	<u>Balance Remaining</u>
<b>Zoo Capital Fund</b>				
Operating Expenses (PS & M&S)	\$71,083	\$11,151	15.69%	\$59,932
Capital Outlay	3,000,000	79,666	2.66%	2,920,334
Contingency	505,648	0	0.00%	505,648
Unappropriated Balance	1,277,031	0	0.00%	1,277,031
<b>Total Fund Requirements</b>	<b>\$4,853,762</b>	<b>\$90,817</b>	<b>1.87%</b>	<b>\$4,762,945</b>
<b>Zoo Operating Fund</b>				
Operating Expenses (PS & M&S)	\$20,655,227	\$5,692,564	27.56%	\$14,962,663
Capital Outlay	85,700	411	0.48%	85,289
Interfund Transfers	2,790,366	852,515	30.55%	1,937,851
Contingency	2,030,595	0	0.00%	2,030,595
Unappropriated Balance	4,482,095	0	0.00%	4,482,095
<b>Total Fund Requirements</b>	<b>\$30,043,983</b>	<b>\$6,545,490</b>	<b>21.79%</b>	<b>\$23,498,493</b>
<b>Total Budget</b>	<b>\$285,998,327</b>	<b>\$47,712,256</b>	<b>16.68%</b>	<b>\$237,956,571</b>





# Oregon

Theodore R. Kulongoski, Governor

110404c-05  
Department of Agriculture

635 Capitol Street NE  
Salem, OR 97301-2532



October 29, 2004

Councilor Rod Park  
METRO  
600 Northeast Grand Avenue  
Portland, Oregon 97232-2736

Dear Rod:

Thank you for including the Department of Agriculture in Metro's discussions related to water quality issues. As you well know, the department and Director Coba take very seriously our responsibilities with agricultural water quality. Our philosophy is to work hand in hand with the industry to affect positive and meaningful improvements in water quality on the ground. We believe the agricultural industry also accepts their responsibility in this area and wants to do their part in dealing with water quality issues. It is a positive step to have Metro involved in this discussion. It allows the agricultural industry to have a voice with an urban audience and share their accomplishments.

Specifically, we appreciate the opportunity to review and respond to the letter submitted to Metro by Sue Marshall of Tualatin Riverkeepers. In her letter, Ms. Marshall implies that performance of the Tualatin Basin Agricultural Water Quality Plan has been slow and improvements in water quality have been insignificant. This is based on the number of voluntary farm plans officially submitted for adoption under the state's Agricultural Water Quality Management program (SB 1010). Measuring progress by counting farm plans and acres addressed by this process is far too narrow. The number of farm plans adopted as a part of this program is relatively low, but in no way is a good measure of the work that has been done and is ongoing by agriculture in the Tualatin basin.

Agricultural operators represent a wide range of interests and many of them prefer to operate independently. Thus, the number of farm plans submitted for ODA review only reflects that part of the population that desires to have public recognition of their actions or their management plans. Many operators have developed plans on their own or with the assistance of the USDA Natural Resources Conservation Service. These plans are not recognized by the data utilized by Ms. Marshall. Ms. Marshall's letter also does not recognize the individual projects pursued by landowners on their own. While projects developed with state funding are recorded, there are many projects that address resource conservation and water quality that are pursued by landowners under their own initiative, utilizing their own resources. These types of initiatives are ignored in the Tualatin Riverkeepers letter.

This is not to say there are no challenges. Stable funding to support Soil and Water Conservation District (SWCD) outreach, technical assistance for projects and plan development, and one-on-one interactions with landowners is insufficient; however, district productivity with the limited resources available to them is impressive, particularly when you consider the large number of small acreage landowners in the Tualatin Basin and the turnover of ownership of these lands that requires a continuous education effort by the Tualatin SWCD.

Ms. Marshall's letter concludes that the results to date that are attributable to the Tualatin Basin Agricultural Water Quality Plan have been quantifiably insignificant, but she then states there have been great strides in water quality due to other factors. Given the long term nature of rebuilding riparian areas, quantifiable measures such as water temperature and sediment are difficult to document in the less than 10 years that this plan has been in place. Where and if these are a problem, establishment and growth of shrubs and trees, given competition from grasses and weeds, is challenging and will take time to become established.

Despite these challenges and in contrast to Ms. Marshall's statement that there are insignificant quantifiable changes, data shows statistically significant improvements in dissolved oxygen and improving trends in water temperature on streams along predominately agricultural areas. For example, data from 1994-2004 show improving trends in dissolved oxygen that are statistically significant for Carpenter Creek, Baker Creek, and McFee Creek. The department has also observed improving trends in temperature in Burris Creek, Baker Creek, and Christiansen Creek.

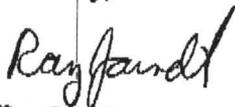
Compliance with the area rules is mandatory. How farmers comply is up to them. What was crafted from SB 1010 in 1993 offers flexibility to the landowner and creates locally-driven area-wide plans and rules that address water quality problems and concerns. SB 1010 offers the best of both worlds. It provides a regulatory backstop and gives farmers an opportunity to do good things.

Improving water quality-limited basins will need time and will also need the patience of all Oregonians before noticeable progress is made. SB 1010 is but one effective tool. Federal and state efforts such as the Conservation Reserve Enhancement Program provide financial incentive for taking sensitive land along waterways out of agricultural production but are not free handouts to our farmers. They involve cost-sharing and a great deal of elbow grease to implement and maintain conservation projects.

Our observations indicate that there is adequate oversight of agriculture's impact on the environment and that the SB 1010 program is providing real positive change in improving the Tualatin basin's rivers and streams.

Thank you again for providing me an opportunity to provide our perspective on agricultural water quality issues. If you have any questions, please contact me at (503) 986-4713.

Sincerely,



Ray Jaendl  
Assistant Administrator  
Natural Resources Division

RJ/cw



WARREN W. ANEY  
 CERTIFIED WILDLIFE BIOLOGIST, THE WILDLIFE SOCIETY  
 CERTIFIED SENIOR ECOLOGIST, THE ECOLOGICAL SOCIETY OF AMERICA

3 November 2004

RESOLUTION NO. 04-35

As I understand the proposed change under Resolution No. 04-3506, the regulatory aspects of Metro's current fish and wildlife habitat conservation program would be replaced by education, incentives, acquisition, and restoration. In other words, Metro would no longer require landowners to conserve fish and wildlife habitat. Instead, there would be an attempt to educate landowners and use tax incentives to get them to conserve this habitat, and to acquire and restore habitat using bond measure funding.

Before the passage of Ballot Measure 37, I would have said that it is the clear intent of Oregon's citizenry that landowners have certain obligations to the rest of us and to future Oregonians. These obligations require them to conserve a wide range of land values, including fish and wildlife habitat. Education, incentives, acquisition, and restoration can help conserve this habitat, but these measures should not replace regulations. Successful habitat conservation requires a regulatory mechanism to make other measures more effective and to insure that necessary conservation occurs where it is most needed.

Now that Ballot Measure 37 has passed, Oregon may have regressed from being a state with exemplary land value protections to a state with the weakest land value protections. What this means in terms of Metro's land use program may not be clear yet, but it does appear that our neighbors are now free to do whatever they want to their lands without regard to how it affects our livability and our property values. It could also mean that Metro's regulation based fish and wildlife habitat conservation program has no more teeth. Education, incentives, acquisition, and restoration could now become more viable, even though more costly and less effective, options.

From my perspective as a wildlife ecologist with a long-term involvement in ecosystems level planning and management, even the "old" Metro program had weaknesses – weaknesses that may become worse with passage of Measure 37. These weaknesses are:

**A lack of vision.** First and foremost, the entire Metro land use program lacks a clear consensus-based vision. I realize the 2000 Streamside CPR Program contains a vision statement, but this is really just a statement of purpose. It does not qualify as a statement of desired future conditions, preferred outcomes, or other forms of a true vision statement. It certainly is not a vision that has been developed and agreed to by a wide range of stakeholders, one that nearly all Metro area residents can claim as their own.

**Cost inequities.** Second, the Metro program does not seem to consider the true and total costs of land use changes. I am not an economist, so I may be naïve in my view that changes in land use should pay their own way in terms of both direct and indirect costs. If houses are built at a lower density, there is a disproportionate increase in infrastructure needs – this means higher costs for roads, utilities, mail service, student transportation, police and fire protection. If trees are removed, there is an increase in stream runoff and reductions in wildlife diversity and scenic amenities – this means higher flood control costs and reduced neighborhood desirability.

I, as a person who has chosen to live in a developed neighborhood, should not subsidize someone who wants a 2 acre homesite/horse paddock on prime agricultural, forest, riparian or wildlife land. Maybe if the full cost of development is computed and charged, there would be a realization that government regulation really is not keeping someone from realizing the full value of their land. The so-called full value of their land may be something that has been artificially subsidized and maintained.

**Ineffective monitoring.** Third, the Metro programs I've reviewed mention monitoring but they lack a promise of effective monitoring. We need to know **where** we are now (Metro has done a pretty good job of assessing current conditions) and we need to know **whether** we are heading in the right direction. For a system as complex as the Metro region, the dedication of resources and commitment to monitoring should



be at least as great as that given to assessing current conditions.

The solution? Given that we are now operating under a new post-Measure 37 paradigm, here's my concept of what needs to be done:

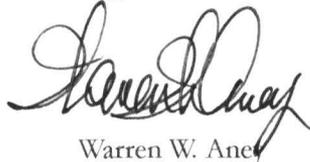
1. **Develop a shared vision of what we want the future Metro region to look like.** Develop a vision that is owned by most residents and other stakeholders. Describe or portray the future developed landscape – housing densities, industrial areas, transportation, public buildings. Also describe or portray future tree densities, parks and open spaces, greenways, wildlands, protected stream corridors, and other conserved natural features.
2. **Act to achieve that vision.** Institute and carry out a management program that features an effective mix of regulations, education, incentives, acquisition, and restoration.
3. **Monitor and evaluate.** Constantly and intensively measure what we are doing in terms of where we want to go. Practice adaptive management, i.e., manage so as to learn. Use the evaluated results of this monitoring to make better decisions; to modify our programs and perhaps even our vision.

A wide range of government and private entities use these concepts to create effective and successful action strategies. Metro should do as well. And to help pay for all this, I add one more concept.

4. **Make development pay its way.** Bill those who make and profit from change for both the direct and indirect costs of these changes. Education, incentives, and acquisition will cost money. The general public may be willing to pay some of these costs. But we also realize that developers need to own up to the fact that what they do imposes both direct and indirect costs on their communities, their neighbors, and on citizens in general. Costs on our infrastructures, property values, natural values, and livability. Costs that we, the general public, should not end up paying for.

Thank you for your attention. I would be happy to discuss this further with you or any of your staff.

Regards,



Warren W. Aney  
Senior Wildlife Ecologist

110404C-D7



# Johnson Creek Watershed Council

1900 SE Milport Rd, Suite B • Milwaukie, OR 97222  
ph: (503) 652-7477 • fx: (503) 652-7188  
info@jwcw.org • www.jwcw.org

Johnson Creek Watershed Council  
Testimony on Resolution 04-3506  
Michelle D. Bussard, Executive Director  
November 4, 2004

For over a decade, Metro has worked with the conservation community, the business community, as well as federal, state, and local governments and agencies to create a plan to meet the objectives of Goal 5 in the Portland metropolitan area. Now more than ever is the time to move forward in a measured and consistent manner even as we acknowledge we are doing so within a radically different planning and land use environment than even one week ago. But if we are to protect the over 80,000 acres of habitat that are at stake here, then we will need to use all of the tools available to us to do so.

Resolution 04-3506's reliance on performance based measures and "broad support of hundreds of thousands of people across the region" – otherwise known as place based consensus perhaps – is a deep concern for this watershed council, and others. The scenario we fear is how we define "place," at what scale? Individual, neighborhood, community, watershed, regional? Because what we foresee is that poorly defined, one persons' forested lot is anothers developable lot; one persons pristine reach where 8 juvenile coho were spotted is another person upstream septic outflow; one persons open space and habitat protection is another persons parking lot. Can regional outcome measures applied in a regulatory vacuum and with insufficient financial resources' to monitor really achieve the desired outcomes Governor Kitzhaber urged you so strongly to be infinitely clear about?

Watershed Council's operate through stakeholders and within a carefully prescribed regulatory framework without which they could not compel or inspire compliance and/or voluntary efforts. In fact, as you know, watershed councils derive their life-blood from the *Oregon Plan for Salmon and Watersheds*

which is a plan based on and steeped in the science of and vision for watershed-based planning, protection and restoration.

But, it is just not realistic to suggest that because of the “restoration initiatives directed by watershed councils,” or the voluntary efforts inspired by organizations such as Johnson Creek Watershed Council, performance based measures can achieve compliance with Goal 5 vision. Certainly not without additional tools and resources at our disposal. And we’re not convinced that even if a bond measure were to pass, there would yet be enough resources to do this work. For example – Gov Kitzhaber talked about the property owner who so willing placed large wood in a creek to create better fish habitat – the simple beauty of the image was compelling as he spoke about the other property owners along that creek that followed suit. For us to do that same project here, on Johnson Creek or one of its reaches for example, costs us upwards of \$50,000 – just for one such project, and that assumes anywhere from \$5,000 - \$20,000 of property owner investment. In fact, we have been pushing on several fish refugia projects for several years at the East Moreland Golf Course, at Errol Heights and the Bradshaw property in the upper watershed. They’ve yet to come to fruition due to funding, permitting and lack of resources <sup>for</sup> education and outreach.

Clearly, our task is to find the appropriate balance, approach, roles and responsibilities. We know the public wants and values a healthy environment but they have concerns. We need to understand those concerns and address them. Let's take the time to understand what the public is saying, and what are the reasonable expectations of our governing structures and our watershed councils.

11/4/04

CLF Testimony regarding Metro Resolution 04-3506

Good afternoon, Council President Bragdon and Metro Councilors.

Teresa Huntsinger, on behalf of CLF

First, I want to commend you for hearing the will of the community and the members of MPAC, and deciding not to vote today on Resolution 04-3506. There is broad agreement that it will take time to understand the ramifications of this proposal, and to decide what is the best way to protect fish and wildlife habitat and preserve our region's livability.

The many people who have been participating over the years in meetings and hearings like this one regarding Goal 5 have always understood that we need to use a range of regulatory and non-regulatory tools to achieve the goals we have for our community. I think the lack of implementation of the Regional Affordable Housing Strategy demonstrates that a purely voluntary program that provides little to no technical support or funding to local jurisdictions is ineffective.

It is still unclear to me how this resolution could achieve the objectives of the regional Goal 5 program, and I believe it is Metro's responsibility to follow through on the promises ~~they~~ <sup>we</sup> have made to the community, and use all the tools at our disposal to develop a regional program that will protect and restore fish and wildlife habitat.

*It is clear that without a Goal 5 program we will continue to lose remaining habitat at alarming rates*

Yesterday was a hard day, reading the final election results. However there was no language in measure 37 pertaining to natural resources. And so, despite its passage, I believe there is no doubt that Oregonians care about the environment, they value it as an important factor in their quality of life, and they believe in protecting it for the fish and wildlife who also live in our community, and for future generations to enjoy.

*and economically viable*

This is not a time for making rash decisions, and it is not a time to give up on achieving the vision of creating a livable region, which is environmentally sustainable, ~~and~~ socially just! We do not believe that Resolution 04-3506 as it is currently drafted will help achieve that vision. And we are more than willing to work with you to find a better solution.

*And, as Jim Labbe stated earlier, we are still required to comply with Federal Laws that protect endangered species and water quality. It still makes sense to do that in a coordinated, regionally-consistent way, with leadership from Metro.*

Amanda Fritz testimony to the Metro Council, 11/04/04

Rosalynn Carter said, **"A leader takes people where they want to go. A great leader takes people where they don't necessarily want to go, but ought to be."**

I urge you to reject the proposal to throw out eight years of careful scientific analysis, preparing for the adoption of region-wide standards for protection of the Metro area's waters of the state and natural resource heritage.

**Regulations are clear, objective standards saying what kinds of development will keep Oregon the beautiful place we love.** Most people want to know what they need to do to build a project, while at the same time protecting shared public resources like the streams that flow from one property to the next. Metro's program should set standards for the majority, and allow variations for property owners who can't meet them. Like Anne Frank, I believe in spite of everything, people are really good at heart. Most people will follow the rules set by a public process, and many would prefer a clear and objective standard like "keep one tree per 50' of stream" to a performance goal like "don't increase water temperature".

**Measure 37 doesn't change this principle.** What it says is, if property owners feel their development potential is diminished by a regulation, they may submit evidence of the alleged devaluation, and if found valid, they must be compensated or the regulation waived on that particular property. It doesn't say the regulation must be repealed, and it doesn't say no new regulations may be adopted. Most Oregonians will still follow the regulations, because they want to do good development.

**The Oregon Legislature will provide administrative rules for the implementation of Measure 37.** They may establish a fund to pay valid compensation claims, throw out the entire Oregon land use system, or refer a measure to the voters asking for approval of these or other alternatives. Until the State decides to throw out the land use planning system, its rules remain in effect. Metro is required to report on progress towards meeting Goal 5, every two years. Metro is required to act as the coordinating agency for Goal 5 protections in the three counties. These mandates were not changed by the passage of Measure 37.

The education/incentives/bond measure route proposed by the Bragdon/Park resolution may turn out to be more expensive than paying for regulations we really need.  
**You should review a cost estimate and funding mechanism, before voting on either the resolution or the Measure 37 response.**

In closing, remember Winston Churchill's words: **"Success is not final, failure is not fatal: it is the courage to continue that counts."** And, Bruce Springsteen's:

***There's a war outside still raging  
You say it ain't ours anymore to win  
Once we made a promise we swore we'd always remember  
No retreat, baby, no surrender***

*Amanda Fritz  
4106 SW Vacuna Street  
Portland, OR 97219.*

Sent by e-mail 11/1/04: Dear Members of the Metro Council,

**Please do not hold a hearing on Resolution 04-3506 this Thursday, November 4.**

There has been inadequate time for public discussion and research on the Bragdon/Park October Surprise proposal. There is no purpose in holding a public hearing when there haven't been regular meetings of watershed councils, neighborhood associations, and other citizen involvement mechanisms in the interim after the first hearing. Please reschedule the hearing for after the MPAC meeting on December 8.

My Top Ten personal comments, offered in response to Councilor McLain's request for my opinion:

**1. Metro appears to be proposing to throw out eight years of careful scientific work and comprehensive citizen involvement assessing the region's natural resources and discussing appropriate strategies to protect them.** There is no evidence a program of incentives and education will provide adequate protection for the remaining streams, wetlands, and upland habitat in the Lower Willamette watershed. Between 1989 and 1999 the Metro region lost 16,000 acres of natural resource land to development, and at the current rate will lose all its floodplain land in the next 20 years. We should be hitting the panic button to fast-track standards for protection, rather than hitting the snooze button and backing off on setting clear and objective standards with region-wide consistency.

