

A G E N D A

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



METRO

Agenda

MEETING: METRO COUNCIL REGULAR MEETING – revised 11/15/04
DATE: November 18, 2004
DAY: Thursday
TIME: 4:00 PM
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. ILLEGAL DUMPING AND ENFORCEMENT Brower

4. CONSENT AGENDA

4.1 Consideration of Minutes for the November 4, 2004 Metro Council Regular Meeting.

5. ORDINANCES – FIRST READING

5.1 **Ordinance No. 04-1063**, For the Purpose of Denying a Solid Waste Facility Franchise Application of Columbia Environmental, LLC to Operate a Local Transfer Station.

5.2 **Ordinance No. 04-1064**, For the Purpose of Amending the FY 2004-05 Budget and Appropriations Schedule Recognizing the Transfer of \$504,000 from Metro's General Fund Tourism Opportunity and Competitiveness Account to the MERC Pooled Capital Fund Capital Outlay and Transferring \$150,000 From MERC Pooled Capital Contingency to MERC Pooled Capital Fund, Capital Outlay; and Declaring an Emergency.

5.3 **Ordinance No. 04-1065**, For the Purpose of Amending Chapter 2.04 of the Metro Code Relating to Public Contracting.

6. ORDINANCES - SECOND 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. McLain

7. RESOLUTIONS

- 7.1 **Resolution No. 04-3515**, For the Purpose of Ratifying the 2004-07 Collective Bargaining Agreement between AFSCME Local 3580 and Metro Monroe
- 7.2 **Resolution No. 04-3506** – REMOVED FROM THE AGENDA, TO BE CONSIDERED AT THE DECEMBER 9, 2004 COUNCIL MEETING
- 7.3 **Resolution No. 04-3498**, For the Purpose of Endorsing Regional Priorities For State Transportation Funding Package Park

8. CONTRACT REVIEW BOARD

- 8.1 **Resolution No. 04-3507**, For the Purpose of Authorizing Execution of Change Order No. 30 to the Contract for Waste Transport Services for Provision of a \$2.5 Million Dollar Performance Bond. Burkholder
- 8.2 **Resolution No. 04-3509**, For the Purpose of Approving Change Order 31 to the Waste Transport Services Contract. Burkholder

9. CHIEF OPERATING OFFICER COMMUNICATION

10. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for November 18, 2004 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 -- Community Access Network www.yourtv.org -- (503) 629-8534 Thursday, November 18 at 2 p.m. (live)	Portland Channel 30 (CityNet 30) -- Portland Community Media www.pcatv.org -- (503) 288-1515 Sunday, November 21 at 8:30 p.m. Monday, November 22 at 2 p.m.
Gresham Channel 30 -- MCTV www.mctv.org -- (503) 491-7636 Monday, November 22 at 2 p.m.	Washington County Channel 30 -- TVTV www.yourtv.org -- (503) 629-8534 Saturday, November 20 at 11 p.m. Sunday, November 21 at 11 p.m. Tuesday, November 23 at 6 a.m. Wednesday, November 24 at 4 p.m.
Oregon City, Gladstone Channel 28 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.	West Linn Channel 30 -- Willamette Falls Television www.wftvaccess.com -- (503) 650-0275 Call or visit website for program times.

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.

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Agenda Item Number 4.1

Consideration of Minutes of the November 4, 2004 Regular Council meeting.

Metro Council Meeting
Thursday, November 18, 2004
Metro Council Chamber

MINUTES OF THE METRO COUNCIL MEETING

Thursday, November 4, 2004
Metro Council Chamber

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

Councilors Absent:

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

1. INTRODUCTIONS

Councilor Monroe introduced Robert Liberty, Metro Council Elect for District 6.

2. CITIZEN COMMUNICATIONS

There were none.

3. EXTERNAL QUALITY CONTROL REVIEW

Alexis Dow, Metro Auditor, presented her report on External Quality Control Review.

4. FIRST QUARTER FINANCIAL REPORT

Casey Short, Financial Planning, presented the First Quarter Financial Report. He gave specifics for each fund. He said we were falling short of projected revenues in some areas such as Parks. He noted attendance had been down at the Oregon Zoo and at Glendoveer Golf Course. He provided an overview of excise tax and the General Fund. They were expecting they would be about where they budgeted for with regards to excise tax. Councilor Burkholder asked for a follow-up from the Chief Operating Officer on the enterprise funds.

5. CONSENT AGENDA

5.1 Consideration of minutes of the October 28, 2004 Regular Council Meetings.

Motion:

Councilor Burkholder moved to adopt the meeting minutes of the October 28, 2004, Regular Metro Council.

Vote:

Councilors Burkholder, Monroe, Newman, Hosticka and Council President Bragdon voted in support of the motion. The vote was 5 aye, the motion passed. Councilor Park abstained from the vote and Councilor McLain was absent from the vote.
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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.

Council President Bragdon assigned Ordinance No. 04-1062 to Council.

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.

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

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

Ray Jaindl, Assistant Administrator for the Natural Resources Division of the Oregon Department of Agriculture, 635 Capitol St NE, Salem, OR 97301 said he had been responsible for developing and implementing the State's agricultural water quality management program. He understood that Metro was exploring the possibility of developing a program that was outcome based similar to the State's agriculture water quality program for the fish and wildlife habitat program. He was asked to review a letter provided by Metro that was given to Council by the Tualatin Riverkeepers. He responded to Councilor Park regarding that letter (a copy of his response is in the record). In regard to their program, they had been pleased with the success of the outcome-based program. In general landowners were going above and beyond what was necessary and improvements were occurring. While land management changes were occurring, improvements in riparian condition thus water qualities would take time. They weren't seeing as much progress as some individuals were expecting to see, but improvement was occurring. Thus it was more difficult to document this early stage of the program but more long term they were expecting to see change occur. This program had been recognized by Environmental Protection Agency (EPA) as a basis of agriculture's implementation plan for total maximum daily loads. It was providing the flexibility necessary to adapt as needed. As he indicated earlier, they, in the industry, were pleased with the outcome to date. Outreach, incentives and volunteer efforts with a regulatory backstop based on conditions, not practices, had been received well by landowners and were resulting in good things. He recommended it as a template and a means to address natural resource issues for Metro to consider.

Councilor Park said Mr. Jaindl's letter addressed different ways of measuring success. One of the ways that it was being looked at was how many plans they had in place versus how much were they actually seeing occur on the ground. He said Mr. Jaindl had gone into an explanation as to why the plans didn't match with what was occurring on the ground and the reasons why. He asked Mr. Jaindl to address this issue.

Mr. Jaindl responded that Councilor Park was referring to a letter from the Tualatin Riverkeepers who documented the number of individual farm plans that landowners developed and had submitted for the department to review and approve. These were not required by landowners to develop but were a means that the department provided to them to give them some assurance that they were doing the right things based on their resources and their goals. Again, landowners were not required to do this but many developed these plans on their own either working with consultants or with the Natural Resource Conservation Service. Those plans were private and would not be submitted to the department. In addition to doing those things, many landowners were doing on the ground projects on their own. They weren't going to government agencies, they weren't receiving grants, they wanted to do good things for their land because it was important that the resource was maintained and improved for their own economic benefit. A lot of these things were occurring and they were individual. That was the way farmers were and they didn't really want to talk to government and provide that information but they would do it on their own. They saw a lot going on but not being reported. That was one thing that was not captured in the letter and which he tried to relay in his response to the letter when he reviewed the letter.

Councilor Hosticka asked about outcomes measured. Had he seen improvement?

Mr. Jaindl explained how their program was built and developed. It was conditioned based rather than practices based. Rather than asking individuals to implement various different things, they were saying they needed to see certain conditions improving on the ground. For example, with riparian areas, allow for the establishment and maintenance of vegetation appropriate to the site for stream banks stability and shade. Their responsibility was water quality not habitat. By providing that condition, landowners then had the ability to look at their operations and decide what series of practices they needed to utilize to achieve those conditions. He spoke to how they measured outcomes. First, complaints were a way to measure outcomes. They had a series of rules with enforceable backstops, and if someone was managing their lands such that those riparian conditions weren't being achieved then the regulatory backstop allowed them the means to work through it. They also had the voluntary outreach to help people understand these things so they didn't have to get to the complaint stage. Second, they had a monitoring program where they were looking at a subset of the riparian areas around the State and looking at how those conditions were changing. They were establishing the foundation right now. They would be monitoring those conditions in the future to see that improvements were being made. The final stage was looking at water qualities since that was their responsibility. The Department of Environmental Quality (DEQ) was the agency primarily responsible for measuring water quality data so they relied on them rather than duplicating their efforts. If there was something that was missing that they thought would augment the results, then they were seeking to find resources to amend or add to the monitoring that was going on in terms of those areas. Sometimes they worked with their local soil and conservation district, which were partners in these efforts. This worked out quite good because they were the local link with the landowners.

Jim Labbe, Audubon Society of Portland, 5151 NW Cornell Rd, Portland OR 97210 reiterated from his last testimony that he thought Resolution No. 04-3506 had some promising features. A copy of his testimony is included in the record.

Marc Liverman, NOAA Fisheries, Goal5TAC member, 525 NE Oregon St #421 Portland OR 97232 said he was very surprised to see this resolution come forward, in particular the memorandum to Metro Policy Advisory Committee (MPAC) that Council President Bragdon had written had actually raised quite a few concerns for him. The memo characterized their efforts so far as never reaching effective programmatic outcomes at the regional level and the fact

that that was a problem that required new direction. In fact, within that group over the years, they thought they were well underway to developing program options that were voluntary and otherwise that were very closing bearing fruit that would in fact be that programmatic outcome at the regional level that they had been looking for. He said as he read the resolution it looked like eight more years of struggling with other groups would be necessary to produce an outcome. One of the problems with the resolution itself was that he thought that it created a false and confusing dichotomy between regulatory and non-regulatory approaches. A regulatory approach was one that simply said that you shall, must or will do something. Anything else that said may, should or can was non-regulatory. A program that said you shall have local performance standards in place in eight years was a regulatory program. Those standards themselves, the examples that were given, were regulatory standards, such as, buffer widths and tree retention ordinances. He expressed concern about calling it a non-regulatory program. He felt it would create an approach, which would allow people to see whatever they wanted to see. He thought it would be far from resolving arguments, he thought it would create quite a few more arguments than it would put to rest. He talked about the function of SB 1010 which had to do with water quality. It was not habitat protection. He also had participated in those rulemaking discussions with Councilor Park and Mr. Jaindl. His job dealt with agriculture issues. His experience with the onset of this program was trying for the first dozen plans or so to get the plan to include the word salmon or habitat or refer to voluntary incentive programs like the Conservation Reserve and Enhancement Program that would pay landowners to set aside habitat buffers. Those were not included in the plan. A decision was made that that was outside the purview of that approach. Their support for it as a habitat tool was not well founded. What was really important there was the fact that Goal 4 under lied that and said that agriculture land was set-aside for an agriculture purpose. Greenspaces were important as agricultural land as development land and forestland and that should be the basis of this approach.

Council President Bragdon said he had never characterized this as a non-regulatory approach. He recognized the existence of local regulations. His attempt was to recognize the existence of local regulations.

Mike Ragsdale, Costa Pacific Communities, 28801 SW 10th Wilsonville, OR 97070 said he was here today as an employee of a developer who took great pride in the community as they developed Orenco Station and now Villabough in Wilsonville as well as an ex-Presiding Officer of the Metro Council and a member of the Oregon Legislature that carried the bill on the floor of the House that created Metro. When they designed the whole concept of Metro, this was what they had talked about. They had talked about creating an agency in the region that would be able to set high level goals and standards for the local communities. They intended for that to be done with recognition that the Council had two constituencies, the residents of the region and local governments. He saw that Metro was very clearing setting the goals and standards and allowing the local governments to deliver on that in a partnership that was fostered by Metro. He commended the Council for the drafters of this resolution. He urged the Council to support the concept. He would comment as the developer of Villabough in Wilsonville, that he saw two things. One was that they were working with a Goal 5 program that had been adopted by the City of Wilsonville and they were working excellently. They were requiring them to preserve wetlands and tree stands. He commended Council also for recognizing in the language that the local programs that had been adopted would be recognized. They were working with Wilsonville on their local program. He talked about the experience at Dammasch. One of the tasks that Council will have as they move forward with this resolution was to remember Metro would have a tremendous amount of work and responsibility to provide the support. The education and technical assistance must be Metro's. He urged, take this as a tool to get the problem addressed more effectively. Finally, he thought the timelines were inappropriate. He felt Metro needed to

step up to their responsibility. If they were going to take this new course, he urged fast tracking the process. He felt Metro needed to say to the partners in the environmental community and local governments that they were willing to take that burden, to take that responsibility, willing to play off the work that had already been done and enhance that, convert it to something that was this model. He urged tighter timelines.

Councilor Burkholder clarified what timelines he was referring to. Mr. Ragsdale said June of 2012 was too long. He suggested three years ought to be adequate for any government agency.

Warren Aney, 9403 SW 74th Ave Tigard, OR 97223 provided a copy of his testimony (a copy of which is included in the meeting record).

Amanda Fritz, Friends of Arnold Creek, 4106 SW Vacuna St Portland OR 97219, submitted a copy of her testimony (a copy of which is in the record). She urged rejection of Resolution No. 04-3506.

Ann Gardner, Schnitzer Investment Group, 3200 NW Yeon Portland OR 97296, said this was the right resolution at the right time. It was important for protection of the resources. This recognized the work that had already been done. Metro's role was significant to fill the gaps to ensure significant lands were protected. It was important that they get to a final resolution.

Councilor Park asked about an acquisition ballot measure. Was Schnitzer Investment Group still committed to helping with a ballot measure? Ms. Gardner said she wasn't present for the testimony so could not speak to the commitment made, but she said if they had made a commitment they would honor that commitment.

Teresa Huntsinger Coalition for a Livable Future, 310 SW 4th St #612 Portland OR 97204 commended the Council for listening to the community to allow further public testimony on this resolution. A copy of her testimony is included in the record.

Michelle Bussard, Johnson Creek Watershed Council, 1900 SE Milport, Milwaukie, OR 97222 said for over a decade Metro had worked with the community to create plans that met the objectives of Goal 5. We would need to use all materials available to us if we were to protect wildlife and habitat (a copy of her testimony is included in the record).

Kevin Kohnstamm, 3002 NW Luray Circle Portland OR 97210, said he was here in support of the Resolution, 04-3506. He talked about Metro's budget documents, which suggested that Metro had already spent about \$10 million on this program.

Councilor McLain asked where he had come up with that budget number. Mr. Kohnstamm said he had looked at Metro's budget documents since 1998.

Bob Clay, City of Portland 1900 SW 4th Ave Portland OR 97210 summarized Gil Kelley's written testimony (a copy of which is included in the record).

Councilor Park asked when he would suggest regulations kick in? Mr. Clay said they would look to achieve performance standards by 2008. Councilor Park clarified was that they would then kick in January 2009? Mr. Clay said they preferred July 2008.

Jennifer Thompson, US Fish and Wildlife Services 2600 SE 98th Ave Portland OR 97266 said they had opposed the resolution (a copy of her testimony is included in the meeting record).

Councilor Hosticka asked if the Department of Fish and Wildlife had a role in administering the current tax incentive programs for riparian areas?

Ms. Thompson responded that they didn't. That was done at the State level. Councilor Hosticka asked, by whom? Ms. Thompson responded, Oregon Department of Fish and Wildlife.

Councilor Park asked what would be the proper level of regulations against take and were they willing now to suggest a certain level of regulations for that so they had a baseline? He noted 37 only applied to State not federal.

Ms. Thompson said the species that were listed right now were not under their jurisdiction. That would be a question for NOAA fisheries but they did all get together with the Metro Council and lay out some options both formal and informal options that Metro could assist with. As far as their species go, they had a petition that they were looking at right now to list three species of lamprey that did occur in the Metro region. They had bald eagles that were listed in the region. There were some tools under the Endangered Species Act that could be used as they were being petitioned for listing, as well as Habitat Conservation Planning, Safe Harbor Agreement, and Candidate Conservation Agreements. There were potential funding sources available to assist with habitat conservation planning.

Councilor Park asked if the two branches of federal government were willing to give Metro a baseline amount so they had something to rely upon. They had been asking but not getting an answer.

Ms. Thompson said they typically worked with their partners and negotiated what was the right amount. They didn't hand people the rules to be implemented. If they were doing a habitat conservation plan, it was a long process. She said they sat down with all of the stakeholders and tried to reach some kind of resolution. It was a complex process.

Councilor Park said he took the answer was no. Ms. Thompson said no they did not have a template they could hand Metro.

Councilor McLain talked about Metro's restoration projects and asked how many millions of dollars had we spent since 1991 to work on these restoration projects?

Ms. Thompson responded that they had funded about 300 grant/restoration projects. They had spent over \$2.6 million. These were all leveraged dollars about three to five times with local contributions. In all they had spent about \$4.6 million dollars in this region for urban conservation.

Councilor Burkholder said, given the other areas the federal agency worked in such as Seattle, who was the responsible body that coordinated the issue? In other urban areas, who were the responsible bodies?

Ms. Thompson said in most cases local governments developed programs with often a county umbrella plan.

Councilor Burkholder said the reason he asked the question was they were trying to explore what the role of this government should be. He talked about what they were trying to accomplish.

Councilor McLain asked if they had a process where they could review the program.

Ms. Thompson said yes but the program had to be developed first to see if they met the standards. There was a great opportunity for Metro to provide a liaison role between the federal government and local jurisdictions.

Councilor Hosticka said they could learn from this experience about what Metro would have to do if they followed this resolution to give guidance to the local governments about how they would comply with Metro's standards. They were frustrated because the federal government was giving them a blueprint or clear idea about how to comply with their standards and yet Metro was turning around and saying that they were going to do that same thing between Metro and local governments. Hopefully they could learn what kind of different communications between different levels of government was helpful that could lead to a conclusion and not just leads to more frustration.

David Leal, US Fish and Wildlife Services 2600 SE 98th Ave Portland OR 97266 said he had worked with Ms. Thompson. He spoke to how Metro's role could influence ESA. A copy of his testimony is included in the record.

Council President Bragdon said for six years he had been hearing about projects from the federal government. They had been waiting for a regional guideline. Mr. Leal said they had to have more information to consider the program.

John Marshall, US Fish and Wildlife Service, 2600 SE 98th Ave Portland OR 97266 said he dealt with the Federal Coordination Act. We had regulations and voluntary programs. He was concerned that Metro might have jumped the gun. He said they had recognized that the regulatory world needed to change. He said the City of Eugene was a great success example of Goal 5. We needed to look at a making a streamline process where the resources were given certainty of protection.

Councilor Newman asked if their agency was opposed to the resolution. He asked for clarification, were they commenting as individuals that they opposed to the resolution or was the agency opposed to it?

Mr. Marshall said the Oregon State Office was opposed to the resolution.

Brian Wegener, Tualatin Riverkeepers, 16507 SW Roy Rogers Rd Sherwood OR 97140 opposed the resolution and provided a copy of his testimony for the record.

Councilor Hosticka wanted to follow-up on the question that Councilor Newman asked and suggested Jennifer Thompson respond to how the federal agency would look upon the resolution and comment it on it in favor or opposition. Under what circumstances would a federal agency look at an action of Metro and then comment on it in favor or opposition?

Ms. Thompson explained that if Metro wanted to get coverage for species that were currently listed and a take permit for the activities that would be allowed, Metro would submit a package that would show what they were proposing to do and what the effects would be on the species. They would then rank it against criteria that were set out. She had included the process with the criteria in a letter she had previously submitted.

Councilor Hosticka wanted to understand the posture of the agency. He didn't know if they were taking a political stance here, saying that they opposed a resolution that was introduced in this body or whether they were taking an administrative stance which said under the laws and rules they operated, that they reviewed Metro's actions and found them wanting in some way.

Ms. Thompson explained that they worked on the Fish and Wildlife Coordination Act and they worked on the Endangered Species Act. They looked for opportunities to work collaboratively with people. It was looking at this program and the opportunities and looking at the way they could work together to conserve their trust resources. They felt that Metro could do this if they had a regulatory program combined with a non-regulatory piece.

Councilor Hosticka said their relationship with US Fish and Wildlife might be a mirror of their relationship with local governments if they adopted a program. It helped them understand their relationship with other governments.

Ms. Thompson said they worked on proactive collaborative programs. They were trying to get at conservation.

Councilor Park said if Metro adopted this resolution and had a program, would US Fish and Wildlife consider the program? Ms. Thompson responded that they would look at the program.

Councilor Park asked Mr. Wegener, in terms of reading the resolution, he was aware that there were regulations within this as currently proposed.

Mr. Wegener responded that they were aware that regulations were put off and not being enforced until 2012. Councilor Park asked Mr. Wegener again, he was aware that regulations were included in the resolution. Mr. Wegener said yes, eventually.

Council President Bragdon explained why Councilors were asking these questions.

Dana McCullough, 5385 NW Jackson School Rd Hillsboro OR 97123 said she was a homeowner and property owner by McKay Creek. They had an issue with the amount of land that been declared animal habitat. They had noticed some degradation of fish and frogs (a copy of her testimony is included in the record).

Dana Krawczuk, Ball Janik 101 SW Main St Suite 1100 Portland OR 97212 summarized her letter for the record.

Councilor McLain asked for clarification on her testimony. Ms. Krawczuk responded to her question.

Jonathan Schlueter, Westside Economic Alliance, Suite G 3 10200 SW Nimbus Portland OR 97223 spoke to valuing employment as well as nature. Westside Economic Alliance supported the resolution and an acquisition ballot measure. He had also suggested looking outside the boundary and looking to other places in the State. He spoke to the testimony that said we must preserve every tree and habitat. He gave an example of Pacific University with its tree canopy. He felt the resolution allowed the communities to do the right thing.

Cindy Catto AOC 9450 SW Commerce Wilsonville OR 97070 summarized her written testimony for the record.

Councilor McLain asked about legal challenges for local programs? Ms. Cato responded to her question. Councilor McLain explained why she asked the question and gave an example of Title 3.

Councilor Hosticka said he didn't think Measure 37 said they could not adopt regulations. They were working on developing this resolution. He hoped that Ms. Catto would continue to work with Metro.

Carl Axelsen, 11405 SW 33rd Portland OR 97219 said he worked in the natural resources area. He was opposed to this resolution but was keeping an open mind. He had talked with Oregon Department of Forestry. He talked about clear cutting areas outside the Urban Growth Boundary (UGB). He had asked the property owner why he had cut his trees. He had learned that a lot of the good behavior and poor behavior was not affected by regulation. He also believed you could continue with a non-regulatory program and still have a regulatory backstop. Finally, he was confident that there was a better way to get outcomes. He urged taking the time to study this before they voted on the resolution. He didn't see the region-wide regulations in the resolution.

John Gibben, 9822 SW Quail Post Portland OR 97219 said he lived in a planned community that was developed in the 1970s. He had clients who came to them with issues of regulatory takings. He said land use planning was a tool. He believed that regulation can be a component of Goal 5 but as an attorney who lived in a home-owners association, he found that they weren't self regulating even if the home owners associations had regulations. Regulations didn't necessarily work. He felt that a voluntary program was essential. He talked about Measure 37 and its impact. He gave an example of a fireman who had created a Christmas Tree Farm near Oregon City and then was unable to cut his trees. He was totally wiped out.

Councilor Hosticka talked about Measure 37 and appreciated Mr. Gibben's testimony.

Charlotte Lehan, Mayor of Wilsonville, 29786 Lehan Ct Wilsonville, OR 97070 said the City of Wilsonville had an acknowledged Goal 5 plan. They had relied on Metro's leadership to do their program. They were now thinking other jurisdictions were coming along. This resolution appeared to be a retreat on Goal 5 or at least a significant detour. If this non-regulatory approach was going to work, the only way to do that was with a bold incentive and education program that had some meat in it. There was no substance in this resolution. She gave an example of her concerns about the resolution. The main thing was that there wasn't enough substance for a non-regulatory approach. She also thought the timeline was too far out.

Councilor Burkholder asked Mayor Lehan about her concern. Mayor Lehan said they thought that Metro was having a region-wide program. They also didn't want to be the only jurisdiction with a strong regulatory program.

Kathleen Havane, 4707 SE Rex Dr Portland OR 97206, said she was a short term resident of Portland. She worked for a small reforestation company in Tigard. She shared that when she read the resolution, she was disappointed to see there was no statement addressing business developers and second, her comments related to the incentive program for businesses. She felt three public hearings weren't enough to get public input. She suggested looking at the LEEDS program to rate developers.

Council President Bragdon appreciated her suggestions and asked staff to follow up on her suggestions.

Tom Wolf, Trout Unlimited, 22875 NW Chestnut, Hillsboro OR 97124 said they opposed the resolution. He reiterated that as he read Measure 37, he didn't believe there should be no regulation. He said people were scared that they might not be compensated for losses. He believed regulations were a tool. He said Metro was the guiding force for jurisdictions. He felt a non-regulatory program would be a mistake. He suggested waiting to see how Measure 37 played out. The timeline for compliance needed to be set at June 2007.

Councilor Park asked if he believed regulations should kick in, in June 2007 if outcomes were being met? Mr. Wolf said if outcomes were being met, he still thought there needed to be regulation in place.

Patrice Snow, Oregon Department of Fish and Wildlife, 3406 Cherry St NE Salem OR 97303, said she was a member of Goal5TAC. She was surprised when the resolution was proposed. Metro needed to have all of the tools available to it for the Goal 5 program. They were supportive of incentives. She talked about two programs they were looking at amending. She also said they were supportive of restoration. They were concerned that if you eliminate regulation would result in further loss in the region of habitat. They were also concerned that if Metro changed course it would undermine the current existing Goal 5 programs. They urged keeping a regulatory component to the program

Councilor Park asked when she recommended regulations kick in? Ms. Snow said she supported the recommendations of the Goal5TAC, they recommended 2007. Councilor Park asked what if all of the outcomes were being accomplished. Ms. Snow said if they were meeting all of the goals of the Goal 5 program, they could reexamine. She was concerned that Metro would lose tools without regulation.

Councilor Hosticka asked what her experience had been with the tax incentive programs and their success. Ms. Snow responded that the incentive programs had not been widely used and explained why. Council President Bragdon said she had made a comment that she was unaware of any Goal 5 programs that were voluntary programs. He clarified that there were currently no voluntary programs in the region. He clarified that she was aware this program would not cause those 24 cities to have voluntary programs? He asked if these were her opinion or the opinion of the Kulongoski administration? Ms. Snow said she could not speak for the governor but she was speaking for ODFW. Councilor Park asked if she had run these comments by her commission? Ms. Snow responded no, they typically didn't when they were commenting on these sorts of things. She summarized what the commission took action on. Councilor Park asked whom then was she speaking for? Ms. Snow said she spoke for the Division. The policy decisions that addressed specifically the State's program went to the Commission. She gave examples of these decisions. Council President Bragdon asked if another State agency might have another opinion? Ms. Snow responded that was correct. She believed DEQ had spoken to Council.

Councilor Hosticka added that this was similar to when Metro's staff talked to other city councils whether actions were to be harmonious with policies adopted by Metro.

Beverly Bookin, CREEC 1020 SW Taylor #760 Portland OR 97205 provided testimony for the record supporting the passage of the resolution.

Peter Livingston, Columbia Corridor Association 1211 SW 5h Ave Suite 1600 Portland OR 97214 said he was here on behalf of the Columbia Corridor Association. He had already submitted testimony.

Council President Bragdon closed the public hearing.

Councilor Hosticka said he thought the resolution had helped accelerate the conversation. The resolution would not slow down the development of the program. He was hopeful that the resolution was the framework or vehicle for the program.

Councilor McLain thanked the audience for coming. She agreed that the resolution helped focus on what the third step should be. They had been working on this issue for 8 years. This was not the end but just the beginning of the opportunities for the third stage, the program itself. She talked about the testimony she had heard today. She raised the issue of basin or watershed approaches. They didn't want any gaps. There had been a lot of talk about Measure 37. Everyone was guessing what it meant. They weren't voting on any regulations. They were voting on compensation.

Councilor Park said it had been an interesting debate. One of his questions he had asked was when regulations would kick in. Metro didn't do regulations without their local partners. He talked about the different timelines that local jurisdictions had to implement their Goal 5 program. He had tried to pick a date that everyone could agree with. There was a wide range of choices as to the date regulations would kick in.

Councilor Monroe asked when Council President Bragdon would schedule this for adoption. Council President Bragdon said he had scheduled it for November 18, 2004.

Councilor McLain added her comments about the variation in dates.

8. CONTRACT REVIEW BOARD

Council President Bragdon suggested reversing consideration of the two resolutions. There was no objection.

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

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

Councilor Monroe summarized the resolution. He urged adoption.

Council President Bragdon opened a public hearing.

Warren Rosenfeld, Calbag Metals Co, Managing member of ORR, 2495 NW Nicolai, Portland OR 97210 said they had already received detailed information on their objections (a copy of his testimony is included in the record).

Council President Bragdon closed the public hearing.

Councilor Park thanked the Council for holding this over until this week. He appreciated the decision had been difficult. He said the staff had recommended not extending the contract with Browning-Ferris Industries (BFI) so they went out for an Release For Proposal (RFP). He was trying to understand the process.

Mike Hoglund, Solid Waste and Recycling Director, shared the process they had gone through. They had wanted higher levels of recovery so they went out for an RFP.

Councilor Park asked what they were getting that was better with this contract?

Mr. Hoglund said there was new equipment that would last longer. They were also requiring additional environmental sustainability. There would also be additional training.

Council President Bragdon asked about the difference between a letter of credit, surety bond or a corporate guarantee.

Marv Fjordbeck, Senior Attorney, said these were various instruments of credit. They provided an increased level of security and had been asked for because it was a new entity and they were unsure of the ability of the company to fulfill the contract. They had requested a corporate guarantee. Council President Bragdon said he understood they had offered a letter of credit. Mr. Fjordbeck said yes. Mr. Hoglund said a condition of the RFP was a letter of credit or a corporate guarantee. They had asked for a corporate guarantee because of the uncertainty of the ability of the company to fulfill the contract.

Councilor Park expressed his concern. He would be more comfortable if they asked for this to be rebid. He wanted to make sure the process was done correctly.

Councilor McLain said these processes were technical and complicated. She spoke to lessons learned. She thought, looking at the letter of the law, the staff had fulfilled their responsibilities. They had asked the staff to deal with additional concerns in the negotiations. They had done that.

Councilor Burkholder said there were two issues, did they feel the negotiations were done correctly and ORR did not appeal. Were they getting the best deal possible? He felt that we were getting more than the original contract. He was in favor of this contract.

Council President Bragdon said he would be voting no on this resolution. He had no dissatisfaction with the existing vendor. He felt there was a shadow of doubt in his mind both with the negotiations and outcome.

Councilor Monroe reviewed the facts, the RFP went out, ORR got the highest rating, ORR contended that the negotiations were cut off too soon but ORR did not appeal, so the second bidder was considered. He said their options were to adopt the resolution or go out for bid again and spend both resources and money. He urged adoption.

Vote:

Councilors Hosticka, Burkholder, McLain, Monroe voted in support of the motion. The vote was 4 aye/2 nay, the motion passed with Councilor Park and Council President Bragdon voting no and Councilor Newman absent from the vote.
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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.

Motion:	Councilor Monroe moved to adopt Resolution No. 04-3502.
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Seconded:	Councilor Hosticka seconded the motion
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Councilor Monroe explain the resolution and urged support.

Vote:

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

9. CHIEF OPERATING OFFICER COMMUNICATION

He had no comments

10. COUNCILOR COMMUNICATION

Councilor Burkholder passed out a memo from Mike Wetter to the Metro Council concerning the Strategic Planning Outreach.

Council President Bragdon asked what they would be asking of the stakeholders. Councilor Burkholder said they would be asking the three questions included in the memo.

Councilor McLain talked about who you were asking and what hat they wore. She hoped that they would be asking a group of citizens as well as local officials.

Councilor Burkholder said this was looking at how we did in providing our services. There would be additional focus groups.

Councilor McLain reminded that there was more than one customer.

Council President Bragdon asked if they were expected to be available for these focus groups.

Councilor Burkholder said Council was not expected to be present. They wanted unvarnished feedback.

Councilor McLain said the Regional Water Consortium would be meeting at the beginning of December.

Council President Bragdon reminded that next Thursday the building would be closed for Veterans Day. The next Council meeting was scheduled for November 18th at 4:00pm.

11. ADJOURN

There being no further business to come before the Metro Council, Council President Bragdon adjourned the meeting at 4:58 p.m.

Prepared by

Chris Billington
Clerk of the Council

ATTACHMENTS TO THE PUBLIC RECORD FOR THE MEETING OF NOVEMBER 4, 2004

Item	Topic	Doc Date	Document Description	Doc. Number
5.1	Minutes	10/28/04	Metro Council Meeting Minutes of October 28, 2004	110404c-01
7.1	Letter	11/3/04	To: Metro Council From: Dana Krawczuk, Ball Janik Re: supports Resolution No. 04-3506, Goal 5 Fish and Wildlife protection program	110404c-02
7.1	Letter	11/3/04	To: Metro Council From: Andrew Schaedel, Water Quality Manager, DEQ, Northwest Region Re: comments on Goal 5, Fish and Wildlife protection program	110404c-03
4	Report	July through September 2004	To: Metro Council From: Casey Short, Financial Planning Re: FY 2004-05 Quarterly Report First Quarter	110404c-04
7.1	Letter	10/29/04	To: Council Park From: Ray Jandl, Assistant Administrator Natural Resources Division Department of Agriculture State of Oregon	110404c-05
7.1	Letter	11/3/04	To: Metro Council From: Warren Aney, Certified Wildlife Biologist, The Wildlife Society Re: recommendations concerning Res No. 04-3506 and Goal 5 program	110404c-06
7.1	Letter	11/4/04	To: Metro Council From: Michelle Bussard, Executive Director Johnson Creek Watershed Council Re: Res No 04-3506 Goal 5	110404c-07
7.1	Testimony	11/4/04	To: Metro Council From: Teresa Huntsinger, Coalition for a Livable Future Re: comments on Goal 5 and Res No 04-3506	110404c-08
7.1	Testimony	11/4/04	To: Metro Council From: Amanda Fritz Re: opposes Res No 04-3506, Goal 5	110404c-09
7.1	Testimony	11/1/04	To: Metro Council From: Amanda Fritz Re: Goal 5 and comments on Res No 04-3506	110404c-10
7.1	Letter	11/4/04	To: Metro Council From: Kemper McMaster, State Supervisor, US Department of Interior Fish and Wildlife Service Re: Testimony presented by Jennifer Thompson, John Marshall and David Leal opposing Res No 04-3506 Goal 5	110404c-11
7.1	Testimony	11/4/04	To: Metro Council From: David Leal, Fish and Wildlife Biologist with the US	110404c-12

			Fish and Wildlife Service Re: Goal 5 program	
7.1	Letter	11/4/04	To: Metro Council From: Brian Wegener and Sue Marshall, Tualatin Riverkeepers Re: Res No 04-3506 and Goal 5	110404c-13
7.1	Testimony	11/4/04	To: Metro Council From: Cindy Cato, Associated General Contractors Re: comments on Res No 04-3506 and Goal 5	110404c-14
7.1	Testimony	11/4/04	To: Metro Council From: Dana McCullough Re: Goal 5	110404c-15
7.1	Testimony	11/4/04	To: Metro Council From: Beverly Bookin, CREEC Re: Goal 5 and Res No 04-3506	110404c-16
8.2	Memo	No date	To: Metro Council From: Warren Rosenfeld, managing member of Oregon Resource Recycling Re: commenting on the RFP process for the transfer station contract	110404c-17
8.2	Letter	11/4/04	To: Metro Council From: Dean Alterman Lane Powell Spears Luberski Re: commenting on the RFP process for the transfer station contract	110404c-18
10	Memo	11/3/04	To: Metro Council From: Mike Wetter, Assistant to the President Re: Strategic Planning Outreach	110404c-19
7.1	Memo	22/4/04	To: Metro Council From: Jim Labbe, Audubon Society of Portland Re: Res No 04-3506 and Goal 5	110404c-20

Agenda Item Number 5.1

Ordinance No. 04-1063, For the Purpose of Denying a Solid Waste Facility Franchise
Application of Columbia Environmental, LLC to Operate a Local Transfer Station.

First Reading

Metro Council Meeting
Thursday, November 18, 2004
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF DENYING A SOLID	)	ORDINANCE NO. 04-1063
WASTE FACILITY FRANCHISE APPLICATION)	
OF COLUMBIA ENVIRONMENTAL, LLC TO	)	Introduced by Michael Jordan, Chief
OPERATE A LOCAL TRANSFER STATION	)	Operating Officer, with the concurrence
	)	of the Council President

WHEREAS, on July 30, 2004 Columbia Environmental, LLC submitted a solid waste facility franchise application to operate a local transfer station at 14041 NE Sandy Boulevard in Portland Oregon; and

WHEREAS, on August 11, 2004 Columbia Environmental representatives met with Metro staff for a pre-application conference, where the application was determined to be complete; and

WHEREAS, in accordance with Metro Code section 5.01.070(h)(3), the Chief Operating Officer and the applicant agreed to a 30-day extension to the application review process; and

WHEREAS, the Metro Council must approve or deny the application prior to January 8, 2005, or the franchise will be deemed granted (see Metro Code section 5.01.070(g)); and

WHEREAS, Metro Code section 5.01.070 requires the Chief Operating Officer to review the application and other evidence submitted, to investigate as he deems appropriate, and to formulate recommendations regarding whether the applicant is qualified, whether the proposed franchise complies with the Regional Solid Waste Management Plan (RSWMP), whether the proposed franchise meets the requirements of Metro Code section 5.01.060, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements; and

WHEREAS, the Chief Operating Officer has concluded that the applicant is qualified and can comply with all other applicable regulatory requirements, but that the proposed franchise does not comply with the RSWMP and does not meet all of the requirements of Metro Code section 5.01.060; and

WHEREAS, on the basis of the application and the Chief Operating Officer's investigation, the Chief Operating Officer recommends denial of the Columbia Environmental application for a solid waste franchise to operate a local transfer station; and

WHEREAS, Columbia Environmental may contest the Council's decision in this matter as explained in the contested case notice attached to this ordinance as Exhibit A, a copy of which shall be provided to Columbia Environmental as provided in Metro Code chapter 2.05; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

The solid waste facility franchise application of Columbia Environmental, L.L.C., is hereby denied. The Chief Operating Officer shall provide the applicant with contested case notice in a form substantially similar to that attached as Exhibit A. In the event that this decision is contested, a hearings officer shall conduct the initial contested case hearing as provided in Metro Code chapter 2.05.

ADOPTED by the Metro Council this 16th day of December, 2004.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

BM:bjl
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BEFORE THE METRO REGIONAL GOVERNMENT

IN THE MATTER OF THE METRO)	
COUNCIL'S DENIAL OF THE SOLID)	
WASTE FACILITY FRANCHISE	)	CONTESTED CASE NOTICE
APPLICATION OF COLUMBIA)	
ENVIRONMENTAL, L.L.C.)	

TO COLUMBIA ENVIRONMENTAL, L.L.C., 14041 NE Sandy Blvd., Portland, OR 97230.

Pursuant to Metro Code § 2.05.005(c), Metro hereby provides Columbia Environmental, L.L.C. with contested case notice in the matter of the Metro Council's approval of Ordinance No. 04-1063 denying Columbia Environmental's solid waste facility franchise application seeking authority to operate a local transfer station. A copy of Ordinance No. 04-1063 is included with this notice.

A contested case arises in this matter pursuant to Metro's authority under Article XI, Section 14 of the Oregon Constitution, the Metro Charter, ORS Chapter 268, including ORS 268.317 and ORS 268.318, and Metro Code Chapters 2.05 and 5.01, including sections 5.01.060 and 5.01.070. Pursuant to Metro Code Chapter 2.05, Columbia Environmental has a right to request a hearing within 60 days of the date of the mailing of this notice. A hearing, if requested, would concern the Metro Council's approval of Ordinance No. 04-1063 denying Columbia Environmental's solid waste facility franchise application seeking authority to operate a local transfer station. Columbia Environmental can be represented by legal counsel at the hearing, if it so desires.

DATED the 17th day of December 2004.

Michael Jordan
Chief Operating Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing CONTESTED CASE NOTICE on the following:

Bryan Engleson
Columbia Environmental, L.L.C.
14041 NE Sandy Blvd.
Portland, OR 97230

and

Anthony J. Motschenbacher
Registered Agent for Columbia Environmental, L.L.C.
117 SW Taylor St., Suite 200
Portland, OR 97204

on December 17, 2004, by mailing to said individuals a complete and correct copy thereof via certified mail, return receipt requested, contained in a sealed envelope, with postage prepaid, and deposited in the U.S. post office at Portland, Oregon.

Roy Brower
Regulatory Affairs Manager
Metro

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1063 FOR THE PURPOSE OF DENYING A SOLID WASTE FACILITY FRANCHISE APPLICATION OF COLUMBIA ENVIRONMENTAL, LLC TO OPERATE A LOCAL TRANSFER STATION

Date: November 2, 2004

Prepared by: Michael Hoglund

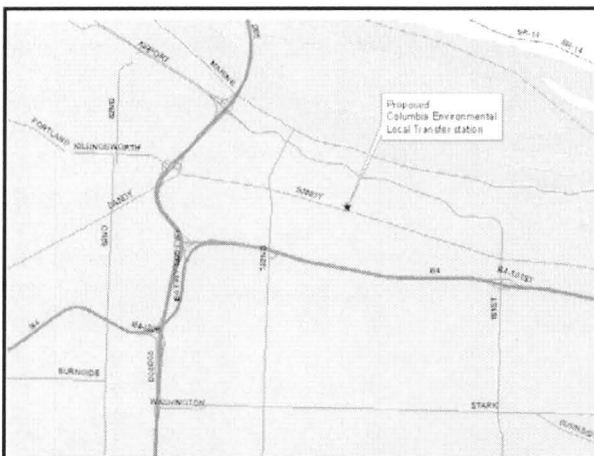
SUMMARY

Based on the criteria contained in Metro Code sections 5.01.060 and 5.01.070, the Chief Operating Officer recommends approval of Ordinance No. 04-1063 that would deny the solid waste facility franchise application of Columbia Environmental, LLC.

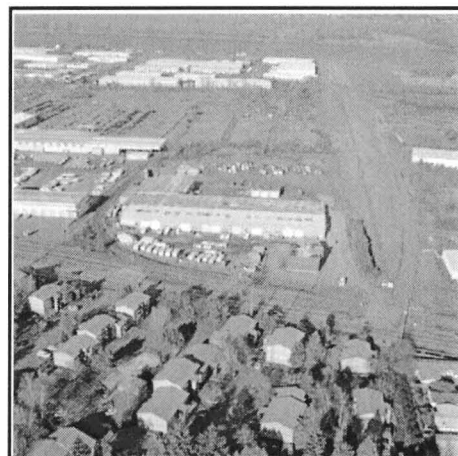
BACKGROUND

Columbia Environmental, LLC submitted a franchise application for a local transfer station to be located at 14041 NE Sandy Boulevard in Portland, Oregon (Site Location Map #1) and located in Metro Council District 1. The proposed facility is located on a 12.5-acre site zoned IG2, a General Industrial base zone with a Scenic Resources overlay zone. It has operated as a source-separated recyclable processing facility since 1996. The City of Portland has defined the impact area as a 60-acre trapezoid surrounding the site that includes some open channels and wetlands associated with the Columbia Slough. The nearest residential area to the site is south on NE Sandy Boulevard, approximately 200 feet from the proposed facility and separated by a parking area, a berm, a frequently-used rail line atop the berm, and NE Sandy Boulevard.

Site Location - Map #1



Aerial Photo of Subject Site



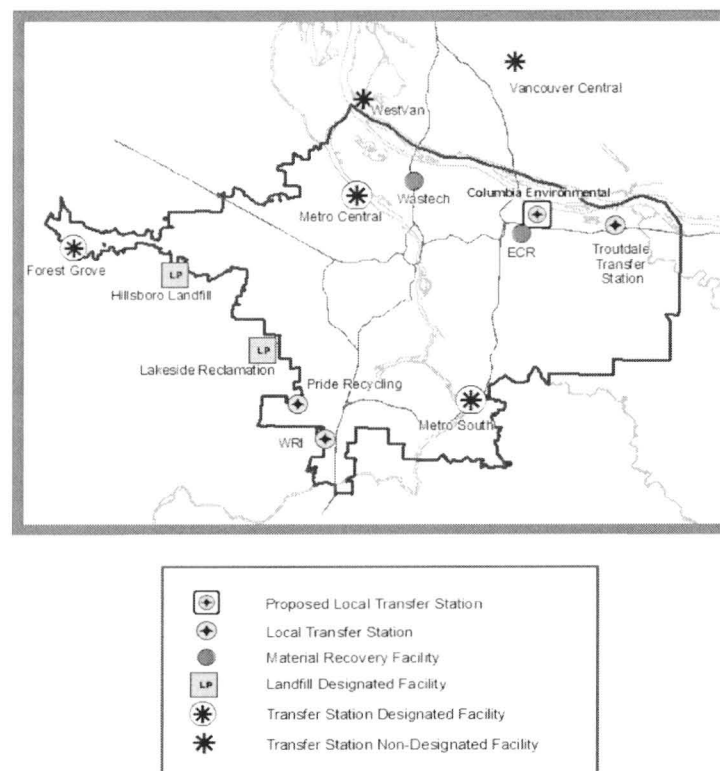
The proposed facility is owned by a partnership of independent haulers that also own Oregon Recycling Systems (ORS). The aerial photo shows the location of ORS, the long building in the center of the photo, which presently serves as a recycling processing

business for residential source separated recyclables. The applicant is proposing to accept a total of 92,000 tons of solid waste annually.¹

Columbia Environmental submitted its local transfer station franchise application to Metro on July 30, 2004. Columbia Environmental representatives met with Metro staff for a pre-application conference on August 11, 2004, where upon providing additional information requested by Metro and proof of insurance, the application was determined to be complete and the 120-day review period was initiated. However, in accordance with Metro Code section 5.01.070(h)(3), the COO and the applicant agreed to a 30-day extension to the application review process. Therefore, the Council must approve or deny the application within 150 days of the date the application was determined to be complete (by January 8, 2005) or the franchise will be deemed granted (Metro Code 5.01.070(g)).²

The following map locates the proposed Columbia Environmental transfer station in relation to other primary facilities of the current solid waste system where waste generated in the Metro region is processed, transferred or disposed.

**Solid Waste Facilities and the
Proposed Columbia Environmental Transfer Station – Map #2**



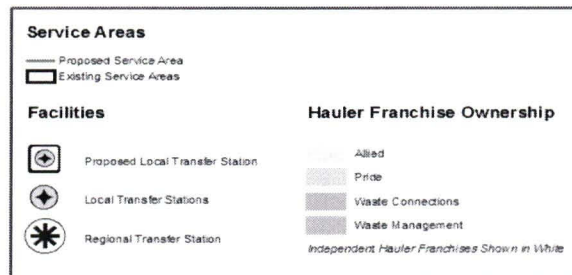
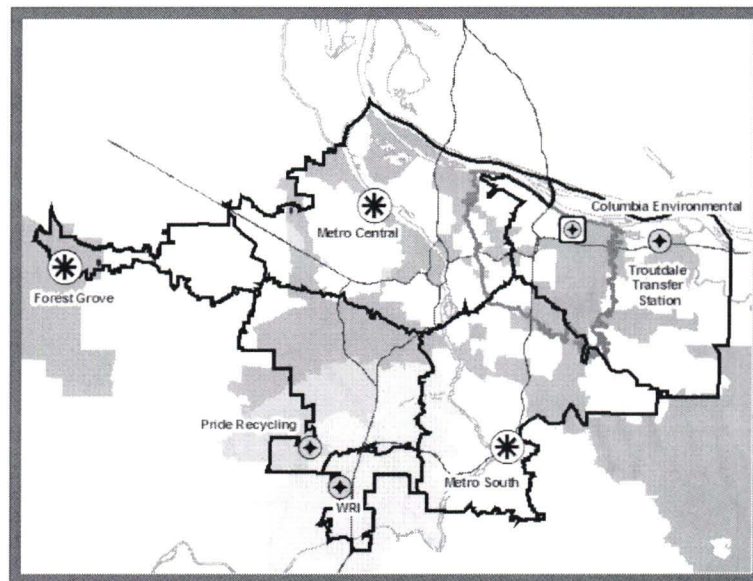
¹ Of the 92,000 tons of solid waste, 55,000 tons are putrescible waste, 32,000 tons are non-putrescible waste, and 5,000 tons are inert or special waste.

² The Council may extend the deadline for up to an additional 60 days.

There are also numerous other specialized processing, composting and reload operations throughout the region (not shown). There are two additional transfer facilities located in Clark County, Washington that are used to process some solid waste generated from within the Metro region. Six other general and limited purpose landfills are found throughout Oregon and Washington and serve as disposal destinations for solid waste generated within the Metro region (not shown).³ These landfills are located anywhere from 47 miles to 170 miles from the Metro region.

Any transfer station in the region would be associated with a service area based on the 2001 amendments to Chapter 5.01 of the Metro Code. Each of the service area boundaries are located equidistant from the next closest transfer station. The following illustrates how the existing transfer station service area boundaries would change if Columbia Environmental's application is approved.

**Proposed Transfer Station Service Areas
with Approval of Columbia Environmental – Map #3**



³ Coffin Butte landfill, Columbia Ridge landfill, Finley Buttes landfill, Wasco landfill, Riverbend landfill, and Roosevelt landfill.

As illustrated in map #3, inserting a new local transfer station service area into the regional system shrinks the service areas of the existing transfer stations (both Metro and non-Metro). The service area concept was adopted by the Council as a rationale for establishing the local transfer station tonnage caps, and as specified in Metro Code, are to be arrived at by: 1) establishing geographic service areas based on distance, 2) calculating the amount of putrescible waste for disposal in each service area (“demand”), and 3) limiting the putrescible waste tons that could be delivered to local transfer stations to the calculated demand. In other words “demand” in each service area would set the “tonnage cap” for each local transfer station. Council was also interested in minimizing distances traveled by waste collection vehicles or reducing Vehicle Miles Traveled (VMT). This was to be accomplished by requiring each facility to serve haulers within its service area.

EVALUATION OF PROPOSED FRANCHISE APPLICATION

Columbia Environmental promotes several key points as part of its franchise application package, including:

- granting the franchise would allow its members to reduce their transportation costs, to potentially offset other increases in their solid waste collection costs. They claim this could result in lower collection franchise rate increases, allowing them to charge more competitive fees to Portland commercial customers;
- the proposed facility would help maintain the presence of small haulers as a stabilizing factor in providing solid waste services in the Metro region. The emphasized features of the proposal are improved accessibility to haulers, increased competition and enhanced material recovery capacity. The applicant provided a financial analysis showing a net “benefit” to the overall system of more than \$1.3 million.

Description of Evaluation Factors

This section provides analysis of explicit criteria for Metro Council consideration in determining whether to grant or deny the franchise application.

Metro Code

Metro Code 5.01.070(f) provides that the Council “shall consider but not be limited by” the five factors listed in the Evaluation Factors Summary Table shown on the next page. Further, as part of the Franchise application, Metro Code 5.01.060(d) requires the applicant to provide an analysis of the same factors described above (Metro Code 5.01.070(f)(1-5)). In its application, Columbia Environmental provided a narrative of how the proposal responds to these five factors.

Evaluation Factors Summary Table

The following table summarizes findings regarding whether or not the application submitted by Columbia Environmental meets the five evaluation factors.

Table 1 The Five Metro Code Evaluation Factors For Solid Waste Franchise Applications	Meets Criteria	Neutral	Does Not Meet Criteria	Findings on the Columbia Environmental Application
<p>1. <i>Consistent with the Regional Solid Waste Management Plan [Metro Code 5.01.070(f)(1)].</i></p> <p>Will there be a <i>Net Benefit</i> to the regional solid waste system?</p>			X	On balance, staff finds that the proposed facility would not produce a certain, equitably distributed, or sufficiently large net benefit to the regional solid waste system and therefore, the application is not consistent with the RSWMP.
<p><u>RSWMP considerations:</u></p> <ul style="list-style-type: none"> Capacity Access (under-served area) Recovery Competition (competition also relates to Cost, which is discussed in Evaluation Factor #2) Cost to regional ratepayers 			X	The region has more than adequate capacity to accept, manage and transfer all of the region's waste for many years to come (refer to Metro's Regional Transfer Capacity Analysis, April 2004).
			X	The proposed facility location does not meet the RSWMP criteria for an under-served area, characterized as more than 25 minutes to a transfer station. Further, it would be located only 6.6 miles from an existing local transfer station. There are even more nearby options for dry waste. While access may be improved for a small number of haulers, a transfer station in every neighborhood would also improve access, but at the same time create a very inefficient system.
	X			The facility would recover an additional 3,000 tons rather than the 20,000 tons claimed by the applicant. The applicant's affiliated haulers have the option of using the nearby existing material recovery facilities rather than the more distant Metro facilities.
		X		The proposed transfer station could hurt competition since a new facility would cause tip fee increases throughout the region (see Evaluation Criteria #2). This situation would: 1) be detrimental to many other independent haulers that rely on Metro's public transfer stations, and 2) provide a windfall to other solid waste operations in competition with the applicant.
			X	Staff finds a significant negative cost impact on regional ratepayers - refer to comments for Evaluation Criteria #2 on the next page.

...continued...					
The Five Metro Code Evaluation Factors For Solid Waste Franchise Applications		Meets Criteria	Neutral	Does Not Meet Criteria	Findings on the Columbia Environmental Application
<p>2. <i>The effect on the cost of solid waste disposal and recycling services for the citizens of the region [Metro Code 5.01.070(f)(2)].</i></p> <p>(Cost relates to Competition, discussed on previous page Evaluation Factor #1-RSWMP consistency)</p>				X	<p>If the application were approved, the citizens of the region will likely incur increased costs of about \$1.2 million to \$1.4 million annually.</p> <ul style="list-style-type: none"> Cost increases to Metro's customers of \$1.30 per ton (+ \$606,000). Cost increases at private facilities would result in higher tip fees region-wide to recover those increased costs (+ \$167,000 excise taxes and fees). In addition, the posted rates at many private facilities are expected to increase to match Metro's rates (at least +\$439,000 additional revenue at non-Metro facilities). The applicant claims that it could realize an adjusted gross savings of \$1.3 million from transportation and dry waste tip fee savings. However, the applicant states these savings would likely not be passed on to its customers, but might slow down future rate increases.
<p>3. <i>Unlikely to unreasonably adversely affect the health, safety and welfare of Metro's residents [Metro Code 5.01.070(f)(3)]</i></p>		X			There is no reason to believe the applicant could not meet this criterion.
<p>4. <i>Unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood [Metro Code 5.01.070(f)(4)]</i></p>		X			There is no reason to believe the applicant could not meet this criterion.
<p>5. <i>Comply with all requirements and standards and other applicable local, state and federal laws, rules, regulations, ordinances, orders or permits pertaining in any manner to the proposed Franchise [Metro Code 5.01.070(f)(5)].</i></p>		X			There is no reason to believe the applicant could not meet this criterion.

Table 2

Councilor Values for the Solid Waste System

(As expressed at the public work session on July 2, 2003 and ordered according to the Council priorities)

- | | |
|---|---|
| 1. Protect the public investment in the solid waste system. | 5. Ensure regional equity - equitable distribution of disposal options. |
| 2. "Pay to Play". Ensure participants/users pay appropriate fees/taxes. | 6. Maintain funding source for Metro general government. |
| 3. Environmental sustainability. | 7. Ensure reasonable / affordable rates. |
| 4. Preserve public access to the disposal options (location & hours) | |

Based on balancing the Councilor Values for the Solid Waste System (see Table 2) staff concludes that the most important Metro Code evaluation factors are the first two: Consistency with the RSWMP and cost for the citizens of the region. Values 1, 3 and 7 apply directly to consideration of Columbia Environmental's application and allows staff to consider Code criteria regarding RSWMP considering cost to the ratepayer as the most important criteria. Values 2, 4, 5 and 6 are neutral as they pertain to Columbia Environmental's application

Analysis of Evaluation Factors

The following is a detailed discussion and analysis of each of the five evaluation factors.

Evaluation Factor #1

Whether the applicant has demonstrated that the proposed Solid Waste Facility and authorized Activities will be consistent with the Regional Solid Waste Management Plan [Metro Code 5.01.070(f)(1)]

The Recommended Practice in the current RSWMP regarding new transfer stations is to:

“Allow additions to the existing system of three transfer stations as necessary to maintain solid waste transfer and disposal service levels. New transfer stations may be authorized where they provide a net benefit to the regional solid waste system. New transfer stations shall perform material recovery subject to facility recovery rate standards.”

To determine consistency with the RSWMP, the application must show that it will result in an overall *net benefit* to the existing solid waste system. In order to evaluate the net benefit, the RSWMP includes provisions to be considered and balanced. These are:

- Capacity
- Accessibility (under-served area)
- Material recovery
- Competition
- Cost to regional ratepayers

In its application, Columbia Environmental indicates that the proposed transfer station will be consistent with the RSWMP because the proposed facility will: 1) improve accessibility to haulers, 2) provide services to an under-served area, and 3) enhance the material recovery capacity of the region, contributing to Metro's overall recovery and recycling goals.