**2. How would a program of incentives and education be funded and staffed?**

Despite heroic efforts by volunteers restoring habitat and providing public education over the past ten years, we are still losing habitat and seeing streams degraded. DEQ lists 213 miles of streams in the Metro region as water quality limited, yet the \$135.6m 1995 bond measure protected just 70 miles of stream frontage. Watershed Councils, environmental grant programs, and professional staff are underfunded and over-extended already. Exactly who do you think is going to be out there in the rain doing all this increased education that will protect all the remaining vulnerable sites?

**3. A bond measure to buy the 30,000 acres of vulnerable habitat not covered by Title 3, even at the purchase rate of the 1995 Greenspaces bond acquisitions, would cost over \$500,000,000.**

Do you really believe it's possible to pass a bond for even half that amount? How would passing another greenspaces bond measure affect local jurisdictions' ability to float bonds for other needs, such as school local option, local recreation parks, early childhood care, libraries, public safety, etc.?

**4. Local jurisdictions depend on Metro's leadership, staff expertise, and practical assistance in adopting programs required by state law.** Metro can best serve the governments, citizens, and natural resources within its boundaries by providing clear, objective, reasonable standards for protection of identified Goal 5 values. And, Metro is required by ORS 195.025 Regional coordination of planning activities, to act as the coordinating body responsible for coordinating all planning activities affecting land uses within the counties of Multnomah, Clackamas, and Washington. We want you to be the regional coordinator, and state law requires you to be it. How can you say, "nah, we'll just let the cities and counties figure it out?"

**5. Metro is required by Oregon Revised Statutes section 197.301 to compile and report to the Department of Land Conservation and Development on performance measures for Goal 5 protection, at least once every two years.** You are required to report on measures that analyze the rate of conversion of vacant land to improved land, and the amount of environmentally sensitive land that is protected and the amount of environmentally sensitive land that is developed. At the very least, the proposed resolution should include assessment and reporting every two years, as required by law.

**6. Regulations are not evil. Regulations tell good people what the good standards are - they set out the rules for how to develop in a sensible, sustainable way.** Wishy-washy performance aspirations don't do that. Measuring jurisdiction-wide tree canopy doesn't tell me what I should or shouldn't do with trees on my property. You may think you're being kinder to property owners with this resolution, but in fact you're just making it harder for everyone to agree on what the best practices should be. Even if Measure 37 passes, we should still continue to set regulations based on what we want to see in development, even if some people choose not to follow them.

**7. Audubon's recent study, "Stormwater/Pavement Impact Reduction", identified multiple regulations in several jurisdictions that actively damage streams and natural areas.**

The regulatory issue is not just that there's a need for better protection regulations, but also that jurisdictions need to be directed to remove existing regulations that are counter-productive. Regulations can be used to remove problems and impediments, as well as imposing new standards. Relying on non-regulatory solutions, even "initially", ignores the fact that existing regulations are widely varying and problematic. Shouldn't there be a level playing field across the jurisdictions for both development and natural resource protection?

**8. At the very least, Metro should adopt the Resource Inventory map by ordinance, giving jurisdictions certainty about the resources identified as important for Goal 5 protection.**

Failure to adopt the map would be a clear indication the real intent of this ordinance is political gain rather than effective natural resource protection.

**9. Passing this Resolution would be in direct conflict with established Metro policy.**

In 1997, the Metro Council passed the "Green Infrastructure" resolution:

*"It is the policy of the Metro Council that lands identified as "unbuildable" in Metro's Urban Growth Report should be protected from development to the maximum extent possible by local jurisdictions and to the maximum extent of the law;*

*"Metro encourages all local jurisdictions in the Metro region to actively protect in perpetuity parks, open space, recreational trails, and other sensitive natural areas, through acquisition of property rights including conservation easements, regulation, or other effective measures, even if they include what has been classified as "buildable" lands in Metro's inventory."*

Relying on incentives, education, and performance aspirations does not protect sensitive lands to the maximum extent of the law, nor does it actively protect the resource lands in perpetuity. And, it breaks a promise to advocates for the environment, that if we supported a tight UGB and increased density in our neighborhoods, Metro would protect the greenspaces within the UGBs and neighborhoods. That if we supported the 1995 bond measure, Metro would supplement its protections with an adopted resource inventory map and regulations to protect all the streams, not just those we were able to purchase.

**10. Metro Councilors are elected to lead the region. You are the only elected regional government in the country. Passing this resolution seems a first step in returning to a Council of Governments. At the very least, it passes the buck on resource protection. Please, don't throw away our work, environment, government, and future.**

Amanda Fritz, RN, MA (Cantab)  
4106 SW Vacuna Street,  
Portland, OR 97219





# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Oregon Fish and Wildlife Office  
2600 SE 98<sup>th</sup> Avenue, Suite 100  
Portland, Oregon 97266  
Phone: (503) 231-6179 FAX: (503) 231-6195

110404C-11



Reply To: 6503.4100  
File Name: 11-4-04TestimonyGoal5Resolution04-3506  
TS Number: 05-82

NOV 04 2004

Metro Council  
600 NE Grand Avenue  
Portland, Oregon 97232

Dear Council President and Councilors:

The Fish and Wildlife Service (Service) is submitting the enclosed testimony regarding Metro Resolution 04-3506. Please contact Jennifer Thompson of my staff at (503) 231-6179 if you wish to discuss this issue further. Thank you for considering our input.

Sincerely,

  
Kemper M. McMaster  
State Supervisor

Enclosure

cc: Chris Deffebach, Metro Growth Management Services  
Andy Cotugno, Metro Growth Management Services

**Subject:** Testimony on Metro Resolution 04-3506  
**Presented by:** Jennifer Thompson, John Marshall, and David Leal  
U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office  
**Date:** November 4, 2004

**Jennifer Thompson**

- ▶ I am here today with two other staff from my office to follow-up on the written testimony we previously submitted in opposition to Metro Resolution 04-3506. We agree that voluntary and incentive-based efforts can make extremely important contributions towards conserving the region's fish and wildlife. Since 1991, we've supported many of these types of activities through our Greenspaces Program partnership with Metro. At the same time, regional land use planning and policies are critical tools for filling gaps in achieving the Goal 5 vision<sup>1</sup> and conserving the region's natural heritage.

Relation to Federal regulations

- ▶ The original program principles put equal importance on protection and restoration for achieving program goals that include "moving toward recovery of threatened and endangered salmonids, and avoiding future endangered or threatened listings of both aquatic and terrestrial species." One of Metro's objectives was to assist local governments by obtaining Federal approval of the program.
- ▶ State and Federal agencies have been at the table as Metro's partners and stakeholders throughout the Goal 5 planning process. Last February, the Fish and Wildlife Service, NOAA Fisheries and the Oregon Department of Environmental Quality met with the Metro Council to specifically explain how the Goal 5 program could help the region to address provisions of the Endangered Species Act (ESA) and Clean Water Act. My agency is still interested in talking further about those possibilities. Conserving species is not the responsibility of any of us alone. Our success will rely on our collective actions - State and Federal agencies, local governments, and the public. There are roles for each of us to play, and we should be looking for ways to work collaboratively. Metro provides a place where this could happen.

Measure 37

- ▶ For me, Measure 37 highlights the need to have a wide variety of tools ready and in play that makes sense to the public. We need a complete Goal 5 package that includes a host of regulatory and non-regulatory solutions to better respond to challenges and opportunities as they arise, as the availability of grants and other funding sources rises and falls, as programs come and go, and as the rules that guide land use planning and implementation change. We have much more to gain by being proactive and equipped, rather than reactive and unprepared.
- ▶ Holding off on developing this complete package will not only leave us with less to work with later in terms of conserving a functional system of habitats, but it will also prolong the uncertainty for landowners. The incremental and divided approach to the region's environmental land use planning with respect to Goals 5, 6, and 7 and our other regulations has created a situation where the rules for property owners have been in flux and the rules have become more complex. It would be of more service to our natural resources and the public to resolve the question of the desired regulatory baseline now rather than letting this issue linger. And it would behoove us all to try to dovetail and leverage our work at the local, State and Federal levels as we strive to achieve outcomes for the public that are of mutual concern.

---

<sup>1</sup> Vision Statement from "Purpose, Vision, Goal, Principles and Context" document: "Our region places a high priority on the protection of its streams, wetlands and floodplains to maintain access to nature; sustain and enhance native fish and wildlife species and their habitats; mitigate high storm flows and maintain adequate summer flows; provide clean water; and create communities that fully integrate the built and natural environment. As ribbons of green, stream and river corridors maintain connections with adjacent upland habitats, form an interconnected mosaic of urban forest and other fish and wildlife habitat, and contribute significantly to our region's livability."

## **David Leal**

- ▶ As a Fish and Wildlife Biologist with the U.S. Fish and Wildlife Service (FWS), I primarily work on Endangered Species Act consultations where the Federal government either conducts, permits, funds, or authorizes an action.

### *Regulatory mechanism:*

- ▶ Existing non-federal regulatory mechanisms enter into our FWS regulatory processes in a couple ways, both of which basically assess existing conditions. When the FWS is evaluating whether a species warrants listing under the ESA it assesses the different threats and protective measures that indicate whether a species' population is stable or trending toward extinction. Two of the threats/protections we look at are habitat loss and the presence of existing protective regulatory mechanisms.
- ▶ When consulting with agencies that have a Federal nexus to their project (e.g., a section 404 Clean Water Act fill permit from the Army Corps of Engineers), the FWS is directed to consider the State and private activities that may affect listed species within the action area. In both cases, the protective measures directing State and private actions on a species' habitat, or the lack of them, may influence whether a species warrants listing or whether a jeopardy opinion is reached or not.
- ▶ Currently, eight listed species under FWS jurisdiction (two birds and six plants) may occur in the Metro area. However, as noted in our written comments, there are three species we are currently reviewing for possible listing. The amount of weight a specific conservation plan has in our decision process changes depending on the species specific factors and the amount of assurance the plan provides. A completely voluntary plan with no reporting for several years, such as that proposed in Resolution 04-3506, is not likely to provide the conservation assurances the FWS would need to support its trust resources.
- ▶ Conservation of fish and wildlife habitat with a regulatory baseline, as was being developed through Goal 5, would be a positive influence on the application of Federal fish and wildlife regulations.

### *Oregon Department of Transportation (ODOT) Bridges Program (OTIA III):*

- ▶ The OTIA III statewide bridge program is an example of how regulatory mechanisms can work in concert with project goals to conserve fish and wildlife resources. ODOT needs to work with numerous State and Federal agencies regarding various permitting regulations required when repairing or replacing hundreds of bridges across the state. Representatives from the agencies worked with ODOT to develop environmental performance standards to address various agency trust resources. The Performance Standards address issues such as stormwater management, disturbance to listed species, habitat restoration, mitigation for unavoidable habitat loss, riverine and floodplain processes, migratory bird avoidance, wildlife passage and habitat connectivity to name a few.
- ▶ While the process was time and personnel intensive up front, ODOT got its regulatory permits from the agencies and in addition to addressing bridge related environmental concerns, the program should improve many miles of stream habitat for listed and no-listed species through the Fluvial Performance Standard. In addition, ODOT is initiating a statewide Comprehensive Mitigation/Conservation Strategy consisting of regional wetland mitigation banks and listed species conservation banks throughout the state and focused on conservation of regional priority habitats.
- ▶ In this example ODOT's proactive approach to addressing its State and Federal regulatory requirements and a desire to be good environmental stewards should result in a win-win for both ODOT and fish and wildlife resources.

- ▶ In closing, a landscape-based fish and wildlife habitat conservation plan with a regulatory baseline will provide valuable habitat for resident and migratory fish and wildlife and could provide conservation incentives that keep species from being listed or project impacts from reaching a jeopardy determination during consultation.

**John Marshall**

- ▶ I have worked on the State of Oregon's Goal 5 policy, and I serve as Jennifer's alternate on the Goal 5 Technical Advisory Committee. I also work on advanced planning and streamlining related to our Federal programs.
- ▶ Experience has shown that melding Federal, state and local regulatory programs and processes benefits the public, and leads to much better natural resource conservation on-the-ground.
- ▶ The West Eugene Wetlands model has demonstrated the benefits of a "streamlined" regulatory approach that relies on a balance and interplay between regulatory and non-regulatory strategies.

## Notes for the Goal 5 Regulations (Metro Resolution 04-3506) Meeting

Brief Intro: David Leal, Fish and Wildlife Biologist with the U.S. Fish and Wildlife Service. I primarily work on Endangered Species Act consultations where the Federal Government either conducts, permits, funds, or authorizes an action.

Regulatory mechanisms: Existing non-federal regulatory mechanisms enter into our FWS regulatory processes in a couple ways which basically assess existing baseline conditions. When the FWS is evaluating whether a species warrants listing under the ESA it assess the different threats and protective measures that indicate whether a species' population is stable or trending toward extinction. Two of the key threats we often cite when listing a species are habitat loss and the absence of protective regulatory mechanisms.

When consulting with agencies that have a Federal nexus to their project (e.g., a section 404 Clean Water Act fill permit from the Army Corps of Engineers), the FWS is directed to consider the State and private activities that may affect listed species within the action area. In both cases, the protective measures directing State and private actions on a species' habitat, or the lack of them, may influence whether a species warrants listing or whether a jeopardy opinion is reached or not.

Currently, there are approximately 8 listed species under FWS jurisdiction (two birds and 6 plants) potentially in the METRO area, however, as noted in our written comments there are 3 to 6 species we are currently reviewing for possible listing. The amount of weight a specific conservation plan has in our decision process varies depending on the species specific factors and the level of assurance the plan provides. A completely voluntary plan with no reporting for several years, such as that proposed in the Resolution, is not likely to provide the conservation assurances the FWS would need to support its trust resources.

Conservation of fish and wildlife habitat with a regulatory baseline, as was being developed through Goal 5, would be a positive influence on the application of Federal fish and wildlife regulations.

ODOT Bridges Program (OTIA III): The OTIA III statewide bridge program is an example of how regulatory mechanisms can work in concert with project goals to conserve fish and wildlife resources. ODOT needed to work with numerous State and Federal agencies regarding various permitting regulations required when repairing or replacing hundreds of bridges across the state. Representatives from the agencies worked with ODOT to develop environmental performance standards to address various agency trust resources. The Performance Standards address issues such as stormwater management, disturbance to listed species, habitat restoration, mitigation for unavoidable habitat loss, riverine and floodplain function, migratory bird avoidance, wildlife passage and habitat connectivity, to name a few.

While the process was time and personnel intensive up front, ODOT got its regulatory permits from the agencies and in addition to addressing bridge related environmental concerns, the program should improve many miles of stream habitat for listed and non-listed fish species through replacement of the old bridges (i.e, increased spans, fewer piers, etc.). In addition, ODOT is initiating a statewide Comprehensive Mitigation/Conservation Strategy consisting of regional wetland mitigation banks and listed species conservation banks throughout the state and focused on conservation of regional priority habitats.

In this example ODOT's proactive approach to addressing its State and Federal regulatory requirements and a desire to be good environmental stewards should result in a win-win for both ODOT and fish and wildlife resources.

In closing, a landscape based fish and wildlife habitat conservation plan with a regulatory baseline will provide valuable habitat for resident and migratory fish and wildlife and could provide conservation incentives that keep species from being listed or project impacts from reaching a jeopardy determination during consultation under the Federal ESA.



# TUALATIN Riverkeepers

16507 SW Roy Rogers Rd. Sherwood, OR 97140  
(503) 590-5813 • fax: (503) 590-6702 • www.tualatinriverkeepers.org  
email: info@tualatinriverkeepers.org

110404C-13



Nov. 4, 2004

Regarding Metro Resolution 04-3506

President Bragdon and Council Members:

Thank you for the opportunity to present our position on Metro Resolution 04-3506. The Tualatin Riverkeepers oppose Metro Resolution 04-3506 as proposed. We acknowledge that passage of Measure 37 casts a great deal of uncertainty on the land use planning program in Oregon. However, Measure 37 does not waive federal requirements under the Clean Water Act and the Endangered Species Act. We suggest for the near term Metro proceed with the Goal 5 Fish and Wildlife Protection planning process focused on development of voluntary program elements and development of a regulatory model ordinance closely linked to both the ESA and CWA.

A regulatory component is essential to comply with these federal acts because it provides assurance that public resources, clean water, fish and wildlife resources will be protected and restored. Additionally, performance criteria stated in NOAA Fisheries 4 d rule and Oregon Department of Environmental Quality's Total Maximum Daily Loads are very difficult to achieve relying on the voluntary actions of individual property owners alone. Clearly the two need to go hand in hand.

I have attached a portion of NOAA Fisheries 4 d rule that describes limits to "take" for threatened and endangered species. A place saver for Metro's Fish and Wildlife Protection Program was spelled out in the rule with a list of performance criteria.

Additionally under the Clean Water Act, the TMDL provide scientifically derive performance standards in the form of pollutant load allocations and wasteload allocations. For the Tualatin River these pollutants include phosphorus, bacteria, temperature, ammonia, and sediment. For the lower Willamette River the pollutants include temperature, bacteria and mercury.

NOAA Fisheries' 4 d rule for municipal, residential, commercial, and industrial development and DEQ TMDL's need to serve as the basis for program performance standards that will be implemented through both the regulatory and non-regulatory components of Metro's Fish and Wildlife Protection Program.

We believe **passage of 04-3506 as it is currently proposed would shift a significant liability to local jurisdictions**, many of whom have been relying on Metro to develop a

model ordinance, leaving the jurisdictions more vulnerable to third party litigation under the Clean Water Act and the Endangered Species Act.

Extracting and delaying for five years the regulatory component of a Regional Fish and Wildlife Protection Program, as is proposed in the resolution, fundamentally weakens the program and does not provide reasonable assurance that public resources will be protected. What is certain is that a great deal of habitat will be lost.

Thank you very much for your consideration.

Respectfully,



Brian Wegener  
Watershed Watch Coordinator  
Tualatin Riverkeepers



Sue Marshall  
Executive Director  
Tualatin Riverkeepers

NOAA Fisheries 4 d rule regarding urban development.

(12) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(5) through (a)(10), and (a)(12) through (a)(19) do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

(i) Such development occurs pursuant to city, county, or regional government ordinances or plans that NMFS has determined are adequately protective of listed species; or within the jurisdiction of the Metro regional government in Oregon and pursuant to ordinances that Metro has found comply with its Urban Growth Management Functional Plan (Functional Plan) following a determination by NMFS that the Functional Plan is adequately protective. NMFS approval or determinations about any MRCI development ordinances or plans, including the Functional Plan, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. NMFS will apply the following 12 evaluation considerations when reviewing MRCI development ordinances or plans to assess whether they adequately conserve listed salmonids by maintaining and restoring properly functioning habitat conditions:

(A) MRCI development ordinance or plan **ensures that development will avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.**

(B) MRCI development ordinance or plan **adequately avoids stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed, including peak and base flows of perennial streams.**

(C) MRCI development ordinance or plan **provides adequately protective riparian area management requirements to attain or maintain PFC around all rivers, estuaries, streams, lakes, deepwater habitats, and intermittent streams.** Compensatory mitigation is provided, where necessary, to offset unavoidable damage to PFC due to MRCI development impacts to riparian management areas.

(D) MRCI development ordinance or plan **avoids stream crossings by roads, utilities, and other linear development wherever possible,** and, where crossings must be provided, minimize impacts through choice of mode, sizing, and placement.

(E) MRCI development ordinance or plan **adequately protects historical stream meander patterns and channel migration zones and avoids hardening of stream banks and shorelines.**

(F) MRCI development ordinance or plan **adequately protects wetlands and wetland functions, including isolated wetlands.**

(G) MRCI development ordinance or plan adequately **preserves the hydrologic capacity of permanent and intermittent streams to pass peak flows.**

(H) MRCI development ordinance or plan includes adequate **provisions for landscaping with native vegetation to reduce need for watering and application of herbicides, pesticides, and fertilizer.**

(I) MRCI development ordinance or plan includes adequate **provisions to prevent erosion and sediment run-off during construction.**

(J) MRCI development ordinance or plan **ensures that water supply demands can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals and that any new water diversions are positioned and screened** in a way that prevents injury or death of salmonids.

(K) MRCI development ordinance or plan **provides necessary enforcement, funding, reporting, and implementation mechanisms and formal plan evaluations at intervals that do not exceed 5 years.**

(L) MRCI development ordinance and plan **complies with all other state and Federal environmental and natural resource laws and permits.**

(ii) The city, county or **regional government provides NMFS with annual reports regarding implementation and effectiveness of the ordinances**, including: any water quality monitoring information the jurisdiction has available; aerial photography (or some other graphic display) of each MRCI development or MRCI expansion area at sufficient detail to demonstrate the width and vegetation condition of riparian set-backs; information to demonstrate the success of stormwater management and other conservation measures; and a summary of any flood damage, maintenance problems, or other issues.

(iii) NMFS finds the MRCI development activity to be consistent with the conservation of listed salmonids' habitat when it contributes to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed's habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. **Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat,** or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat

characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the Federal Register announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iv) Prior to approving any city, county, or regional government ordinances or plans as within this limit, or approving any substantive change in an ordinance or plan within this limit, NMFS will publish notification in the Federal Register announcing the availability of the ordinance or plan or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

**TESTIMONY BEFORE METRO COUNCIL**  
**RE: RESOLUTION NO. 04-3506**  
**November 4, 2004**  
**Cindy Catto**  
Associated General Contractors, Oregon-Columbia Chapter

President Bragdon and members of the Council, I am here again today to reiterate AGC's support for Resolution 04-3506. Three minutes is not nearly enough time to make every point that we would like to make; however, we would ask that you consider the following as you move forward in your decisionmaking process.

1. Given the passage of Measure 37, this new policy direction is probably the only course of action you are able to take that will not cause an immediate legal challenge of Metro's Fish and Wildlife Habitat Program. We encourage you to move forward with a voluntary program that recognizes the existence of excellent Goal 5 programs already in place in most of the jurisdictions in the region and that brings jurisdictions without excellent programs to an achievable level of performance.
2. We encourage you not to get too tied up in trying to define what the voluntary program will look like before passing this resolution. The resolution sets the tone for future programmatic work—it isn't the program. While you may need to give more direction to staff about the voluntary program, interim reports

2002 AGC of America Chapter of the Year

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**Craig Honeyman**

3. prior to 2010 and how to develop performance measures and regional outcomes, the resolution doesn't need to include all of those specifics now. What is before you is a policy decision, not a program decision. We encourage you to move forward sooner rather than later with the policy decision and commit resources, as we commit to work with you, to develop the program details.
- 3.4. We ask that you set some definite decisionmaking process and timelines. Right now, this resolution seems to have fallen into a bit of a black hole and we are confused about your process to get to a final decision. While this represents a welcome change in direction for Metro Council, we believe that the decision needs to be made as soon as possible so that staff and constituents can focus on the important work that lies before us.
- 4.5. In defining your decisionmaking process, we also ask that you define what structure will be used to advise staff. If the Implementation Team that was recently created is to be that vehicle, we would ask that you take another look at it's make-up and include a few commercial developers who can provide input on what works on the ground.

Thank you, again, for the opportunity to provide input into your decisionmaking process.

11/4/2004

Testimony before the METRO Council regarding Councilor David Bragdon's Resolution for the Goal 5 Process.

Dana McCullough, Property Owner, 1/3 undivided interest in 77acre EFU parcel north of Hillsboro, Oregon.

Description of Property—During our forty years of ownership, we have allowed the forested area to grow naturally, it shades both the Waible bottomland, Waible creek and McKay creek with tall mature trees we never intend to cut. Even so, the water quality is compromised, fingerling fish, crawdads and frogs are dwindling and beaver are disappearing, not from leaving the land alone, but from issues of chemical pollution controlled at a federal level. Your Goal 5 process does not touch on the probable causes nor provide practical remedies:

1. DEQ slow to clean up toxic spill in McKay by Wood Treating Plant *- cash strapped*
2. Quality deteriorated after Hi Tech plants and chemical manufacturing plants established. May be due to release of reverse osmosis water into Waible Creek tributaries or unmonitored air pollution(?). *noticeably*
3. Possibly due to agricultural run off.

*We receive  
no grants*

*treatment  
not offered  
with resource  
plan -*

*1. Skewed not couple habitat with riparian protection*

I want to bring three additional reasons to the attention of METRO and the Tualatin Basin Natural Resources Coordinating Committee for proceeding cautiously and more deliberately in their implementation of Goal 5.

1. Your process does not fulfill clear guidelines of Goal 5
  - a. B.2—Implementation: *"The conservation of both renewable and non-renewable natural resources and the physical limitations of the land should be used as the basis for determine the quantity, quality, location, rate and type of growth in the planning area."*

Comment: Instead, Oregon and Washington County have put this guideline on its head. Instead, location, rate and type of growth is driven by a state law, passed after Goal 5, mandating a 20 year supply of developable land—a policy at odds with the implementation guideline.

- b. B.7—Implementation: *“Local, regional and state governments should be encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assess, development rights acquisition and similar techniques to implement this goal.”*

*“Shelter rely primarily, . . .” Resolution*

Comment: Why does Councilor Bragdon have to introduce an amendment to comply with this guideline? Compensation is clearly the intent of Goal 5.

- c. “Fair compensation” is impossible when the governing entity first negatively impacts the market value by codifying the resource property with its resource maps, then offers only the atificially reduced market value as compensation.

2. The Goal 5 analysis fails to identify some possible negative impacts.

- a. The FAA Advisory regarding Hazardous Wildlife Attractants on or Near Airports.

**1-3. SITING CRITERIA.** FAA recommends separations when siting any of the wildlife attractants mentioned in Section 2 or when planning new airport development projects to accommodate aircraft movement. The distance between an airport’s aircraft movement areas, loading ramps, or aircraft parking areas and the wildlife attractant should be as follows:

**a. Airports serving piston-powered aircraft.** A distance of 5,000 feet is recommended.

**b. Airports serving turbine-powered aircraft.** A distance of 10,000 feet is recommended.

**c. Approach or Departure airspace.** A distance of 5 statute miles is recommended, if the wildlife attractant may cause hazardous wildlife movement into or across the approach or departure airspace.

- i. METRO and the TBNRCC should not encourage birds in airspace around the Hillsboro Airport, particularly at the NW region of Runway 30—the extended instrument approach runway

- ii. Global Flight Service in Hillsboro experience a costly bird strike last month
  - b. Forest lands that are conserved but not managed increase fire hazards, especially during dry years.
  - c. Wild lands near populated areas attract:
    - i. Dumping
    - ii. Crime/drug activity
    - iii. Killing and trapping of animals
    - iv. Liability issues for property owners
    - v. Added management expense for taxpayers if land is acquired
    - vi. Parks and natural areas are incompatible concepts.
3. With regard and NW of the Hillsboro Airport, it is necessary to add the realities of terrorist threat.
- i. Cover for illicit activity
  - ii. Possible danger to corporate jets.
  - iii. Suspicious activity already reported to FBI.

Thank you for your time, and for your efforts to bring fairness, vision and balance to your work.

Dana McCullough  
5385 NW Jackson School Rd  
Hillsboro, OR 97124

- ii. Global Flight Service in Hillsboro experience a costly bird strike last month
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    - v. Added management expense for taxpayers if land is acquired
    - vi. Parks and natural areas are incompatible concepts.
3. With regard and NW of the Hillsboro Airport, it is necessary to add the *new* realities of terrorist threat.
- i. Cover for illicit activity
  - ii. Possible danger to corporate jets.
  - iii. Suspicious activity already reported to FBI.
- May have to clear for safety purposes.*

Thank you for your time, and for your efforts to bring fairness, vision and balance to your work.

Dana McCullough  
5385 NW Jackson School Rd  
Hillsboro, OR 97124

Dana McCullough

United States Department of Agriculture  
Animal & Plant Health Inspection Service  
Wildlife Services

## National Wildlife Research Center

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### NWRC - Sandusky, Ohio Field Station

## Some Significant Wildlife Strikes to Civil Aircraft in the United States, 2002



Compiled by Sandra Wright, Manager, FAA Wildlife Strike Database

The U.S. Department of Agriculture, through an interagency agreement with the Federal Aviation Administration, compiles a database of all reported wildlife strikes to U.S. civil aircraft and to foreign carriers experiencing strikes in the United States. More than 48,000 strike reports from 1,356 airports have been compiled for 1990-2003 (about 6,100 strikes in 2002). It is estimated that this database represents only about 20% of the strikes that have occurred.

The following examples from the database are presented to show the significant impacts that strikes by birds or other wildlife can have on aircraft. These examples, from throughout the country, demonstrate the widespread nature of the problem. The examples are not intended to highlight or criticize individual airports because strikes have occurred on almost every airport in the United States. Many of the strike examples reported here occurred off airport property during approach or departure. For more information on wildlife strikes, to report a strike, visit [www.birdstrike.org](http://www.birdstrike.org) or <http://wildlife-mitigation.tc.f>

#### Date: 25 January 2002

Aircraft: Learjet 60

Airport: Naples Municipal Airport (FL)

Phase of Flight: Landing roll

Effect on Flight: None

Damage: Engine

Wildlife Species: Muscovy duck

*Comments from Report:* Duck was ingested into #1 engine. Bird remains evident throughout the core and bypass sections of engine. Time out of service and cost for repairs \$443,000.

**Date: 26 January 2002**

Aircraft: B-757  
Airport: Denver Intl. (CO)  
Phase of Flight: Take off  
Effect on Flight: Precautionary landing  
Damage: Engine  
Wildlife Species: Great horned owl

*Comments from Report:* Engine ingested a great horned owl which caused vibration. Aircraft returned to land at DEN. Many fan blades were damaged. Remains were removed for ID. Maintenance thought there was fur and feathers in the engine. Cost was \$500,000 and time out of service was 3 days. [Smithsonian.

**Date: 21 February 2002**

Aircraft: Beechcraft 1900  
Airport: Phoenix Sky Harbor Intl. (AZ)  
Phase of Flight: Climb (400' AGL)  
Effect on Flight: Precautionary landing  
Damage: Wing, fuel tank  
Wildlife Species: Northern pintail

*Comments from Report:* Bird penetrated right wing and fuel was rapidly leaking out. Emergency landing was made. Passengers safely deplaned. Bird [Smithsonian.

**Date: 24 February 2002**

Aircraft: Fk-100  
Airport: Dallas-Fort Worth (TX)  
Phase of Flight: Climb (6000' AGL)  
Effect on Flight: Precautionary landing  
Damage: Engine, nose, wing  
Wildlife Species: Greater white-fronted goose

*Comments from Report:* Aircraft struck a flock of geese and ingested one during takeoff. Engine vibration caused crew to reduce power to idle. Nose was damaged. Several blades were deformed. Engine was replaced. Bird was identified by the Smithsonian. Cost of repairs and lost revenue totaled \$100,000. Aircraft was out of service for 8 days.

**Date: 09 March 2002**

Aircraft: Canadair RJ 200  
Airport: Dulles Intl. (DC)  
Phase of Flight: Take off  
Effect on Flight: Aborted take off  
Damage: Engine, windshield, fuselage  
Wildlife Species: Wild turkeys

*Comments from Report:* Aircraft struck wild turkeys. One shattered the

spraying the cockpit with glass fragments and remains. Another hit the and was ingested. There was a 14 inch by 4 inch section of fuselage st damaged below the windshield seal on the flight officer's side. Cost of estimated at \$200,000. Time out of service was at least 2 weeks.

**Date: 27 March 2002**

Aircraft: MD-83

Airport: Lambert-St. Louis Intl. (MO)

Phase of Flight: Climb (2500')

Effect on Flight: Precautionary landing

Damage: Engine, windshield

Wildlife Species: Mallards

*Comments from Report:* While climbing out at 2500' AGL, the aircraft h 2 ducks. One hit the captain's windshield covering the entire area with The other hit the right wing leading edge and left a hole the size of a "r Flight returned to St. Louis. Time out of service 19 hours, estimated co: repairs was \$60,000. Bird ID by Smithsonian. Birds were first reported :

**Date: 11 April 2002**

Aircraft: Cessna 208

Airport: Baltimore-Washington Intl. (MD)

Phase of Flight: Approach (2,500')

Effect on Flight: Other

Damage: Windshield

Wildlife Species: Horned grebe

*Comments from Report:* Bird came through the windshield, injuring the ID by Smithsonian. Aircraft was out of service for 3 days and cost of re: \$18,000.

**Date: 18 April 2002**

Aircraft: Piper 23

Airport: Blue Grass (KY)

Phase of Flight: Descent (3000')

Effect on Flight: Slowed airspeed

Damage: Fuselage

Wildlife Species: Goose

*Comments from Report:* Bird was seen just prior to impact in full dive configuration. Bird hit directly over pilot's head. The overhead reading l air vent were discharged from the panel, striking a passenger in the ter Aircraft was slowed to 100 kts. Aircraft was escorted by fire and emerg: equipment.

**Date: 23 April 2002**

Aircraft: Piper 32

Airport: George R. Carr Memorial (LA)

Phase of Flight: Take off

Effect on Flight: Aborted take off  
Damage: Wing, fuel tank  
Wildlife Species: White-tailed deer

*Comments from Report:* During take off, the aircraft's left wing hit a deer that crossed in front of it. The pilot aborted take-off and returned to the hangar. The left wing spar and left flap were damaged and the left fuel tank was ruptured. Time out of service was 11 weeks and total cost estimated at \$28,000 to \$42,000.

**Date: 08 May 2002**

Aircraft: Beechjet 400  
Airport: Burke Lakefront (OH)  
Phase of Flight: Take off  
Effect on Flight: Aborted take off  
Damage: Engines  
Wildlife Species: Gulls (ring-billed and herring)

*Comments from Report:* Pilot revved engines to move gulls from runway. As gulls lifted off, then as the aircraft took off, the gulls returned to the runway and were struck. Both engines ingested gulls and were damaged beyond repair. One engine had an uncontained failure. The aircraft was towed back to the hangar. Gull carcasses were recovered on runway. Estimated cost was \$1 million for engine repairs and \$0.5million in lost revenue.

**Date: 01 June 2002**

Aircraft: Cessna 172  
Airport: Navajo Dam Airport (NM)  
Phase of Flight: Approach  
Effect on Flight: Avoidance maneuver  
Damage: Wings  
Wildlife Species: Unknown bird

*Comments from Report:* Student pilot, doing touch and go landings, executed an abrupt right turn to avoid striking a bird. A wind gust pushed the plane to the right. The aircraft touched down and then veered off the runway. The right wing hit a tree and the left wing hit the ground.

**Date: 06 June 2002**

Aircraft: Cessna 172  
Airport: Orlando-Sanford Intl. (FL)  
Phase of Flight: Descent (1100')  
Effect on Flight: Precautionary landing  
Damage: Windshield  
Wildlife Species: Turkey vulture

*Comments from Report:* Vulture smashed through the windshield and the side door blew open. The instructor's headset flew out the open door. It landed in the baggage compartment. Student pilot was cut on face and arms, in

cut on face and arm. Time out of service was 48 hours and cost to repair \$1000. Loss of revenue unknown at time of report.

**Date: 08 June 2002**

Aircraft: Cessna Citation  
Airport: John F. Kennedy Memorial (WI)  
Phase of Flight: Landing roll  
Effect on Flight: Avoidance maneuver  
Damage: Wing, fuselage, nose  
Wildlife Species: White-tailed deer

*Comments from Report:* Pilot was warned of deer on airfield. Deer was away but as the aircraft landed, a second deer ran onto the active runway. Pilot swerved to avoid the deer but it hit just below the pilot's window, against the static ports, hit the left wing root fairing. The aircraft was ferried to a maintenance base for repairs. Time out of service was 6 weeks and cost at least \$125,000.

**Date: 08 July 2002**

Aircraft: Cessna 560  
Airport: Santa Barbara Muni (CA)  
Phase of Flight: Approach (500' AGL)  
Effect on Flight: None  
Damage: Engine  
Wildlife Species: Unknown bird

*Comments from Report:* Hit a medium-sized black bird on short final. Landing continued uneventfully. After shutdown, found an excessive amount of oil draining from left engine. Aircraft was out of service for 9 days.

**Date: 08 July 2002**

Aircraft: Canadair RJ 200  
Airport: South Bend Michiana Regional (IN)  
Phase of Flight: Landing roll  
Effect on Flight: Not reported  
Damage: Wing  
Wildlife Species: White-tailed deer

*Comments from Report:* Hit deer during landing roll. Right inboard flap actuators had to be replaced. Time out of service 48 hours. Cost of repair \$195,000.

**Date: 10 July 2002**

Aircraft: B-737  
Airport: Sarasota/Bradenton Intl. (FL)  
Phase of Flight: Climb  
Effect on Flight: Diverted, precautionary landing  
Damage: Engine, tail and nose cowling  
Wildlife Species: Unknown birds

*Comments from Report:* Strike occurred at rotation. There was a golf ball hole in some of the blades. Four pairs of blades were replaced. The nose was punctured in 2 places. Aircraft made an overweight landing. Horizontal stabilizer was dented. Aircraft was out of service for more than 24 hours.

**Date: 26 July 2002**

Aircraft: B-757  
Airport: San Francisco Intl. (CA)  
Phase of Flight: Climb  
Effect on Flight: Engine reacted  
Damage: Engines and radome  
Wildlife Species: Unknown birds

*Comments from Report:* The aircraft hit 40-50 large birds. Engines reacted but continued running with no abnormal indications. Upon landing found both engines had fan blade and acoustic damage. Several sets of fan blades were replaced.

**Date: 04 August 2002\***

Aircraft: Airbus 310  
Airport: Changi Intl. (Singapore)  
Phase of Flight: Take off  
Effect on Flight: Aborted take off  
Damage: Engine  
Wildlife Species: Unknown

*Comments from Report:* Engine damage included fan blades, compressor blades, exit guide vanes and bases, and a dented nose inlet cowl. Aircraft was out of service 40 hours. Estimated cost of repairs was \$570,700.