The following section provides staff comment and analysis on each of the RSWMP provisions to be considered in order to assist the Council in its consideration of the application.

A. Capacity

The RSWMP policy on capacity: “...an efficient disposal system depends on both capacity and accessibility. New transfer stations may be considered when the delivery of efficient disposal services is negatively affected by either of these two factors.”

Summary of applicant's analysis

The applicant did not address capacity.

Analysis/findings

In April 2004, Metro Solid Waste & Recycling staff issued the *Regional Transfer Capacity Analysis* report that addressed the capacity of the region's solid waste facilities to accept and load waste for transport to disposal sites. The analysis concluded that 1) the region's transfer capacity for putrescible waste currently exceeds the needed capacity by approximately 1.1 million tons per year, and 2) by 2015, the transfer stations that service the region will still have 841,000 tons of unused capacity, based on a very conservative estimate.

B. Accessibility

The RSWMP policy on accessibility: *"...an efficient disposal system depends on both capacity and accessibility. New transfer stations may be considered when the delivery of efficient disposal services is negatively affected by either of these two factors."*

The RSWMP's *Key Elements of the Recommended Practice* provide further clarification of the question of *accessibility*, with an emphasis that new transfer stations be located in "under-served" areas:

- *"Provide more uniform access to transfer stations, in order to improve system efficiencies in those areas of the Metro region that are under-served."*
- *"New transfer stations may be authorized where they benefit residents, businesses and solid waste haulers within the under-served areas."*

Summary of applicant's analysis

Columbia Environmental's application includes information on how its proposed facility would improve accessibility to its affiliated haulers. The applicant states that physical proximity is not the only factor that determines accessibility to haulers, and that price and ownership are also important. The applicant states that accessibility must be interpreted broadly to include all the factors that influence access to transfer stations. The applicant claims that the proposed new transfer station will significantly reduce travel times for haulers in the areas it will serve. Further, the applicant claims that the proposed transfer station is located in an "underserved" area for transfer stations.

Analysis/findings

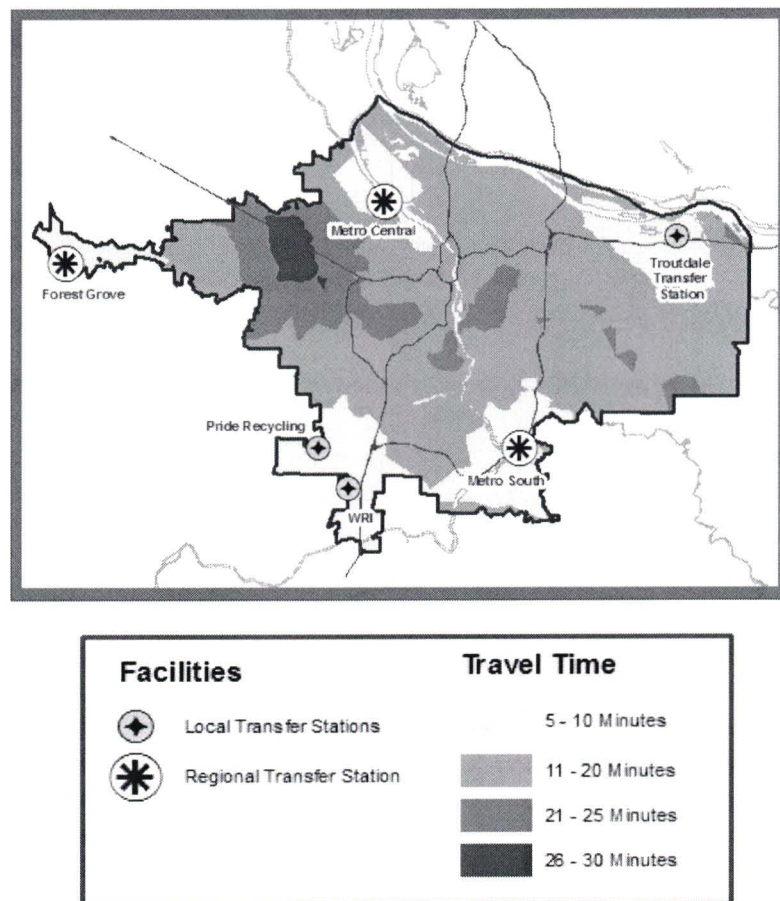
If approved, Columbia Environmental's new local transfer station would improve accessibility and reduce travel times for some of its affiliated haulers. However, the proposed facility would be sited only about 7 miles from the existing Troutdale Transfer

Station (about 12 minutes driving time). This fact, alone, makes it somewhat difficult to characterize the location of the proposed facility as an underserved area.

The working standard used to guide RSWMP policy for underserved areas has been that facility access is an issue in areas of the region that are more than 25 minutes travel time from a transfer station.⁴

Estimated travel time zones for each of the six existing transfer stations are illustrated in Map #4 below.⁵ As illustrated, only an area in the western part of the region is more than 25 minutes away from an existing transfer station, and it would be unaffected by the proposed new transfer station.

Wet Waste: Estimated Travel Time Zones – Map #4



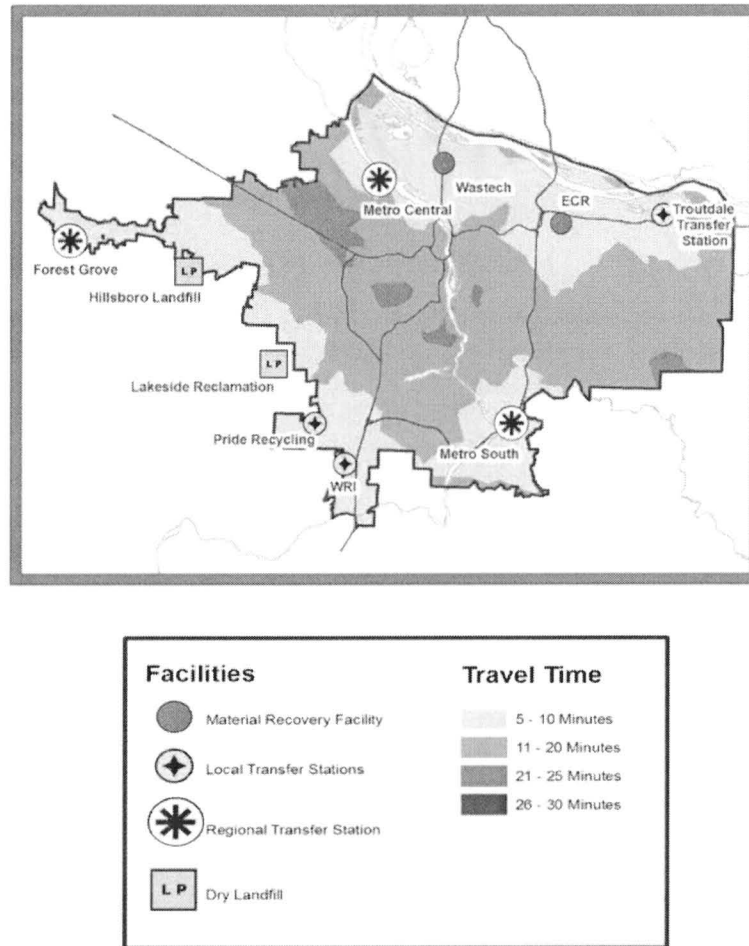
Moreover, regarding non-putrescible waste (“dry waste”), there are even more options available to the applicant’s affiliated haulers. This is because, in addition to the existing

⁴ Staff Report to Ordinance No.00-865, adopted by the Metro Council on June 15, 2000.

⁵ Metro modeling network mid-day auto travel times for year 2000 are based on the modeling network developed by the Metro Planning Department for transportation planning purposes.

transfer stations that accept both wet and dry waste, there are also two mixed dry waste processing facilities located nearby: Wastech and East County Recycling (ECR).

Dry Waste: Estimated Travel Time Zones – Map #5



The applicant based its hauler travel time savings for solid waste on travel time to Metro's regional transfer stations (Metro Central or Metro South) and did not include consideration of the location of available existing infrastructure, such as Troutdale Transfer Station or the two nearby dry waste recovery facilities (Wastech and ECR). The applicant states that price and ownership are important factors to accessibility, but failed to explain why the applicant's affiliated haulers did not use those transfer stations or explain why the nearby dry waste recovery facilities are not used.

While the proposed facility would improve access for some Columbia Environmental independent haulers with collection routes within the proposed facility's new service area, the benefits of improved access cannot be viewed in isolation. Any new transfer station will enhance accessibility for some haulers. At some point the benefits of reducing travel time to the nearest transfer station are outweighed by inefficiencies

caused by deteriorating economies of scale and resulting increased costs to the region's ratepayers (see the cost analysis in Evaluation Factor #2).

Based on the preceding analysis: 1) the proposed location of the new transfer station is not within an underserved area - as defined by the RSWMP, and 2) adding this transfer station will not improve overall system efficiencies for businesses, residents and haulers not affiliated with Columbia Environmental.

C. Material Recovery

The RSWMP policy on material recovery: "*New transfer stations shall perform material recovery subject to facility recovery rate standards.*" Metro Code 5.01.125(b) specifies that franchised local transfer stations will recover at least 25 percent by weight of non-putrescible waste accepted at the facility.

Summary of applicant's analysis

The applicant states that recovery at the facility will be accomplished because Columbia Environmental has a strong economic incentive to recover recyclable materials from the waste stream. Columbia Environmental does not own a landfill to which the waste will be transferred and, therefore, has more of an incentive to conduct material recovery, which will bring revenue into the facility. The applicant projects the proposed facility would conduct recovery at a rate of 35% from 52,000 tons of dry waste and from 5,000 tons of special/other wastes, thereby diverting some 20,000 additional tons from being landfilled.

Analysis/findings

The applicant has indicated that it intends to maintain a recovery rate of 35%, which is greater than the minimum 25% standard required by Metro Code. The proposed facility will actually accept about 32,000 tons per year of non-putrescible (dry) waste from which recovery would likely be conducted – not 52,000 tons listed in the application. (This number appears to be an error, as it is not consistent with the 32,000 tons number used throughout other parts of the application.) A proposed recovery rate of 35%, would result in 11,200 tons of recovery – not the additional 20,000 tons as claimed by the applicant.

The 11,200 tons of material the applicant projects will be recovered does not represent *additional* tons recovered because wherever that waste is currently delivered, some amount of it is already being recovered. From the application, it is not clear whether any of that waste is currently being delivered to the two dry waste recovery facilities (Wastech and ECR) located closest to where Columbia Environmental is proposed to be located. If so, there would not likely be any increase in additional recovery, as both of these facilities achieve recovery rates at least as high as what the applicant is proposing.

If all of this estimated 32,000 tons of dry waste is currently delivered to one of the two Metro transfer stations, it would likely result in about 8,000 tons of recovery based on the

25% to 30% recovery rate at Metro transfer stations for dry commercial drop-box loads (the recovery rate for public self-haul loads is lower). Therefore, the additional recovery that the applicant could achieve would be between zero and 3,200 *additional* tons above and beyond that which already occurs at Metro facilities.

D. Competition

The RSWMP policy on competition: *“Metro shall encourage competition when making decisions about transfer station ownership or regulation of solid waste facilities in order to promote efficient and effective solid waste services. Metro shall consider whether the decision would increase the degree of vertical integration in the regional solid waste system and whether that increase would adversely affect the public. Vertical integration is the control by a private firm or firms of two or more of the primary functions of a solid waste system – collection, processing, transfer and hauling, and disposal.”*

Summary of applicant’s analysis

The applicant states that the proposed Columbia Environmental transfer station will preserve the presence of small independent haulers in the Metro system, which, in turn, improves competition. The applicant predicts that competition will increase efficiency and reduce system costs. For example, the applicant states that since 1988, there has been a significant decrease in the number of small haulers serving the Metro region due to consolidation and large, vertically integrated, multi-national firms. In response, the small haulers must create the same vertical integration scale advantages.

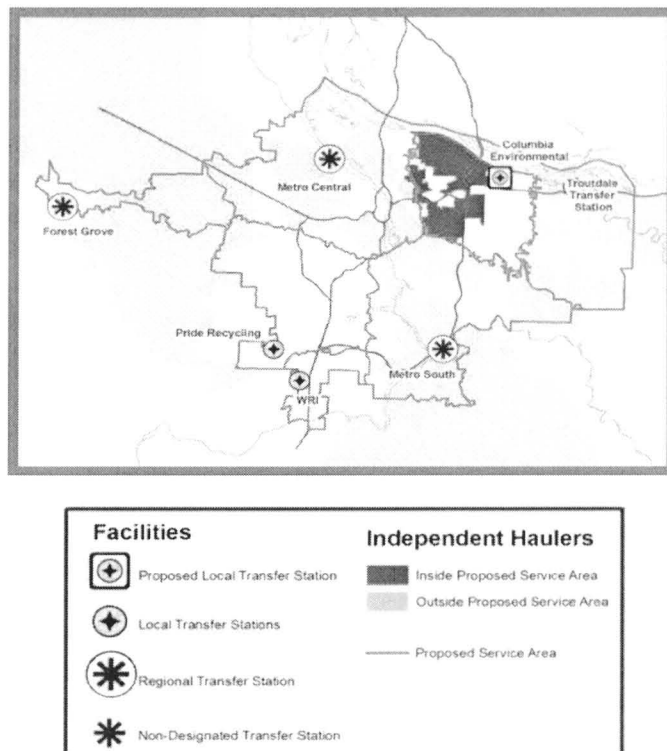
Analysis/findings

According to the RSWMP policy, competition should be encouraged in order to promote efficient and effective solid waste services. Further, Metro must consider whether the degree of vertical integration in the region would be increased and if it would adversely affect the public.

The applicant has stated that its proposed facility would “preserve the presence of small independent haulers in the Metro system.” No quantitative information was included in the application to support that finding. In fact, as illustrated in Map # 6 below, there are many independent haulers located outside the new Columbia Environmental service area that will not benefit from the proposed transfer station.⁶

⁶ For the purpose of this report, independent haulers mean those haulers that do not own or are not directly affiliated with their own transfer station or landfill.

Independent Hauler Franchises Located Inside and Outside the Proposed Columbia Environmental Service Area – Map #6



As illustrated in Map #6 above, there are a number of independent hauler franchises (shown in red) inside Columbia Environmental's proposed service area.⁷ These haulers will benefit from the proposed facility (through shorter drive time and lower dry waste tip fees). In contrast, if the transfer station were approved, the other independent haulers in the region (franchises shown in pink), many of whom also use Metro Central or Metro South, would be adversely impacted due to the expected increase in tip fees at Metro transfer stations (see Evaluation Factor #2).

Would the applicant's proposed facility result in competition leading to an improvement in the delivery of efficient and effective solid waste services? Probably not. In a solid waste system that already has ample capacity and only limited access issues, the addition of new transfer capacity within a few miles of three other existing facilities (Wastech, ECR, Troutdale Transfer Station) is unlikely to noticeably improve service efficiency or effectiveness for more than a small subset of the region's haulers. Moreover, with tip fees expected to increase region-wide in response to Metro's higher per-ton costs if the facility is approved, many ratepayers would pay higher garbage bills (see Evaluation Factor #2).

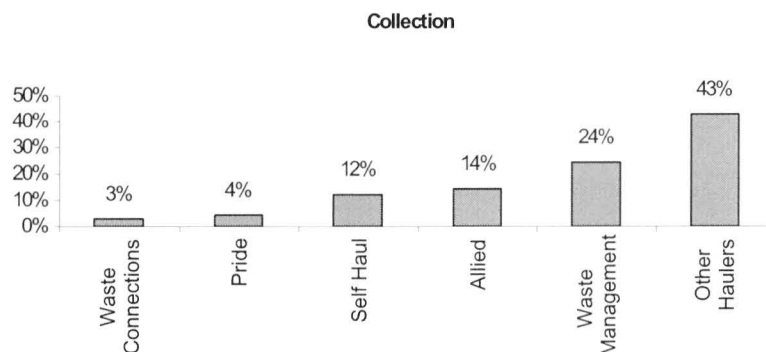
⁷ There are other Columbia Environmental affiliated haulers located outside the proposed service area that would use the proposed transfer station.

Would approval of the proposed transfer station have an impact on the degree of vertical integration, and would the public be adversely impacted? Yes to both questions. The Columbia Environmental haulers would become a new vertically integrated company, i.e., its members would control two of the three major pieces of the supply chain (collection and transfer). Hence, there would be a limited increase in the overall degree of vertical integration in the solid waste system. Whereas this new vertically integrated entity would likely gain some market power for commercial accounts, non-affiliated haulers and the general rate paying public would be negatively impacted due to the increased tip fees at other solid waste facilities (see Evaluation Factor #2).

Classical measures of competition commonly utilize the concept of “market share,” i.e., the proportion of the total market controlled by the firm in question. Typically, competition will also lead to either lower prices for the consumer, as a result of market entry, or innovation in service or products. The proposal will actually increase rates (see cost analysis) and new innovation in services or products are not identified in the application.

The following graph illustrates that independent haulers (“other haulers”)—including Columbia Environmental affiliates and non-affiliates—still control 43% of the total collection service market. If approved, the Columbia Environmental transfer station would likely accept about ¼ of the total solid waste delivered to transfer facilities by independent haulers, or about 11% of the total market.⁸

Solid Waste Collection Markets for the Metro Region (FY 2003/04).



From a competition standpoint, it should be noted that the City of Portland actively encourages competition for its residential collection franchised routes. In order to prevent a monopoly by any single company, the City of Portland limits the total number of households (50,000) any single residential franchise can serve.⁹

⁸ Estimated CY 2004 MSW tons taken to transfer stations by independent haulers is about 372,000 tons. Of this total, about 228,000 tons are delivered to Metro’s public transfer stations.

⁹ The City of Portland estimates that there are about 135,000 total households.

In summary, the applicant's proposed facility would allow some of its independent affiliated haulers to operate more profitably. However, the increased "competition" would at best lead to a reduction in some commercial dry waste disposal fees, but an increase for most residential ratepayers. Granting the Columbia Environmental franchise would increase costs for haulers and ratepayers who continue to rely on Metro's public transfer stations, and could provide a financial windfall opportunity to other solid waste facilities in competition with the applicant. One potential use of these windfall revenues elsewhere in the region could be to subsidize the cost of commercial collection in the City of Portland, further squeezing the profitability of independent haulers who currently compete in this market.

Consistency with the RSWMP Conclusion

Based on staff analysis and findings, the Columbia Environmental proposed transfer station would not result in a net benefit to the solid waste system. Therefore, the proposed new transfer station would not be consistent with the current RSWMP.

Evaluation Factor #2

The effect that granting a Franchise to the applicant will have on the cost of solid waste disposal and recycling services for the citizens of the region [Metro Code 5.01.070(f)(2)]

Summary of applicant's analysis

Columbia Environmental provided a financial analysis, indicating a gross benefit to the overall system of more than \$1.7 million (net 1.3 million dollars). The applicant states that savings realized by its affiliated, smaller haulers will have: 1) a constraining effect on their average collection costs, and rate increases for their residential customers, and 2) that it would allow them the option to charge more competitive rates to provide service to Portland commercial customers.

Analysis/findings

Rather than producing a \$1.3 million net benefit to the overall system, the citizens of the region will likely pay about \$1.3 million *more* annually for solid waste and recycling services if Metro grants Columbia Environmental a local transfer station franchise. At the same time, Columbia Environmental haulers may be able to reduce their own transportation and disposal costs. Some of those savings could be passed on to commercial customers (the applicant claims over \$600,000); however, as stated in the application, they have no plan that lower costs will be passed on to the general public via lower garbage bills.

Impacts at Columbia Environmental

1. The applicant's cost savings is overstated by over \$550,000. Staff analysis reveals the error to be a double-count of transportation savings. Partially offsetting this,

however, the applicant's tip fee savings are understated by about \$80,000 because the applicant did not consider Metro's \$7.50/load transaction fee. Making these two adjustments, the applicant's savings are as follows:

Transportation Savings: (\$536,000)

MSW Tip Fee Savings: (\$579,000)

Special Waste Savings: (\$158,000)

(\$1,273,000) Adjusted gross savings claimed by the applicant

2. The applicant's calculated gross savings, as adjusted for the errors described above, may be overstated regarding travel time assumptions. For example:

Travel Time:

- Although the applicant did not supply sufficient data for Metro staff to verify the applicant's travel time savings claims, it appears that a significant proportion of the tonnage collected by the applicant's haulers is located closer to an existing facility than to Columbia Environmental. For example, nearly all Columbia Environmental's dry waste is closer to East County Recycling; and Gresham Sanitary (one-fifth of the applicant's wet tonnage) is closer to Troutdale Transfer Station. Delivery of these tons to Columbia Environmental would actually require traveling longer distances than using the closest existing facility.
- The applicant assumes a minimum of 20 minutes two-way travel-time savings for every load. This seems unlikely for a number of member franchise areas, especially those inner Eastside franchise areas that are about equidistant from Metro South, Metro Central, and the new proposed facility (e.g., Trashco, City Sanitary). Conversely, travel-time savings may be underestimated in some cases, such as for the Argay franchise area, which is located virtually adjacent to the proposed facility location. There, travel-time savings may actually exceed the 35 minutes represented by the applicant.

Tip Fee Impacts at Public & Private Facilities

3. If Metro maintains a cost-based tip fee¹⁰, the diversion of about 92,000 tons of mixed waste from Metro's transfer stations would increase Metro's tip fee by \$1.30 per ton: 23¢ RSF and Excise Tax, plus \$1.07 in cost recovery at Metro's transfer stations (see Attachment 1).

Cost Increase

to Metro's Customers:

\$605,000

(466,157 tons x \$1.30)

¹⁰ First fully implemented this fiscal year (FY2004-05).

4. Private facilities are likely to raise tip fees to recover their increased cost of Metro's fees & taxes.

Cost Increase

to Private Facility Customers: \$167,000
(741,476 tons x 23¢)

5. Consistent with past practice, the posted rates for wet waste at the other private transfer stations will be revised to match Metro's tip fee. Similarly, ECR will likely match the Metro tip fee.

**Non-Metro Revenue
Matching Potential**

\$439,000 to \$662,000
(409,391 to 606,985 tons x \$1.07)

TOTAL INCREASE FROM TIP FEES: \$1,211,000 to 1,435,000

Note: The approximately \$1.3 million increase from higher tip fees throughout the region is likely to be incorporated into the average basis used by local government rate setters and, hence, passed on to ratepayers via higher garbage bills.

Cost to Ratepayers Summary

Adjusted Gross Savings

Passed on to Ratepayer: \$0

Total Increase from Tip Fees: _____ \$1.2 to 1.4 million

ANNUAL COST TO RATEPAYERS: \$1.2 to 1.4 million

In summary, the citizens of the region will likely pay about \$1.2 to \$1.4 million more annually, through increased tip fees, for solid waste and recycling services if Metro grants Columbia Environmental (CE) a local transfer station franchise.

The applicant plans to make significant capital improvements to expand wet waste processing capacity and dry waste material recovery capacity at the site. Columbia Environmental has not said how much capital it intends to invest, nor over what period the applicant intends to recover those increased system costs.

Evaluation Factor #3

Whether granting a Franchise to the applicant would be unlikely to unreasonably adversely affect the health, safety and welfare of Metro's residents [Metro Code 5.01.070(f)(3)]

Summary of applicant's analysis

The applicant posits that the issue of adverse effects on area residents was completely reviewed as part of the City of Portland conditional use approval for the proposed Columbia Environmental transfer station. A "Decision of the Hearings Officer" was issued by the City of Portland (LUR 02-137433) in 2003 and the Hearings Officer concluded that:

- The "proposed waste-related uses pose no significant health or safety risk to nearby uses."
- Operations at the site "adequately address potential nuisance impacts."
- "Taking into consideration expected traffic impacts of the proposed use, both City and State requirements for traffic levels and safety on nearby streets would be met."
- From any residential property, "noise, vibration, odor, and glare will be difficult to detect at significant levels."
- "The existing facility has not had a citation of non-compliance in the five years it has been in operation."

In summary, the applicant claims that based on the information presented to the City of Portland, the Oregon Department of Environmental Quality, and in its application to Metro, there is no indication that the activities on the proposed site would be likely to unreasonably adversely affect residents of the region.

Analysis/findings

The proposed facility is located on a 12.5-acre site zoned IG2, a General Industrial base zone with a Scenic Resources overlay zone. It has operated as a source-separated recyclable processing facility since 1996. The City of Portland has defined the impact area as a 60-acre trapezoid surrounding the site that includes some open channels and wetlands associated with the Columbia Slough. The nearest residential area to the site is south on NE Sandy Boulevard, approximately 200 feet from the proposed facility and separated by a parking area, a berm, a frequently-used rail line atop the berm, and NE Sandy Boulevard.

Following hearings on Columbia Environmental's application to the City of Portland for a conditional use permit, the Hearings Officer made a finding that "There will be no significant health or safety risk to nearby uses." Factors considered in the Hearings Officers written decision included evaluations of the potential for nuisances caused by traffic, noise, vibration, odor, glare, litter, dust, mud, and vectors. A conditional use permit was approved with conditions intended to assure the minimization of any impacts to nearby residents. Such conditions include the processing of waste only within enclosed buildings, the implementation of an odor control system that limits the migration of odors off-site, and on-going monitoring by Metro. These are conditions that are also routinely included in Metro transfer station franchises. Metro staff concurs with the Portland Hearings Officer's findings and concludes that the granting of the requested

franchise is unlikely to unreasonably adversely affect the health, safety, and welfare of Metro's residents. In summary, the application satisfies this criterion.

Evaluation Factor #4

Whether granting a Franchise to the applicant would be unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood [Metro Code 5.01.070(f)(4)]

Summary of applicant's analysis

The applicant states that the potential for impacts on nearby residents and property owners was reviewed as part of the City of Portland conditional use approval for the proposed facility. The applicant refers to the Hearing Officer quotes listed above in responses to evaluation factor #4 as applicable to this factor. Further, the "existing character or expected future development of the surrounding neighborhood" was also considered as part of the land use case. The applicant asserts that the industrial area around the proposed facility is already mostly developed, with some vacant parcels, and the proposed transfer station would have no significant adverse impact on future development, residents, property owners, or the character of the area.

Analysis/findings

Following hearings on Columbia Environmental's application to the City of Portland for a conditional use permit, the Hearing Officer made a finding that "There will be no significant health or safety risk to nearby uses." Factors considered in the Hearings Officers written decision included evaluations of the potential for nuisances caused by traffic, noise, vibration, odor, glare, litter, dust, mud, and vectors. A conditional use permit was approved with conditions intended to assure the minimization of any impacts to nearby residents. Such conditions include the processing of waste only within enclosed buildings, the implementation of an odor control system that limits the migration of odors off-site, and on-going monitoring by Metro.

Metro staff concurs with the Portland Hearings Officer's findings and concludes that the granting of the requested franchise is unlikely to unreasonably adversely affect nearby residents, property owners or the existing character or expected future development of the surrounding neighborhood. The area immediately adjacent to the facility is zoned for industrial uses, and two other solid waste facilities are already in operation on the site. The granting of this franchise therefore, is not likely to have any significant additional impact on nearby residents, property owners or the character and future development potential of the area. However, staff notes that there could be odor impacts on nearby residents or businesses that are created by Pacific Power-Vac (PPV), a tenant of Oregon Recycling Systems and co-located at the proposed Columbia Environmental facility. PPV treats sludges, wastewaters and sludge-like material for landfill disposal. In 2003, for example, Metro received a series of odor complaints regarding PPV's operations. In summary, the application satisfies this criterion.

Evaluation Factor #5

Whether the applicant has demonstrated the strong likelihood that it will comply with all the requirements and standards of this chapter (Metro Code Chapter 5.01), the administrative rules and performance standards adopted pursuant to section 5.01.132 of this chapter and other applicable local, state and federal laws, rules, regulations, ordinances, orders or permits pertaining in any manner to the proposed Franchise [Metro Code 5.01.070(f)(5)].

Summary of applicant's analysis

The applicant states that Columbia Environmental will comply with all applicable regulations for the transfer station, and that the existing management team at the facility has an excellent history of meeting its regulatory obligations. Further, as stated by the City of Portland in the land use decision, "The existing facility has not had a citation of non-compliance in the five years it has been in operation."

Analysis/findings

To evaluate the likelihood that the applicant will comply with all applicable regulations, staff contacted both the City of Portland's Bureau of Environmental Services and the DEQ in order to examine the applicant's past record of compliance. Neither agency has had compliance issues with Columbia Environmental. Oregon Recycling Systems is the recycling processing business currently located on the site.