**Date: 05 August 2002**

Aircraft: B-757  
Airport: Portland Intl. (OR)  
Phase of Flight: Take off  
Effect on Flight: Precautionary landing  
Damage: Engine  
Wildlife Species: Red-tailed hawk

*Comments from Report:* Normal take-off. At 300 feet, vibration and flutter in right engine. As climb continued, vibration got worse, power was reduced to the engine and vibration stopped at idle. Declared precautionary emergency and returned to airport. Made single engine landing without incident. Upon inspection found blade damage due to bird ingestion. Replaced 6 pairs of fan blades. Aircraft was delayed 18 hours.

**Date: 07 August 2002**

Aircraft: B-757  
Airport: San Francisco Intl. (CA)  
Phase of Flight: Climb (100' AGL)

Effect on Flight: Precautionary landing  
Damage: Engine  
Wildlife Species: Pigeons

*Comments from Report:* Shortly after rotation, a flock of 40-45 pigeons struck the aircraft. Multiple bird strikes, including at least two ingested into left engine surged and vibrated briefly. Declared emergency and returned to base with both engines running. Taxied to gate after fire chief cleared aircraft. Several fan blades damaged.

**Date: 12 September 2002**

Aircraft: Hawker Mark 20  
Airport: Orlando Executive (FL)  
Phase of Flight: Climb (700' AGL)  
Effect on Flight: Precautionary landing  
Damage: Windshield, canopy  
Wildlife Species: Egrets

*Comments from Report:* Hit 2 egrets with bubble canopy, slightly at top of head. Canopy disintegrated, departed aircraft along with most of the front and emergency escape panel. Canopy debris struck and damaged both the horizontal stabilizer and damaged the vertical fin. Debris landed in residential area. Time out of service 8 weeks and cost of repairs estimated \$20,000 to 30,000 with estimated other cost at \$80,000.

**Date: 13 September 2002**

Aircraft: BA - 41  
Airport: Dayton Intl. (OH)  
Phase of Flight: Climb (50' AGL)  
Effect on Flight: Precautionary landing  
Damage: Engine and prop  
Wildlife Species: European starlings

*Comments from Report:* Aircraft returned after ingesting 24-30 starlings. Turbine blade was bent beyond limits. The engine was removed and repaired. Time out of service was 30 hours and estimated cost of repairs along with other costs was \$172,000.

**Date: 17 September 2002**

Aircraft: DC-9-30  
Airport: La Crosse Municipal (WI)  
Phase of Flight: Take off  
Effect on Flight: Aborted take off  
Damage: Radome, engine  
Wildlife Species: Canada geese

*Comments from Report:* Hit 4 geese during take off. Aborted take off at 30 knots. One bird was ingested causing damage to engine fans to the 3rd engine. Engine was removed and replaced. The other struck the radome, causing damage.

and damaging the supporting brackets.

**Date: 23 September 2002**

Aircraft: MD-83

Airport: San Diego Intl. (CA)

Phase of Flight: Climb (14,000' AGL)

Effect on Flight: Precautionary landing

Damage: Radome, wing

Wildlife Species: Northern pintail

*Comments from Report:* Hit 2-10 ducks. Plane was rerouted to Los Angeles and made a precautionary landing. Radome and bulkhead were penetrated. Debris was found in landing gear compartment. Leading edge of wing was also penetrated. Remains identified by Smithsonian.

**Date: 6 October 2002**

Aircraft: B-737

Airport: Newark Intl. (NJ)

Phase of Flight: Approach (10' AGL)

Effect on Flight: None

Damage: Engine

Wildlife Species: Canada geese

*Comments from Report:* Hit at least 8 geese on landing flare. Two birds found in the engine (1 in core). Damaged 9 blades and nose cowl. Engine removed. Cost for repairs was \$1.4 million.

**Date: 6 October 2002**

Aircraft: Canadair RJ 200

Airport: Salt Lake City Intl. (UT)

Phase of Flight: Approach (1,700' AGL)

Effect on Flight: None

Damage: Radome, wing, engine

Wildlife Species: Canada geese

*Comments from Report:* Hit 5 geese on final approach. Damage included radome, left wing root and #1 engine and nacelle. Aircraft out of service 48 hours.

**Date: 13 October 2002**

Aircraft: B-737-300

Airport: Piedmont Triad Intl. (NC)

Phase of Flight: Approach (10' AGL)

Effect on Flight: None

Damage: Engines 1 and 2, wing

Wildlife Species: Canada geese

*Comments from Report:* Hit flock of Canada geese on landing flare. Geese ingested in both engines. No immediate effect. There was an odor in the

Both nose cowls were replaced as well as a full set of fan blades on the engine and 3 pairs of fan blades on the right engine.

**Date: 14 October 2002**

Aircraft: Bombardier de Havilland Dash 8

Airport: Albany Intl. (NY)

Phase of Flight: Approach (3,000' AGL)

Effect on Flight: Disconnected auto pilot to avoid flock

Damage: Tail, wing, engine

Wildlife Species: Canada geese

*Comments from Report:* Pilot saw a large flock of birds and disconnect autopilot to try to avoid them but several hit with a big thud. Aircraft har normally and landed without incident. At the gate, found a bird protrudin the wing and fuel leaking out running down the wing. Another hole was the horizontal stabilizer. Engine was starting to smoke where the fuel w by it. Called fire and rescue.

**Date: 19 October 2002**

Aircraft: B-767

Airport: Boston Logan (MA)

Phase of Flight: Climb (200' AGL)

Effect on Flight: Engine shut down, precautionary landing

Damage: Engine, landing lights

Wildlife Species: Double-crested cormorants

*Comments from Report:* Encountered a flock of more than 20 birds. At was ingested. There were immediate indications of engine surging on t side, compression stall and smoke came from engine. In-flight engine s Nose cowl dented and punctured. Heavy fan blade damage with abnor vibration. Overweight landing with one engine was made without incide fan blade was found on the runway. Because pieces of engine exited th front it was considered a contained failure. Aircraft was towed to the rail Hydraulic lines were leaking and several bolts were sheared off inside t Many pieces fell out when the cowling was opened. Aircraft was out of 3 days. Cost of repairs was \$1.7 million.

**Date: 12 November 2002**

Aircraft: Eurocopter/Kawasaki BK 117

Airport: near Tequesta FL

Phase of Flight: En route (800' AGL)

Effect on Flight: Emergency landing

Damage: Unknown

Wildlife Species: Vulture

*Comments from Report:* An emergency medical helicopter ran into a gr vultures. One of the medical technicians was struck by 1 of the birds ar received minor injuries. The helicopter was forced to make an emerger due to damages. This was a back-up aircraft so the county's emergenc

was without any helicopters for about a day. (This strike was not report information is missing.)

**Date: 3 December 2002**

Aircraft: Learjet 36

Airport: Astoria Regional (OR)

Phase of Flight: Take-off

Effect on Flight: Aborted take-off & ran off runway

Damage: Aircraft destroyed

Wildlife Species: Elk

*Comments from Report:* Learjet was destroyed after colliding with multi and subsequent runway overrun. Impact forces and post-crash fire des airplane. Crew believes a piece of the animal was ingested into the left causing it to catch fire. No one was injured.

\*American-based airline at a foreign airport.

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Dana McCullough

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Bird Strike Committee USA

## *Understanding and Reducing Bird Hazards to Aircraft*

### Significant Bird Strikes

[Threat Overview](#)

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the Threat](#)

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The following is a selected list of recent **bird strikes** to civil and military **aircraft**.

[Civil Aircraft \(USA\)](#), [Large Military Aircraft](#)

The U.S. Department of Agriculture, through an interagency agreement with the Federal Aviation Administration, compiles a database of all reported bird/wildlife strikes to U.S. civil **aircraft** and to foreign carriers experiencing strikes in the USA. Over 38,000 strike reports from 1,300 airports have been compiled, 1990-2001 (about 5,900 strikes in 2000). The FAA estimates that this represents only about 20% of the strikes that have occurred. The following examples from the database are presented to show the serious impact that strikes by birds or other wildlife can have on **aircraft**. These examples demonstrate the widespread and diverse nature of the problem and are not intended to criticize individual airports. Many of the strike examples reported here occurred off airport property during descent, approach or climb

### Civil Aircraft (USA)

**Date:** 03 June 1995

**Aircraft:** Concorde

**Airport:** John F. Kennedy (NY)

**Phase of Flight:** Landing roll

**Effect on Flight:** **Aircraft** was towed to gate

**Damage:** Engines

**Wildlife Species:** Canada geese

Comments from Report: **Aircraft** ingested a Canada goose into the #3 engine which had an uncontained failure causing parts to go into the #4 engine. Both engines were destroyed. Flames and smoke were seen coming from both engines. **Cost** was over \$9 million. **Aircraft** was out of service for 5 days. The NY Port Authority paid **\$5.3 million** in compensation for losses.

**Date: 10 December 1995**

**Aircraft:** B-747

Airport: John F. Kennedy (NY)

Phase of Flight: Approach (7500' AGL)

Effect on Flight: Not reported

Damage: Engines, cowling, wing, fuselage

Wildlife Species: Snow geese

Comments from Report: As the **aircraft** broke through a cloudbank at 7500 feet, it was struck by a flock of snow geese, which sounded like sandbags hitting. The impact destroyed one engine, damaged several fan blades on another and extensively damaged the airframe. Repairs **cost** approximately **\$6 million**.

**Date: 31 March 1996**

**Aircraft:** B-737

Airport: Kansas City Intl. (MO)

Phase of Flight: Take off

Effect on Flight: Precautionary landing

Damage: Engine

Wildlife Species: Medium to large bird

Comments from Report: Airport operations found a piece of inlet cooling duct on runway from a B-737 that had just taken off. **Aircraft** returned and landed safely. Engine had several damaged guide vanes. **Aircraft** was out of service about 24 hours.

**Date: 2 June 1996**

**Aircraft:** B-737

Airport: Chicago Midway (IL)

Phase of Flight: Climb (100' AGL)

Effect on Flight: Precautionary landing

Damage: Engine

Wildlife Species: Gull

Comments from Report: Ingested a gull during climb out. Tower observed flames from #2 engine and advised pilot who declared an emergency and returned to land without incident. Emergency equipment was on the runway. **Aircraft** landed using single engine landing procedures. Core and all fan blades were damaged. Engine was rebuilt.

**Date: 7 January 1997**

**Aircraft:** MD-80

Airport: Dallas-Fort Worth (TX)

Phase of Flight: Climb (50' AGL)

Effect on Flight: Precautionary landing

Damage: Engine &amp; wing

Wildlife Species: Blackbirds (437)

Comments from Report: **Aircraft** struck over 400 birds just after take off. Almost every part of the plane was hit. Pilot declared an emergency and returned to land without event. Substantial damage was found on various parts of the **aircraft**. #1 engine had to be replaced. Runway was closed for an hour. Personnel were sent to disperse another large flock on the airfield.

**Date:** 27 January 1997**Aircraft:** DC-10

Airport: Los Angeles Intl. (CA)

Phase of Flight: Climb

Effect on Flight: Engine shut down

Damage: Engine

Wildlife Species: Gull

Comments from Report: Crew thinks they hit a gull shortly after take off. #3 engine had a vibration with oil quantity fluctuation. When oil quantity dropped to zero,  $\frac{3}{4}$  of the way to Japan, the engine was shut down. Crew had planned to divert to Anchorage but decided against it due to poor weather. Feathers found in engine after landing. **Cost \$1.5 million.**

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**Date:** 15 November 1997**Aircraft:** Airbus 320

Airport: John Wayne (CA)

Phase of Flight: Take off

Effect on Flight: Precautionary landing

Damage: Engine

Wildlife Species: Large bird

Comments from Report: A large bird was ingested into one of the two engines causing a fire. Passengers heard a loud boom, then the **aircraft** dropped momentarily before recovering altitude. The **aircraft** circled for 30 minutes before making an emergency landing. There were no injuries. Bird hit blades on starboard fan which broke or bent all blades causing damage to cowling and to system behind the fan. Engine changed. Time out of service 30+ hrs. **Cost of repairs \$300,000 and other cost \$800,000.**

**Date:** 17 December 1997**Aircraft:** Bellanca Super Viking

Airport: Jefferson County (OH)  
Phase of Flight: Take off  
Effect on Flight: **Aircraft** lost power  
Damage: Destroyed  
Wildlife Species: White-tailed deer  
Comments from Report: **Aircraft** hit a deer on take off and lost power, crashing into a heavily wooded area. **Aircraft** was destroyed. Pilot was life-flighted out and passenger had minor injuries.

**Date: 09 January 1998**

**Aircraft:** B-727

Airport: Houston Intercontinental (TX)  
Phase of Flight: Climb (6,000' AGL)  
Effect on Flight: Precautionary landing  
Damage: Engine, radome, right wing  
Wildlife Species: Snow geese  
Comments from Report: **Aircraft** was climbing through 6,000' when a flock of snow geese was encountered. Three to five birds were ingested. Engine lost all power and was destroyed, radome was torn from the **aircraft** and leading edges of both wings were damaged, pitot tube for first officer was torn off. Intense vibration in airframe and noise level in cockpit increased to the point that communication between crewmembers became difficult. Emergency was declared. Flight returned safely to Houston. Time out of service was 216 hours and **cost** was \$468,000.

**Date: 22 February 1999**

**Aircraft:** B-757-200

Airport: Cincinnati/Northern Kentucky Intl. (KY)  
Phase of Flight: Take off (rotation)  
Effect on Flight: Emergency landing  
Damage: Both engines and wing  
Wildlife Species: European starlings  
Comments from Report: Number 2 engine was destroyed. Extensive damage to right wing. **Massive clean-up of 400 birds.** **Cost** of repairs at least \$500,000. NTSB investigating.

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**Date: 12 June 1999**

**Aircraft:** Beechcraft 90

Airport: Westchester County (NY)  
Phase of Flight: Take off  
Effect on Flight: Aborted take off  
Damage: Landing gear, nose, engines, props, wings, fuselage, lights  
Wildlife Species: Coyote  
Comments from Report: Nose gear was torn from **aircraft**

causing other parts of plane to be damaged. Time out of service 5 months, lost revenue \$55,000 and cost of repairs \$550,000.

**Date: 14 July 2000**

**Aircraft:** Fk-100

**Airport:** Chicago O'Hare Intl. (IL)

**Phase of Flight:** Takeoff

**Effect on Flight:** Precautionary landing

**Damage:** Engine

**Wildlife Species:** American crow

**Comments from Report:** Pilot heard a thump and felt the **aircraft** yaw slightly to the right. A foul odor filled the cabin. Engine caution light came on. Pilot pulled back power on engine and returned to land. Emergency equipment was standing by. **Engine was destroyed.**

**Date: 23 August 2000**

**Aircraft:** B-747

**Airport:** Philadelphia Intl. (PA)

**Phase of Flight:** Take off

**Effect on Flight:** Aborted take off

**Damage:** Engine, wing

**Wildlife Species:** Canada geese

**Comments from Report:** The **aircraft** flew through a flock of about 30 Canada geese and ingested 1 or 2 in the #1 engine. The high-speed aborted take off resulted in 9 flat tires. The **aircraft** was towed to the ramp. Time out of service was 72 hours. Engine was a total loss. **Cost was \$3 million.**

**Date: 27 August 2000**

**Aircraft:** B-747

**Airport:** Los Angeles Intl. (CA)

**Phase of Flight:** Climb (500' AGL)

**Effect on Flight:** Emergency landing

**Damage:** Engine

**Wildlife Species:** Western gull

**Comments from Report:** At least one Western gull was ingested just after take off. Bystanders on a beach heard a giant backfire and saw the jet spewing flames. Three pieces of the engine fell to the ground, one 5-ft piece landed on a beach where people were having a cookout. No one was injured. The pilot dumped 83 tons of fuel over the ocean and then made an emergency landing. The flight had 449 people who were not able to get another flight until the next day. The costs reported do not include room and board. Time out of service was 72 hours and **cost of repairs was \$400,000.**

**Date: 08 November 2000**

**Aircraft:** Saab-340

Airport: Aberdeen Regional (SD)  
Phase of Flight: Approach (400' AGL)  
Effect on Flight: **Aircraft** was grounded  
Damage: Fuselage, wiper, propeller  
Wildlife Species: Snow geese  
Comments from Report: A flock snow geese was struck. The windshield wiper broke off, hit the prop which broke it into several pieces and threw it through the fuselage. A passenger was injured in the leg with the piece of metal and was taken to the hospital.

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**06 December 2000**

**Aircraft:** Emb 120  
Airport: Yeager Airport (WV)  
Phase of Flight: Landing roll  
Effect on Flight: None  
Damage: Prop and fuselage  
Wildlife Species: White-tailed deer  
Comments from Report: **Aircraft** collided with 2 deer just after landing. The tip of a propeller blade (4" x 3") had separated and punctured the fuselage, injuring a passenger, who later died.

**Date: 05 January 2001**

**Aircraft:** B-757  
Airport: Miami Intl. (FL)  
Phase of Flight: Climb (100' AGL)  
Effect on Flight: Precautionary landing, engine shut down  
Damage: Engine  
Wildlife Species: Turkey vulture  
Comments from Report: The number 2 engine ingested one or more turkey vultures just after lift off. There were at least 20 circling vultures. The engine failed and the captain returned to land without incident. Time out of service was 7 days and cost was estimated at between \$200,000 and \$2 million.

**Date: 14 January 2001**

**Aircraft:** Learjet 60  
Airport: Troy Municipal (AL)  
Phase of Flight: Landing  
Effect on Flight: **Aircraft** slid off runway  
Damage: **Aircraft** destroyed  
Wildlife Species: White-tailed deer  
Comments from Report: The Learjet collided with two deer and ran off the end of the runway into a ditch because the thrust reversers would not operate. The **aircraft** burst into flames. Rescuers kept the fire from reaching the pilots for about 40 minutes until they could be removed. The pilot and

first officer had serious injuries and were flown to a hospital. The plane was owned by the Dallas Cowboys owner. **Cost** to replace **aircraft** \$9.5 million. **Other costs** \$25,000.

**Date: 21 January 2001**

**Aircraft:** MD-11

**Airport:** Portland Intl. (OR)

**Phase of Flight:** Take off

**Effect on Flight:** Aborted take-off, engine shut down

**Damage:** Engine

**Wildlife Species:** Herring gull

**Comments from Report:** The #3 engine ingested a Herring gull. The engine stall blew off the nose cowl that was sucked back into the engine and shredded. The engine had an uncontained failure. The pilot aborted take-off and blew two tires. 217 passengers were safely deplaned and rerouted to other flights.

**Date: 08 March 2001**

**Aircraft:** Bell 206

**Airport:** Barnes-Jewish Hospital Helipad (MO)

**Phase of Flight:** Approach (500' AGL)

**Effect on Flight:** None

**Damage:** Windshield

**Wildlife Species:** Duck

**Comments from Report:** **Aircraft** was transporting a heart patient to Barnes-Jewish Hospital, when a duck crashed through the windshield. The pilot was slightly injured and was partially incapacitated. The duck ended up in the patient's lap.