Oregon Recycling Systems has not been regulated by Metro except to periodically inspect them to assure only source-separated recyclables are being taken. The facility operators have always been cooperative with Metro staff. There is a presumption of a strong likelihood that Columbia Environmental will comply with all the requirements and standards of Metro Code Chapter 5.01. In summary, the application satisfies this criterion.

CHIEF OPERATING OFFICER'S RECOMMENDATION

The Metro Code requires the Chief Operating Officer to formulate recommendations to the Metro Council "regarding whether the applicant is qualified, whether the proposed Franchise complies with the Regional Solid Waste Management Plan, whether the proposed Franchise meets the requirements of [Metro Code] section 5.01.060, and whether or not the applicant has complied or can comply with all other applicable regulatory requirements." (See Metro Code 5.01.070(c).) In addition, the Metro Code requires the Council to consider five criteria when deciding whether to grant or deny an application for a regional transfer station franchise, but the Code explicitly provides that the Council need not be limited by only those five criteria. The previous analysis in this

report has addressed all of the issues that the Chief Operating Officer is required to analyze, as well as all five of the criteria the Council is required to consider.

The Chief Operating Officer finds that the applicant is qualified to operate a local transfer station and has complied and can comply with all other applicable regulatory requirements. The Chief Operating Officer also finds that the application meets the requirements of Metro Code sections 5.01.060(a), (b) and (c), and 5.01.070(f)(3), (4) and (5).

The Chief Operating Officer believes, however, that the most important criteria are demonstration by the applicant that the proposed new facility will be consistent with the RSWMP and the effect that granting the franchise would have on the cost of solid waste services for the region's citizens (see Metro Code sections 5.01.070(c), (f)(1) and, (f)(2), and 5.01.060(d)). The RSWMP provides that new transfer stations may be considered when disposal services have been impaired by either of two factors: inadequate capacity or inadequate access.

It should be emphasized that the region's current transfer stations have more than adequate capacity to accept, manage, and transfer all of the region's waste for many years to come (refer to Metro's *Regional Transfer Capacity Analysis, April 2004*). If a new transfer station is to be granted, the primary rationale must be improved access. Moreover, the RSWMP also specifically provides that a transfer station may be approved if it will provide a net benefit for the region and if located in an "under-served" area.

The net benefit analysis of the applicant's proposal requires the weighing and balancing of several different RSWMP factors. Thus, to grant an application for a transfer station, an applicant must demonstrate that the benefits of doing so outweigh the costs that will accompany such a decision. Given this, prudence demands that new transfer station franchises be approved only if the potential benefits are large and certain enough to outweigh potential risks and costs to the system.

Taking into consideration the changes made to the RSWMP in 2000 to allow consideration of new transfer station applications, the Chief Operating Officer concludes that the two most important issues to be considered are whether:

- (1) The proposed transfer station is located in an underserved area, and
- (2) The effect on the costs of solid waste and recycling services for the citizens of the region.

Furthermore, the Chief Operating Officer has considered the Councilor Values for the Solid Waste System. The Councilor Values are listed in Table 2 on page 6. In addition to each value, the Metro Council has indicated that all system-related scenarios or decisions will "maintain safety and public health throughout the solid waste system" as a minimal threshold for operation.

Underserved Area

One of Metro's key objectives in deciding to consider the establishment of additional transfer stations was to provide for better access within the *underserved areas*. The working standard for underserved areas that guides the RSWMP policies for authorizing new transfer stations, are those areas within the region that are more than 25 minutes from a transfer station.¹¹

As illustrated previously in the Estimated Travel Time Zone maps for both wet and dry waste (map #4 and map #5), the proposed transfer station would not be located in an area of the region where estimated travel time for wet waste would exceed 25 minutes. For dry waste, there are even more options available to haulers in this area when the dry waste recovery facilities are also considered since there are two nearby mixed dry waste processing facilities (Wastech and ECR). Therefore, based on the RSWMP considerations for establishing an under-served area, the proposed Columbia Environmental transfer station would not be located in an underserved area, and therefore does not meet the RSWMP requirement for approving a new transfer station.

As a local transfer station, Columbia Environmental would be located only 7 miles, or about 12 minutes away, from an existing local transfer station (the Troutdale Transfer Station), which already has both the authority and capacity to serve a substantial portion of their service area. Nevertheless, granting Columbia Environmental's application would result in better access for those haulers affiliated with the proposed Columbia Environmental facility and located within its proposed service area boundary.

However, any new local transfer station would achieve similar results by improving local access by reducing travel time for some haulers, but at the same time create a very inefficient overall disposal system. Unless an area is truly underserved, the benefits of reducing travel time (and minimizing VMT) are outweighed by inefficiencies caused by deteriorating economies of scale at the region's existing transfer stations and resulting increase in cost to the regional ratepayers.

Costs to the Regional Ratepayers

If this application were approved, the citizens of the region would likely incur increased costs estimated to be between \$1.2 million to \$1.4 million annually (over the status quo). At the same time, Columbia Environmental's affiliated haulers may be able to reduce their own costs; they state that it is unlikely these lower costs will be passed on to the ratepayers via lower garbage bills. The applicant claims, however, that future rate *increases* might be delayed.

Even if it could be assured that some savings would be passed through to ratepayers, it must be recognized that granting a local transfer station franchise to Columbia Environmental would create both winners and losers. That is to say, residents in

¹¹ Staff Report to Ordinance No.00-865, adopted by the Metro Council on June 15, 2000.

franchised areas close to Columbia Environmental whose haulers began using that facility might see a savings in their garbage bills as their local governments factored the greater transportation efficiencies and localized tip fee savings into collection rates. However, the much larger group of ratepayers whose haulers continue to use Metro's transfer stations would be burdened with higher rates as Metro increased its tip fee to pay for its costs after having lost tonnage and, along with it, part of those stations' economies of scale.

Tip fee increases at Metro transfer stations would result directly in a local rate increase; whereas, transportation cost reductions have only a slight chance of lowering local rates. In addition, it has historically been the case when Metro increases its tip fee, other privately operated transfer stations and dry waste material recovery facilities also increase their tip fees. Thus, the cost of solid waste disposal services for the region's citizens and businesses would likely increase even more.

Staff concludes that, in the end, there would be far more "losers" than "winners" if this application were granted.

COO Conclusion and Recommendation

The applicant's proposal is not without merit. It appears that granting its application would result in some transportation cost savings and some *dry waste* tip fee savings to its affiliated haulers. The question, however, is whether the estimated cost benefits are sufficiently certain, large, equitably distributed, and likely to be realized by the region's ratepayers to outweigh the likely costs and potential risks of granting this application. On balance, the Chief Operating Officer finds that the benefits to a limited number of haulers and customers do not outweigh the certain and substantial overall increases in costs to the rest of the citizens and businesses of the region.

For the above reasons, the Chief Operating Officer recommends approval of Ordinance No. 04-1063, denying Columbia Environmental's application for a local transfer station franchise.

If the ordinance to deny the application is upheld by the Council and the matter is contested by the applicant, the Council has the option of having the matter heard by a Hearings Officer or by the Council (Metro Code section 2.05.025). The Chief Operating Officer recommends that the matter, if contested, be referred to a Hearings Officer for consideration. This would allow the Hearings Officer, an unaffiliated third party, to hear all of the evidence in the matter and to draft a Proposed Order, which the Council would then consider, along with any of the parties' objections to the Proposed Order, before issuing a Final Order in the matter.

ANALYSIS/INFORMATION

1. Known Opposition

The applicant, Columbia Environmental, LLC and its affiliated haulers that would use the facility would be opposed to the proposed legislation.

2. Legal Antecedents

Metro Code Chapter 5.01 and the Regional Solid Waste Management Plan.

3. Anticipated Effects

If the legislation were adopted, the proposed local transfer station franchise application would be denied.

4. Budget Impacts

There would be no cost to implement the legislation, as the legislation would deny the franchise application.

RECOMMENDED ACTION

Council should approve Ordinance No.04-1063, denying Columbia Environmental's application for a local transfer station franchise.

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METRO

www.metro-region.org

ATTACHMENT 1

TABLE 1
Approximate Effect of CE on Metro's Per-ton Costs

	12-mo. Budget (\$ millions)	Per-ton Cost		Diff (\$/ton)
		current tonnage*	tonnage w/ CE*	
Transfer Operations				
New BFI Contract	5.4	\$9.63	\$9.73	0.10
(BFI budget amount varies with tonnage; all other budget amounts shown are fixed)				
Fixed Costs				
Contribution to Renewal & Replacement	0.6	\$1.12	\$1.34	0.22
Scalehouse & Maint. (fully loaded)	2.1	\$3.75	\$4.50	0.75
Subtotal Fixed Costs:				0.97
Subtotal Metro Transfer Station Operations:				\$1.07
Programs & Gen. Govt.				
Regional Programs	18.4	\$15.09	\$15.23	0.14
General Fund**	10.5	\$8.58	\$8.66	0.08
Subtotal Programs & Gen. Govt.				\$0.23
Total Impact on Metro's per-ton Costs:				\$1.30

* Revenue Bases			
	Tons		
	current tonnage	tonnage w/ CE	Diff
Metro:	558,264	466,157	-92,107
non-Metro:	<u>660,882</u>	<u>741,476</u>	<u>80,594</u>
Regional:	1,219,146	1,207,633	-11,513

** A per-ton increase in excise tax would not occur until Year 2; all other increases likely would occur in Year 1.

TABLE 2
Approximate Effect of CE on Citizens of the Region*

Transfer Operations

Metro	466,157	tons x \$0.10 =	<u>\$46,616</u>	
-------	---------	-----------------	-----------------	--

Fixed Costs

Metro	466,157	tons x \$0.97 =	<u>\$453,223</u>	
-------	---------	-----------------	------------------	--

Programs & Gen. Govt.

Metro	466,157	tons x \$0.23 =	\$105,196	
Non-Metro	<u>741,476</u>	tons x \$0.23 =	<u>\$167,326</u>	
	1,207,633		\$272,522	

Non-Metro Revenue Matching Potential

Wet	409,391	tons x \$1.07 =	\$438,971	(all wet waste matches)
Dry*	<u>208,249</u>	tons x \$1.07 =	<u>\$223,296</u>	(all dry waste matches)
	606,985		\$662,266	(both wet & dry waste match)

Total Potential Cost to Ratepayers Annually:

between	\$1,211,331	(wet matches)
and	\$1,434,626	(wet & dry match)

* "Citizens of the Region" is Code language [5.01.070(f)(2)], here understood to mean solid waste ratepayers.

** Excluded from the total are about 130,000 tons of dry waste delivered to the Washington Co. landfills, where a rate increase is less likely because those facilities are rate regulated by the county.

Ordinance No. 04-1064, For the Purpose of Amending the FY 2004-05 Budget and appropriations schedule recognizing the Transfer of \$504,000 from Metro's General Fund Tourism Opportunity and Competitiveness Account in the MERC Pooled Capital Fund Capital Outlay and Transferring \$150,000 from MERC Pooled Capital Contingency to MERC Pooled Capital Fund, Capital Outlay; and Declaring an Emergency

First Reading.

Metro Council Meeting
Thursday, November 18, 2004
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE FY	)	ORDINANCE NO. 04-1064
2004-05 BUDGET AND APPROPRIATIONS)	
SCHEDULE RECOGNIZING THE TRANSFER	)	Introduced by Mike Jordan, Chief Operating
OF \$504,000 FROM METRO'S GENERAL FUND	)	Officer, with the concurrence of the Council
TOURISM OPPORTUNITY &	)	President
COMPETITIVENESS ACCOUNT TO THE MERC)	
POOLED CAPITAL FUND CAPITAL OUTLAY)	
AND TRANSFERRING \$150,000 FROM MERC)	
POOLED CAPITAL CONTINGENCY TO MERC)	
POOLED CAPITAL FUND, CAPITAL OUTLAY;)	
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 funds transferred from its General Fund; and

WHEREAS, Oregon Budget Law 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; 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 transferring \$504,000 from the Metro's General Fund Tourism Opportunity & Competitiveness Account and transferring \$150,000 from MERC Pooled Capital Contingency to MERC Pooled Capital Fund, Capital Outlay.
2. 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 04-1064

ACCT	DESCRIPTION	Current Budget		Revision		Amended Budget	
		FTE	Amount	FTE	Amount	FTE	Amount
General Fund							
Total Personal Services		23.00	\$1,796,906	0.00	\$0	23.00	\$1,796,906
Total Materials & Services			\$569,286		\$0		\$569,286
<u>Interfund Transfers</u>							
INDTEX Interfund Reimbursements							
5800	Transfer for Indirect Costs						
	* to Building Management Fund		337,777		0		337,777
	* to Support Services Fund		680,958		0		680,958
	* to Risk Mgmt Fund-Liability		5,660		0		5,660
	* to Risk Mgmt Fund-Worker Comp		7,550		0		7,550
EQTCH Fund Equity Transfers							
5810	Transfer of Resources						
	* to Planning Fund (general allocation)		4,066,611		0		4,066,611
	* to Planning Fund (project allocation)		75,234		0		75,234
	* to Reg. Parks Fund (general allocation)		476,847		0		476,847
	* to Reg. Parks Fund (earned on SW revenues)		730,198		0		730,198
	* to Reg. Parks Fund (\$1 per ton on SW)		1,235,149		0		1,235,149
	* to Reg. Parks Fund (\$1.50 per ton on SW)		1,512,917		0		1,512,917
	* to Reg. Parks Fund (landbanking)		231,008		0		231,008
	* to MERC Pooled Capital Fund		0		504,000		504,000
	* to MERC Operating Fund (OCC - VDI Compliance)		182,129		0		182,129
Total Interfund Transfers			\$9,542,038		\$504,000		\$10,046,038
<u>Contingency and Ending Balance</u>							
CONT Contingency							
5999	Contingency						
	* General Contingency		563,000		0		563,000
	* Prior Year PERS Reserve		58,550		0		58,550
	* Current Year PERS Reserve		86,758		0		86,758
	* Tourism Opportunity & Competitiveness Fund		504,307		(504,000)		307
UNAPP Unappropriated Fund Balance							
5990	Unappropriated Fund Balance						
	* Ending balance		902,361		0		902,361
	* Recovery Rate stabilization reserve		412,042		0		412,042
Total Contingency and Ending Balance			\$2,527,018		(\$504,000)		\$2,023,018
TOTAL REQUIREMENTS		23.00	\$14,435,248	0.00	\$0	23.00	\$14,435,248

Note: This Ordinance does not reflect Ordinance No. 04-1066 that transfers \$63,208 to the Zoo Operating Fund

Exhibit A
Ordinance No 04-1064

ACCT	DESCRIPTION	Current		Revision		Amended	
		FTE	Budget Amount	FTE	Amount	FTE	Budget Amount
Merc Pooled Capital							
Resources							
BEGBA Beginning Fund Balance							
	* Prior year ending balance		4,698,164		0		4,698,164
	* Prior year PERS reserve		16,458		0		16,458
GVCN1 Contributions from Governments							
4145	Government Contributions		321,484		0		321,484
INTRST Interest Earnings							
4700	Interest on Investments		67,779		0		67,779
DONA1 Contributions from Private Sources							
4750	Donations and Bequests		627,775		0		627,775
4760	Sponsorship		88,000		0		88,000
EQTRE Fund Equity Transfers							
4970	Transfer of Resources						
	* from Convention Center Capital Fund		385,000		0		385,000
	* from MERC Operating - OCC		178,750		0		178,750
	* from General Fund		0		504,000		504,000
	* from MERC Operating - Expo Center		117,356		0		117,356
TOTAL RESOURCES			\$6,500,766		\$504,000		\$7,004,766
Total Personal Services		4.95	\$406,287	0.00	\$0	4.95	\$406,287
Total Materials and Services			\$10,000		\$0		\$10,000
Capital Outlay							
CAPNC Capital Outlay (Non-CIP Projects)							
5710	Improve-Oth thn Bldg (non-CIP)		40,000		0		40,000
5720	Buildings & Related (non-CIP)		305,600		0		305,600
5740	Equipment & Vehicles (non-CIP)		10,000		0		10,000
CAPCL Capital Outlay (CIP Projects)							
5715	Improve-Oth thn Bldg (CIP)		800,000		0		800,000
5725	Buildings & Related (CIP)		1,720,000		654,000		2,374,000
5745	Equipment & Vehicles (CIP)		266,750		0		266,750
Total Capital Outlay			\$3,142,350		\$654,000		\$3,796,350
Total Interfund Transfers			\$354,000		\$0		\$354,000
Contingency and Ending Balance							
CONT Contingency							
5999	Contingency						
	* General Contingency		500,000		(150,000)		350,000
	* Prior Year PERS Reserve		16,458		0		16,458
	* Current Year PERS Reserve		21,123		0		21,123
UNAPF Unappropriated Fund Balance							
5990	Unappropriated Fund Balance						
	* Ending Balance		2,050,548		0		2,050,548
Total Contingency and Ending Balance			\$2,588,129		#####		\$2,438,129
TOTAL REQUIREMENTS		4.95	\$6,500,766	0.00	\$504,000	4.95	\$7,004,766

Note: This Ordinance does not reflect Ordinance No. 04-1065 that transfers \$63,208 to the Zoo Operating Fund

Exhibit B
Ordinance No. 04-1064
FY 2004-05 SCHEDULE OF APPROPRIATIONS

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Amended</u> <u>Appropriation</u>
GENERAL FUND			
Council Office/Public Affairs			
Operating Expenses (PS & M&S)	\$2,101,192	\$0	\$2,101,192
Subtotal	2,101,192	0	2,101,192
Special Appropriations			
Operating Expenses (PS & M&S)	265,000	0	265,000
Subtotal	265,000	0	265,000
General Expenses			
Interfund Transfers	9,542,038	504,000	10,046,038
Contingency	1,212,615	(504,000)	708,615
Subtotal	10,754,653	0	10,754,653
Unappropriated Balance	1,314,403	0	1,314,403
Total Fund Requirements	\$14,435,248	\$0	\$14,435,248
MERC POOLED CAPITAL FUND			
Operating Expenses (PS & M&S)	\$416,287	\$0	\$416,287
Capital Outlay	3,142,350	654,000	3,796,350
Interfund Transfers	354,000	0	354,000
Contingency	537,581	(150,000)	387,581
Unappropriated Balance	2,050,548	0	2,050,548
Total Fund Requirements	\$6,500,766	\$504,000	\$7,004,766

Note: This Ordinance does not reflect Ordinance No. 04-1066 that transfers \$62,280 to the
Zoo Operating Fund

ALL OTHER APPROPRIATIONS REMAIN AS PREVIOUSLY ADOPTED

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 04-24

For the purpose of recommending to the Metro Council a proposal for an investment funded by the Metro Tourism Opportunity and Competitiveness Account (MTOCA), recommending a budget amendment to the fiscal year 2004-05 adopted Metro budget to authorize the transfer of \$504,000 from Metro's general fund contingency to MERC pooled capital fund capital outlay and the transfer of \$150,000 from MERC pooled capital contingency to MERC capital outlay, and approving transmittal of the recommended amendment to the Metro Council.

WHEREAS, Metro Code 6.01.050 provides that the Commission shall annually prepare and approve an annual budget which shall, to the maximum extent permitted by law, consist of one commission-wide series of appropriations in those categories which are required by local budget law, applicable to all buildings, facilities, and programs managed by the Commission; and

WHEREAS, the Commission previously approved and transmitted to the Metro Council the Fiscal Year 04-05 budgets for the MERC Operating Fund, the MERC Pooled Capital Fund, and the Convention Center Project Capital Fund; and

WHEREAS, on May 20, 2004, the Metro Council passed Ordinance No. 04-1052, increasing the excise tax on solid waste by \$.50 per ton; and

WHEREAS, the proceeds from this tax are allocated to the Metro Tourism Opportunity and Competitiveness Account ("MTOCA"), to be used to maximize the competitiveness, financial viability, economic impact, and continued success of the Oregon Convention Center; and

WHEREAS, on October 7, 2004, the Metro Council passed Resolution No. 04-3494A, which adopted MTOCA Policy And Guidelines; and

WHEREAS, in Resolution No. 04-3494A, the Metro Council directed the MERC Commission to submit proposals for funding the goals and strategies listed in the adopted MTOCA Policy And Guidelines, with priority given to those under Goal Number 1; and

WHEREAS, Goal Number 1 in the MTOCA Policy And Guidelines includes Strategy A, expending funds to obtain official green building (LEED) certification for the Oregon Convention Center; and

WHEREAS, obtaining LEED certification for the Oregon Convention Center will enhance OCC's marketing advantages and enhance OCC and Portland's distinctive reputation for environmental quality and build on the state's "Brand Oregon" campaign; and

WHEREAS, this certification could be used to enhance OCC's marketing advantages, particularly in conjunction with the Portland Visitor's Association (POVA's) "It's Not Easy Being Green" marketing plan for Portland. Such certification would enhance OCC and Portland's distinctive reputation for environmental quality and build on the State's "Brand Oregon" campaign; and

WHEREAS, the MERC Commission recommends expending funds from MTOCA for Fiscal Year 2004-05 to assist OCC to obtain official green building (LEED) certification, based on the understanding that fully funding the improvements to obtain LEED certification will also require funding from MTOCA in future fiscal years; and

WHEREAS, the Metro Council is the ultimate budget authority for MERC and, in accordance with budget law and the MTOCA Policy and Guidelines, final decisions on the recommendation made by the MERC Commission will be made as Supplementary Budget actions by the Metro Council.

BE IT THEREFORE RESOLVED AS FOLLOWS:

1. The MERC Commission recommends the expenditure of \$1,378,000 to obtain Green Building (LEED) certification for the Oregon Convention Center, as shown as "Strategy A" in the attached Exhibit "A," which recommendation is based on the understanding that the initial funding for the work will come in part from MTOCA funds for Fiscal Year 2004-05, and that additional MTOCA funds in future fiscal years will also be allocated to this project, as shown more particularly in the attached Exhibit "A," and
2. The MERC Commission recommends adoption of a budget amendment transferring \$504,000 from Metro's General Fund Tourism Opportunity & Competitiveness Fund Contingency to Metro's General Fund Transfer of Resources to MERC's Transfer of Resources and the appropriation of those funds in MERC's Pooled Capital, Capital Outlay; and
3. The MERC Commission recommends adoption of a budget amendment transferring \$150,000 from MERC Pooled Capital Contingency to MERC Pooled Capital Fund, Capital Outlay; and
4. The MERC Commission authorizes a five-year \$850,000 intra-fund loan from those funds identified as Expo's in MERC Pooled Capital Fund to OCC for expenditure on the Green Building (LEED) certification projects, which shall be repaid over a five-year term in semi annual payments with an interest rate of 3.5% per annum.
5. The MERC Commission grants the authority to MERC staff to prepare and present a Budget Ordinance to the Metro Council to amend the Fiscal Year 04-05 budget to reflect the above changes.

Passed by the Commission on October 27, 2004.

Approved as to Form:
Daniel B. Cooper, Metro Attorney

Chair

By: _____
Lisa Umscheid
Senior Attorney

Secretary-Treasurer

MERC STAFF REPORT

Agenda Item: For purpose of submitting to the METRO Council a proposal for the investment in the LEED Certification for the Oregon Convention Center, funded from the new Tourism Opportunity and Competitiveness Account (MTOCA) capital Improvements totaling \$1,378,000.

Resolution: 04-24

Date: October 28, 2004

Prepared by: Kathy Taylor and Jeff Blosser

Background: The MERC Commission previously approved a Policy and Guidelines for establishing a process and criteria for proposed investments from the Metro Tourism and Opportunity and Competitiveness Account. The MERC Budget Committee discussed the Goals and Strategies identified in the Policy and Guidelines and is recommending investment in Goal #1, Targeted Capital Investments in the Oregon Convention Center's physical plant that yield demonstrable marketing advantages. Strategy A: Green Building (LEED) Certification.

Funds could be expended to obtain official LEED certification for OCC. This certification could be used to enhance OCC's marketing advantages, particularly in conjunction with the Portland Oregon Visitor's Association (POVA's) "It's Not Easy Being Green" marketing plan for Portland. Such certification would enhance OCC and Portland's distinctive reputation for environmental quality and build on the State's "Brand Oregon" campaign.

Fiscal Impact:

A. Expenditure: of \$1,378,000 to obtain Green Building (LEED) certification, as described in the attached Exhibit "A."

B. Funding:

1. Amendment transferring \$504,000 from Metro's General Fund Tourism Opportunity & Competitiveness Fund Contingency to Metro's General Fund Transfer of Resources to MERC's Transfer of Resources and the appropriation of those funds in MERC's Pooled Capital, Capital Outlay; and
2. Amendment transferring \$150,000 from MERC Pooled Capital Contingency to MERC Pooled Capital Fund, Capital Outlay;
3. A five-year \$850,000 intra-fund loan from those Funds identified as Expo's in MERC Pooled Capital Fund to OCC for expenditure on the Green Building (LEED) certification projects. The loan to be repaid over a five-year term in semi annual payments with an interest rate of 3.5%.

Recommendation: Staff recommends approval of Resolution No. 04-24.

Metro Tourism Opportunity and Competitiveness Account

Program	Request	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Beginning Balance		-	32,568	440,705	863,717	1,301,975	1,755,862
Resources							
Excise Tax from Metro	A	504,000	B	595,000	609,875	625,122	640,750
Intra-fund transfer from Expo to OCC	12/1/2004	850,000					656,769
Business Energy Tax Credits (BETC)		150,000					
Loan Payments							
To repay funds to Expo							
5 years/3.5%annual interest, with semiannual payments		(93,432)	(186,863)	(186,863)	(186,863)	(186,863)	(93,432)
MTOCA Goals							
Goal 1	Targeted capital investments in the Oregon Convention Center's physical plant that yield demonstratable marketing advantages.						
Strategy A -- Green Building LEED Certification							
Apply for LEED Certification on expansion by November 2004		n/a					
Retrofit existing building to meet LEED standards							
Replace three 800 ton chiller units	870,000	E					
Replace 250 ton chiller	130,000	E					
Chiller room ventilation/noise abatement	60,000						
Chiller controls	28,000						
Replace 198 Toilet/Urinals (auto flush)	125,000						
Replace light sensors	10,000						
ZGF Consulting	30,000						
Contingency 10%	125,000						
	<u>1,378,000</u>	(1,378,000)					
Strategy B -- OCC Operational Advantage	C						
Strategy C -- Headquarters Hotel Related Investments	C						
Goal 2	Assist the Visitor Development Fund with Oregon Convention Center Facility Costs.						
Strategy A -- Offset Facility Costs when VDI allocation not fully funded	C						
Goal 3	Maintain the Oregon Convention Center in First Class Condition						
Strategy A -- Ensure sufficient funds for basic OCC cleaning, maintenance, and event service.	C						
Net Change for the Year		32,568	408,137	423,012	438,258	453,887	563,337
Ending Balance Available for other items		32,568	440,705	863,717	1,301,975	1,755,862	2,319,199

A Budget amount for 2004-05. Effective September 1, 2004.

B Assume future MTOCA funds will be available. Apply Metro inflation estimate 2.5% to this and all future periods.

C Assume investment in all strategies -- amounts by strategy to be determined.

D Concept only -- projects to be submitted to Metro Council for approval.

E Chillers in the existing building need to be replaced to meet environmental standards

Operating Impact

Reduced energy costs LEED		10,000	10,000	10,000	10,000	10,000
Additional convention revenue from LEED, net			50,000	50,000	50,000	50,000
	-	10,000	60,000	60,000	60,000	60,000

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO 04-1064, FOR THE PURPOSE OF AMENDING THE FY 2004-05 BUDGET AND APPROPRIATIONS SCHEDULE RECOGNIZING THE TRANSFER OF \$504,000 FROM METRO'S GENERAL FUND TOURISM OPPORTUNITY & COMPETITIVENESS ACCOUNT TO MERC POOLED CAPITAL FUND, CAPITAL OUTLAY AND TRANSFERRING \$150,000 FROM MERC POOLED CAPITAL FUND CONTINGENCY TO MERC POOLED CAPITAL FUND, CAPITAL OUTLAY; AND DECLARING AN EMERGENCY

Date: November 1, 2004

Prepared by: Kathy Taylor and Jeff Blosser

BACKGROUND

The purpose of this Ordinance is to take the necessary budget action to implement the MERC Commission's recommendation for use of the Metro's General Fund Tourism and Opportunity Contingency Fund (MTOCA). Metro Resolution No. 04-3494 adopted a policy and established a process and criteria for proposed investments from the Metro Tourism Opportunity and Competitiveness Account (MTOCA). This Ordinance reflects the recommendation of the MERC Commission as stated in the attached Exhibit C, MERC's Commission approved Resolution No. 04-24 and staff report.