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**Date: 02 April 2001**

**Aircraft:** B-767-300

**Airport:** Charles de Gaulle

**Phase of Flight:** Climb (14,000' AGL)

**Effect on Flight:** Precautionary landing

**Damage:** Nose, radome, wing, fuselage, tail

**Wildlife Species:** Northern shoveler

**Comments from Report:** A flock of shovelers was struck causing dents and 11 punctures to the **aircraft**. One bird entered the cockpit causing depressurization. The pilot had to use an oxygen mask. The **aircraft** returned safely to the airport. **Cost** of repairs estimated at over \$1 million.

**Date: 26 April 2001**

**Aircraft:** B-757-200

**Airport:** Detroit Metropolitan (MI)

**Phase of Flight:** Climb (300' AGL)

Effect on Flight: Precautionary landing, engine shut down  
Damage: Engine  
Wildlife Species: Snow geese  
Comments from Report: After take off, flight crew saw several **bird strikes** to left engine. Engine made loud rumbling noise, EGT rose above 700 degrees and smoke entered the cabin. An emergency was declared and the engine was shut down. Landing was without incident.

**Date: 08 June 2001**

**Aircraft:** Airbus 300

**Airport:** Newark Intl. (NJ)

**Phase of Flight:** Approach (150' AGL)

**Effect on Flight:** None

**Damage:** Engine

**Wildlife Species:** Canada geese

**Comments from Report:** 2-10 birds were ingested which damaged several fan blades. The engine was removed and several sets of fan blades were replaced. **Cost was \$2.8 million for repairs and other costs.**

**Date: 09 June 2001**

**Aircraft:** Airbus 300

**Airport:** Dayton Intl. (OH)

**Phase of Flight:** Climb (200' AGL)

**Effect on Flight:** Precautionary landing

**Damage:** Engine

**Wildlife Species:** Canada goose

**Comments from Report:** A Canada goose was ingested into the #2 engine shortly after lift off. The engine had an uncontained failure and a precautionary landing was made. **The cost to repair (\$3.5 million) was not economical so the engine was scrapped.**

**Date: 31 July 2001**

**Aircraft:** B-737-500

**Airport:** Washington Dulles Intl. (DC)

**Phase of Flight:** Approach (100' AGL)

**Effect on Flight:** None

**Damage:** Engine

**Wildlife Species:** Canada goose

**Comments from Report:** A Canada goose was ingested during approach. The oil cooler was plugged with bird remains. A set of fan blades and the oil cooler were replaced. Time out of service was 4 days and **cost was \$430,000. Bird ID by Smithsonian**

**Date: 06 December 2001**

**Aircraft:** B-737

**Airport:** Detroit Metropolitan (MI)

Phase of Flight: Climb

Effect on Flight: Precautionary landing

Damage: Engine

Wildlife Species: Gulls

Comments from Report: **Aircraft** struck a flock of gulls, ingesting one after take off. Engine rolled back, and then started compressor stalls. Pilot pulled throttle back to idle and returned to airport. Emergency landing made due to engine flame out. The engine was replaced. Cost estimated at \$2.3 million.

**Date: 26 January 2002**

**Aircraft:** B-757

Airport: Denver Intl. (CO)

Phase of Flight: Take off

Effect on Flight: Precautionary landing

Damage: Engine

Wildlife Species: Great horned owl

Comments from Report: **Aircraft** ingested a great horned owl which caused engine vibration. **Aircraft** returned to land at DEN with substantial fan blade damage. Engine was washed before remains were removed for ID. Maintenance thought there was fur and feathers in the engine. Smithsonian identified the feather remains. Time out of service was 3 days and cost of repairs was \$500,000.

**Date: 21 February 2002**

**Aircraft:** BE-1900

Airport: Phoenix Sky Harbor Intl. (AZ)

Phase of Flight: Climb (400' AGL)

Effect on Flight: Precautionary landing

Damage: Wing, fuel tank

Wildlife Species: Northern pintail

Comments from Report: Bird penetrated right wing and fuel was rapidly leaking out. Emergency landing was made. Passengers safely deplaned. Smithsonian identified the bird.

**Date: 24 February 2002**

**Aircraft:** Fk-100

Airport: Dallas-Fort Worth (TX)

Phase of Flight: Climb (6000' AGL)

Effect on Flight: Precautionary landing

Damage: Engine, nose, wing

Wildlife Species: Greater white-fronted goose

Comments from Report: **Aircraft** struck a flock of geese and ingested one after takeoff. Engine vibration caused crew to reduce power to idle. Nose was damaged. Several blades were deformed. Engine was replaced. Bird ID by Smithsonian.

Cost of repairs and lost revenue totaled \$654,000. **Aircraft** was out of service for 8 days.

**Date: 09 March 2002****Aircraft:** Canadair RJ 200**Airport:** Dulles Intl. (DC)**Phase of Flight:** Take off**Effect on Flight:** Aborted take off**Damage:** Engine, windshield, fuselage**Wildlife Species:** Wild turkeys

**Comments from Report:** **Aircraft** struck wild turkeys. One shattered the windshield spraying the cockpit with glass fragments and remains. Another hit the fuselage and was ingested. There was a 14 inch by 4 inch section of fuselage skin damaged below the windshield seal. **Cost** of repairs estimated at \$200,000. **Aircraft** was out of service for at least two weeks.

**Date: 08 May 2002****Aircraft:** Beechjet 400**Airport:** Burke Lakefront (OH)**Phase of Flight:** Take off**Effect on Flight:** Aborted take off**Damage:** Engines**Wildlife Species:** Gulls (ring-billed and herring)

**Comments from Report:** Pilot revved engines to move gulls from runway. The gulls lifted off, but as the **aircraft** was taking off, the gulls returned to the runway and were struck. Both engines ingested gulls and were damaged. One had an uncontained failure. the **aircraft** was towed back to the hanger. 14 carcasses were recovered. Estimated **cost** was \$600,000.

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**Large Military Aircraft****15 July 1996; Belgian Air Force Lockheed C-130;**

**Eindhoven, Netherlands:** The **aircraft** struck a flock of birds during approach and crashed short of the runway. All four crew members and 30 of the 37 passengers were killed. A synopsis of the accident report is available in [English](#), in [French](#), and in [Dutch](#).

**14 July 1996; NATO E-3 AWACS; Aktion, Greece:** The **aircraft** struck a flock of birds during takeoff. The crew aborted the takeoff and the **aircraft** overran the runway. The **aircraft** was not repaired, but none of the crew was seriously injured.

**22 September 1995; U.S. Air Force E-3 AWACS;**

**Elmendorf AFB, Alaska:** During takeoff as the **aircraft** was passing rotation speed, the **aircraft** struck about three dozen

geese, ingesting at least three into engine two and at least one into engine one. The **aircraft** was unable to maintain controlled flight and crashed in a forest about 1 mile (1.6 km) beyond the runway. All 24 occupants were killed.

**September 1987; U.S. Air Force B1-B; Colorado, USA:** **Aircraft** lost control and crashed after a large bird struck the wing root area and damage a hydraulic system. The **aircraft** was on a low level, high speed training mission. Only three of the six occupants were able to successfully bail out. .

**1980; Royal Air Force Nimrod; Kinloss Scotland: Aircraft** lost control and crashed after ingesting a number of birds into multiple engines.

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Dana McCullough



U.S. Department  
of Transportation

Federal Aviation  
Administration

# Advisory Circular

**Subject:** HAZARDOUS WILDLIFE ATTRACTANTS ON  
OR NEAR AIRPORTS

**Date:** 5/1/97

**AC No:** 150/5200-33

**Initiated by:**

**Change:**

AAS-310 and APP-600

**1. PURPOSE.** This advisory circular (AC) provides guidance on locating certain land uses having the potential to attract hazardous wildlife to or in the vicinity of public-use airports. It also provides guidance concerning the placement of new airport development projects (including airport construction, expansion, and renovation) pertaining to aircraft movement in the vicinity of hazardous wildlife attractants. Appendix 1 provides definitions of terms used in this AC.

**2. APPLICATION.** The standards, practices, and suggestions contained in this AC are recommended by the Federal Aviation Administration (FAA) for use by the operators and sponsors of all public-use airports. In addition, the standards, practices, and suggestions contained in this AC are recommended by the FAA as guidance for land use planners, operators, and developers of projects, facilities, and activities on or near airports.

**3. BACKGROUND.** Populations of many species of wildlife have increased markedly in the

last few years. Some of these species are able to adapt to human-made environments, such as exist on and around airports. The increase in wildlife populations, the use of larger turbine engines, the increased use of twin-engine aircraft, and the increase in air-traffic, all combine to increase the risk, frequency, and potential severity of wildlife-aircraft collisions.

Most public-use airports have large tracts of open, unimproved land that are desirable for added margins of safety and noise mitigation. These areas can present potential hazards to aviation because they often attract hazardous wildlife. During the past century, wildlife-aircraft strikes have resulted in the loss of hundreds of lives world-wide, as well as billions of dollars worth of aircraft damage. Hazardous wildlife attractants near airports could jeopardize future airport expansion because of safety considerations.

DAVID L. BENNETT  
Director, Office of Airport Safety and Standards

## SECTION 1. HAZARDOUS WILDLIFE ATTRACTANTS ON OR NEAR AIRPORTS.

### 1-1. TYPES OF HAZARDOUS WILDLIFE ATTRACTANTS ON OR NEAR AIRPORTS.

Human-made or natural areas, such as poorly-drained areas, retention ponds, roosting habitats on buildings, landscaping, putrescible-waste disposal operations, wastewater treatment plants, agricultural or aquacultural activities, surface mining, or wetlands, may be used by wildlife for escape, feeding, loafing, or reproduction. Wildlife use of areas within an airport's approach or departure airspace, aircraft movement areas, loading ramps, or aircraft parking areas may cause conditions hazardous to aircraft safety.

All species of wildlife can pose a threat to aircraft safety. However, some species are more commonly involved in aircraft strikes than others. Table 1 lists the wildlife groups commonly reported as being involved in damaging strikes to U.S. aircraft from 1993 to 1995.

**Table 1. Wildlife Groups Involved in Damaging Strikes to Civilian Aircraft, USA, 1993-1995.**

Wildlife Groups	Percent involvement in reported damaging strikes
Gulls	28
Waterfowl	28
Raptors	11
Doves	6
Vultures	5
Blackbirds- Starlings	5
Corvids	3
Wading birds	3
Deer	11
Canids	1

**1-2. LAND USE PRACTICES.** Land use practices that attract or sustain hazardous wildlife populations on or near airports can significantly increase the potential for wildlife-aircraft collisions. FAA recommends against land use practices, within the siting criteria stated in 1-3, that attract or sustain populations of hazardous wildlife within the vicinity of airports or cause movement of hazardous wildlife onto, into, or across the approach or departure airspace, aircraft movement area, loading ramps, or aircraft parking area of airports.

Airport operators, sponsors, planners, and land use developers should consider whether proposed land uses, including new airport development projects, would increase the wildlife hazard. Caution should be exercised to ensure that land use practices on or near airports do not enhance the attractiveness of the area to hazardous wildlife.

**1-3. SITING CRITERIA.** FAA recommends separations when siting any of the wildlife attractants mentioned in Section 2 or when planning new airport development projects to accommodate aircraft movement. The distance between an airport's aircraft movement areas, loading ramps, or aircraft parking areas and the wildlife attractant should be as follows:

**a. Airports serving piston-powered aircraft.** A distance of 5,000 feet is recommended.

**b. Airports serving turbine-powered aircraft.** A distance of 10,000 feet is recommended.

**c. Approach or Departure airspace.** A distance of 5 statute miles is recommended, if the wildlife attractant may cause hazardous wildlife movement into or across the approach or departure airspace.

## SECTION 2. LAND USES THAT ARE INCOMPATIBLE WITH SAFE AIRPORT OPERATIONS.

**2-1. GENERAL.** The wildlife species and the size of the populations attracted to the airport environment are highly variable and may depend on several factors, including land-use practices on or near the airport. It is important to identify those land use practices in the airport area that attract hazardous wildlife. This section discusses land use practices known to threaten aviation safety.

**2-2. PUTRESCIBLE-WASTE DISPOSAL OPERATIONS.** Putrescible-waste disposal operations are known to attract large numbers of wildlife that are hazardous to aircraft. Because of this, these operations, when located within the separations identified in the siting criteria in 1-3 are considered incompatible with safe airport operations.

FAA recommends against locating putrescible-waste disposal operations inside the separations identified in the siting criteria mentioned above. FAA also recommends against new airport development projects that would increase the number of aircraft operations or that would accommodate larger or faster aircraft, near putrescible-waste disposal operations located within the separations identified in the siting criteria in 1-3.

**2-3. WASTEWATER TREATMENT FACILITIES.** Wastewater treatment facilities and associated settling ponds often attract large numbers of wildlife that can pose a threat to aircraft safety when they are located on or near an airport.

**a. New wastewater treatment facilities.** FAA recommends against the construction of new wastewater treatment facilities or associated settling ponds within the separations identified in the siting criteria in 1-3. During the siting analysis for wastewater treatment facilities, the potential to attract hazardous wildlife should be considered if an airport is in the vicinity of a proposed site. Airport operators should voice their opposition to such sitings. In addition, they should consider the existence of wastewater treatment facilities when evaluating proposed sites for new airport development projects and avoid such sites when practicable.

**b. Existing wastewater treatment facilities.** FAA recommends correcting any wildlife hazards arising from existing wastewater treatment facilities located on or near airports without delay, using appropriate wildlife hazard mitigation techniques. Accordingly, measures to minimize hazardous wildlife attraction should be developed in consultation with a wildlife damage management biologist. FAA recommends that wastewater treatment facility operators incorporate appropriate wildlife hazard mitigation techniques into their operating practices. Airport operators also should encourage those operators to incorporate these mitigation techniques in their operating practices.

**c. Artificial marshes.** Waste-water treatment facilities may create artificial marshes and use submergent and emergent aquatic vegetation as natural filters. These artificial marshes may be used by some species of flocking birds, such as blackbirds and waterfowl, for breeding or roosting activities. FAA recommends against establishing artificial marshes within the separations identified in the siting criteria stated in 1-3.

**d. Wastewater discharge and sludge disposal.** FAA recommends against the discharge of wastewater or sludge on airport property. Regular spraying of wastewater or sludge disposal on unpaved areas may improve soil moisture and quality. The resultant turf growth requires more frequent mowing, which in turn may mutilate or flush insects or small animals and produce straw. The maimed or flushed organisms and the straw can attract hazardous wildlife and jeopardize aviation safety. In addition, the improved turf may attract grazing wildlife such as deer and geese.

Problems may also occur when discharges saturate unpaved airport areas. The resultant soft, muddy conditions can severely restrict or prevent emergency vehicles from reaching accident sites in a timely manner.

**e. Underwater waste discharges.** The underwater discharge of any food waste, e.g., fish processing offal, that could attract scavenging wildlife is not recommended within the separations identified in the siting criteria in 1-3.

**2-4. WETLANDS.****a. Wetlands on or near Airports.**

(1) **Existing Airports.** Normally, wetlands are attractive to many wildlife species. Airport operators with wetlands located on or nearby airport property should be alert to any wildlife use or habitat changes in these areas that could affect safe aircraft operations.

(2) **Airport Development.** When practicable, the FAA recommends siting new airports using the separations identified in the siting criteria in 1-3. Where alternative sites are not practicable or when expanding existing airports in or near wetlands, the wildlife hazards should be evaluated and minimized through a wildlife management plan prepared by a wildlife damage management biologist, in consultation with the U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers (COE).

**NOTE:** If questions exist as to whether or not an area would qualify as a wetland, contact the U.S. Army COE, the Natural Resource Conservation Service, or a wetland consultant certified to delineate wetlands.

**b. Wetland mitigation.** Mitigation may be necessary when unavoidable wetland disturbances result from new airport development projects. Wetland mitigation should be designed so it does not create a wildlife hazard.

(1) FAA recommends that wetland mitigation projects that may attract hazardous wildlife be sited outside of the separations

identified in the siting criteria in 1-3. Wetland mitigation banks meeting these siting criteria offer an ecologically sound approach to mitigation in these situations.

(2) Exceptions to locating mitigation activities outside the separations identified in the siting criteria in 1-3 may be considered if the affected wetlands provide unique ecological functions, such as critical habitat for threatened or endangered species or ground water recharge. Such mitigation must be compatible with safe airport operations. Enhancing such mitigation areas to attract hazardous wildlife should be avoided. On-site mitigation plans may be reviewed by the FAA to determine compatibility with safe airport operations.

(3) Wetland mitigation projects that are needed to protect unique wetland functions (see 2-4.b.(2)), and that must be located in the siting criteria in 1-3 should be identified and evaluated by a wildlife damage management biologist before implementing the mitigation. A wildlife damage management plan should be developed to reduce the wildlife hazards.

**NOTE:** AC 150/5000-3, *Address List for Regional Airports Division and Airports District/Field Offices*, provides information on the location of these offices.

**2-5. DREDGE SPOIL CONTAINMENT AREAS.**

FAA recommends against locating dredge spoil containment areas within the separations identified in the siting criteria in 1-3, if the spoil contains material that would attract hazardous wildlife.

### SECTION 3. LAND USES THAT MAY BE COMPATIBLE WITH SAFE AIRPORT OPERATIONS.

**3-1. GENERAL.** Even though they may, under certain circumstances, attract hazardous wildlife, the land use practices discussed in this section have flexibility regarding their location or operation and may even be under the airport operator's or sponsor's control. In general, the FAA does not consider the activities discussed below as hazardous to aviation if there is no apparent attraction to hazardous wildlife, or wildlife hazard mitigation techniques are implemented to deal effectively with any wildlife hazard that may arise.

**3-2. ENCLOSED WASTE FACILITIES.** Enclosed trash transfer stations or enclosed waste handling facilities that receive garbage indoors; process it via compaction, incineration, or similar manner; and remove all residue by enclosed vehicles, generally would be compatible, from a wildlife perspective, with safe airport operations, provided they are not located on airport property or within the runway protection zone (RPZ). No putrescible-waste should be handled or stored outside at any time, for any reason, or in a partially enclosed structure accessible to hazardous wildlife.

Partially enclosed operations that accept putrescible-waste are considered to be incompatible with safe airport operations. FAA recommends these operations occur outside the separations identified in the siting criteria in 1-3.

**3-3. RECYCLING CENTERS.** Recycling centers that accept previously sorted, non-food items such as glass, newspaper, cardboard, or aluminum are, in most cases, not attractive to hazardous wildlife.

**3-4. COMPOSTING OPERATIONS ON AIRPORTS.** FAA recommends against locating composting operations on airports. However, when they are located on an airport, composting operations should not be located closer than the greater of the following distances: 1,200 feet from any aircraft movement area, loading ramp, or aircraft parking space; or the distance called for by airport design requirements. This spacing is intended to prevent material, personnel, or equipment from penetrating any Obstacle Free Area (OFA), Obstacle Free Zone (OFZ), Threshold Siting Surface (TSS), or Clearway (see AC 150/5300-13, *Airport Design*). On-airport disposal of compost by-products is not recommended for the reasons stated in 2-3.d.