The MERC Commission is recommending that these funds be expended to obtain official green building (LEED) certification for the Oregon Convention Center. This certification would enhance OCC's marketing plan by making the center attractive to conventions that require LEED certification. In addition, this project fits nicely with POVA's "It's Not Easy Being Green" marketing plan for Portland.

The complete project is expected to cost \$1,378,000 to obtain Green Building (LEED) certification. The details of the project components are included in an attachment to the MERC Staff Report. Funding for the total project is proposed to be from the transfer of \$504,000 from MTOCA account, \$150,000 from MERC Pooled Capital contingency (which will be reimbursed by expected Business Energy Tax Credits) and an \$850,000 intra fund loan from Expo's fund balance. The repayment of the intra fund loan is to be over five years with semi annual payments bearing interest of 3.5%. The initial funding of this project allows for the first of these payments. Subsequent payments on the intra fund loan will be from future years transfers from the MTOCA account.

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 funds transferred from Metro's General Fund. 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 complete the LEED Certification for the Oregon Convention Center that will increase the marketability of the Oregon Convention Center

4. **Budget Impacts** This action requests the recognition of \$504,000 in capital outlay from the transfer from the Metro General Fund MTOCA account, and \$150,000 in capital outlay from MERC Pooled Capital Contingency. The balance of the appropriation for this project comes from canceling the \$750,000 Expo Center Electrical Project. Expected energy credits of \$150,000 will replace the \$150,000 used from contingency.

RECOMMENDED ACTION

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

Agenda Item Number 5.3

Resolution No. 04-1065, For the Purpose of Amending Chapter 2.04 of the Metro Code Relating the Public Contracting.

First Reading

Metro Council Meeting
Thursday, November 18, 2004
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING CHAPTER) ORDINANCE NO. 04-1065
2.04 OF THE METRO CODE RELATING TO)
PUBLIC CONTRACTING) Introduced by Chief Operating Officer
) Michael J. Jordan, with the concurrence of
) Council President David Bragdon

WHEREAS, the 2003 Oregon Legislature enacted significant, major revisions to the Oregon Public Contracting Code;

WHEREAS, the amendments adopted by the Oregon Legislation require the Metro Council to review and update the provisions of the Metro Contracting Code both to comply with state law and to modernize procurement practices so that they reflect market place and industry standards; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Metro Code Section 2.04.010 is amended to read as follows:

2.04.010 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meanings indicated:

- (a) "Auditor" means the Metro Auditor provided for in Section 18 of the Metro Charter.
- (b) "Chief Operating Officer" means the person holding the position of Chief Operating Officer established by Section 2.20.010 of the Metro Code.
- (c) "Competitive bidding" means an advertised solicitation of sealed bids.
- (d) "Contract Review Board" or "Board" means the Metro Council, sitting as a local Contract Review Board created pursuant to Section 2.04.050 of this chapter the provisions of ORS 279A.060.
- ~~(e)~~(d) "Council President" means the Council President provided for in Section 16(4) of the Metro Charter.
- ~~(f)~~(e) "Emergency" means the occurrence of a specific event or events that could not have been reasonably foreseen and prevented, and which requires the taking of prompt action to remedy the condition and thereby avoid further physical damage or harm to individuals or the occurrence of avoidable costs, circumstances that: (A) could not have been reasonably foreseen; (B) create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (C) require prompt execution of a contract to remedy the condition.
- ~~(g)~~(f) "Emergency contract" means a contract whose purpose is limited to remedying an emergency situation.

~~(h)~~(g) “Intergovernmental agreement” means a written agreement with any other unit or units of federal, state or local government providing for the acquisition of goods or services by Metro, for the provision of goods or services by Metro or for the payment or receipt of funds in order to promote or carry out a common purpose.

~~(i)~~(h) “Notice of award” means written communication to a responsive, responsible bidder or proposer stating that their bid or proposal has been conditionally determined to be the lowest, responsive, responsible bid or most responsive proposal and that Metro intends to enter into a contract upon completion by the bidder/proposer of all required conditions.

~~(j)~~(i) “Personal services contract” means any contract by which Metro acquires a professional, artistic, creative, consulting, educational, or management service. Contracts which are predominately for the purpose of obtaining a product, labor or materials, or the services of a construction trade are not a personal services contract.

~~(k)~~(j) “Procurement Officer” means the person designated by the Chief Operating Officer to carry out the functions required of such person by this chapter.

~~(l)~~(k) “Public agency” means any agency of the federal government, State of Oregon, or any political subdivision thereof, authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

~~(m)~~(l) “Public contract” means any purchase, lease or sale by Metro of personal property, public improvement or services, including those transacted by purchase order, other than agreements which are for personal services.

~~(n)~~(m) “Public improvement” means projects for construction, reconstruction or major renovation on real property by or for a ~~public~~ contracting agency. “Public improvement” does not include (i) projects for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection or (ii) emergency work, minor alteration, ordinary repair or maintenance in order to preserve a public improvement.

~~(o)~~(n) “Request for Proposals or RFP” means the issuance of a request for offers that will be evaluated based on factors that are not limited to price alone.

~~(p)~~(o) “Sole source contract” means a contract for which it can be documented ~~there is only one qualified provider of the required service or material. that the goods or services or class of goods or services are available from only one source.~~

SECTION 2. Metro Code Section 2.04.024 is amended to read as follows:

2.04.024 Metropolitan Exposition-Recreation Commission

The Metropolitan Exposition-Recreation Commission has authority to enter into contracts pursuant to Metro Code Section 6.01.040(j). Notwithstanding any provision of this chapter to the contrary, the Commission may without the prior approval of the Chief Operating Officer enter into contracts in any amount in accordance with contracting rules adopted by the Commission pursuant to the authority contained in Section 6.01.040(j). However, pursuant to ORS 279A.060~~the Contract Review Board created pursuant to Section 2.04.050~~ Metro Council shall be the local contract review board for the Commission.

SECTION 3. Metro Code Section 2.04.026 is amended to read as follows:

2.04.026 Council Approval of Contracts

(a) Notwithstanding any other provisions of this chapter, the Chief Operating Officer, Metro Attorney, or Auditor must obtain authorization by the Council prior to execution of the following types of contracts:

- (1) Any contract which commits the Metro to the expenditure of appropriations not otherwise provided for in the current fiscal year budget at the time the contract is executed and which has a significant impact on Metro. The following types of contracts shall be considered to have significant impacts unless the Council finds that under the circumstances a contract will not have a significant impact:
 - (A) Any public contract for a term greater than 12 months for private operation of all or of a major part of a Metro facility or concessions at a Metro facility.
 - (B) Any public improvement contract for an amount over \$50,000.
 - (C) Any public contract which will potentially result in a material (more than 5 percent of the related fund) loss of revenues or increase in expenditures in more than one year in any Metro fund.
 - (D) Any contract for personal services for a term greater than 12 months and in an amount greater than \$50,000.
 - (E) Any contract for personal services for an amount greater than \$50,000 related to Metro's exercise of its regional planning functions pursuant to Section 5 of the Metro Charter.
 - (F) Any contract for personal services for an amount over \$50,000 related to the study by Metro of exercising authority, pursuant to Section 7 of the Metro Charter, over additional functions.
- (2) Any agreement entered into pursuant to ORS Chapter 190 by which Metro acquires or transfers any interest in real property, assumes any function or duty of another governmental body, or transfers any function or duty of Metro to another governmental unit; or
- (3) Any contract for the purchase, sale, lease or transfer of real property owned by Metro. However, the Chief Operating Officer may execute options to purchase real property.

(b) Prior to adoption of the annual budget, the Chief Operating Officer shall submit a list of proposed contracts over \$50,000 to be entered into during the next fiscal year. The Council shall designate in the annual budget ordinance which contracts have a significant impact on Metro.

Thereafter, if the Chief Operating Officer proposes to enter into a contract that will commit Metro to the expenditure of appropriations not provided for in the current fiscal year budget in an amount greater than \$50,000 that the Council has not considered during the annual budget process, the

Chief Operating Officer shall inform the Council President in writing and shall recommend whether the contract should be classified as a significant impact contract. The Council President shall immediately cause copies of the notice to be furnished to all members of the Council. The Council may determine that the contract has a significant impact on Metro within 10 days of receipt of the notice from the Chief Operating Officer. If the contract is determined by the Council to have a significant impact on Metro, execution by the Chief Operating Officer shall be subject to Council authorization. If the Council does not determine that the contract has a significant impact on Metro, the Chief Operating Officer may execute the contract after transmitting a description of the purpose of the contract, the appropriation to which contract payments will be charged, and a summary of the scope of work to be performed to the Council or a Council committee as deemed appropriate by the Council President.

(c) All contracts which require Council authorization pursuant to subsection (a)(1) or (b) above and which are subject to procedures for competitive sealed bidding, or Request for Proposals procedures for competitive sealed proposals, or for special procurements shall require Council authorization of the request for sealed bids or Request for Proposals prior request for sealed proposals, or requests for special procurements to release of bidding or proposal or special procurement documents to vendors. At the time of Council authorization of the documents seeking competitive bid sealed bids, or Request for Proposal competitive sealed proposals, or special procurements, documents, the Council may waive the requirement of Council authorization of the contract.

SECTION 4. Metro Code Section 2.04.040 is amended to read as follows:

2.04.040 Personal Services Contracts -- General

(a) Disadvantaged Business Program. All contracting for personal services is subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

(b) Substantive Requirements. All Metro personal services contracts shall contain all provisions required of local contracting agencies by ORS Chapter 279A and ORS Chapter 279B and shall be construed to be consistent with all relevant provisions of ~~ORS Chapter 279~~ such chapters.

SECTION 5. Metro Code Section 2.04.042 is amended to read as follows:

2.04.042 Procurement of Personal Services Contracts Up to \$50,000

(a) ~~For personal services contracts of less than \$5,000, multiple proposals are not required, but shall be encouraged. Any procurement of personal services not exceeding \$5,000 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.~~

(b) ~~For personal services contracts of \$5,000 or more but not more than \$50,000, proposals shall be solicited from a minimum of three (3) potential contractors who are capable and qualified to perform the requested work. Metro shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. Any procurement of personal services exceeding \$5,000 but not exceeding \$150,000 shall be awarded in accordance with the provisions of ORS 279B.070. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.~~

(c) Any procurement of personal services exceeding \$150,000 shall be awarded in accordance with the provisions of ORS 279B.060

SECTION 6. Metro Code Section 2.04.044 is repealed.

SECTION 7. Metro Code Section 2.04.046 is amended to read as follows:

2.04.046 Personal Services Contract Amendments

(a) Personal services contracts of an initial amount of ~~\$25,000~~ \$50,000 or less may be amended to increase the amount of the contract to no more than twice the original contract amount. This limit provided in this subsection is cumulative and includes any and all contract amendments or extensions. Any contract amendment(s) in excess of this ~~ceiling~~ limit requires approval by the Metro Council. The Metro Council shall determine whether it is appropriate to amend the contract ~~despite the policy that favors competitive procurement of personal services in light of the policies set forth in ORS 279A.015 and ORS 279B.010.~~

(b) Contracts with an initial amount of greater than ~~\$25,000~~ \$50,000 may be amended provided that any amendment that increases the total amount payable to an amount more than ~~\$50,000~~ \$100,000 greater than the initial contract amount shall be subject to approval by the Metro Council. The Metro Council shall determine whether it is appropriate to amend the contract ~~despite the policy that favors competitive procurement of personal services in light of the policies set forth in ORS 279A.015 and ORS 279B.010.~~

SECTION 8. Metro Code Section 2.04.050 is repealed.

SECTION 9. Metro Code Section 2.04.052 is amended to read as follows:

2.04.052 Public Contracts —General & Public Improvement Contracts

(a) ~~State Law Requirements, Procedures:~~ Procedural requirements

- (1) The procedures for sealed competitive bidding, sealed competitive proposals, and all other methods of procurement of all Metro public contracts and for the issuance of competitive Request for Proposals when authorized as an exception to competitive bid requirements used by Metro shall comply with all requirements that are generally applicable to local governments as set forth in ORS Chapters 279A and 279B.
- (2) The procedures for competitive bidding of all Metro public improvement contracts shall comply with all requirements that are generally applicable to local governments as set forth in ORS Chapters 279C.
- (3) ~~(2)~~ Notwithstanding the provisions of this subsections (a)(1) and (a)(2), and pursuant to ORS 279A.065(5), the model rules adopted by the Oregon Attorney General shall not apply to Metro.
- (4) ~~(3)~~ The Chief Operating Officer may establish by executive order detailed procedural requirements consistent with this chapter and state law. In so doing, the Chief Operating Officer may adopt in whole or in part the model rules of

procedure established by the Oregon Attorney General pursuant to ORS ~~279.049~~
279A.065.

(b) Substantive Requirements.

- (1) All Metro public contracts shall contain all provisions required of local contracting agencies by ORS Chapters 279A & 279B and shall be construed to be consistent with all provisions of ORS Chapters 279A & B.
- (2) All Metro public improvement contracts shall contain all provisions required of local contracting agencies by ORS Chapter 279C and shall be construed to be consistent with all provisions of ORS Chapter 279C.

(c) Rejection of Bids and Proposals. The Chief Operating Officer may reject any bid, ~~or proposal or response~~ not in compliance with all prescribed procedures and requirements and may, for good cause, reject any or all bids, ~~or proposals or procurement responses for personal service contracts and public contracts upon finding that it is in the public interest to do so in accordance with the provisions of ORS 279B.100 and may reject all bids or proposals for public improvement contracts in accordance with the provisions of ORS 279C.395.~~

(d) Bonds. Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

- (1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for ~~\$25,000~~ \$50,000 or less.
- (2) For public improvements, a labor and materials bond and a performance bond, both in an amount equal to 100 percent of the contract price are required for contracts over ~~\$25,000~~ \$50,000.
- (3) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the Chief Operating Officer determines it is in the public interest.

(e) Disadvantaged Business Program. All public contracts are subject to the Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts, Metro Women Business Enterprise Program, and the Metro Minority Business Enterprise Program provisions of this chapter.

SECTION 10. Section 11 is added to and made a part of Metro Code Chapter 2.04.

SECTION 11.

2.04.053 Special Procurements

(a) Pursuant to ORS 279B.085, the following public contracts are approved as classes of special procurements based on the legislative finding by the Metro Contract Review Board that the use of a special procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts and will result in substantial cost savings to Metro or the public or will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements that are applicable under ORS 279B.055, ORS 279B.060, ORS 279B.065 ORS 279B.070:

- (1) All contracts estimated to be not more than ~~\$50,000~~ \$150,000 provided that the procedures required by Section 13 of this Ordinance are followed.
- (2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items ~~and any sales of food or concession items at Metro facilities.~~
- (3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for ~~formal~~ sealed competitive Request for Proposals used by Metro for personal services contracts are followed.
- (4) Emergency contracts provided that the provisions of ORS 279B.080 are followed. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.
- (5) Purchase of food items for resale at the ~~Oregon Zoo~~ provided that the provisions of ~~Section 2.04.060 are followed~~ facilities owned or operated by Metro.
- (6) Contracts for warranties, including but not limited to ~~computer software warranties,~~ in which the supplier of the goods or services covered by the warranty has designated a ~~sole~~ an authorized provider for the warranty service.
- (7) Contracts for computer hardware, ~~and software,~~ provided that ~~procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.~~
- (8) Contracts under which Metro is to receive revenue by providing a service.
- (9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition-Recreation Commission.
- (10) Public contracts by the Metro Exposition-Recreation Commission in an amount less than ~~\$75,000~~ \$150,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.
- (11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.
- (12) Contracts in the nature of grants to further a Metro purpose provided a competitive Request for Proposal process is followed.
- (13) The procurement of utilities or any other services whose price is regulated by any governmental body, including but not limited to ~~telephone service, electric, natural gas, and sanitary services,~~ provided that if competition is available, a Request for Proposal process is followed.
- (14) Contracts for goods or services when the provider of the procured goods or services is required by the federal government or by the state of Oregon.

~~(15)~~ Contracts for co-operative procurements permitted under ORS 279A.220 to 279A.225.

~~(+416)~~ The procurement of art and art related production and fabrication provided that a Request for Proposal process is followed.

~~(+517)~~ Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.

~~(+618)~~ Sponsorship contracts, provided that quotes are obtained from at least three potential sponsors or that good faith efforts to obtain such quotes are documented. A sponsorship contract is any contract under which the sponsor's name or logo is used in connection with a facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for the sponsor's agreement to pay consideration, including money, goods, services, labor, credits, property or other consideration.

~~(19)~~ Contracts for projects that are not public improvements as defined in Metro Code Section 2.04.010(m) in which a contractor provides any portion of the funding for such project.

(b) Description of procurement procedures for class special procurements: Procurements for each of the class special procurements described in subsection (a) shall be performed by means of procedures chosen by the Chief Operating Officer as an appropriate method tailored to and in light of the demands, circumstances and market realities associated with obtaining each of the enumerated goods and services. Such procurement procedures may include but shall not limited to direct negotiations with individual or multiple vendors or suppliers; negotiations with ranked proposers; competitive negotiations; or multiple tiered competitions.

(c) Specific contracts not within the classes described in subsection (a) may be procured by special procurements subject to the requirements of ORS 279B.085.

SECTION 12. Metro Code Section 2.04.054 is amended to read as follows

2.04.054 Competitive Bidding Exemptions for Public Improvements

Subject to the policies and provisions of ORS ~~279.005- 279A.015~~ and ~~279.007 279C.300~~, and the Metro Code, all Metro and Metropolitan Exposition-Recreation Commission public improvement contracts shall be based upon competitive bids except:

(a) State Law. Classes of public improvement contracts specifically exempted from competitive bidding requirements by state law.

(b) Board Rule. The following classes of public improvement contracts are exempt from the competitive bidding process based on the legislative finding by the Metro Council, sitting pursuant to ORS 279A.060 as a local contract review Board, that the exemption will not encourage favoritism or

substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- ~~(1) Contracts for public improvements in which a contractor agrees to provide any portion of the funding for such public improvement project.~~
- ~~(1) All contracts estimated to be not more than \$50,000 provided that the procedures required by Section 2.04.056 are followed.~~
- ~~(2) Purchase and sale of zoo animals, zoo gift shop retail inventory and resale items, and any sales of food or concession items at Metro facilities.~~
- ~~(3) Contracts for management and operation of food, parking or similar concession services at Metro facilities provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.~~
- ~~(4) Emergency contracts provided that written findings are made that document the factual circumstances creating the emergency and establishing why the emergency contract will remedy the emergency. An emergency contract must be awarded within 60 days of the declaration of the emergency unless the Board grants an extension.~~
- ~~(5) Purchase of food items for resale at the Oregon Zoo provided the provisions of Section 2.04.060 are followed.~~
- ~~(6) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.~~
- ~~(7) Contracts for computer hardware and software provided that procedures substantially similar to the procedures required for formal Request for Proposals used by Metro for personal services contracts are followed.~~
- ~~(8) Contracts under which Metro is to receive revenue by providing a service.~~
- ~~(9) Contracts for the lease or use of the convention, trade, and spectator buildings and facilities operated by the Metro Exposition Recreation Commission.~~
- ~~(10) Public contracts by the Metro Exposition Recreation Commission in an amount less than \$75,000, which amount shall be adjusted each year to reflect any changes in the Portland SMSA CPI, provided that any rules adopted by the commission which provide for substitute selection procedures are followed.~~
- ~~(11) Contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.~~
- ~~(12) Contracts in the nature of grants to further a Metro purpose provided a competitive Request for Proposal process is followed.~~

- ~~_____ (13) The procurement of utilities, including telephone service, electric, natural gas, and sanitary services, provided that if competition is available, a Request for Proposal process is followed.~~
- ~~_____ (14) The procurement of art and art related production and fabrication provided that a Request for Proposal process is followed.~~
- ~~_____ (15) Sponsorships which are identified and approved in the proposed budget and are not designated by Council as having a significant impact as outlined in Section 2.04.026 need not follow a competitive bidding or proposal process. In order to be eligible for this exemption the sponsorship shall provide Metro with event advertising and/or media releases.~~
- ~~_____ (16) Sponsorship contracts, provided that quotes are obtained from at least three potential sponsors or that good faith efforts to obtain such quotes are documented. A sponsorship contract is any contract under which the sponsor's name or logo is used in connection with a facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for the sponsor's agreement to pay consideration, including money, goods, services, labor, credits, property or other consideration.~~

(c) Board Resolution. Specific contracts, not within the classes exempted in subsections (a) and (b) above, may be exempted by the Metro Council, sitting pursuant to ORS 279A.060 as a local contract review Board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(6); 279C.355. The Board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

SECTION 13. Metro Code Section 2.04.056 is repealed and Section 14 of this Ordinance is enacted in lieu thereof.

SECTION 14.

2.04.056 Procurement of Public Contracts

_____ (a) Any procurement of a public contract not exceeding \$5,000 may be awarded in any manner deemed practical or convenient by the Chief Operating Officer.

_____ (b) Any procurement of a public contract exceeding \$5,000 but not exceeding \$150,000 shall be awarded in accordance with the provisions of ORS 279B.070. In addition, the contracting department shall notify the procurement officer of the nature of the proposed contract, the estimated cost of the contract, and the name of the contact person.

_____ (c) Any procurement of a public contract exceeding \$150,000 shall be awarded in accordance with the provisions of either ORS 279B.055, ORS 279B.060, or ORS 279B.085.

SECTION 15. Metro Code Section 2.04.060 is repealed.

SECTION 16. Metro Code Section 2.04.062 is repealed, and Section 17 of this Ordinance is enacted in lieu thereof.

SECTION 17.

2.04.062 Sole-source Procurements

A contract for goods or services may be awarded without competition when the Metro Council, sitting pursuant to ORS 279A.060 as a local contract review Contract Review Board determines in writing by resolution and in accordance with the provisions of ORS 279B.075 that the goods or services or class of goods or services are available from only one source.

SECTION 18. Metro Code Section 2.04.064 is amended to read as follows:

2.04.064 Sales of Surplus or Personal Property

(a) Contracts for sale of surplus property may be executed without competitive ~~oral or~~ sealed bids or proposals only when the Chief Operating Officer determines in writing that the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by bid will be such that a liquidation sale will result in substantially greater net revenue to Metro.

(b) Contracts for the sale of personal property shall be performed in accordance with ORS 279A.185.

SECTION 19. Metro Code Section 2.04.070 is amended to read as follows:

2.04.070 Notice of Award and Appeals

(a) At least ~~five (5)~~ seven (7) days prior to the execution of any public contract over \$50,000 for which a competitive bid or proposal process is required, Metro shall provide a notice of award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals.

(b) Bid/Request for Proposals Appeal Procedures. The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a public contract or a personal services contract above \$150,000. The appeal process for bids is the same as for a Request for Proposals. In the case of a Request for Proposal(s), disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the procurement officer at Metro's main office within ~~five (5)~~ seven (7) working days of the postmarked date on the notice of award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.
- (2) The procurement officer shall forthwith notify the appropriate Department Director and the Chief Operating Officer of the appeal. In the case of an appeal of an award by a Commission or the Metro Auditor, the appeal shall be forwarded to the Commission or Metro Auditor. Within 10 working days of the receipt of the notice of appeal, the Chief Operating Officer, Commission or Metro Auditor shall send a notice of rejection of the appeal or a notice of acceptance of the appeal, as applicable, to the appellant. The appellant may appeal the Chief Operating Officer's, Commission's, or Metro Auditor's decision to reject the appeal in writing to the Board within five (5) working days from the postmarked date on the notice of rejection.

- (3) The Board will review the grounds for appeal, all pertinent information, and the Chief Operating Officer's, Commission's or Metro Auditor's recommendation, and make a decision. The decision of the Board is final.
- (4) No contract, which is the subject of a pending appeal, may be executed unless the Board shall have given its approval. The Chief Operating Officer, Commission or Metro Auditor may request the Board to determine a matter without waiting for the expiration of the time periods provided for herein.
- (5) In the event Council authorization of execution of the contract is required under Section 2.04.026 of this Code the appeal shall be heard before the Council considers authorization of the contract.

(c) Appeals from Disqualifications Debarment or Denial of Prequalification

- (1) The Board shall hear all appeals from any person who is disqualified by Metro as a bidder. The basis for the appeal shall be limited to the following grounds:
 - (A) Disqualification-Debarment of bidders and proposers pursuant to ORS 279.037, 279B.130
 - (B) Denial of prequalification to bid pursuant to ORS 279.039 and 279.041-279B.120 and 279B.125.
- (2) Any person who wishes to appeal disqualification-debarment or denial of prequalification as a bidder shall, within three (3) business days after receipt of notice of disqualification, notify in writing the Metro Attorney that the person appeals the disqualification. The Metro Attorney shall promptly notify the Board of the appeal by providing notice to the Council President.
- (3) Promptly upon receipt of notice of appeal, the Council President shall notify the appellant and the Metro Attorney of the time and place of the appeal proceeding.
- (4) The Board shall conduct the appeal proceeding in accordance with the provisions of ORS 279B.425 and decide the appeal within 40 30 -days after receiving notification of the appeal from the Metro Attorney. The Board shall set forth in writing the reasons for the decision.
- (5) Appeal Proceeding.
 - (A) The Council President shall preside over the appeal proceeding. The general order shall be as follows:
 - (i) Presentation by Metro of documentation and testimony supporting the disqualification.
 - (ii) Presentation by the appellant of documentation and testimony opposing the disqualification.

- (B) Members of the Board shall have the right to ask both Metro and the appellant questions and to review documentation referred to and presented by the parties.
- (C) Formal court rules of evidence shall not apply.
- (D) The Board shall consider de novo the notice of ~~disqualification~~ debarment or denial of prequalification, and record of investigation made by Metro and any evidence provided by Metro and the appellant prior to or at the appeal proceeding. There shall be no continuance or reopening of the appeal proceeding to offer additional evidence unless the appellant can demonstrate to the Council President that the additional evidence was not known to the appellant at the time of the proceeding or that with reasonable diligence the appellant would not have discovered the evidence prior to the appeal proceeding.
- (E) A tape recording will be made of the appeal proceeding which shall be made available to the appellant upon payment of costs to Metro of making the tape.
- (F) The Board shall render a decision which shall be reviewed only upon petition in the Circuit Court of Multnomah County. The petition must be filed within 15 days after the date of the decision in accordance with the provisions of ORS 279B.425.

- (6) Metro may reconsider its determination with regard to the ~~disqualification~~ debarment or denial of prequalification at any time prior to the appeal proceeding.

(d) Appeals of contract awards and decisions of the Auditor shall be made directly to the Contract Review Board.

SECTION 20. Metro Code Section 2.04.500 is amended to read as follows:

2.04.500 Policy Statement

It is the purpose of this ordinance to establish a Recycled Content Product Procurement Program that will achieve the following:

(a) Increase the procurement of recycled content products and recyclable materials by all Metro departments and facilities and increase the use of recycled content, recyclable and reusable products and ~~recyclable~~ materials by contractors to Metro in the performance of their contract work.

(b) Comply with ORS Chapters 279A and 279B regarding procurement of recycled content, reusable and recyclable materials and products by public agencies.

(c) Encourage procurement of products with the greatest post-consumer content, and those that contribute to the use of locally generated and recovered materials for which there are the most significant recycling market development needs.

(d) Serve as an example for other institutional purchasers, both public and private.

SECTION 21. Metro Code Section 2.04.520 is amended to read as follows:

2.04.520 Recycled, Reusable and Recyclable Products (Generally)

(a) Metro facilities and contractors to use Recycled, Reusable and Recyclable Materials and Products

- (1) The procurement officer shall review procurement standards and specifications currently utilized in order to eliminate, where economically feasible, discrimination against the procurement of recycled, reusable and recyclable materials and products, and to develop purchasing practices which encourage purchase of materials that are recycled or may be recycled or reused when discarded.
- (2) To the extent practicable, Metro's standards and specifications for recycled products shall be consistent with US EPA Purchasing Guidelines.
- (3) Notices to solicit bids from contractors shall state that Metro gives the price preference described in subsection (b)(1) of this section to recycled products and materials. All invitations to bid or requests for proposals shall include the following language: "Vendors shall use recycled and recyclable materials and products to the maximum extent economically feasible in the performance of contract work set forth in this document."
- (4) At their discretion, Metro and its agents, including contractors, may specify acceptance of only recycled products or materials in bids and solicitations so long as quality and availability of recycled products and materials are equal to nonrecycled products and materials. When a recycled product or material is specified in a bid or solicitation, no price preference shall be given.
- (5) If the price of a recycled product is equal to or less than an otherwise identical non-recycled product, then Metro and its agent, including contractors, shall specify only the recycled product in bids and specifications.
- (6) The procurement officer and waste reduction division shall provided information on US EPA Purchasing Guidelines and on recycled products available in the region to contractors and bidders, and shall provide notice of the availability of such information in procurement solicitations. Metro staff shall contact the procurement officer or the waste reduction division to determine the availability of recycled products prior to the solicitation of quotes, bids or proposals for any contract in an amount greater than \$5,000. This requirement shall not apply to contracts for services only.
- (7) The procurement officer shall investigate and implement, as appropriate, purchasing jointly with other public agencies to potentially reduce the price for recycled products.