**a. Composition of material handled.** Components of the compost should never include any municipal solid waste. Non-food waste such as leaves, lawn clippings, branches, and twigs generally are not considered a wildlife attractant. Sewage sludge, wood-chips, and similar material are not municipal solid wastes and may be used as compost bulking agents.

**b. Monitoring on-airport composting operations.** If composting operations are to be located on airport property, FAA recommends that the airport operator monitor composting operations to ensure that steam or thermal rise does not affect air traffic in any way. Discarded leaf disposal bags or other debris must not be allowed to blow onto any active airport area. Also, the airport operator should reserve the right to stop any operation that creates unsafe, undesirable, or incompatible conditions at the airport.

**3-5. ASH DISPOSAL.** Fly ash from resource recovery facilities that are fired by municipal solid waste, coal, or wood, is generally considered not to be a wildlife attractant because it contains no putrescible matter. FAA generally does not consider landfills accepting only fly ash to be wildlife attractants, if those landfills: are maintained in an orderly manner; admit no putrescible-waste of any kind; and are not co-located with other disposal operations.

Since varying degrees of waste consumption are associated with general incineration, FAA classifies the ash from general incinerators as a regular waste disposal by-product and, therefore, a hazardous wildlife attractant.

**3-6. CONSTRUCTION AND DEMOLITION (C&D) DEBRIS LANDFILLS.** C&D debris (Class IV) landfills have visual and operational characteristics similar to putrescible-waste disposal sites. When co-located with putrescible-waste disposal operations, the probability of hazardous wildlife attraction to C&D landfills increases because of the similarities between these disposal activities.

FAA generally does not consider C&D landfills to be hazardous wildlife attractants, if those landfills: are maintained in an orderly manner; admit no putrescible-waste of any kind; and are not co-located with other disposal operations.

**3-7. WATER DETENTION OR RETENTION PONDS.** The movement of storm water away from runways, taxiways, and aprons is a normal function on most airports and is necessary for safe aircraft operations. Detention ponds hold storm water for short periods, while retention ponds hold water indefinitely. Both types of ponds control runoff, protect water quality, and can attract hazardous wildlife. Retention ponds are more attractive to hazardous wildlife than detention ponds because they provide a more reliable water source.

To facilitate hazardous wildlife control, FAA recommends using steep-sided, narrow, linearly-shaped, rip-rap lined, water detention basins rather than retention basins. When possible, these ponds should be placed away from aircraft movement areas to minimize aircraft-wildlife interactions. All vegetation in or around detention or retention basins that provide food or cover for hazardous wildlife should be eliminated.

If soil conditions and other requirements allow, FAA encourages the use of underground storm water infiltration systems, such as French drains or buried rock fields, because they are less attractive to wildlife.

**3-8. LANDSCAPING.** Wildlife attraction to landscaping may vary by geographic location. FAA recommends that airport operators approach landscaping with caution and confine it to airport areas not associated with aircraft movements. All landscaping plans should be reviewed by a wildlife damage management biologist. Landscaped areas should be monitored on a continuing basis for the presence of hazardous wildlife. If hazardous wildlife is detected, corrective actions should be implemented immediately.

**3-9. GOLF COURSES.** Golf courses may be beneficial to airports because they provide open space that can be used for noise mitigation or by aircraft during an emergency. On-airport golf courses may also be a concurrent use that provides income to the airport.

Because of operational and monetary benefits, golf courses are often deemed compatible land uses on or near airports. However, waterfowl (especially Canada geese) and some species of gulls are attracted to the large, grassy areas and open water found on most golf courses. Because waterfowl and gulls occur throughout the U.S., FAA recommends that airport operators exercise caution and consult with a wildlife damage management biologist when considering proposals for golf

course construction or expansion on or near airports. Golf courses should be monitored on a continuing basis for the presence of hazardous wildlife. If hazardous wildlife is detected, corrective actions should be implemented immediately.

**3-10. AGRICULTURAL CROPS.** As noted above, airport operators often promote revenue-generating activities to supplement an airport's financial viability. A common concurrent use is agricultural crop production. Such use may create potential hazards to aircraft by attracting wildlife. Any proposed on-airport agricultural operations should be reviewed by a wildlife damage management biologist. FAA generally does not object to agricultural crop production on airports when: wildlife hazards are not predicted; the guidelines for the airport areas specified in 3-10.a-f. are observed; and the agricultural operation is closely monitored by the airport operator or sponsor to ensure that hazardous wildlife are not attracted.

**NOTE:** If wildlife becomes a problem due to on-airport agricultural operations, FAA recommends undertaking the remedial actions described in 3-10.f.

**a. Agricultural activities adjacent to runways.** To ensure safe, efficient aircraft operations, FAA recommends that no agricultural activities be conducted in the Runway Safety Area (RSA), OFA, and the OFZ (see AC 150/5300-13).

**b. Agricultural activities in areas requiring minimum object clearances.** Restricting agricultural operations to areas outside the RSA, OFA, OFZ, and Runway Visibility Zone (RVZ) (see AC 150/5300-13) will normally provide the minimum object clearances required by FAA's airport design standards. FAA recommends that farming operations not be permitted within areas critical to the proper operation of localizers, glide slope indicators, or other visual or electronic navigational aids. Determinations of minimal areas that must be kept free of farming operations should be made on a case-by-case basis. If navigational aids are present, farm leases for on-airport agricultural activities should be coordinated with FAA's Airway Facilities Division, in accordance with FAA Order 6750.16, *Siting Criteria for Instrument Landing Systems*.

**NOTE:** Crop restriction lines conforming to the dimensions set forth in Table 2 will normally provide the minimum object clearance required by

FAA airport design standards. The presence of navigational aids may require expansion of the restricted area.

**c. Agricultural activities within an airport's approach areas.** The RSA, OFA, and OFZ all extend beyond the runway shoulder and into the approach area by varying distances. The OFA normally extends the farthest and is usually the controlling surface. However, for some runways, the TSS (see AC 150/5300-13, Appendix 2) may be more controlling than the OFA. The TSS may not be penetrated by any object. The minimum distances shown in Table 2 are intended to prevent penetration of the OFA, OFZ, or TSS by crops or farm machinery.

**NOTE:** Threshold Siting standards should not be confused with the approach areas described in Title 14, Code of Federal Regulations, Part 77, (14 CFR 77), *Objects Affecting Navigable Airspace*.

**d. Agricultural activities between intersecting runways.** FAA recommends that no agricultural activities be permitted within the RVZ. If the terrain is sufficiently below the runway elevation, some types of crops and equipment may be acceptable. Specific determinations of what is permissible in this area requires topographical data. For example, if the terrain within the RVZ is level with the runway ends, farm machinery or crops may interfere with a pilot's line-of-sight in the RVZ.

**e. Agricultural activities in areas adjacent to taxiways and aprons.** Farming activities should not be permitted within a taxiway's OFA. The outer portions of aprons are frequently used as a taxilane and farming operations should not be permitted within the OFA. Farming operations should not be permitted between runways and parallel taxiways.

**f. Remedial actions for problematic agricultural activities.** If a problem with hazardous wildlife develops, FAA recommends that a professional wildlife damage management biologist be contacted and an on-site inspection be conducted. The biologist should be requested to determine the source of the hazardous wildlife attraction and suggest remedial action. Regardless of the source of the attraction, prompt remedial actions to protect aviation safety are recommended. The remedial actions may range from choosing another crop or farming technique to complete termination of the agricultural operation.

Whenever on-airport agricultural operations are stopped due to wildlife hazards or annual harvest, FAA recommends plowing under all crop residue and harrowing the surface area smooth. This will reduce or eliminate the area's attractiveness to foraging wildlife. FAA recommends that this requirement be written into all on-airport farm use contracts and clearly understood by the lessee.

Table 2. Minimum Distances Between Certain Airport Features And Any On-Airport Agriculture Crops.

Aircraft Approach Category And Design Group <sup>1</sup>	Distance In Feet From Runway Centerline To Crop		Distance In Feet From Runway End To Crop		Distance In Feet From Centerline Of Taxiway To Crop	Distance In Feet From Edge Of Apron To Crop
	Visual & $\geq \frac{3}{4}$ mile	$< \frac{3}{4}$ mile	Visual & $\geq \frac{3}{4}$ mile	$< \frac{3}{4}$ mile		
<b>Category A &amp; B Aircraft</b>						
Group I	200 <sup>2</sup>	400	300 <sup>3</sup>	600	45	40
Group II	250	400	400 <sup>3</sup>	600	66	58
Group III	400	400	600	800	93	81
Group IV	400	400	1,000	1,000	130	113
<b>Category C, D &amp; E Aircraft</b>						
Group I	530 <sup>3</sup>	575 <sup>3</sup>	1,000	1,000	45	40
Group II	530 <sup>3</sup>	575 <sup>3</sup>	1,000	1,000	66	58
Group III	530 <sup>3</sup>	575 <sup>3</sup>	1,000	1,000	93	81
Group IV	530 <sup>3</sup>	575 <sup>3</sup>	1,000	1,000	130	113
Group V	530 <sup>3</sup>	575 <sup>3</sup>	1,000	1,000	160	138
Group VI	530 <sup>3</sup>	575 <sup>3</sup>	1,000	1,000	193	167

1. Design Groups are based on wing span, and Category depends on approach speed of the aircraft.

Group I: Wing span up to 49 ft.

Group II: Wing span 49ft. up to 78 ft.

Group III: Wing span 79 ft. up to 117 ft.

Group IV: Wing span 118 ft. up to 170 ft.

Group V: Wing span 171 ft. up to 213 ft.

Group VI: Wing span 214 ft. up to 261 ft.

Category A: Speed less than 91 knots

Category B: Speed 91 knots up to 120 knots

Category C: Speed 121 knots up to 140 knots

Category D: Speed 141 knots up to 165 knots

Category E: Speed 166 knots or more

2. If the runway will only serve small airplanes (12,500 lb. and under) in Design Group I, this dimension may be reduced to 125 feet; however, this dimension should be increased where necessary to accommodate visual navigational aids that may be installed. For example farming operations should not be allowed within 25 feet of a Precision Approach Path Indicator (PAPI) light box.

3. These dimensions reflect the TSS as defined in AC 150/5300-13, Appendix 2. The TSS cannot be penetrated by any object. Under these conditions, the TSS is more restrictive than the OFA, and the dimensions shown here are to prevent penetration of the TSS by crops and farm machinery.

## SECTION 4. NOTIFICATION OF FAA ABOUT HAZARDOUS WILDLIFE ATTRACTANTS ON OR NEAR AN AIRPORT.

**4-1. GENERAL.** Airport operators, land developers, and owners should notify the FAA in writing of known or reasonably foreseeable land use practices on or near airports that either attract or may attract hazardous wildlife. This section discusses those notification procedures.

**4-2. NOTIFICATION REQUIREMENTS FOR WASTE DISPOSAL SITE OPERATIONS.** The Environmental Protection Agency (EPA) requires any operator proposing a new or expanded waste disposal operation within 5 statute miles of a runway end to notify the appropriate FAA Regional Airports Division Office and the airport operator of the proposal (40 CFR 258, *Criteria for Municipal Solid Waste Landfills*, section 258.10, *Airport Safety*). The EPA also requires owners or operators of new municipal solid waste landfill (MSWLF) units, or lateral expansions of existing MSWLF units that are located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used only by piston-type aircraft, to demonstrate successfully that such units are not hazards to aircraft.

**a. Timing of Notification.** When new or expanded MSWLFs are being proposed near airports, MSWLF operators should notify the airport operator and the FAA of this as early as possible pursuant to 40 CFR Part 258. Airport operators should encourage the MSWLF operators to provide notification as early as possible.

**NOTE:** AC 150/5000-3 provides information on these FAA offices.

**b. Putrescible-Waste Facilities.** In their effort to satisfy the EPA requirement, some putrescible-waste facility proponents may offer to undertake experimental measures to demonstrate that their proposed facility will not be a hazard to aircraft. To date, the ability to sustain a reduction in the numbers of hazardous wildlife to levels that existed before a putrescible-waste landfill began operating has not been successfully demonstrated. For this reason, demonstrations of experimental wildlife control measures should not be conducted in active aircraft operations areas.

**c. Other Waste Facilities.** To claim successfully that a waste handling facility sited within the separations identified in the siting criteria in 1-3

does not attract hazardous wildlife and does not threaten aviation, the developer must establish convincingly that the facility will not handle putrescible material other than that as outlined in 3-2. FAA requests that waste site developers provide a copy of an official permit request verifying that the facility will not handle putrescible material other than that as outlined in 3-2. FAA will use this information to determine if the facility will be a hazard to aviation.

**4-3. NOTIFYING FAA ABOUT OTHER WILDLIFE ATTRACTANTS.** While U. S. EPA regulations require landfill owners to provide notification, no similar regulations require notifying FAA about changes in other land use practices that can create hazardous wildlife attractants. Although it is not required by regulation, FAA requests those proposing land use changes such as those discussed in 2-3, 2-4, and 2-5 to provide similar notice to the FAA as early in the development process as possible. Airport operators that become aware of such proposed development in the vicinity of their airports should also notify the FAA. The notification process gives the FAA an opportunity to evaluate the effect of a particular land use change on aviation safety.

The land use operator or project proponent may use FAA Form 7460-1, *Notice of Proposed Construction or Alteration*, or other suitable documents to notify the appropriate FAA Regional Airports Division Office.

It is helpful if the notification includes a 15-minute quadrangle map of the area identifying the location of the proposed activity. The land use operator or project proponent should also forward specific details of the proposed land use change or operational change or expansion. In the case of solid waste landfills, the information should include the type of waste to be handled, how the waste will be processed, and final disposal methods.

### **4-5. FAA REVIEW OF PROPOSED LAND USE CHANGES.**

**a.** The FAA discourages the development of facilities discussed in section 2 that will be located within the 5,000/10,000-foot criteria in 1-3.

**b.** For projects which are located outside the 5,000/10,000-foot criteria, but within 5 statute miles of the airport's aircraft movement areas, loading ramps, or aircraft parking areas, FAA may review development plans, proposed land use changes, operational changes, or wetland mitigation plans to determine if such changes present potential wildlife hazards to aircraft operations. Sensitive airport areas will be identified as those that lie under or next to approach or departure airspace. This brief examination should be sufficient to determine if further investigation is warranted.

**c.** Where further study has been conducted by a wildlife damage management biologist to evaluate a site's compatibility with airport operations, the FAA will use the study results to make its determination.

**d.** FAA will discourage the development of any excepted sites (see Section 3) within the criteria specified in 1-3 if a study shows that the area supports hazardous wildlife species.

**4-6. AIRPORT OPERATORS.** Airport operators should be aware of proposed land use changes, or modification of existing land uses, that could create hazardous wildlife attractants within the separations identified in the siting criteria in 1-3. Particular attention should be given to proposed land uses involving creation or expansion of waste water treatment facilities, development of wetland mitigation sites, or development or expansion of dredge spoil containment areas.

**a. AIP-funded airports.** FAA recommends that operators of AIP-funded airports, to the extent practicable, oppose off-airport land use changes or practices (within the separations identified in the siting criteria in 1-3) that may attract hazardous wildlife. Failure to do so could place the airport operator or sponsor in noncompliance with applicable grant assurances.

FAA recommends against the placement of airport development projects pertaining to aircraft movement in the vicinity of hazardous wildlife attractants. Airport operators, sponsors, and planners should identify wildlife attractants and any associated wildlife hazards during any planning process for new airport development projects.

**b. Additional coordination.** If, after the initial review by FAA, questions remain about the existence of a wildlife hazard near an airport, the airport operator or sponsor should consult a wildlife damage management biologist. Such questions may be triggered by a history of wildlife strikes at the airport or the proximity of the airport to a wildlife refuge, body of water, or similar feature known to attract wildlife.

**c. Specialized assistance.** If the services of a wildlife damage management biologist are required, FAA recommends that land use developers or the airport operator contact the appropriate state director of the United States Department of Agriculture/Animal Damage Control (USDA/ADC), or a consultant specializing in wildlife damage management. Telephone numbers for the respective USDA/ADC state offices may be obtained by contacting USDA/ADC's Operational Support Staff, 4700 River Road, Unit 87, Riverdale, MD, 20737-1234, Telephone (301) 734-7921, Fax (301) 734-5157. The ADC biologist or consultant should be requested to identify and quantify wildlife common to the area and evaluate the potential wildlife hazards.

**d. Notifying airmen.** If an existing land use practice creates a wildlife hazard, and the land use practice or wildlife hazard cannot be immediately eliminated, the airport operator should issue a Notice to Airmen (NOTAM) and encourage the land owner or manager to take steps to control the wildlife hazard and minimize further attraction.

**APPENDIX 1. DEFINITIONS OF TERMS USED IN THIS ADVISORY CIRCULAR.**

**1. GENERAL.** This appendix provides definitions of terms used throughout this AC.

**a. Aircraft movement area.** The runways, taxiways, and other areas of an airport which are used for taxiing or hover taxiing, air taxiing, takeoff, and landing of aircraft exclusive of loading ramps and aircraft parking areas.

**b. Airport operator.** The operator (private or public) or sponsor of a public use airport.

**c. Approach or departure airspace.** The airspace, within 5 statute miles of an airport, through which aircraft move during landing or takeoff.

**d. Concurrent use.** Aeronautical property used for compatible non-aviation purposes while at the same time serving the primary purpose for which it was acquired; and the use is clearly beneficial to the airport. The concurrent use should generate revenue to be used for airport purposes (see Order 5190.6A, *Airport Compliance Requirements*, sect. 5h).

**e. Fly ash.** The fine, sand-like residue resulting from the complete incineration of an organic fuel source. Fly ash typically results from the combustion of coal or waste used to operate a power generating plant.

**f. Hazardous wildlife.** Wildlife species that are commonly associated with wildlife-aircraft strike problems, are capable of causing structural damage to airport facilities, or act as attractants to other wildlife that pose a wildlife-aircraft strike hazard.

**g. Piston-use airport.** Any airport that would primarily serve FIXED-WING, piston-powered aircraft. Incidental use of the airport by turbine-powered, FIXED-WING aircraft would not affect this designation. However, such aircraft should not be based at the airport.

**h. Public-use airport.** Any publicly owned airport or a privately-owned airport used or intended to be used for public purposes.

**i. Putrescible material.** Rotting organic material.

**j. Putrescible-waste disposal operation.** Landfills, garbage dumps, underwater waste discharges, or similar facilities where activities include processing, burying, storing, or otherwise disposing of putrescible material, trash, and refuse.

**k. Runway protection zone (RPZ).** An area off the runway end to enhance the protection of people and property on the ground (see AC 150/5300-13). The dimensions of this zone vary with the design aircraft, type of operation, and visibility minimum.

**l. Sewage sludge.** The de-watered effluent resulting from secondary or tertiary treatment of municipal sewage and/or industrial wastes, including sewage sludge as referenced in U.S. EPA's *Effluent Guidelines and Standards*, 40 C.F.R. Part 401.

**m. Shoulder.** An area adjacent to the edge of paved runways, taxiways, or aprons providing a transition between the pavement and the adjacent surface, support for aircraft running off the pavement, enhanced drainage, and blast protection (see AC 150/5300-13).

**n. Turbine-powered aircraft.** Aircraft powered by turbine engines including turbojets and turboprops but excluding turbo-shaft rotary-wing aircraft.

**o. Turbine-use airport.** Any airport that ROUTINELY serves FIXED-WING turbine-powered aircraft.

**p. Wastewater treatment facility.** Any devices and/or systems used to store, treat, recycle, or reclaim municipal sewage or liquid industrial wastes, including Publicly Owned Treatment Works (POTW), as defined by Section 212 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Clean Water Act of 1977 (P.L. 95-576) and the Water Quality Act of 1987 (P.L. 100-4). This definition includes any pretreatment involving the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. (See 40 C.F. R. Section 403.3 (o), (p), & (q)).

**q. Wildlife.** Any wild animal, including without limitation any wild mammal, bird, reptile, fish, amphibian, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, including any part, product, egg, or offspring thereof (50 CFR 10.12, *Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants*). As used in this AC, WILDLIFE includes feral animals and domestic animals while out of the control of their owners (14 CFR 139.3, *Certification and Operations: Land Airports Serving CAB-Certificated Scheduled Air Carriers Operating Large Aircraft (Other Than Helicopters)*).

**r. Wildlife attractants.** Any human-made structure, land use practice, or human-made or natural geographic feature, that can attract or sustain hazardous wildlife within the landing or departure airspace, aircraft movement area, loading ramps, or aircraft parking areas of an airport. These attractants can include but are not limited to architectural features, landscaping, waste disposal sites, wastewater treatment facilities, agricultural or aquacultural activities, surface mining, or wetlands.

**s. Wildlife hazard.** A potential for a damaging aircraft collision with wildlife on or near an airport (14 CFR 139.3).

**2. RESERVED.**



**Commercial Real Estate Economic Coalition**

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**ADDITIONAL PUBLIC TESTIMONY ON RESOLUTION 04-3506  
BY BEVERLY BOOKIN, AICP  
ON BEHALF OF THE COMMERCIAL REAL ESTATE ECONOMIC COALITION (CREEC)  
NOVEMBER 4, 2004**

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*President Bragdon and Members of the Metro Council:*

*On behalf of the Commercial Real Estate Economic Coalition (CREEC), I wish to submit additional testimony to the public record in support of Resolution 04-3506. We urge the speedy adoption of this resolution establishing in principle the intent of the Metro Council to pursue an alternative approach to completing the regional Goal 5 program.*

*As I understand the intent, President Bragdon and Counselor Park propose to step back from the creation of a regional Goal 5 regulatory program that augments and/or overrides local jurisdiction Goal 5 regulations. The State already requires all local jurisdictions to prepare Goal 5 resource protection plans using a carefully prescribed methodology and requiring LCDC acknowledgement. From the beginning, Metro's decision to undertake a regional program was voluntary. The new approach relies on the collective local regulatory framework that is already in place, wherein Metro plays a role in regional coordination, technical assistance and open space acquisition, not as a legal or regulatory intervener. If this collective local regulatory framework fails to meet regional performance standards, to be developed as part of this new approach, then Metro reserves the right to enact additional regulatory requirements, the so-called "regulatory backstop". In the meantime, Metro will concentrate efforts to develop the non-regulatory side of the program. We think this is a meaningful attempt to re-calibrate the relationship between Metro and its local jurisdictions in the hope that we all can work in a more civil, collaborative and productive manner.*

*Environmental interests who characterize the proposal as a wholesale roll-back of environmental protection by virtue of relying solely on non-regulatory measures are misinformed or disingenuous. As I have just noted, there already is a regulatory framework – Goal 5, Title 3, enhanced storm water manuals and tree ordinances – in place and in many jurisdictions – Portland, Tualatin Basin, Lake Oswego and Wilsonville – these are quite robust. It is true that there are some jurisdictions with programs that are not up to snuff, but that is where Metro can lend its technical assistance to help raise their natural resource programs to a reasonable regional standard.*

*We urge the adoption of this resolution as soon as possible. Not only is it a preferred approach, but it may be the only way to salvage the regional Goal 5 program. Even people who support the harsh regulatory regime that we have been working on for five years – many of them are here today – have to admit that this approach is politically "dead on arrival". I know many responsible people who voted for Measure 37 knowing that it was a train wreck because they felt it was the only way to shake up the system. We planners and public officials have become addicted to regulations on the premise that we can make anyone do anything we want because we think it is in the common interest. In fact, the system does not work when the regulated refuse to be regulated. I think this backlash to land use regulation is the primary message in the passage of Measure 37 and elected officials ignore it at their peril.*

*Thanks again for the option to speak with you again today.*

**Warren Rosenfeld**

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To: Warren Rosenfeld  
Subject: FW: Draft presentation--oral.

Council President Bragdon, council members, my name is Warren Rosenfeld, a managing member of Oregon Resource Recycling.

I will keep my comments brief; you have already received detailed information about the full range of concerns regarding the RFP and the subsequent negotiation process.

I come before you embarrassed and chagrined; after 92 years of business, this is the first time a member of my family or any of Calbag's 54 employees, or any other of our 450 employees of our affiliated companies in the metropolitan area have addressed a legislative body for such a narrow issue of self interest. I am uncomfortable in this environment.

Over the last number of weeks, I have been searching for a metaphor to describe how we got here; now, it is clear; all matters originate at a head water, a source that may or may not at the time seem consequential. Like the Columbia whose source is a small bit of bubbling water, matters escalate into a condition, certainly not resembling it's source. The RFP is our source.

METRO sought to challenge past assumptions of solid waste handling; wrote an RFP that emphasized the desire to find alternatives to the status quo, and engaged the best proposer in negotiation. The evaluation declared ORR's proposal clearly superior, providing huge cost savings and increased public value, and specifically recommended that staff negotiate accordingly.

ORR had responded to the RFP; accentuated the public goals, met the technical requirements, and provided this community with a new vision. By definition, ORR had stated the obvious and the evaluation team had concurred; you cannot do things the same old way and expect a different outcome.

The technical requirements were clear, and included identifying the assets to be purchased, and a \$2million performance bond. As your staff counsel pointed out so clearly last week, METRO wanted to be sure ORR, and all bidders, would have a big enough stake in the project to assure contract performance. Staff further defined insurance of continuity of operations by requiring respondents agreement to leave all equipment in place for 6 months in the event of performance default.

The RFP spelled out the terms and conditions; the RFP did not distinguish securitization or capitalization of a private company versus a public, and lord knows recent history of public company performance could not justify a distinction; As such, respondents could only assume the RFP's requirements were the method for prequalification. ORR in fact agreed to a more significant stake, providing a cash instrument of \$2million to back up the other capital obligations. In sum, our stake by any measure was significant.

This of course leads to the importance of staff counsels salient point; if "stake" is reasonably to be assumed such a high priority, then it was reasonable to assume the RFP reflected METRO's definition through it's stated requirements.

An RFP with such a material change, demanded in the context of good faith negotiations, could not achieve the outcome of public policy METRO and the evaluation committee imagined through this process.

From the source, all matters are built. We ask that this body reflect on that source, and instruct staff with all speed and precision to rebid the transfer stations.

Thank you.

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November 4, 2004

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**BY MESSENGER**

Metro Council President David Bragdon  
Councilor Brian Newman  
Councilor Carl Hosticka  
Councilor Rex Burkholder  
Councilor Rod Monroe  
Councilor Rod Park  
Councilor Susan McLain  
Metro  
600 NE Grand Avenue  
Portland, OR 97232

Re: RFP No. 04-1091 SWR  
Our Client: Oregon Resource Recovery, L.L.C.  
File No. 013262-55

Dear Metro President Bragdon and Councilors:

This letter follows up on my letter of October 28 about Metro's request for proposals to operate the Metro South and Metro Central waste transfer stations. I am writing this letter on behalf of Oregon Resource Recovery, L.L.C. ("ORR"). ORR is a venture of four companies, each with expertise in some part of solid waste handling and resource recovery. These are Envirocon, Inc., a 500-employee company that provides environmental services, Calbag Metals Co., a 54-employee company that is our area's leading processor of non-ferrous scrap metal, SSI Shredding Systems, Inc., a manufacturer and services of waste compactors, shredders, and other machinery, and East County Recycling, Inc., a local company that extracts and markets about 130,000 tons of recycled materials annually. Each of the players is long-established; Envirocon, SSI, and East County Recycling have been in business for nearly 20 years, and Calbag has its roots in a family business founded nearly a century ago.

Metro should re-solicit proposals to operate the transfer stations for two basic reasons, which I will discuss below in more detail. First, Metro did not adequately negotiate contract terms with ORR after it recognized ORR's proposal as the highest-scoring. Second, in the two negotiating sessions, Metro proposed additional contract terms that were not referenced or alluded to in the request for proposals and that significantly changed the essential financial nature of the contract.

**A. Background**

In its request for proposals (RFP), Metro identified the criteria by which it would evaluate the proposals. A proposal could receive up to 100 points. The lowest-cost proposal would receive 50 points and the other proposals would receive fewer points, based on how far they were above the lowest-cost proposal. A proposal with a cost twice that of the lowest cost proposal would receive no points in this category.

Twenty points were available for material recovery, based on the material recovery percentage that the contractor was willing to guarantee. Five points were available for feasibility of the contractor's proposal. Twenty-five points were available for the operations and maintenance proposal.

The RFP did not contain any specific conditions on financial qualifications of responders. The RFP did indicate that the successful proposer would be required to provide a performance bond to backstop its commitment to operate the stations.

Four proposers responded. The Evaluation Committee gave ORR's proposal the highest score of the four proposals, receiving 83.4 points. The other three proposals received scores of 78.1, 45.1, and 35.5 points.

Metro staff held two meetings with ORR to negotiate the contract. At the first meeting, on July 29, Metro asked ORR's principals to provide personal and corporate guarantees of the contract<sup>1</sup> because ORR was a limited liability company with initial operating capital of \$1 million. At the second meeting, on August 9, Metro reduced this to a request for corporate guarantees. The RFP stated no minimum net worth requirement, and did not contain any obvious financial requirement at all except for the requirement for a performance bond of unspecified amount. Metro and ORR held a brief third meeting at which no negotiation took place, but ORR repeated its willingness to negotiate a contract in good faith. ORR made a counteroffer to Metro's proposal, which Metro rejected on August 20 and then cut off negotiations.

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<sup>1</sup> Dan Cooper's memorandum to you of October 28 states that Metro staff (not the Evaluation Committee) determined that Metro should "seek a corporate guarantee from one or both of the primary partners that were joining to create ORR (Envirocon, Inc. and Calbag Metals)." The message heard by ORR was that the principals of these two companies, Dennis Washington and Warren Rosenfeld, should personally guarantee the contract.

**B. Metro added a financial responsibility requirement when it asked for personal and corporate guarantees that should have been addressed in the RFP, and expressed an apparent preference against limited liability companies only after proposals were submitted.**

A public agency has an interest in assuring itself that it contracts with financially responsible businesses. That's why Metro will require the successful bidder to post a performance bond or other security to protect Metro from the consequences of default.

Metro staff went beyond the scope of the RFP, however, when they imposed a requirement of personal and corporate parent guarantees on ORR because of what Mr. Cooper described as "the strong reservations the Evaluation Committee had regarding ORR's proposal." The Office of the Metro Attorney (OMA) had advised the Evaluation Committee that it should use three factors to judge whether ORR was a responsible bidder:

- a. Whether ORR has shown that it has or can obtain the necessary resources and expertise to meet its obligations under the contract;
- b. Whether ORR has a documented, unsatisfactory<sup>2</sup> record of performance and integrity; and
- c. Whether ORR has supplied the necessary information to show that it is responsible.

ORR's responsibility was backstopped by the \$1 million of initial capital and Metro's performance bond requirement. If Metro staff wanted to impose a minimum net worth or financial security requirement on proposers, then the RFP should have included that requirement and stated the minimum dollar amount that Metro would accept.

Mr. Cooper further explained in his October 28 memo that Metro staff (not the Evaluation Committee) was concerned that ORR was a limited liability company. ORR is puzzled by this concern, which Metro staff raised only after the proposals were submitted. The RFP did not require bidders to be corporations, nor did it prohibit them from being limited liability companies, partnerships, or private individuals. If Metro staff prefer to deal with corporations, then the RFP should have said so. Warren Rosenfeld

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<sup>2</sup> It's not clear to me what OMA meant by this standard. I interpret it to mean that Metro could deem a proposer with a documented, unsatisfactory record of performance and integrity to not be responsible, and not a requirement that a proposer provide a documented, satisfactory record of performance and integrity. Given the long business histories of the principals of ORR, this criterion does not seem to have been a concern to the Evaluation Committee in reviewing ORR's proposal.

Metro Council President David Bragdon  
Metro Councilors Newman, Hosticka, Burkholder, Monroe, Park, and McLain  
November 4, 2004  
Page 4

(Calbag's principal), Ralph Gilbert (East County's principal), Thomas Garnier (SSI's principal), and Dennis Washington (Envirocon's principal) are all established businesspeople and would have provided adequate assurances of performance, if Metro had specified what Metro required in the RFP. They are frankly perplexed that Metro staff apparently thought them to be irresponsible.

If these two requirements are not important to the Council, then staff should not have used them as a reason to abruptly cut off negotiations with ORR. If these two requirements are important to the Council, then Council should direct staff to include them in the RFP and reissue the RFP so that all parties have a chance to respond.

### **C. Hog fuel and diesel fuel**

Mr. Cooper's October 28 memorandum to you states that 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." That is half-correct. To make it fully correct, it must be read in conjunction with Mr. Cooper's statement in the previous paragraph that "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."

The negotiations started off with Metro staff wanting to cut the organics reloading price roughly in half, representing a reduction in compensation of about \$700,000 over the life of the contract. Let's compare this to the hog fuel and diesel fuel questions.

As Mr. Cooper notes, staff calculated that the additional risk to Metro over the life of the contract, if Metro assumed the risk of increased diesel fuel prices, was about \$85,000. This is well under the giveback that staff asked ORR to make on organics reloading.

Hog fuel is a more complicated question. Proposals were due to Metro on April 15. In 2004 through April, the purchase price for hog fuel at SP Newberg was \$15 per ton. In the three years before proposals were due, the price had ranged between \$15 and \$25 per ton, with \$20 being a typical price. Starting in May – after the four bidders submitted their proposals – the market for hog fuel ceased and the market price was effectively zero. In August 2004 mills began to buy a few loads of hog fuel, but the market was still minimal at best.

ORR had proposed to recover about 14,673 tons per year of hog fuel, which at \$15/ton is a revenue stream of about \$220,000 per year. Neither Metro nor the bidders could have anticipated in April 2004 that in a month hog fuel would become worthless. Hog fuel is a large part of the waste stream.

The potential loss of \$1 million in revenue over the life of the contract because of the sudden and unexpected implosion of the hog fuel market led ORR to suggest a risk-sharing arrangement to Metro, in which Metro would subsidize ORR while the hog fuel price was below expectations, and ORR would share profits with Metro while the price was above expectations. Mr. Cooper's memo to you correctly notes that ORR asked Metro to bear the risk of hog fuel remaining below \$15/ton, but does not tell you that ORR offered to credit Metro the first \$3/ton if prices exceeded \$15/ton, plus half of the excess above \$18/ton.<sup>3</sup> This was not a phantom offer but had the potential to pay cash to Metro when hog fuel prices returned to their historic range: during 2003 hog fuel prices ranged between \$20 and \$25 per ton, and during 2002 the price ranged between \$17.50 and \$20.

ORR made a reasonable proposal in response to the catastrophic change in the hog fuel market and attempted to negotiate a solution in good faith with Metro. It should not have served as a reason for Metro to cut off negotiations.

#### **D. Conclusion**

Ordinarily the highest-scoring proposer would appeal and take whatever legal action was available, if on an important contract such as this one an agency moved on to a lower-ranked proposer after holding only two substantive meetings to work out the details of the contract. ORR, and Messrs. Rosenfeld and Gilbert in particular, are not asking you to direct staff to reopen negotiations with ORR. They ask you to recognize simply that after the time to submit proposals had passed, two things happened. First, Metro staff added requirements to the contract that were not contained in the RFP. We would like to think that they added these requirements because the negotiations with ORR and the second-ranked applicant helped to identify areas of the RFP that needed more detail. Second, the market for one of the largest components of the recoverable waste stream disintegrated.

The fair thing to do is to revise the RFP to incorporate the requirements that staff has identified, and then invite **all** proposers to revise and resubmit their proposals to respond to those requirements. This should be relatively easy as the RFP does not need to be rewritten: the basics of the RFP can remain the same, and the additional terms can likely

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<sup>3</sup> Mr. Cooper described ORR as being "willing to share hog fuel price increases until Metro was reimbursed for any subsidy it had provided." This is not fair to ORR; in an August 5 memo to Metro, ORR proposed that "when the price exceeds \$15, Metro and ORR shall rebate the first \$3.00 per ton back to Metro. If the price exceeds \$18.00 per ton then Metro and ORR will share dollar for dollar the excess commodity revenue."

Metro Council President David Bragdon  
Metro Councilors Newman, Hosticka, Burkholder, Monroe, Park, and McLain  
November 4, 2004  
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be contained on one or two pages. In particular, the added terms should clearly state what financial qualification Metro is requiring.

Similarly, the proposers can use their previous responses as the base for their resubmissions, identifying on a short addendum, perhaps, how they would change their proposals to respond to the added terms and the changed market conditions. The Evaluation Committee can then re-score the proposals and Metro staff can then proceed to negotiate a contract with the most responsive proposal, for the benefit of the public.

Very truly yours,

LANE POWELL SPEARS LUBERSKY LLP

Dean N. Alterman

cc: Mr. Warren J. Rosenfeld  
Mr. Ralph Gilbert

013262.0055/487574.1

LANE  
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Dean N. Alterman  
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altermand@lanepowell.com

November 4, 2004

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Councilor Carl Hosticka  
Councilor Rex Burkholder  
Councilor Rod Monroe  
Councilor Rod Park  
Councilor Susan McLain  
Metro  
600 NE Grand Avenue  
Portland, OR 97232

Re: RFP No. 04-1091 SWR  
Our Client: Oregon Resource Recovery, L.L.C.  
File No. 013262-55

Dear Metro President Bragdon and Councilors:

This letter follows up on my letter of October 28 about Metro's request for proposals to operate the Metro South and Metro Central waste transfer stations. I am writing this letter on behalf of Oregon Resource Recovery, L.L.C. ("ORR"). ORR is a venture of four companies, each with expertise in some part of solid waste handling and resource recovery. These are Envirocon, Inc., a 500-employee company that provides environmental services, Calbag Metals Co., a 54-employee company that is our area's leading processor of non-ferrous scrap metal, SSI Shredding Systems, Inc., a manufacturer and services of waste compactors, shredders, and other machinery, and East County Recycling, Inc., a local company that extracts and markets about 130,000 tons of recycled materials annually. Each of the players is long-established; Envirocon, SSI, and East County Recycling have been in business for nearly 20 years, and Calbag has its roots in a family business founded nearly a century ago.