(b) Price preference to be given for the purchase of Recycled Products or Materials

- (1) When purchasing products or procuring services, Metro shall give preference to materials and supplies manufactured from recycled materials if the recycled product or material:
 - (A) is available;
 - (B) meets applicable standards;
 - (C) can be substituted for a comparable nonrecycled product; and
 - (D) costs do not exceed the costs of nonrecycled products by more than 10 percent.
- (2) At their discretion, Metro departments and facilities may give a greater than 10 percent price preference to the purchase of recycled products, materials and supplies manufactured from recycled materials or that reduce the amount of waste generated.
- (3) When considering bids/proposals submitted by contractors, Metro shall evaluate the extent to which recycled materials and products have been incorporated.
- (4) Vendors and contractors who incorporate recycled materials and products in their bids/proposals shall provide written certification of the minimum recycled content of these materials and products, including the percent of post-consumer and secondary waste as defined in Section 2.04.510.
- (5) Unless otherwise specified in a bid or proposal request, bidders and proposers shall submit the actual proposed cost of a recycled product or material bid item. It shall be Metro's responsibility to calculate any preferences required. If Metro, in its sole discretion, determines that a product or material offered by a vendor or contractor is a recycled product or material meeting the requirements of this section, Metro shall subtract 10 percent or the preference otherwise offered, from the bid or proposal item, for the purpose of comparing bids or proposals.

SECTION 22. Metro Code Section 2.04.540 is amended to read as follows:

2.04.540 Recycled Oil

(a) As specified in ORS ~~279B.240~~~~580 to 279.595~~, Metro specifications for the purchase of lubricating oil and industrial oil shall not exclude recycled oils and shall not require that oils be manufactured from virgin materials. Specifications for the procurement of recycled oil shall be consistent with the re-refined lubricating oil purchasing guideline of the US Environmental Protection Agency. In addition, Metro shall purchase lubricating and industrial oil from the seller whose product contains the greater percentage of recycled oil as long as the recycled oil:

- (1) Is available within a reasonable period of time in quantities necessary for Metro's needs;
- (2) Meets performance standards recommended by the equipment or vehicle manufacturer, including any warranty requirements; and

- (3) Is offered at a price that does not exceed the 10 percent price preference for recycled products over comparable nonrecycled products.

(b) ~~As stipulated in ORS Chapter 279,~~ Metro's affirmative program for procuring recycled oil shall include, but be not be limited to the following:

- (1) Notice of Metro's preference for recycled oil shall be provided in publications used to solicit bids from suppliers;
- (2) Metro shall provide a description of its recycled oil procurement program at bidders' conferences and in procurement solicitations or invitations to bid; and
- (3) Metro shall make a good faith effort to inform industry trade associations about its recycled oil preference program.

(c) Metro shall specify recycled oils in its bids and solicitations for fleet vehicles and transport services and to the extent feasible not enter into agreements for these services with companies that restrict the use of recycled oils.

SECTION 23. Metro Code Section 2.04.550 is amended to read as follows:

2.04.550 Compost Products and Contracts for Lawn and Landscape Maintenance

(a) Metro shall specify and give preference to purchase of organic soil amendments made from yard debris, sewage sludge or other organic waste composts rather than compost made from nonrecycled organic materials if the organic soil amendments:

- (1) Are available;
- (2) Meet the functional requirements of the specific application;
- (3) Meet human health and plant safety standards; and
- (4) Do not exceed the 10 percent price preference for recycled products over nonrecycled products.

(b) As specified in ORS 279B.225, every contract for lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost effective.

/////

/////

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

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

MDF/kaj
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11/04/2004

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 04-1065, FOR THE PURPOSE OF AMENDING CHAPTER 2.04 OF THE METRO CODE RELATING TO PUBLIC CONTRACTING

Date: November 18 2004

Prepared by: David Biedermann

BACKGROUND

The 2003 Oregon Legislature enacted a major revision to public contracting law, Oregon Revised Statutes Chapter 279. The legislative work is comprehensive, and deals with a variety of issues affecting Metro.

As a result, the Office of Metro Attorney and the Metro Contracts Manager reviewed the agency's Contract Code for both consistencies with the State law changes and to bring the Code up-to-date with changed circumstances within Metro. The result is a significant amendment of the Metro code (the last was done in 1996) to bring it into legal symmetry with the State law and to adapt to Metro business changes in the last nine years.

The State law takes effect March 1 2005; this ordinance is before you more than 90 days prior to the date of effect to avoid the need and use of an emergency clause.

The major changes in the legislation are in five areas.

1. Current law requires a local government to affirmatively name itself as its local contract review board. According, the Metro Council is currently designated as the Metro Public Contract Review Board. The new 2003 law now provides that if a local government does not act to the contrary, it serves as its own contract review board without having to name itself. Additionally, the new Oregon public contracting law allows local governments to use their own contracting rules, rather than following the State Attorney General's Model Rules. To do so, governments must affirmatively opt out of the state rules. The proposal before the Council continues the current policy choice of opting out of the state contracting rules.
2. The new State law substantially changed the dollar thresholds for informal quotations and formal bids. The current levels are:
 - a. Under \$5,000 no quotes are necessary,
 - b. Between \$5,000 and \$50,000 a minimum of 3 quotes are required and
 - c. Over \$50,000 formal bids must be submitted.

The change occurs in “b” and “c”; quotations will be required between \$5,000 and **\$150,000**, and the formal bid threshold will be **\$150,000**.

3. If an agency uses prequalification in its bidding process, the Contract Review Board can hear appeals from vendors that are disqualified. That process is now called “debarment”. (Metro does not use prequalification process.)
4. The proposed changes to the Metro code include updates to incorporate state law purchasing changes related to procurement of recycled goods, such as oil manufacturing and reuse of lawn maintenance debris.
5. The Metro Contract Review Board has the power to grant “exemptions” for specific procurements that are not required to be procured through competitive bids or competitive proposals. Examples are regulated products and services, repair services where the cost cannot be determined without extensive dismantling, and contracts where Metro receives a revenue for providing a service, etc.

The guiding principle is that such exemptions: (a) will be unlikely to encourage favoritism in the awarding of public contracts or will substantially diminish competition for public contracts and, (b) will result in substantial cost savings to Metro or the public or will otherwise substantially promote the public interest in a manner that compliance with other new, expanded procurement methods will not. The state law now refers to these exemptions as “special procurements”.

The review by the Office of the Metro Attorney and the Contracts Officer identified a few contractual circumstances that can benefit from being “special procurements.”

- The exemption for the purchase of food is changed to include all Metro facilities, not just the Oregon Zoo. We propose the following change.
 - Purchase of food items for resale at facilities owned or operated by Metro.
- The existing exemption for exclusion of warranties from competitive bidding has historically been interpreted to include software warranties, which includes support agreements with the manufacturer. To clarify the purpose, software and hardware acquisition, warranty and support are now separated from other warranty procurements (such as compactors at the Transfer Stations). We propose the following changes as special procurements.
 - Contracts for warranties other than computer software warranties described in subsection 7, in which the supplier of the goods or services covered by the warranty has designated an authorized provider for the warranty service.
 - Contracts for computer hardware, software and associated warranties.

- Metro has some limited situations where it requires a service that, while generally available in the marketplace, is nonetheless restricted to a sole source by another government. In that case, we have no choice but to use the prescribed vendor. Our Code, however, requires a competitive process. We propose the following addition to the Metro list of special procurements:
 - Contracts for goods or services when the provider of the procured goods or services is required by the federal government or by the state of Oregon.
- The state law clarifies the use of cooperative procurements among governments. We propose to specifically include this as a special procurement to allow another governments to conduct the process on behalf of Metro. We propose the following addition to the Metro list.
 - Contracts for co-operative procurements permitted under ORS 279A.220 to 279A.225.
- There are increased efforts by both for-profit and non-profit private organizations willing to both raise funds and do work Metro sees necessary to meet its goals (wildlife habitat remediation, donation of in-kind services to build a public improvement, preservation of wetlands, etc.)

When acceptable to our goals, it would be both cumbersome, potentially embarrassing to the potential donor and likely unsuccessful for Metro to then advertise to seek others willing to donate the same amount of funds and time to accomplish the same goal. We propose the following additions to the Metro list of special procurements that are exempt from competitive processes:

- Contracts for projects that are not public improvements as defined in Metro Code Section 2.04.010(m) in which a contractor provides any portion of the funding for such project. [for minor alterations, ordinary repairs or maintenance necessary to preserve a public improvement in which a contractor provides the funding for such project.]
- Contracts for public improvements in which a contractor agrees to provide any portion of the funding for such public improvement project.

ANALYSIS/INFORMATION

1. **Known Opposition:** None.
2. **Legal Antecedents:** Metro Code 2.04, State of Oregon Revised Statutes (ORS) 279 (current), and prospective chapters 279A, 279B and 279C (effective March 2005).
3. **Anticipated Effects:** Metro Code 2.04 will be in compliance with ORS 279A, B and C.
4. **Budget Impacts:** Depending on the actions taken by the Metro Council, adoption of the ordinance could result in annual budgetary savings of \$35,000 to \$75,000 by eliminating staff time and processing costs for procurements less than \$150,000.

RECOMMENDED ACTION

Chief Operating Officer recommends passage of Ordinance 04-1065.

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.

Second Reading

Metro Council Meeting
Thursday, November 18, 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		Revision		Amended	
		FTE	Amount	FTE	Amount	FTE	Amount
Regional Parks Operating Fund							
<u>Resources</u>							
BGBAL	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
TOTAL RESOURCES			\$11,215,890		\$1,586,918		\$12,802,808

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

	<u>Current</u> <u>Appropriation</u>	<u>Revision</u>	<u>Amended</u> <u>Appropriation</u>
REGIONAL PARKS OPERATING FUND			
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
Total Fund Requirements	\$11,215,890	\$1,586,918	\$12,802,808

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:	<input checked="" type="checkbox"/>	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
Total:	\$0	\$0	\$0	\$1,200,000	\$0	\$0	\$0	\$0	\$1,200,000
Funding Source:									
Donations	\$0	\$0	\$0	\$1,200,000	\$0	\$0	\$0	\$0	\$1,200,000
Total:	\$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:	<input checked="" type="checkbox"/>	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
Total:	\$0	\$0	\$0	\$68,000	\$0	\$0	\$0	\$0	\$68,000
Funding Source:									
Donations	\$0	\$0	\$0	\$68,000	\$0	\$0	\$0	\$0	\$68,000
Total:	\$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
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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

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

<i>Regional Parks Operating Fund</i>		<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 3rd 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.

<i>Regional Parks Operating Fund</i>		
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&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)
		\$34,765	
Expenditures -	Contracted Services:	\$33,765	
	Other M&S:	<u>\$1,000</u>	
		\$34,765	

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.

Agenda Item Number 7.1

Resolution No. 04-3515, For the Purpose of Ratifying the 2004-2007 Collective Bargaining Agreement Between
AFSCME Local 3580 and Metro.

Metro Council Meeting
Thursday, November 18, 2004
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF RATIFYING THE 2004-	)	RESOLUTION NO. 04-3515
2007 COLLECTIVE BARGAINING)	
AGREEMENT BETWEEN AFSCME LOCAL	)	Introduced by Michael Jordan, Chief
3580 AND METRO.		Operating Officer, in concurrence with
		Council President Bragdon

WHEREAS, Metro's designated representatives for labor relations have negotiated in good faith with AFSCME Local 3580; and

WHEREAS, Metro's designated representatives for labor relations and the Union's designated bargaining representatives have reached a signed tentative agreement for a three year collective bargaining agreement; and

WHEREAS, the Union membership has duly ratified the tentative agreement; and

WHEREAS, Metro's designated representatives recommend and support ratification by the Council; now therefore

BE IT RESOLVED that the Metro Council hereby ratifies the tentative agreement attached to this resolution as Exhibit A.

ADOPTED by the Metro Council this 18th day of November, 2004

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Collective Bargaining Contract

Metro and the
American Federation
of State, County and
Municipal Employees
Local 3580

November, 1, 2004 – June 30, 2007



METRO
People Places
Opens Spaces

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Produced by union members and
copied in a union copy center.

Article 1: Preamble

THIS AGREEMENT is entered into by Metro, (Employer) and the ~~Oregon Public Employees Council No. 75, Local 3580 of the American Federation of State, County and Municipal Employees, Local 3580, AFL-CIO, hereinafter referred to as "(the Union-".)~~

The purpose of this Agreement is to set forth the full and complete Agreement between Metro and the Union on matters pertaining to rates of pay, hours of work, fringe benefits and conditions of employment, to promote efficiency in employee work performance, and to provide an equitable and peaceful procedure for the resolution of disputes in the interpretation and application of the terms of this Agreement consistent with Metro's and the Union's mutual objective of providing ever improved services to the public of the Metro region.

The provisions of this Agreement shall be applied equally to all employees in the bargaining unit without discrimination as to age, sex, marital status, sexual preference, race, color, creed, religion, national origin, association or political affiliation, mental or physical handicap.

Except as otherwise provided by law, regulation, or grant provisions, the PARTIES AGREE AS FOLLOWS:

Article 2: Recognition

Section 2.1 Metro recognizes the Union as the exclusive bargaining representative of all permanent employees of Metro, excluding employees who are included in a bargaining unit represented by the Laborers' International Union, Local 483, and confidential and supervisory employees as defined by ORS 243.650(6) and (23). In the event of a dispute between the parties regarding the confidential or supervisory status of any employee, the parties shall meet and discuss the matter at a mutually agreeable time and place. In the event that the parties are unable to agree on the employee's status, either party may petition the Employment Relations Board of the State of Oregon to resolve the matter.

Section 2.2 Temporary employees are not included in the bargaining unit. Temporary employees shall be defined as those employees working less than one thousand forty-four (1,044) hours per year in a twelve (12) month period from initial hiring, or any 12-month period thereafter. Temporary employees shall not be used to replace and/or diminish wages, hours or other conditions of employment of existing bargaining unit employees except during bona fide recruitment of permanent employees, leaves, or short-term non-recurring work operations. Metro agrees to provide the Union a monthly listing of temporary employees and hours worked from hire date.

Article 3: Management Rights

The employer shall have and retain the sole responsibility for the management and operation of all Metro functions and direction and control of its work force, facilities, properties, programs and activities, except as expressly limited by the terms and conditions of this Agreement. These rights include but are not limited to the following:

- (1) Determination of Metro's mission, policies, and all standards of service offered to the public and other local governments;
 - (2) Planning, directing, controlling and determining the operations or services to be conducted by employees of Metro;
 - (3) Determining the methods, means, number of personnel needed to carryout any department's mission;
 - (4) Directing the work force;
 - (5) Hiring and assigning or transferring employees within or between departments;
 - (6) To promote, suspend, discipline or discharge consistent with this Agreement;
 - (7) To layoff or relieve employees due to lack of work or funds or for other legitimate reasons;
 - (8) To make, publish and enforce rules and regulations including personnel rules and policies that do not violate any specific provision of this Agreement; and
 - (9) To introduce new or improved methods, equipment or facilities.
- To complete performance evaluations of employees as required.
- To classify, reclassify or merge positions as required.

Article 4: Union Security

Section 4.1 Membership. Membership or non-membership in the Union shall be guaranteed as an individual choice of employees within the bargaining unit provided, however, that any employee who chooses to belong to the Union shall be entitled to subsequently withdraw from membership of the Union by the giving of written notice to the Union and Metro.

Section 4.2 Fairshare. Metro agrees to fairshare in accordance with and pursuant to the terms of the Oregon Revised Statutes 243.650 (10) and (18) with the understanding that the fairshare for non-union employees shall be equivalent to the dues of the Union membership in ~~Oregon Council 75~~, American Federation of State, County and Municipal Employees, Local 3580, AFL-CIO.

The right of non-association of employees based on bona fide religious tenets or teaching of a church or religious body of which an employee is a member as provided by ORS 243.666, is hereby guaranteed. Such employee shall pay the fairshare amount described hereinabove to a nonreligious charity or to another charitable organization mutually agreed upon by the employee and the Union. The employee shall furnish proof to the Union that this has been done.

Section 4.3 Effective Date. The effective date of withholding Union membership dues or fairshare shall be the first of the month following thirty (30) calendar days of employment.

Section 4.4 Dues Checkoff. Upon receipt of a signed authorization from the employee, Metro agrees to deduct from the paycheck of each employee authorized by the Union, the regular monthly dues uniformly required of members of the Union and the amount of fairshare determined by application of Article 4.2 of this Agreement from all non-union members of the bargaining unit for which the Union is the exclusive bargaining agent. The aggregate amount deducted, together with an itemized statement, shall be transmitted monthly to the Council 75 offices on behalf of all employees involved. The performance of this service is at no cost to the Union. Metro will not be held liable for any errors or delays, but will make any proper corrections as soon as possible.

Section 4.5 The Union agrees that it will indemnify, defend and ~~save-hold~~ Metro harmless from all suits, actions, proceedings, and claims against Metro, or person acting on behalf of Metro, whether for damages, compensation, reinstatement, or a combination hereof arising out of Metro's implementation of this Article. In the event any decision is rendered by ~~the highest~~ court of competent having jurisdiction or by enacted law that this Article is invalid and/or that reimbursement of the service fee (fairshare) must be made to employees affected, the Union shall be solely responsible for such reimbursement.

Article 5: Hours and Shifts

Section 5.1 Forty (40) hours shall constitute the normal workweek, eight (8) hours per day, five (5) consecutive days per week with two (2) consecutive days off. Notice of change in shift starting times or days off will be given prior to the end of the week before the week in which the change becomes effective, and such change will be effective for not less than one (1) week. Provided, however, that this Section shall not govern the payment of overtime, which shall be strictly governed by Article 7.

Section 5.2 Except in cases of emergency, all employees shall be provided with a fifteen (15) minute rest period during every four (4) hours worked. Rest periods normally shall be taken near the middle of each one-half (1/2) shift whenever feasible.

Section 5.3 Notwithstanding the workweek set forth in 5.1 and 5.2 above, the Union may request and Metro may initiate an alternate workweek schedule, upon mutual agreement of the Union and Metro.

Section 5.4 Shift work shall be permitted in all classifications, without restrictions, on the following basis. The day shift for pay purposes is any shift which begins between 6:00 a.m. and 9:59 a.m. Part-time work which is commenced after 11 :59 a.m. and completed by 6:59 p.m. is day shift work.

Section 5.5 Employees transferred from one shift to another, unless relieved from work at least a full shift before starting their new shift, shall be paid the overtime rates for the first such new shift worked.

Section 5.6 The second or swing shift for pay purposes shall be defined as any shift which begins after 9:59 a.m. and ends after 6:00 p.m. Employees scheduled on the third shift shall receive a shift premium of ~~sixty (60) cents~~ ninety-five (95) cents per hour July 1, ~~1999~~2004; and ~~eighty (80) one (1) cents-dollar~~ per hour July 1, ~~2000~~2005; and, ~~ninety-five (90) cents~~ per hour July 1, ~~2001~~2006, in addition to the regular hourly rate (as set forth in Exhibit A).

Section 5.7 The third or graveyard shift for pay purposes shall be defined as any shift which begins after 6:59 p.m. or prior to 6:00 a.m. Employees scheduled on the third shift shall receive shift premium of ~~sixty-five (65) one (1) dollar cents~~ per hour July 1, ~~1999~~2004; and ~~eighty-five (85) cents~~ one (1) and five (5) cents per hour July 1, ~~2000~~2005; and, ~~ninety-five (90) one (1) dollar and ten (10) (95) cents~~ per hour July 1, ~~2001~~2006, in addition to the regular hourly rate (as set forth in Exhibit A).

Section 5.8 Relief shifts shall be deemed as:

5.8.1 Any workweek schedule which includes multiple shifts with a maximum of three (3) day shifts. This definition means a workweek consisting of any combination of two (2) or more shifts in which the employee works not less than one nor more than three day shifts and any other shift or shifts.

5.8.2 Employees assigned to relief shifts shall be paid ~~seventy-five (75) cents~~ one (1) dollar per hour July 1, ~~1999~~2004; and ~~ninety-five (95) cents~~ one (1) dollar and five (5) cents per hour July 1, ~~2000~~2005; and, one (1) dollar and five (5) cents per hour July 1, ~~2001~~2006; premium for all hours worked.

5.8.3 Employees working relief shifts shall not receive the shift premium authorized in Sections 5.6 and 5.7 above.

Section 5.9 The shift differential shall apply to all hours worked during that shift. If an employee works one-half or more of the second or third shift, the employee shall receive the higher differential for all hours worked in that shift.

Section 5.10 REM employees who work weekends shall be paid a differential of ~~sixty-five (65) cents~~ one (1) dollar per hour July 1, ~~1999~~2004; and ~~eighty-five (85) cents~~ one (1) dollar and five (5) cents per hour July 1, ~~2000~~2005; and ~~ninety-five (95) cents~~ one (1) dollar and ten (10) cents per hour July 1, ~~2001~~2006, for all hours worked between the hours of 12:00 a.m. Saturday to 11:59 p.m. Sunday.

Article 6: No Strike or Lockout

Section 6.1 During the term of this Agreement, neither the Union nor its agents or any employee, for any reason, will authorize, institute, aid, condone or engage in a slowdown, work stoppage, picketing, strike, or any other interference with the work and statutory functions or obligations of Metro. During the term of this Agreement neither Metro nor its agents for any reason shall authorize, institute, aid, or promote any lockout of employees covered by this Agreement.

Section 6.2 If any work stoppage, slowdown, picketing, or strike shall take place, the Union agrees to immediately notify any employees engaging in such activities to cease and desist and to publicly declare that such work stoppage, slowdown, picketing, or strike is in violation of this Agreement and is unauthorized. The Union agrees to immediately notify all Local officers and representatives of their obligation and responsibility for maintaining compliance with this Article including their responsibilities to remain at work during any interruption which may be caused or initiated by others and to encourage other employees violating Section 6.1 above to return to work.

Article 7: Overtime and Comp Time

Section 7.1 Overtime worked by employees non-exempt from the Fair Labor Standards Act (FLSA) shall be paid at one and one half (1-1/2) the employee's regular rate including any regular rate premiums. Overtime is time worked over eight (8) hours per day or over forty (40) hours in one (1) workweek. For employees working four day workweeks overtime is time worked over ten (10) hours per day or over forty (40) hours in one (1) workweek. The "workweek" for purposes of calculating overtime for non-exempt employees is defined as seven (7) consecutive calendar days beginning at 12:01 a.m. on Sunday, and ending on the following Saturday at 12:00 midnight, provided, however, that Metro may establish other, alternative workweeks for individual employees or classes of employees, consistent with the requirements of the FLSA, by so notifying the employees in writing. The "workday" for purposes of calculating overtime for non-exempt employees is defined as the 24-hour period beginning at 12:01 a.m. each day and ending at 12:00 midnight. Overtime shall be paid whenever required by this subsection or the FLSA.

Section 7.2 Upon agreement with a non-exempt employee that overtime not be paid, non-exempt employees shall receive one and one-half (1-1/2) hours of compensatory time off for every hour worked in excess of eight (8) hours (ten (10) hours per day for four day workweek employees) or forty (40) hours per workweek.

Section 7.3 Exempt employees, as salaried professional, executive, and administrative employees under FLSA, shall not be paid overtime nor receive hour for- hour compensatory time. Metro may, at its sole discretion, allow exempt employees "bonus time" off as determined appropriate by the Executive Officer or his/her designee(s). The decision to grant or disallow bonus time, including the promulgation of any standards or procedures for awarding bonus time, shall be considered as the exercise of a Management Right allowed by Article 3 of this Agreement.

Article 8: Holidays

Section 8.1 All bargaining unit members shall receive one (1) day's hourly pay or no deduction from salary for each of the following designated holidays listed on which they perform no work:

- New Years Day;
- Martin Luther King Day;
- (3) Washington's Birthday;
- (4) Memorial Day;
- (5) Independence Day;
- (6) Labor Day;
- (7) Veterans Day;
- (8) Thanksgiving Day;
- (9) Christmas Day;
- (10) Two (2) Personal Holidays are allowed each fiscal year on days of each employee's choice, subject to schedule approval of the supervisor. Employees hired after January 1 of each fiscal year shall be entitled to one (1) such holiday in that fiscal year. For purposes of this section, a Personal Holiday is any day chosen by the employee and approved by the supervisor which would otherwise be a regular scheduled workday. The personal holidays must be taken by the employee within the fiscal year in which they accrue.

Section 8.2 All part-time employees will receive holiday pay pro-rated based on average hours worked per work day during the preceding two pay periods.

Section 8.3 Whenever a holiday shall fall on the first day not included in the employee's regularly scheduled work week, the preceding day in an employee's regular workweek shall be observed as a holiday. Whenever a holiday shall fall on the second day not included in the employee's regularly scheduled workweek, the following day in an employee's regular workweek shall be observed as a holiday.

Section 8.4 Holidays which occur during vacation or sick leave shall not be charged against such leave.

Section 8.5 Eligible employees shall receive eight (8) hours regular pay for each of the holidays set forth above on which they perform no work. Eligible employees who work a 4-10 schedule shall receive ten (10) hours regular pay for each of the holidays set forth above on which they perform no work. In addition to holiday pay, any non-exempt employee shall be paid the

overtime rate for any holiday actually worked. However, if an employee is scheduled to work on a holiday, that employee will be permitted to defer the holiday with regular pay until a later date. An employee under this section can accumulate no more than five deferred holidays.

Article 9: Vacation

Section 9.1 Subject to department approval and the provision on initial probationary period, all bargaining unit employee shall be granted annual vacation leave with pay based on hours worked, accruing at the following rates:

Total Years of Continuous Service	Accrual Rate Per Hours	Equivalent Annual Hour Full-Time Employees
Date of hire through completion of 3 yrs	.0385 hours	80 hours
4 years through completion of 7 yrs.	.0577 hours	120 hours
8 years through completion of 11 yrs.	.0770 hours	160 hours
12 years plus	.0862 hours	180 hours

Section 9.2 Permanent employees who have been employed by Metro for more than six (6) consecutive months may be granted accrued vacation leave by approval of the department director or his/her designee.

Section 9.3 Employees shall not accumulate more than two hundred seventy-five (275) hours of vacation leave. Additional hours that would have accrued at the rates in this Agreement shall be forfeited unless a denial of a vacation request prevents an employee from avoiding the 275 hours maximum. If denial of a vacation request prevents an employee from avoiding the 275 hour maximum, the employee shall be paid at regular rate for those hours accrued over 275 hours. Metro paycheck stubs shall contain language advising employees of the 275 hour maximum. This article is subject to the provision that Metro shall have the option to "buy back" any vacation hours over 250 that an employee has accrued at the end of each fiscal year, at the employee's regular straight time rate.

Section 9.4 Department directors or their designees shall schedule vacation for their respective staff with consideration for vacation accrued, seniority, the desires of the staff, and for the work requirements of the department. Vacation schedules may be amended to allow the department to meet emergency situations. Vacation requests more than thirty (30) working days in advance shall not be arbitrarily denied or amended without demonstration of conflict with a prior request or a bona fide work emergency.

Section 9.5 Any regular employee who resigns, retires, is laid off or dismissed from employment with Metro shall be entitled to immediate lump sum payment for accrued and unused vacation at the employee's existing salary rate provided, however, that such lump sum payment shall not be

made if separation occurs prior to the completion of the initial probationary period including any extensions.

Article 10: Sick Leave

Section 10.1 Bargaining unit members shall earn sick leave with pay at a rate of .05 hours per hour worked accrued in an unlimited amount. Qualified employees shall be eligible for use of earned sick leave after working one (1) day of service with Metro.

Section 10.2 Employees are eligible to use sick leave only for the following reasons:

- (1) Personal illness or physical disability;
- (2) Illness or physical disability in the employee's immediate family or household requiring the employee to remain at home.
- (3) Medical appointments and office visits.
- (4) As otherwise required by law.

Section 10.3 Employees unable to report to work shall report the reason for absence to their supervisor within (1/2) hour after the scheduled beginning of their shift. At locations where multiple shifts are worked, employees unable to report to work due to illness shall report the reason for the absence to their supervisor one hour prior to the scheduled beginning of their shift. ~~An employee shall be entitled to use a maximum of four (4) consecutive days sick leave without a doctor's certificate if the employee has accumulated not less than four hundred (400) hours of sick leave. Otherwise, sick leave beyond three (3) days (or beyond four (4) days, in the case of an employee who has accumulated over 400 hours of sick leave) must be supported by a physician's statement. Sick leave with pay shall not be allowed unless the employee has reported the reason for his/her absence and/or submitted any required physician's statement as required herein.~~

Section 10.4 Metro and the Union agree that no employee should receive full net wages in paid sick leave while also receiving time loss payments on an insured disability or Workers' Compensation claim. The parties therefore agree as follows:

Where the dual payment would result from the employee filing a claim for time loss payments for an injury or disease the employee shall receive only the paid sick leave, if any, for the same condition necessary to bring the employee to full net take-home pay for the pay period. Metro may recoup any overpayment of sick leave paid, either by deductions from gross wages per pay period in an amount not exceeding 20 percent gross wages until the total overpayment is recouped, or Metro and the employee may, by mutual agreement, provide for some other means for repayment. Upon repayment of the total amount of the excess, the employee's sick leave account shall be credited with that portion of the sick leave repaid.

Section 10.5 Sick leave shall not continue to accrue during periods of disability or leave unpaid by Metro.

Section 10.6 Notwithstanding the foregoing, employees who misuse sick leave may be subject to discipline pursuant to Article 17 Discipline and Discharge, and/or may be required to furnish a doctor's certificate for each day of illness. Management will consider the following factors in determining if an employee is misusing sick leave: (a) fraudulent or improper use of sick leave, (b) failure to follow required notification procedures, (c) exhaustion of all accrued sick leave, and (d) use of five (5) days of sick leave in any six (6) month period, provided, however, that this sub-section (d) shall not apply to (i) employees who have accumulated more than four hundred (400) hours of sick leave or (ii) employees who have gone over the five (5) day threshold as a result of a single incident supported by a doctor's certificate. Metro shall not conclude that any employee has misused sick leave without first notifying the employee that he/she appears to be misusing sick leave, and giving the employee an opportunity to respond. The Human Resources Director must concur with any actions taken pursuant to this section.

An employee who meets any one of the following criteria may be deemed a high sick leave user:

- a) exhaustion of all accrued sick leave;
- b) use of 5 days of sick leave, paid or unpaid in the preceding six (6) months;

Subsections (a) and (b) of 10.6 do not apply to employees who have accumulated more than four-hundred (400) hours of sick leave.

An employee who meets the above criteria as a result of a single incident of illness or injury, as evidenced by a physician's certificate, shall not be included as information leading to the determination that an employee is a high sick leave user.

An employee's absences that are covered by FMLA/OFLA, Workers' Compensation, or the American's with Disabilities Act shall not be included as information leading to the determination that an employee is a high sick leave user.

Metro shall not conclude that any employee has misused sick leave without first notifying the employee in writing that he/she appears to be misusing sick leave, and giving the employee an opportunity to respond.

Section 10.7 Regular full-time employees who use twenty-four (24) hours or less of sick leave within one fiscal year period shall accrue eight (8) additional hours of vacation leave in exchange for eight (8) hours of sick leave at the end of the fiscal year period. Regular part-time employees who use twenty-four (24) hours or less of sick leave within one fiscal year period shall accrue four (4) additional hours of vacation leave in exchange for four (4) hours of sick leave at the end of the fiscal year period.

Article 11: Other Leaves

Section 11.1 Bereavement Leave. An employee absent from duty by reason of the death of his or her spouse, ~~domestic partner~~, parents, children, sister, brother, grandparent, grandchildren, father-in-law, mother-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, or other household member shall be allowed not to exceed three (3) days time off duty without deduction of pay on account of such absence. ~~Eligibility for bereavement leave is extended to domestic partners.~~

Employees may attend a funeral ceremony for a fellow employee within their own department with four (4) hours time off with pay to attend such funeral ceremony, subject to the needs of the operation.

Section 11.2 Military Leave. Employees shall be granted 15 days military leave with pay as required by law. Any remaining leave shall be without pay, as required by law.

Section 11.3 Jury Duty/Court Appearances. Employees shall be granted a paid leave of absence for time off for jury service, or as a result of service upon the employee of a lawful subpoena requiring his/her appearance in a court of law. Any jury or witness fees or mileage will be endorsed over to Metro. In the event that an employee is excused from jury duty prior to the end of his/her daily work shift, the employee shall promptly return to work.

Section 11.4 Disability Leave. ~~Employer agrees to abide by the Americans with Disabilities Act, the Family Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA) when administering qualifying leave for employees. Employees shall be allowed to use accrued leave balances (sick leave, compensatory time, personal holiday and vacation) for FMLA and OFLA leaves.~~

- 1 ~~Upon application, supported by a statement of a physician, a leave of absence shall be granted without pay for a period not to exceed six (6) months from the beginning of the disability in cases of the physical disability of a regular employee. Any employee requesting such leave shall file such request in writing with the employee's department director and attach thereto a statement of the attending physician.~~

~~The latter physician's statement must indicate that the duration of leave requested is necessary for the disabled employee to recover from the disability. Upon ceasing work, the employee may use any vacation and sick leave earned.~~

- (2) Disability leave without pay shall commence immediately upon completion of the vacation and sick leave. During the first three (3) months of such disability leave, Metro shall continue to provide health, dental, life insurance, accidental death and dismemberment and long-term disability benefits, to the same extent provided other employees, and shall pay all appropriate premiums. If a leave of absence for a disability extends beyond three (3) months, the employee may elect to continue the latter coverages and benefits; upon such election, the gross premiums for such extended coverage shall be paid by the employee. Any and all such extensions of coverages and benefits beyond the

first three (3) months shall be subject to any and all restrictions and conditions in each applicable benefit policy or plan.

- (3) ~~In the event that any leave of absence on account of a disability exceeds six (6) months, the employee may be dismissed from employment; provided, however, that the Executive Officer may extend such disability leave once by an additional six (6) month period if such extension will not adversely affect the operations of Metro and if prior to the expiration of such six-month period of disability leave, such employee presents to the Executive Officer an attending physician statement that the employee will be able to resume full performance of his/her normal work duties within six months following the expiration of the initial six months of disability leave. However, if the attending physician statement indicates that the employee will require disability leave for a total period extending beyond one (1) year, or if the actual period of disability extends beyond one year, the employee shall be dismissed from employment. Any extension of an employee's disability leave beyond six months by the Executive Officer shall be in writing and shall be filed in the Human Resources office.~~
- (4) ~~Any leave granted under this Section shall constitute and run concurrently with any leave allowed under the Family Medical Leave law.~~

Section 11.5 Family and Medical Leaves shall be governed in accordance with the Family Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA). Employees shall be allowed to use accrued leave balances (sick leave, compensatory time, personal holiday, and vacation) for FMLA and OFLA leaves.

Parental Leave. Unpaid Parental Leave up to the developmental stage equivalent of twelve (12) weeks for a newborn or for the 12-week period following the date an adoptive parent takes custody of a newly adopted child under six (6) years of age shall be granted to eligible employees.

- (1) ~~The employee shall be entitled to take parental leaves without being penalized for taking leave.~~
- (2) ~~An employee returning from parental leaves shall be reinstated with no greater or lesser rights in employment than if the employee had not taken the leave. This section is pursuant to ORS 659.484 as provided by FMLA, OFLA.~~

~~All regular employees who have completed ninety (90) calendar days of employment are eligible to request the leave.~~

~~Employees have the option of using their accrued vacation leave during the parental leave. If the employee chooses to take leave without pay, benefits will be paid through the last day of the month following the month in which the leave without pay commences. If the employee chooses to utilize accrued vacation, benefits will be continued as long as the leave is continued on paid status. Such leave shall not be used for parental leave unless required by law.~~

- (5) ~~A request shall be submitted to the Human Resources Department thirty (30) calendar days before the occurrence of the event. The request must be in writing and contain the following information:~~
- ~~(A) The employee's intent to take parental leave beginning on a date certain more than thirty (30) days from the date of the request.~~
 - ~~(B) The anticipated date of birth of the parent's child, or~~
 - ~~(C) The anticipated date that the parent will obtain physical custody of a newly adopted child under six (6) years of age, and~~
 - ~~(D) The dates when the parent, or if both parents request parental leave, the dates which each parent will commence and terminate his or her portion of the parental leave.~~
- (63) Employees who return from parental FMLA/OFLA leaves (including parental leave) by the date listed in the written request on file will be restored to their former position without loss of seniority or vacation credits. If circumstances change so that the employee's former job is no longer available, that worker will be reinstated in an equivalent position. Employees who do not return by the date specified shall be placed on the appropriate lay off list under this Agreement.

Section 11.6 Leave Without Pay. All permanent employees may be granted leave of absence without pay and without employee benefits for a period not to exceed six (6) months provided such leave can be scheduled without adversely affecting the operations of Metro. Such leave may be extended once by the Executive Officer for an additional six (6) months. All requests for leave of absence without pay shall be in writing, shall be directed to the department director and shall contain reasonable justification for approval. Requests of less than ten (10) calendar days may be approved by the Department Director. Both the request and the Executive Officer's approval of the request shall be in writing and shall be filed in the Human Resources Division Office. The employee may elect to continue employee coverages and benefits, however, premiums for such extended coverages and benefits shall be paid by the employee. Any and all such extensions of coverages and benefits shall be subject to any and all restrictions and conditions which may exist in each applicable benefit policy or plan. No employee may be denied leave without pay for arbitrary or capricious reasons. Any employee returning from an approved leave shall be reinstated with no greater or lesser employment rights than if the employee had not taken the leave.

Section 11.7 Family Medical Leave. Metro shall provide Family Medical Leave as required by law. Metro may implement any rules that it deems necessary or desirable to govern requests for Family Medical Leave, provided that such rules comply with the applicable law concerning Family Medical Leave.

Article 12: Health and Welfare

Section 12.1 The Union is entitled to selected one voting member to serve on the Joint Labor-Management Committee on Health Care. ~~No later than February 1, 2000, a joint eight (8) member committee comprised of four (4) members appointed by the Union and four (4) members appointed by Metro shall be formed.~~

Metro shall make available to the committee current information regarding insurance premium rates and projected increases as such information becomes available to Metro. The committee shall meet to consider adjustments to benefits or coverages to stay below the specified employer contributions for each year of the Agreement. Each employee may contribute the remainder of the actual composite premium cost greater than the employer contribution, if necessary.

In years 2 and 3 of this Agreement, the Union may, at its discretion, choose to apply a portion of the agreed-upon cost-of-living adjustment intended for salaries to offset increases in the medical, dental and vision plan. Any decision the Union makes must apply to all bargaining unit members and must be communicated in writing to the Human Resources Director no later than May 15, 2000, and May 15, 2001, May 1, 2005 and May 1, 2006. ~~This option may be discussed during the committee's meetings.~~

A lawful meeting shall be comprised of an equal number of Union and Metro Committee members with not less than two of each group. The Committee shall make recommendations to the Executive Human Resource Director and Chief Operating Officer to keep health care costs under the amounts set forth in Section 12.2.

The Executive Chief Operating Officer shall consider the committee's recommendations and have the authority to make Plan modifications as necessary. In the event that the parties do not agree, the parties shall mediate such issues.

Section 12.2 Effective July 1, 20022004, Metro shall contribute an amount not to exceed \$535.00629.50 per employee per month for an equivalent medical, dental and vision plan provided by an HMO and/or indemnity carrier. Effective July 1, 20032005, Metro shall contribute an amount not to exceed \$562.00692.50 per employee per month for an equivalent medical, dental and vision plan provided by an HMO and/or indemnity carrier. Effective July 1, 2006, Metro shall contribute an amount not to exceed \$727.12 per employee per month for an equivalent medical, dental and vision plan provided by an HMO and/or indemnity carrier.

Effective for the 2005-06 health insurance year, the parties agree to reopen under the PECBA interim bargaining process if:

Kaiser Health and Dental premium realizes a greater than 13% increase over the 2004-05 composite cap of \$629.50 (i.e. if the Kaiser composite premium exceed \$711.33).

Or, if out-of-pocket costs for ODS Health and Dental are 13% greater than the 2004-05 costs of \$156 (i.e. if out-of-pocket costs are greater than \$176.28 per month/per employee).

[Note: If a tentative agreement is not reached by July 1, 2004 the employer is not offering to reimburse out-of-pocket health insurance costs.]

Section 12.3 The Committee established pursuant to Section 12.1, by its actions in year 2 of this Agreement, can demonstrate cost savings compared to what was budgeted for year 2, such cost savings shall be applied to any year 3 cost increases above the cap set forth in Section 12.2.

Section 12.4 Life Insurance and Additional Dependent Life And Disability coverages shall be maintained at current levels at no cost to the employee unless adjustments are made by the joint committee to keep medical, dental and vision costs below the cap for that coverage.

Section 12.5 Metro agrees to involve the Union in discussions with the agent of record related to rate increases and plan options and provide copies of all information received from the agent of record regarding ways to avoid increased costs. The vehicle for sharing this information will be the committee the parties agreed to in Section 12.1.

~~Section 12.6 As of July 1, 2000, the Kaiser HMO co-pays will increase from two dollars (\$2.00) per visit and one dollar (\$1.00) per prescription to five dollars (\$5.00) per visit and five dollars (\$5.00) per prescription.~~

Section 12.7 As of July 1, 1999, non-prorated insurance benefits will be available to employees who work thirty-two (32) hours a week or more. Prorated insurance will be based on hours paid using forty (40) hours as the denominator.

Section 12.8 All employees (.5 - 1.0 FTE) who have worked for the Agency prior to July 1, 1999, are eligible for full health and welfare benefits.

Article 13: Retirement Benefits

Section 13.1 During the term of this Agreement, all eligible unit employees shall participate in the Oregon Public Employees Retirement System (PERS), as provided in the Oregon Revised Statutes and by applicable court decisions. The extent of PERS membership shall include prior eligibility service, but shall not include prior benefit service or the unused sick leave option.

Section 13.2 ~~The 5.5% salary increase referred to in Appendix G to the 1995-1996 contract is hereby rolled back pursuant to paragraph 3 of that Appendix.~~ Metro agrees to pay the employee's contribution to the Oregon Public Employees Retirement System in the amount of six (6) percent of the employee's base salary, in addition to the required employer contributions.

Section 13.3 ~~In the event that the decision of the Oregon Supreme Court in Case No. SC-S42333 that PERS is revised or reversed by further court action, legislation, or constitutional amendment,~~ this Article shall be reopened for bargaining upon the written request of either party, pursuant to the laws and rules covering interim bargaining.

Article 14: Salary Administration

Section 14.1 Metro shall notify the Union when creating a new classification or substantially revising an existing classification. The Union shall have ten (10) days to request wage negotiations for a new or substantially revised classification.

Section 14.2 Metro will implement a salary rate for the new or revised classification. This rate shall remain in effect subject to negotiations between Metro and the Union. If negotiations result in an increase in salary rate, the increase shall be effective back to the date the new or revised classification was implemented.

Section 14.3 When an employee is assigned for a limited period to perform the duties of a position at a higher level classification for more than three (3) days, the employee shall be compensated for all hours worked at the higher level classification. The employee shall be compensated at the next higher step in his/her range or the first step in the higher classification whichever is greater.

Section 14.4 Employees hired at step one shall be placed at the next step in the salary range after completion of probation. The employee's date of completion of probation shall become the employee's anniversary date. One (1) year after the employee's anniversary and each anniversary date thereafter the employee shall advance one (1) step in the salary range until the employee reaches the top step. Nothing in this section is to be construed to prohibit Metro from placing employees above step one or advancing employees to higher levels of the salary range. Employees hired above step one shall advance one (1) step in the salary range one (1) year after date of hire and each year thereafter until the employee reaches the top step.

Section 14.5 Employees promoted into a higher classification at Metro shall be placed at the next higher step in the new salary range. The next higher step in the new salary range means the next rate that would provide for a five percent (5%) increase for the promoted employee. This means that an employee promoted from one range to another would not be placed on the next step in the new range. Upon completion of promotional probation employees shall advance to the next step in the new range. The date of completion of promotional probation shall constitute a new "anniversary date" and employees shall advance one (1) step on each anniversary date until the employee reaches the top step. Nothing in this section shall be construed to prohibit Metro from starting promoted employees higher or advancing employees upon the steps faster.

Section 14.6 For the purposes of this section, initial and promotional probation shall be six (6) calendar months from the first day of hire or promotion. Initial probationary employees may be terminated without recourse to the grievance procedure. Promotional probationary employees shall return to their former classifications and rate of pay if they fail to complete their probation without recourse to the grievance procedure. Promotional probationary employees shall not be discharged without just cause and shall have recourse to the grievance procedure.

Article 15: Wages

Section 15.1 ~~Effective July 1, 2002~~September 7, 2004, provided that the Tentative Agreement reached that date is ultimately ratified by both parties, employees shall be paid in accordance with the classifications and rates of pay contained in Exhibit A (attached). ~~This amounts to a 2.3% increase in wage rates.~~ On October 1, 2004, Metro agrees to increase the salary schedule between 1.8% (highest pay range – highest step) and 2.7% increase (lowest pay range – lowest step). (See attached).

Employer shall make a \$337.50 contribution to each member's medical savings account or on January 1, 2005; or cash payment of \$337.50 on December 1, 2004; or a payment of \$337.50 to a member's 401(k) or Oregon Savings Growth Plan.

Effective July 1, ~~2003~~2005, the rates set out in Exhibit A shall be increased in accordance with the Portland-Salem, OR Consumer Price index all Urban Consumers (CPI-U 1982-84 = 100) measured for the 2nd half of the year preceding the July 1 effective date of the wage schedule would be used for determining the schedule adjustment with a minimum of ~~2~~1.5% and a maximum of ~~4~~3.5%.

Effective July 1, 2006, the rates set out in Exhibit A shall be increased in accordance with the Portland-Salem, OR Consumer Price index all Urban Consumers (CPI-U 1982-84 = 100) measured for the 2nd half of the year preceding the July 1 effective date of the wage schedule would be used for determining the schedule adjustment with a minimum of 1.5% and a maximum of 3.5%.

Section 15.2 Employees shall move to the next highest step in the salary range on the employee's anniversary date annually during the life of this Agreement.

Section 15.3 Any non-exempt employee required to return to work before the employee's next work shift shall be paid for a minimum of two (2) hours at the rate of one and one-half (1-1/2) times the regular rate. However, when any non-exempt employee is required to work in excess of eight (8) hours in any workday, and the excess time is adjacent to the employee's regular work schedule, the employee will be paid time and one-half (1-1/2) only for the time worked in excess of eight (8) hours.

Article 16: Seniority

Section 16.1 Seniority shall be computed from date of hire or promotion into the classification. Seniority shall be applied for layoff, shift bidding and elsewhere as specified in this Agreement. In cases in which an employee in a represented class applies for, accepts, and serves time in another represented class, and then voluntarily returns to the originally held class, seniority for the purposes of shift bidding shall be calculated as the total time from the original appointment to the date of the shift bid, less the time served in the second class.

Section 16.2 Where Metro employs multiple shift operations employees, such employees shall have the right to choose appropriate shifts every six (6) months or whenever a vacancy occurs. Employees shall indicate their shift preference in writing to their immediate supervisor prior to the filling of a vacancy. The supervisors shall assign employees based on written seniority preference. Employees may not be denied seniority preference for arbitrary and capricious reasons. The parties hereby agree that the shift bidding process specified in this Section 16.2 will be implemented in the following manner:

Formal shift bids will be held every six months, at which time employees will submit, in writing, their shift preferences. The shifts will then be assigned based on the written seniority preference.

During the interim six-month period between the formal shift bids described in paragraph 1, above, supervisors will post openings for seven (7) calendar days. The senior employee submitting a written bid will be awarded the position. The bidding employee's position will then be posted and bid in a similar fashion. Any open position after that will be filled at the Employer's discretion.

The issue of bidding shifts more frequently in Regional Environmental Management (REM) shall be referred to the REM Labor/Management Committee.

Section 16.3 Seniority shall be continuous service in the employee's classification. Time spent on approved leave or as a result of on the job injury or illness shall not be considered a break in service. Continuous service in lower classifications shall count as total seniority in the case of layoff. Metro shall publish and distribute semi-annually and thirty (30) days prior to any layoff a seniority list for all employees.

Section 16.4 Layoff shall be defined as a separation from service for involuntary reasons not reflecting discredit upon employees. The Executive Officer shall determine the number and classifications to be laid off. All temporary, seasonal and probational employees within the classification selected for layoff shall be laid off prior to any layoff of permanent employees.

Section 16.5 Employees will be laid off by classifications with the least senior employees laid off first. In cases of ties in seniority within classification, total Metro service seniority shall be the tie breaker. Employees shall be given thirty (30) days notice of layoff. Employees given notice of layoff shall within ten (10) working days:

- a. Accept demotion to a former classification previously served, including bumping the least senior employee in that former classification, provided the bumping employee has more classification seniority in the former classification, and provided that the receiving manager determines that, on the basis of relevant job skills, the affected employee can perform all of the duties of the specific position adequately within two weeks.
- b. Apply for appointment to a vacant Metro position at the same or lower salary range for which the employee meets the minimum qualifications. The best qualified employee given notice of layoff shall be appointed to a vacant position for which the employee applies and meets the minimum qualifications, provided that the receiving manager determines that, on the basis of relevant job skills, the affected employee can perform all of the duties of the specific position adequately within two weeks.
- c. Accept layoff.
- d. Disputes concerning layoffs shall be handled through the grievance procedure, beginning at step 3.

Article 17: Discipline and Discharge

Section 17.1 No employee may be disciplined or discharged without just cause.

Section 17.2 No employee shall be denied Union representation in any investigation. Employees shall receive all rights and safeguards provided by the State and Federal Constitutions.

Section 17.3 Any employee discharged may appeal such action in writing within fifteen (15) calendar days directly to the Director of Human Resources step of the grievance procedure, provided that all other requirements of Article 19 shall apply. All other disciplinary actions shall be processed through the grievance procedure from the first step.

Section 17.4 If Metro has reason to reprimand or discipline an employee, every reasonable effort shall be made to avoid embarrassment to the employee before other employees or the public.

Article 18: Safety and Health

Metro agrees to provide a safe and healthful workplace, as required by law. Metro also agrees to provide and maintain all clothing, tools and equipment required by Metro for use by the employee. (See Article 36.)

Metro and the Union will establish joint labor-management safety committees in compliance with current Oregon law and administrative rules. Joint safety committees will be established to represent the following primary places of employment:

- 1 Metro Regional Center
2. Oregon Zoo
3. All facilities under Regional Environmental Management Department control.

Metro and the Union will each elect or appoint an appropriate number of representatives and alternates to the committees specified above in accordance with the statute. Metro and the Union agree to establish new committees as required by expansion or reorganization.

Each safety committee shall inquire into and make recommendations to Metro on all safety issues in the work area. Any employee who observes an unsafe condition in the workplace shall promptly report the same to his/her supervisor. The supervisor shall promptly take appropriate action.

No employee shall be disciplined for failure to perform an unsafe work operation or operate unsafe equipment.

Article 19: Grievance Procedure

Section 19.1 A grievance for the purpose of this Agreement is any dispute regarding the meaning, application or interpretation of any provision of this Agreement. Grievances except as noted elsewhere in this Agreement shall be processed as follows:

Section 19.2 Within fifteen (15) working days of the alleged dispute or the employee's first knowledge of such dispute, the employee alone or accompanied by the Union shall file the written grievance with the employee's immediate supervisor.

Section 19.3 Within five (5) working days the supervisor shall respond in writing to the employee and Union. Failure of the supervisor to respond, or failure of the grievance to be resolved at this level, shall permit the employee or Union to advance it to the next level within five (5) working days of the deadline for the supervisor's response.

Section 19.4 Any grievance not resolved or advanced from 19.3 shall be reduced to writing on a form mutually agreed to by the parties. The employee and the Union may present the grievance in a meeting with the Director of the employee's particular Department. The Director may respond within ten (10) working days of receipt of the written grievance.

Section 19.5 Any grievance not resolved at the Director's level, or failure of the Director to respond, will allow the Union to escalate the grievance within five (5) working days of the deadline for the Director's response. It shall be filed with the Executive Officer of Metro. The Executive Officer or his/her designee shall respond within ten (10) working days of receipt of the written grievance. Failure of the Executive Officer to respond or if the grievance is not resolved it may be advanced to the next level by the Union within ten (10) working days of the deadline for the Executive Officer's response.

Section 19.6 If the parties are unable to resolve the grievance or as required elsewhere in the Agreement the Union may request binding arbitration to resolve the dispute. The Union shall request a list of five (5) arbitrators from the State of Oregon Mediation and Conciliation Service. Such request shall not prohibit the parties also requesting grievance mediation at the same time. Any mediation shall be mutually agreeable to the parties. Upon receipt of the list the parties shall select an arbitrator by mutual agreement or alternate striking of names with the Union proceeding with the first strike. The Arbitrator thus selected shall be contacted by the parties to set a hearing.

Section 19.7 The Arbitrator's decision in the grievance shall be final and binding upon the parties. The Arbitrator's decision shall be within the scope of the Agreement. The Arbitrator shall have no authority to alter, amend, modify, add to or detract from the Agreement. The losing party shall pay the cost of the Arbitrator's award. All other expenses shall be borne by the party incurring them.

Article 20: Equal Opportunity

Section 20.1 Metro and the Union agree to continue their policies of not unlawfully discriminating against any employee because of race, color, religion, sex, sexual orientation, national origin, mental or physical disability, marital status, political affiliation, or Union activity.

Section 20.2 Any complaint alleging unlawful discrimination based on race, color, religion, sex, sexual orientation, national origin, age, mental or physical disability, marital status or political affiliation which is brought to the Union for processing will be submitted directly to the ~~Executive~~ Chief Operating Officer or designee. If such a complaint is not satisfactorily resolved within thirty (30) days of its submission, it may be submitted to the Bureau of Labor and Industries for resolution.

Section 20.3 If an employee has a grievance alleging unlawful discrimination based on Union activity, it shall be first pursued through the grievance procedure at the ~~Executive~~ Chief Operating Officer's level, however, the parties may mutually agree, in writing, to waive arbitration on any such grievance allowing the matter to be resolved through the Employment Relations Board.

Article 21: Past Practice

Section 21.1 The parties recognize Metro's full right to direct the work force and to issue work orders and rules and that these rights are diminished only by the law and this Agreement.

Section 21.2 Metro may change or issue new work practices or rules covering permissive subjects of bargaining, including issuing rules over issues which are nonnegotiable and are not in conflict with or otherwise addressed in a specific provision of this Agreement.

Section 21.3 Metro agrees to bargain over any proposed changes in "Working conditions" considered mandatory subjects of bargaining, unless the subject was submitted as a written proposal during negotiations for this Agreement, in which case it cannot be opened by either party.

Section 21.4 Demand to Bargain. If the Director of Human Resources believes that the subject change is a mandatory subject of bargaining, the parties shall meet within ten (10) days of the Union's request to meet. If agreement is reached by the parties during the meeting under this Section, then the agreement shall be reduced to writing and signed by the parties.

If the Director of Human Resources believes that the subject change is a permissive or prohibited subject of bargaining, the Director of Human Resources shall inform the Union that Metro refuses to bargain the subject change within fifteen (15) calendar days of the Director of Human Resources' receipt of the demand to bargain.

The Union may then file an unfair labor practice complaint with the Employment Relations Board. If the Board determines that the change is a permissive or prohibited subject of bargaining, the Union shall withdraw its demand to bargain. If the Board determines the change is mandatory, the parties shall meet to negotiate the change. If, after bargaining, the parties do not reach agreement, the Union may submit the matter to arbitration. The arbitrator shall have authority to set aside changes which are arbitrary and capricious. The notice must be received by the Director of Human Resources within fifteen (15) days immediately following the last date the parties met to negotiate the change. Nothing herein is intended to prevent the parties from agreeing, on a case-by-case basis, to resolve matters covered by this Article through a collaborative interest-based process.

Article 22: Personnel File

Section 22.1 Metro shall maintain one (1) official personnel file for all employees. This file shall be maintained in the Metro Human Resources Office. No document, report or correspondence of an adverse nature shall be placed in this file without a signature by the employee or a statement signed by the supervisor which indicates the employee has been shown the document and refused to sign it. An employee's signature shall not be construed to mean the employee agrees with the content.

Section 22.2 All material in the official personnel file of any employee may be inspected by the affected employee. No material of an adverse nature may be used against an employee unless entered in the official Metro file as described in subsection 22.1. An employee upon request shall have the right to view all material in the employee's personnel file.