Metro should re-solicit proposals to operate the transfer stations for two basic reasons, which I will discuss below in more detail. First, Metro did not adequately negotiate contract terms with ORR after it recognized ORR's proposal as the highest-scoring. Second, in the two negotiating sessions, Metro proposed additional contract terms that

*Anchorage, AK  
Olympia, WA  
Portland, OR  
Seattle, WA  
Vancouver, WA  
London, England*

were not referenced or alluded to in the request for proposals and that significantly changed the essential financial nature of the contract.

#### **A. Background**

In its request for proposals (RFP), Metro identified the criteria by which it would evaluate the proposals. A proposal could receive up to 100 points. The lowest-cost proposal would receive 50 points and the other proposals would receive fewer points, based on how far they were above the lowest cost proposal. A proposal with a cost twice that of the lowest cost proposal would receive no points in this category.

Twenty points were available for material recovery, based on the material recovery percentage that the contractor was willing to guarantee. Five points were available for feasibility of the contractor's proposal. Twenty-five points were available for the operations and maintenance proposal.

The RFP did not contain any specific conditions on financial qualifications of responders. The RFP did indicate that the successful proposer would be required to provide a performance bond to backstop its commitment to operate the stations.

Four proposers responded. The Evaluation Committee gave ORR's proposal the highest score of the four proposals, receiving 83.4 points. The other three proposals received scores of 78.1, 45.1, and 35.5 points.

Metro staff held two meetings with ORR to negotiate the contract. At the first meeting, on July 29, Metro asked ORR's principals to provide personal and corporate guarantees of the contract<sup>1</sup> because ORR was a limited liability company with initial operating capital of \$1 million. At the second meeting, on August 9, Metro reduced this to a request for corporate guarantees. The RFP stated no minimum net worth requirement, and did not contain any obvious financial requirement at all except for the requirement for a performance bond of unspecified amount. Metro and ORR held a brief third meeting at which no negotiation took place, but ORR repeated its willingness to negotiate

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<sup>1</sup> Dan Cooper's memorandum to you of October 28 states that Metro staff (not the Evaluation Committee) determined that Metro should "seek a corporate guarantee from one or both of the primary partners that were joining to create ORR (Envirocon, Inc. and Calbag Metals)." The message heard by ORR was that the principals of these two companies, Dennis Washington and Warren Rosenfeld, should personally guarantee the contract.

a contract in good faith. ORR made a counteroffer to Metro's proposal, which Metro rejected on August 20 and then cut off negotiations.

**B. Metro added a financial responsibility requirement when it asked for personal and corporate guarantees that should have been addressed in the RFP, and expressed an apparent preference against limited liability companies only after proposals were submitted.**

A public agency has an interest in assuring itself that it contracts with financially responsible businesses. That is why Metro will require the successful bidder to post a performance bond or other security to protect Metro from the consequences of default.

Metro staff went beyond the scope of the RFP, however, when they imposed a requirement of personal and corporate parent guarantees on ORR because of what Mr. Cooper described as "the strong reservations the Evaluation Committee had regarding ORR's proposal." The Office of the Metro Attorney (OMA) had advised the Evaluation Committee that it should use three factors to judge whether ORR was a responsible bidder:

- a. Whether ORR has shown that it has or can obtain the necessary resources and expertise to meet its obligations under the contract;
- b. Whether ORR has a documented, unsatisfactory<sup>2</sup> record of performance and integrity; and
- c. Whether ORR has supplied the necessary information to show that it is responsible.

ORR's responsibility was backstopped by the \$1 million of initial capital and Metro's performance bond requirement. If Metro staff wanted to impose a minimum net worth or financial security requirement on proposers, then the RFP should have included that requirement and stated the minimum dollar amount that Metro would accept.

Mr. Cooper further explained in his October 28 memorandum that Metro staff (not the Evaluation Committee) was concerned that ORR was a limited liability company. ORR

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<sup>2</sup> It is not clear to me what OMA meant by this standard. I interpret it to mean that Metro could deem a proposer with a documented, unsatisfactory record of performance and integrity to not be responsible, and not a requirement that a proposer provide a documented, satisfactory record of performance and integrity. Given the long business histories of the principals of ORR, this criterion does not seem to have been a concern to the Evaluation Committee in reviewing ORR's proposal.

is puzzled by this concern, which Metro staff raised only after the proposals were submitted. The RFP did not require bidders to be corporations, nor did it prohibit them from being limited liability companies, partnerships, or private individuals. If Metro staff prefer to deal with corporations, then the RFP should have said so. Warren Rosenfeld (Calbag's principal), Ralph Gilbert (East County's principal), Thomas Garnier (SSI's principal), and Dennis Washington (Envirocon's principal) are all established businesspeople and would have provided adequate assurances of performance, if Metro had specified what Metro required in the RFP. They are frankly perplexed that Metro staff apparently thought them to be irresponsible.

If these two requirements are not important to the Council, then staff should not have used them as a reason to abruptly cut off negotiations with ORR. If these two requirements are important to the Council, then Council should direct staff to include them in the RFP and reissue the RFP so that all parties have a chance to respond.

### **C. Hog fuel and diesel fuel**

Mr. Cooper's October 28 memorandum to you states that 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." That is half-correct. To make it fully correct, it must be read in conjunction with Mr. Cooper's statement in the previous paragraph that "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."

The negotiations started off with Metro staff wanting to cut the organics reloading price roughly in half, representing a reduction in compensation of about \$700,000 over the life of the contract. Let's compare this to the hog fuel and diesel fuel questions.

As Mr. Cooper notes, staff calculated that the additional risk to Metro over the life of the contract, if Metro assumed the risk of increased diesel fuel prices, was about \$85,000. This is well under the giveback that staff asked ORR to make on organics reloading.

Hog fuel is a more complicated question. Proposals were due to Metro on April 15. In 2004 through April, the purchase price for hog fuel at SP Newberg was \$15 per ton. In the three years before proposals were due, the price had ranged between \$15 and \$25 per ton, with \$20 being a typical price. Starting in May—after the four bidders submitted their proposals—the market for hog fuel ceased and the market price was effectively zero. In August 2004, mills began to buy a few loads of hog fuel, but the market was still minimal at best.

ORR had proposed to recover about 14,673 tons per year of hog fuel, which at \$15/ton is a revenue stream of about \$220,000 per year. Neither Metro nor the bidders could have anticipated in April 2004 that in a month hog fuel would become worthless. Hog fuel is a large part of the waste stream.

The potential loss of \$1 million in revenue over the life of the contract because of the sudden and unexpected implosion of the hog fuel market led ORR to suggest a risk-sharing arrangement to Metro, in which Metro would subsidize ORR while the hog fuel price was below expectations, and ORR would share profits with Metro while the price was above expectations. Mr. Cooper's memorandum to you correctly notes that ORR asked Metro to bear the risk of hog fuel remaining below \$15/ton, but does not tell you that ORR offered to credit Metro the first \$3/ton if prices exceeded \$15/ton, plus half of the excess above \$18/ton.<sup>3</sup> This was not a phantom offer but had the potential to pay cash to Metro when hog fuel prices returned to their historic range: during 2003 hog fuel prices ranged between \$20 and \$25 per ton, and during 2002 the price ranged between \$17.50 and \$20.

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November 4, 2004  
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Similarly, the proposers can use their previous responses as the base for their resubmissions, identifying on a short addendum, perhaps, how they would change their proposals to respond to the added terms and the changed market conditions. The Evaluation Committee can then re-score the proposals and Metro staff can then proceed to negotiate a contract with the most responsive proposal, for the benefit of the public.

Very truly yours,

LANE POWELL SPEARS LUBERSKY LLP



Dean N. Alterman

DNA:pas  
cc: Mr. Warren J. Rosenfeld  
Mr. Ralph Gilbert

013262.0055/488513.1

**To: Metro Councilors**

**November 3, 2004**

**From: Michael Wetter**

**Re: Strategic Planning Outreach**

On September 23<sup>rd</sup> Karen Withrow and Janice Larson facilitated a discussion with the Council about stakeholder involvement in the strategic plan. In that session, the Council directed that staff set up focus groups with local elected officials and identified the strategic planning goals that should be the primary topic of these discussions.

Staff have since developed a work plan, hired a focus group facilitator, and begun drafting a proposed agenda for the focus groups.

Based on direction given to us by council, we are developing a focus group agenda that centers around three fundamental questions:

- From the perspective of a local elected official, what are the ideal roles for a regional body?
- How is Metro doing in fulfilling these roles?
- How can Metro improve?

We will ask these questions in relation to the programmatic goals in the strategic plan (i.e., "What are the ideal roles for a regional government in creating great places to live?"). We intend to test the focus group format and agenda with local government staff to make sure our approach is effective.

Focus groups will be held in early December. We will be sending an email Friday giving local elected officials a heads-up on dates. We'd like to follow the email up with a letter from the Council. We propose to extend the invitation to all county commissioners and city councilors in the region, knowing that only a fraction will participate.

We also expect that some of you will have a chance to meet with local elected officials in your district to get their feedback on the strategic planning goals and Metro's role. We will be developing a set of suggested questions for your use and will soon discuss with you the timing and coordination of any such meetings.

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<< >>  
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November (date), 2004

Dear (name),

We are writing to invite you to play a part in shaping Metro's future. The Metro Council has undertaken a strategic planning initiative designed to help guide our activities in the region. As one of two regional governments in the US, we recognize that Metro has a unique opportunity to coordinate planning and investment, operate facilities and services for region-wide benefit, and to continue to maintain and develop the region as a truly exceptional place to live. We also know that this task is not ours alone, and that we must continuously seek to understand how we can best work with and serve our local government partners.

This letter is an invitation to participate in a small focus group discussion of Metro's role in the region. In recognition of the importance of our relationship with local officials, the invitation is open to local elected leaders only and will be limited to a maximum of twelve. A professional facilitator will conduct the sessions and will present results to the Metro Council. The Council will use the results to help shape the way in which we conduct our future programs and activities.

A discussion will be held on (date) at (time) at (location). Light refreshments will be served. Please RSVP by November (date) to Cathy Sherick at (503) 797-1781 if you are available to attend. If you would like to attend a discussion and this date does not work with your schedule, please contact Cathy for the dates and locations of other discussions.

Thank you in advance for your feedback. We are eager to hear from you.

Sincerely,

David Bragdon, Metro Council President  
Rod Park, Metro Councilor District 1  
Brian Newman, Metro Councilor District 2  
Carl Hosticka, Metro Councilor District 3  
Susan McLain, Metro Councilor District 4  
Rex Burkholder, Metro Councilor District 5  
Rod Monroe, Metro Councilor District 6



**To:** Metro Council

**From:** Jim Labbe, Urban Conservationist, Audubon Society of Portland

**Date:** November 9, 2004

**Re:** Metro Council Resolution 04-3506

Dear Metro Council,

We remain concerned that the Resolution 04-3506's proposal to postpone the regulatory component of the regional fish and wildlife program until 2012 will unjustifiably compromise the region's ability to achieve the purpose, intent, and goals articulated in Metropolitan Policy Advisory Committee's Goal 5 Vision Statement. The opportunity to achieve those goals and develop a program to protect and restore a continuous, ecologically viable stream corridor system will never be greater than it is right now. In retreating from a program that combines and integrates regulatory and non-regulatory tools, we believe Resolution 04-3506- as written- sets the region on a course that will fail to achieve the purpose, vision and goals we have set for ourselves as a region.

We feel strongly that Metro's regional Goal 5 planning should be allowed to continue toward developing a program that will draw on the full range of tools available to achieve our goals. The same approach- successfully achieved and implemented with regional water quality regulations (Title 3) - has had demonstrable benefits for the region. By synthesizing and refining the best local Goal 5 programs, we can do the same in developing a regional fish and wildlife program that combines regulatory and non-regulatory tools.

The level of regulatory protection, extent and nature of complementary education and incentive programs, definition and scope of performance standards, and strategies to incorporate flexibility as envisioned in riparian district planning are all key questions that can and should be developed in the next and final phase of the planning process.

We ask that the Council consider the following issues and reject the Resolution 04-3506 as currently written:

**I.) Resolution 04-3506 will not feasibly achieve the goals articulated in the Goal 5 Vision Statement:**

It is unclear how the Resolution 04-3506 will achieve the stated purpose, vision and goals of the Regional Fish and Wildlife Plan articulated in the Metropolitan Policy Advisory Committee (MPAC) Vision Statement:

Specifically:

1. How will local voluntary and incentive programs coupled with a proposed regional green space bond measure realistically achieve:
  - the purpose and intent to “address Federal Endangered Species Act (ESA) requirements” and specifically “recovery obstacles within and along stream corridors?”
  - the overall goal of “a continuous ecologically viable streamside corridor system, from the streams’ headwaters to their confluence with others streams and rivers, and with their floodplains in a manner that is integrated with the surrounding urban landscape?”
2. How will local governments and watershed councils obtain the funding for new voluntary and incentive programs when funding for existing programs is being cut or is in question?
3. How much public funding will a regional bond measure raise? What if a regional bond measure does not pass?
4. Should local and regional acquisition programs meant to buy public-access green space substitute for regulations that serve a very different function, namely to ensure new development avoids, minimizes or mitigates environmental impacts to regionally significant habitat?

## **II.) Resolution 04-3506 unjustifiably delays a regional regulatory program.**

Resolution 04-3506 proposes to delay implementation of a regional regulatory program and to rely on voluntary and incentive-based approaches to achieve “local performance standards.” However, the resolution is vague with respect how “local performance standards” are to be defined. There is no indication in Resolution 04-3506 that “performance standards” will conform with **OAR 660-023-0050(2c)** which specifically defines them as “an outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance.”

Hence, local governments will not be required to update of their local codes and development standards to avoid, minimize, or mitigate environmental impacts until 2012 at the soonest.

Delaying the regulatory program ignores existing information that already indicates local regulatory and non-regulatory programs are inadequate to prevent ongoing habitat degradation and loss. Resolution 04-3506 leaves many of the region's streams and watersheds extremely vulnerable to severe degradation over the next decade by eliminating any mandate to substantially comply with a regional standard to protect even the highest value habitats.

Specifically:

- 1.) There are approximately 30,000 acres of regionally significant fish and wildlife habitat that are not protected by Title 3 water quality management areas and existing parks and open space. In the 1990s the Metro region lost approximately 16,000 acres of urban natural areas to development, an area larger than the City of Gresham.<sup>1</sup> To date, acquisitions from the 1995 regional bond measure total just over 8,000 acres.

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<sup>1</sup> Metro Data Resource Center, Henings, L.A. and Edge, D.W. 2003. Riparian Bird Community Structure in Portland, Oregon: Habitat, Urbanization, and Spatial Scale Patterns. *The Condor* 105: 299-302.

2.) At least 100 miles of streams inside the Urban Growth Boundary are not protected by Title 3 Water Quality Resource Areas (WQRAs). Many of these streams are small intermittent headwater streams. Recent scientific research increasingly identifies these streams as critical to downstream water quality and aquatic habitat.<sup>2</sup>

3.) Many local Goal 5 program provide stream corridors protections that are less or equal to those currently provided by Title 3 WQRAs and are inadequate to protect fish and wildlife habitat and habitat connectivity.<sup>3</sup> The July 1997 Policy and Scientific Literature Review for Title 3 found that “Title 3’s WQRA is within the recommended widths, but is at the low end because the region is not focusing on fish and wildlife habitat at this time.”<sup>4</sup>

4.) Metro’s March 2003 Performance Measures Report indicates the region is losing its undeveloped floodplains under Title’s 3’s balance-cut-and-fill. Between 1998 and 2000 the Portland-Metro region lost roughly 568 acres of vacant floodplain lands, a 9% reduction. At this rate, the region’s remaining undeveloped floodplain could be developed in about 20 years.<sup>5</sup> These data are supported by ample anecdotal evidence.<sup>6</sup>

The status of City of Gresham’s local Goal 5 program highlights the regulatory gaps in the region’s protections for stream corridors and their implications for protection and restoration efforts in watersheds like Johnson Creek and the Columbia Slough. In delaying when local governments would be required to update their comprehensive plans to meet a consistent regional standard for fish and wildlife habitat protection, Resolution 04-3506 will only undermine local watershed protection and restoration efforts.

The City of Gresham lacks the human, technical and financial resources to develop a Goal 5 program that can realistically achieve the purpose, vision and goals of MPAC’s Goal 5 Vision statement. The City faces a serious budget crisis and has dedicated limited planning resources to the Pleasant Valley and Springwater urban expansion areas which together total some 2700 acres.

Having last updated its local Goal 5 program 1988, Gresham has one of the most out-dated local Goal 5 programs in the region. Their Goal 5 program’s stream protection standards were exceeded by Metro’s Title 3 which the City adopted in November of 2002. At that time the City of Gresham adopted the following language in reference to its local Water Quality Resource Areas Overlay District:

“It is intended that this overlay will remain in effect until the City adopts more stringent stream/wetland protection standards. These will be based on the Metro Goal 5 Streamside CPR (Conserve, Protect and Restore) program, any special needs for compliance with the Endangered Species Act (ESA), and any Total Maximum Daily Load (TMDL) allocations required under the Clean Water Act. The adoption of these standards will occur after Metro completes the Goal 5 program, as preparation for an ESA submittal, or after TMDL’s relevant to Gresham water bodies are adopted.”<sup>7</sup>

The City of Gresham’s existing stream corridor protection standards do not cover or adequately protect headwater streams in the Columbia Slough, Johnson Creek, and Lower Sandy Watersheds. Existing patterns of development, particularly in the Johnson Creek headwaters, jeopardize high quality habitat and ongoing restoration investments downstream.

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<sup>2</sup> Metro Technical Report on Goal 5 (2002), Letter to U.S. Army Corps of Engineers from 39 scientists (October 2001). Online at: <http://www.urbanfauna.org/Headwaters.html>

<sup>3</sup> Metro Local Plan Analysis (2002).

<sup>4</sup> Metro Policy and Scientific Literature Review for Title 3 (1997).

<sup>5</sup> Metro Performance Measure Report 2003.

<sup>6</sup> *Oregonian*, January 8, 2004.

<sup>7</sup> City of Gresham Development Code Section 5.0602.

**III.) Resolution 04-3506 ignores the public record and undermines the planning process:**

The Metro Council and MPAC made clear 4 years ago the intent and purpose of the regional (Goal 5) fish and wildlife plan to provide a consistent, region-wide program combining of regulatory and non-regulatory tools. Thousands citizens, scientists, and stakeholders have informed this effort to date, weighing in with letters, postcards, and spoken testimony and participating in open houses and advisory committees. Thousands of citizens have supported and advocated a strong regional program with regulatory standards applied consistently throughout the region. In the last year and a half, Metro has received over 1500 letters and postcards supporting stronger development standards to protect the region's streams and watersheds.