Section 22.3 All disciplinary material shall be expunged from the personnel file two (2) years from the date the material was entered, provided that the employee has received no other disciplinary action. Periodic performance appraisals shall permanently remain part of the official personnel file. Supervisors may elect to remove disciplinary material from an employee's personnel file prior to the end of the 2-year period specified above. Any material of an adverse nature shall be removed if not entered in accordance with subsection 22.2. Employees may include in their official personnel file any material rebutting disciplinary material that they believe to be incorrect. Grievances shall not be maintained in the personnel file.

Section 22.4 A written record of an oral reprimand may be included in the personnel file as disciplinary material subject to the restrictions specified in 22.3. Such a written record will consist only of the date of the reprimand and a brief one-two sentence statement of the reason for the reprimand.

Article 23: Outside Employment

Employees may engage in outside employment, provided that such outside employment does not:

1. Create a conflict of interest with the employee's Metro duties; and
2. Create an inability to perform employee's job duties at Metro.

Employees who engage in outside employment which is found to violate the above restrictions and who have failed to notify their department director of such employment shall be discharged.

Article 24: Union Rights

Section 24.1 Bulletin Boards: Metro agrees to furnish and maintain suitable bulletin boards in convenient places in each work area to be used by the Union. The Union shall limit its posting of notices to such bulletin boards. All posting of notices on bulletin boards by the Union shall be signed and dated by the individual doing the posting. Each bulletin board will have a sign designating a specific AFSCME posting area.

Union bulletin boards will be placed as follows:

Metro Regional Center:

Employee Lounge/Lunchroom	4th floor
Transportation Planning Department	3rd floor west wall across from the coffee area - east wing
Regional Environmental Management <u>Solid Waste and Recycling</u> Department	2nd floor west wall across from the coffee area - east wing
Administrative Services Department	2nd floor coffee/copy room - north wall - west wing
Regional Parks and Greenspaces Department	1st floor hallway
Gatehouse <u>Scalehouses</u>	Each site
<u>Hazardous Waste Facilities</u>	<u>Each site</u>
Zoo	Administration Office <u>area</u> <u>Administrative Office</u> <u>Building and Cascade Crest</u> <u>Staff Area</u>

~~Each bulletin board will have a sign designating a specific AFSCME posting area. Members must confine their posting to these areas.~~

Section 24.2 Union Representatives: The Union shall appoint and certify the names of shop stewards to Metro.

Shop stewards shall be allowed to investigate and process grievances during working hours. In the event such activities would interfere with either the steward's or employee's work Metro

agrees to arrange a mutually agreeable time within seventy-two (72) hours. The steward must notify his/her supervisor prior to engaging in Union activity.

Article 25: Savings Clause

Should any Article, Section or portion thereof of this Agreement be held unlawful and unenforceable by any court of competent jurisdiction, such decision shall apply only to the specific Article, Section or portion thereof directly specified in the decision. Upon the issuance of any such decision, the Parties agree immediately to negotiate a substitute, if possible, for the invalidated Article, Section or portion thereof. All other portions of this Agreement and the Agreement as a whole shall continue without interruption for the term of this Agreement.

Article 26: Child Care

Section 26.1 Metro shall establish under the terms of Section 129 of the IRS Code, as a pre-tax benefit, a voluntary deduction by the employee to a flexible spending account for childcare.

Article 27: Employee Assistance Program (EAP)

Metro shall provide at no cost to the employee an employee assistance program, subject to approval of funding by the Metro Council.

Article 28: Inclement Weather

Section 28.1 Upon determination of the Executive Officer or the Executive Officer's designee, that inclement weather conditions exist, and such determination results in the decision to open later than regularly scheduled hours or close any Metro site to send the staff home before the end of their normal shift, those employees shall receive pay for a regular shift.

Article 29: Recoupment of Wage and Benefit Overpayments & Underpayments

Section 29.1 Overpayments.

- (1) In the event that an employee receives wages or benefits from Metro to which the employee is not entitled, regardless of whether the employee knew or should have known of the overpayment, Metro shall notify the employee in writing of the overpayment which will include information supporting that an overpayment exists and the amount of wages and/or benefits to be repaid. For purposes of recovering overpayments by payroll deduction, the following shall apply:
 - (A) Metro may, at its discretion, use the payroll deduction process to correct any overpayment made within a maximum period of two (2) years before the notification.
 - (B) Where this process is utilized, the employee and Metro shall meet and attempt to reach mutual agreement on a repayment schedule within thirty (30) calendar days following written notification.
 - (C) If there is no mutual agreement at the end of the thirty (30) calendar day period, Metro shall implement the repayment schedule stated in subsection (D) below.
 - (D) If the overpayment amount to be repaid is more than five percent (5%) of the employee's regular monthly base salary, the overpayment shall be recovered in monthly amounts not exceeding five percent (5%) of the employee's regular monthly base salary. If an overpayment is less than five percent (5%) of the employee's regular monthly base salary, the overpayment shall be recovered in a lump sum deduction from the employee's paycheck. If an employee leaves Metro service before Metro fully recovers the overpayment, the remaining amount may be deducted from the employee's final check.
- (2) An employee who disagrees with Metro's determination that an overpayment has been made to the employee may grieve the determination through the grievance procedure.
- (3) This Article does not waive Metro's right to pursue other legal procedures and processes to recoup an overpayment made to an employee at any time.

Section 29.2 Underpayments.

- (1) In the event the employee does not receive the wages or benefits to which the record/documentation has for all times indicated the employer agreed the employee was entitled, Metro shall notify the employee in writing of the underpayment. This notification will include information showing that an underpayment exists and the amount of wages and/or benefits to be repaid. Metro shall correct any such underpayment made within a maximum period of two years before the notification.

- (2) This provision shall not apply to claims disputing eligibility for payments which result from this Agreement. Employees claiming eligibility for such things as leadwork, work out of classification payor reclassification must pursue those claims pursuant to the timelines elsewhere in this Agreement.

Article 30: Contracting Out

In the event that a Metro decision to contract out work normally performed by bargaining unit members would result in a reduction of hours for, or the layoff of bargaining unit members, Metro shall provide the Union with notice of its intent to contract out and shall, upon demand, bargain the impact of such a decision.

Article 31: Education and Training

Section 31.1 Metro and AFSCME Local 3580 share a desire to retain a skilled workforce. To the extent possible, Metro will make available to regular employees, including support and technical staff, current information about available training opportunities.

Section 31.2 Job-related training for employees may be conducted both during and outside of an employee's work schedule. When an employee's attendance is required by Metro, she/he shall be notified in writing and shall be paid for the time as time worked. When a regular status employee requests job related training/education, the request shall be made in writing to his/her Department Director. Department Directors have the discretion to approve or deny the request. Department Directors may agree to provide financial assistance and/or paid leave to employees who request to participate in job-related training/educational programs. Department Directors may deny requests based on, but not limited to, operating requirements, priorities or budget limitations.

Section 31.3 Metro may offer in-house training for employees to improve their knowledge, skills and abilities to perform their job.

Article 32: Job Sharing

Section 32.1 "Job Sharing Position" means a full-time position that may be held by more than one individual on a shared-time basis where each of the individuals holding the position works less than full time.

Section 32.2 Job sharing is voluntary. An employee who wishes to participate in job sharing shall submit a written request to his/her supervisor and the Human Resources Director. The Human Resources Director shall register the requesting employee by name, department, classification and date of request. When a hiring manager requests to fill a vacant position by "job share," the internal recruitment will include that the position is a job share opportunity.

Section 32.3 Job sharing employees shall accrue vacation leave, sick leave, and holiday pay based on a prorated share of hours worked in a month during which the employee has worked thirty-two (32) hours or more. Individual salary review dates will be established for job share employees. Job share employees shall be entitled to share the employer-paid insurance for one (1) full-time position based on a prorate of regular hours scheduled per week or per month, whichever is appropriate. In any event, the employer contribution for insurance benefits in a job share position is limited to the amount authorized for one (1) full-time employee.

Section 32.4 If one (1) job sharing partner in a job sharing position is removed, dismissed, resigns, or otherwise is separated from Metro employment, the hiring supervisor has the right to determine if job sharing is still appropriate for the position. If it is determined that job sharing is not appropriate or Metro is unable to recruit qualified employees for the job share position, Metro shall have the right to terminate the job sharing arrangement. In such event, the remaining job share partner shall have the following options: (1) assume the position on a full-time basis; (2) request a lateral transfer to a vacant part-time position for which he/she is qualified; or (3) voluntarily demote to a vacant part-time position for which he/she is qualified.

Article 33: Flex Time

Section 33.1 "Flex Time" is defined as an alternate work schedule for regular full-time employees which accommodates Metro's operating requirements. Flex time begins no earlier than 7:00 a.m. and ends no later than 6:00 p.m. Exceptions shall be mutually agreed to in writing between the supervisor and the employee(s). Flex time will not impair Metro's need to meet operating requirements through assigned overtime or other similar scheduling. Flex time may be canceled with seven (7) days notice to the employee(s).

Section 33.2 An employee or a group of employees in the same work unit desiring a flexible work schedule or a change in work schedule may request such a change in writing from his/her/their supervisor. The request shall include benefits to Metro of the requested schedule. If the supervisor approves the flexible work schedule, the employee(s) waives all rights to reporting pay, overtime compensation or other forms of penalty pay during the transition from one schedule to another to the maximum extent permitted by the FLSA.

Article 34: CDL Policy

Section 34.1 In the event that any AFSCME-represented employees are assigned duties which require a Commercial Drivers License (CDL), those employees shall be subject to the CDL Drug and Alcohol Policy Policies currently required by the Federal Department of Transportation, applicable to Metro's employees who are represented by the Laborers International Union Local 483.

Article 35: Smoke-Free Building

The parties hereby agree that the Metro Regional Center building is a smoke free area in which smoking is not permitted.

Article 36: Clothing Allowances

A. REMSolid Waste & Recycling (SW&R)

It is agreed by the Union and Metro that for ~~For Scalehouse Clerks, Hazardous Waste Technicians, and Hazardous Waste Specialists, Landfill and Environmental Specialist and Technicians, REM Facilities Maintenance Technicians,~~ Metro will, in each year of the Contract, provide the following uniform:

Five (5) pairs of pants/Shorts (\$125.00 Per Year)

Five (5) shirts

Two (2) sweaters

One (1) belt

One (1) pair of shoes (\$75 per year)

One (1) pair per year of shoes for Hazardous Waste Technicians and Specialist, Landfill Technicians and Specialist (up to \$125).

One (1) winter jacket (\$45 per year, with option to combine up to two years).

The five shirts may be selected from three styles: short-sleeve, long-sleeve pleated front and long-sleeve plain front at the employee's option. Metro will determine the style and color of the uniform; any changes to the style and color of the uniform and reasonable rules concerning the maintenance and wearing of the uniform shall be made at the discretion and direction of the site supervisor. Changes in the uniform rules will be posted with due notice. Metro retains the right to alter, amend or discontinue this practice of providing uniforms at its sole discretion.

Normal wear and tear is expected and any uniforms that are damaged or suffer unusual wear due to the performance of on-the-job duties will, at the discretion and direction of the site supervisor, be replaced by Metro. Uniforms are to be provided for wear during work hours, including travel to and from the job site, and may not be worn at any other time. Each employee who receives a uniform will be granted ~~\$45~~ \$17 (\$17.50 on July 1, 2005 and \$18 on July 1, 2006) per month to clean and care for the uniform to be paid to each employee once per month.

Employees who have special needs may at their option select different fabric types or sizes to accommodate these needs. If the cost of the special uniforms is higher than the uniform provided by Metro, the employee will pay the difference.

Employees shall promptly deliver all Metro uniform items issued to them in the preceding 12-month period upon termination. Failure to return any uniform items shall result in the replacement cost being assessed against the employee.

B. Zoo Security

It is agreed by the Union and Metro that for ~~For~~ Security Officers, Metro will provide the following items and replace them as stated below. These items will constitute the uniform to be worn while on duty.

~~TO BE REPLACED BY METRO EVERY TWELVE (12) MONTHS:~~To be replaced by Metro every twelve (12) months.

Four (4) pairs of trousers (employee's choice of winter or summer weight)

One-two (1-2) pairs of black shoes (\$70.00 allowance per year)

~~TO BE REPLACED BY METRO EVERY TWENTY-FOUR (24) MONTHS:~~To be replaced by Metro every twenty-four (24) months.

~~One (1) winter jacket~~

One (1) summer windbreaker jacket

Six (6) shirts (employee's choice of long or short sleeve)

One (1) winter cap (washable and rainproof)

Replaced as needed due to wear and tear: Winter Jacket

The items listed above will be of such quality as to remain serviceable for the applicable twelve- ~~(12)~~ or twenty-four ~~-(24)~~ month period, under normal conditions. Items damaged in the line of duty will be repaired or replaced by Metro. There will be an annual dry-cleaning allowance of ~~\$15.00~~17.00 (\$17.50 on July 1, 2005) to clean the winter jacket. There will be a monthly allowance of ~~\$15.00~~17.00 (\$17.50 on July 1, 2005 and \$18 on July 1, 2006) for laundering and maintenance of the other uniform pieces. Both uniform allowances will be paid to each security officer by Metro. It will be the responsibility of each security officer to care for the equipment, to keep uniforms neat, clean, relatively wrinkle-free, and maintain good personal hygiene; all in keeping with the portrayal of a positive Oregon Zoo representative. Security Officers will be responsible for purchasing the shoes and Metro will reimburse them after being presented with receipt of purchase. Security Officers may combine two year's worth of the ~~\$70.00~~75.00 per year shoe allowance in order to purchase a shoe of better quality.

The following uniform equipment will be provided to each security officer by Metro and, with average wear and tear, be replaced by Metro as needed.

One (1) officer notebook and case

One (1) nylon duty belt

One (1) badge

One (1) nameplate

One (1) mini-maglite flashlight and holster

One (1) glove pac (for minor first aid)

One (1) CPR mask

One (1) security office access key
Ten (10) shoulder patches
One (1) flashlight holder
One (1) key ring holder with protector

- C. ~~For both REMSW&R and Zoo employees, the \$15 monthly allowance for laundering and maintenance shall be increased on July 1, 1997, and July 1, 1998 by 100% of the National CPI-W (1982-84 = 100), measured from March to March of the preceding year. Metro will provide a monthly allowance of \$17.00 for laundering and maintenance upon ratification of the agreement. Metro will provide a monthly allowance of \$17.50 beginning on July 1, 2005 and \$18 beginning on July 1, 2006.~~

Article 37: Joint Labor Management Committee

To improve communications and further each party's commitment to solving problems and improve relations (including but not limited to employee/management relations), the parties agree to create, a joint labor/management committee within Metro, as further agreed between the parties.

The committee will consist of three (3) employee members appointed by the Union and three (3) members of management. Employees appointed by the Union will be in pay status during the time spent in committee meetings. Time spent in committee meetings shall neither be charged to leave credits nor considered as overtime worked. The committee shall meet as mutually agreed.

The committee may use the interest-based problem solving method to reach consensus. The parties will share the costs of training of the committee members in interest-based problem solving.

Other labor/management committees may be mutually created as required by this agreement, or as deemed necessary by the parties (e.g. JLMC on Health and Welfare insurance).

It is understood by the parties that the committee shall be on a "meet and confer" basis only and shall not have the authority to negotiate amendments to this Agreement or other mandatory or permissive subjects of bargaining. Matters which may require a letter of agreement shall not be implemented until such Letter of Agreement has been signed by the Labor Relations Manager and the AFSCME Council Representative.

Matters which should be resolved through the grievance and arbitration procedure shall be handled pursuant to that procedure. Disciplinary actions shall not be discussed by committees.

Article ~~37~~38: Term of Agreement

This Agreement shall remain in full force and effect from July 1, ~~2002~~2004, to June 30, ~~2004~~2007. Either party may give written notice sixty (60) days prior to the expiration of the Agreement of its intention to renegotiate the terms and provisions of this Agreement.

Signature Page

METRO NEGOTIATING TEAM:

By _____
Michael Jordan
Chief Operating Officer

By _____
Ruth Scott
Human Resource Director

By _____
Kevin B. Dull
Labor & Employee Relations
Manager

By _____
Lee Barrett
Solid Waste & Recycling
Representative

By _____
Nancy Chase
Parks & Greenspaces
Representative

By _____
Carmen Hannold
The Oregon Zoo Representative

By _____
Jenny Kirk
Planning Representative

By _____
Brad Stevens
Finance & Administrative
Services Representative

**AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL
EMPLOYEES LOCAL NO. 3580**

AFSCME NEGOTIATING TEAM:

By _____
Issa Simpson
Council Representative

By _____
Cathy Thomas
President

By _____
Avory Gray

By _____
Denise Hays

By _____
Debbie Humphreys

By _____
David Horowitz

Date _____

APPENDIX A: LETTER OF AGREEMENT REGARDING TELECOMMUNTING

The parties agree to the terms of Executive Order No. 52 regarding telecommuting, a copy of which is attached.

METRO NEGOTIATING TEAM:

By: Judy Gregory
Judy Gregory
Date: 8-15-96

By: Mark B. Williams
Mark B. Williams
Date: 7/28/96

By: Gail McKenzie
Gail McKenzie
Date: 8-15-96

By: Terry Petersen
Terry Petersen
Date: 8/15/96

AFSCME NEGOTIATING TEAM:

By: Yvonne Martinez
Yvonne Martinez
Date: 8/15/96

By: Cathy Thomas
Cathy Thomas
Date: 8/15/96

By: Ron Sarver
Ron Sarver
Date: 8-15-96

By: Denise Hays
Denise Hays
Date: 8-15-96

EXECUTIVE ORDER NO. 52

EFFECTIVE DATE: December 16, 1994

SUBJECT: TELECOMMUTING

Definition: Telecommuting is defined as transportation and work alternatives that substitute home-to-work commuting with working at home or at satellite work locations as authorized by a supervisor.

Policy Statement: Metro supports authorized telecommuting by employees to reduce energy used in transportation, to decrease traffic congestion, to improve air quality, and to improve the environment.

This policy addresses telecommuting on a part-time basis, generally one to two days per week or for special projects as assigned. It does not set conditions for home based employees, whose primary place of business is their home.

Telecommuting does not include temporary work at home due to specific employee situations such as child care, recovering from an illness or caring for an ill family member. Such situations should be arranged between the employee and his/her supervisor. This policy will comply with all applicable provisions of the Americans With Disabilities Act (ADA).

CONDITIONS: To ensure an effective, productive telecommuting program, Metro establishes the following policies:

A. GENERAL

1. Professionalism in terms of job responsibilities, work products, customer or public contact will continue to follow the same high standards as currently are being met by Metro staff.
2. Metro is committed to the telecommuting program and will enhance network access from remote locations. However, current system constraints may not guarantee modem access to the system.
3. Telecommuting is not suitable for all employees and/or positions. Any employee who wants to telecommute must discuss the request with his/her supervisor. The supervisor will make the final decision about telecommuting and suitability. A supervisor may terminate an authorized telecommuting situation at any time.
4. To be eligible to participate, an employee must have completed the probationary period in his/her current position. Employee participation in Metro's telecommuting program is voluntary.

5. Telecommuters must be self-motivated, have minimal requirements for face-to-face daily supervision, and must be conscientious about work time and productivity.
6. Employee salary/wages, benefits, and employer-sponsored insurance coverage will not change as a result of telecommuting.
7. A telecommuting employee's conditions of employment remain the same as for non-telecommuting employees.
8. Telecommuting is not a substitute for child care. Telecommuters shall make appropriate child care arrangements during the agreed-upon telecommuting work hours.
9. Trips between the employee's home and primary work location are not reimbursable.
10. While telecommuting, the employee should be reachable by telephone, fax, network access, or E-Mail during agreed-upon work hours. The employee and supervisor will agree on how to handle phone messages, including the feasibility of call forwarding, voice-mail, frequency of checking phone messages, and feasibility of having a home phone answering machine.
11. More specific conditions relating to the employee's telecommuting are detailed in the Telecommuting Agreement (Attachment 1), which must be filled out by the employee and his/her supervisor prior to the start of telecommuting.

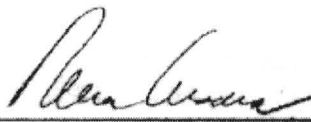
B. HOME OFFICE

1. A designated home work space shall be maintained by the telecommuter that is quiet, free of distractions and kept in a clean, professional and safe condition, with adequate lighting and ventilation.
2. Since the employee's home work space is an extension of Metro work space, Metro's liability for job-related accidents or injuries will continue to exist during the approved work schedule and the employee's designated work location. To ensure that safe working conditions exist, Metro retains the right to make on-site inspections of the home work space at mutually agreed upon times.
3. A consistent schedule of telecommuting work days and hours is desirable for many jobs to ensure regular and predictable contact with Metro staff and others. For some positions, more flexibility in work hours and days is


feasible. A specific work schedule will be stated in the Telecommuting Agreement and must be authorized by the supervisor.

C. SUPPLIES AND EQUIPMENT

1. Office supplies will be provided by the employee's department. Out-of-pocket expenses for supplies normally available in the department will not be reimbursed.
2. Metro will not provide office furniture for telecommuters.
3. The following conditions shall apply to use of computers, software and other equipment:
 - a. In most instances, the telecommuter will provide his/her own equipment. Use of Metro equipment will be decided by the supervisor. Metro equipment in the home office may not be used for personal purposes.
 - b. Metro-owned software shall not be duplicated.
 - c. The telecommuter and supervisor will comply with the Using Business Software Home Directive in the Computer Handbook published by ISD.
 - d. The home computer must be plugged into a surge protector and have current virus protection maintained on it.
 - e. Restricted-access materials shall not be taken out to the office or accessed through the computer unless approved in advance by the supervisor.
 - f. Unless otherwise agreed to in writing prior to any loss, damage, or wear, Metro does not assume liability for loss, damage, or wear of employee-owned equipment.



Rena Cusma, Executive Officer



Dated

Attachment A

Executive Order No.: 52

METRO TELECOMMUTING AGREEMENT

**THESE CONDITIONS FOR TELECOMMUTING ARE AGREED UPON BY THE
EMPLOYEE AND SUPERVISOR:**

1. The employee agrees to work at the following location (please describe designated work area, e.g. home office, isolated section of the living room, etc.):

2. The employee's usual telecommuting work hours will be:

3. The following are typical assignments to be worked on by the employee at the remote work location:

4. Business telephone calls, including long distance telephone calls between the employee's home and primary office, made from the home will be paid as follows (e.g. Department credit card; employee reimbursement, etc.):

5. The decision whether to install a telephone line to the home for a personal computer will be made between the supervisor and employee. If such a line is installed, the expenses will be handled as follows:

6. Data calls made from the home with a personnel computer will be reimbursed as follows:

7. The following equipment will be used by the employee in the remote work location (please specify whether equipment is Metro or employee owned):

8. Employee agrees to call the office to obtain messages at least ____ times per day while working at home. Employee (agrees) (does not agree) to have a home answering machine, paid for by the employee, for messages. (Write in the specific agreement for phone availability of the employee):

9. Employee agrees to participate in Metro-provided telecommuting training.

10. Employee agrees to participate in Transportation Planning's evaluation of telecommuting including mileage logs and completion of questionnaires and other surveys.

11. Employee agrees to allow Metro to inspect the employee's designated work location at mutually agreed upon times to ensure that safe working conditions exist.

12. Additional conditions agreed upon by the telecommuting employee and the supervisor areas follows (e.g. child care arrangements, need of employee to attend meetings as necessary, etc):

This Agreement is subject to cancellation by the supervisor at any time as stated in the Telecommuting Executive Order No. 52.

I have read and understand Metro's telecommuting policies and agree to the conditions detailed.

Date _____

Employee Signature _____

Supervisor Signature: _____

Department Director _____

cc: Employee's Personnel File

APPENDIX B: LETTER OF AGREEMENT REGARDING LABOR/MANAGEMENT COMMITTEES

To improve communications and further each party's commitment to solving problems and improving relations, the parties agree to create, on a pilot basis, joint labor/management committees within Metro, as further agreed between the parties.

Each committee will consist of three (3) employee members appointed by the Union and three (3) members of management. Employees appointed by the Union will be in pay status during the time spent in committee meetings. Time spent in committee meetings shall neither be charged to leave credits nor considered as overtime worked.

The committees will use the interest-based problem-solving method to reach consensus. The parties will share the costs of training of the committee members in interest-based problem solving.

It is understood by the parties that the committees shall be on a "meet and confer" basis only and shall not have the authority to negotiate amendments to this Agreement or other mandatory or permissive subjects of bargaining. Matters which may require a letter of agreement shall not be implemented until such Letter of Agreement has been signed by the Human Resources and the AFSCME Council Representative. It is the intention of the parties to discuss workload issues and the institution of the deposit in the labor/management committee forum.

Matters which should be resolved through the grievance and arbitration procedure shall be handled pursuant to that procedure. Disciplinary actions shall not be discussed by the committees.

At the conclusion of the term of this contract, the parties will discuss the concept of labor/management committees and whether they should be modified continued or discontinued.

METRO NEGOTIATING TEAM

By: Judy Gregory
Judy Gregory
Date: 8-15-96

By: Mark B. Williams
Mark B. Williams
Date: 7/26/96

By: Gail McKenzie
Gail McKenzie
Date: 8-15-96

By: Terry P. Harner
Terry P. Harner
Date: 8/15/96

AFSCME NEGOTIATING TEAM:

By: Yvonne Martinez
Yvonne Martinez
Date: 8/15/96

By: Cathy Thomas
Cathy Thomas
Date: 8/15/96

By: Ron Sarver
Ron Sarver
Date: 8-15-96

By: Denise Hays
Denise Hays
Date: 8-15-96

APPENDIX C: LETTER OF AGREEMENT REGARDING TDM PROGRAM

The parties agree to extend the applicable Transportation Demand Management Program to off-site facilities, with the exception of the Zoo, on a pilot basis. On the effective date of the institution of fee for parking only at the Zoo, all of the following provisions shall apply. The off-site program will consist of the following:

Metro Trans Token:

\$20 worth of bus tickets (redeemable at the Metro Regional Center) or \$20 applied to a monthly pass if employees use transit as the primary mode to get to work 80% of the month.

Bicycle/Walk Certificate:

\$20 certificate for merchandise at selected vendors for those employees who bicycle or walk from home to work 80% of the month.

Combination:

Employees who use a combination of transit, bike, or walking as the primary mode to get to work 80% of the month can choose between the Trans token or the bicycle/walk certificate.

Carpooling:

If and when an off-site facility, except the Zoo, charges a fee for parking, employees who certify they are carpooling with one or more licensed driver(s) and park at a Metro facility, will be eligible for a reduced parking rate of \$10 per month for each person in the carpool.

Guaranteed Ride Home:

For employees who carpool, use transit, walk or bike to work, Metro will pay for a taxi ride home if the need arises to leave work unexpectedly or stay late due to job demands or an emergency. ~~A voucher will be available at each work site for this use.~~ Employees will be reimbursed.

Others:

For the duration of this Agreement, every attempt will be made to extend any new TDM elements to off-site employees, except the Zoo.

Zoo:

AFSCME Local 3580 employees are eligible for the Zoo's TDM program.

METRO NEGOTIATING TEAM:

By: Judy Gregory
Judy Gregory
8-15-96

By: Mark B. Williams
Mark B. Williams
Date: 8/28/96

By: Gail McKenzie
Gail McKenzie
Date: 8-15-96

By: Terry Petersen
Terry Petersen
8/15/96

AFSCME NEGOTIATING TEAM:

By: Yvonne Martinez
Yvonne Martinez
Date: 8/15/96

By: Cathy Thomas
Cathy Thomas
Date: 8/15/96

By: Ron Sarver
Ron Sarver
Date: 8-15-96

By: Denise Hay
Denise Hay
Date: 8-15-96

APPENDIX D: Zoo Security – Trades

Shift Trades may be made by mutual agreement between the employees. Individual trades of full or partial shifts may be made under the provisions of the Fair Labor Standards Act.

Trades must be approved by the supervisor of the employee originally assigned the shift to be traded.

Employees may agree to time trades with other employees who are qualified to perform the duties required in the course of the trade. Such agreement shall be in writing and signed by the affected employees. Supervisors shall not withhold approval of time trades without valid cause. If a trade is denied a brief explanation shall be provided on the request form which will then be returned to the employee. Employees may not work more than one double per week, nor make trades that routinely change the shift they bid per the shift bidding process.

Where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

Trades are not subject to formal record keeping by Metro. Records of trade time worked and owed are the responsibility of the employees involved in the trade. Metro is not responsible, nor can it be held liable, for disputes between employees over time owed as a result of trades. Metro cannot be held responsible for the balancing of trade accounts.

Employees are responsible for ensuring that their assigned shifts are covered.

If the employee who has agreed to work for another in trade does not report to work, the employee originally assigned the shift will be credited as if he or she had worked his or her normal work schedule for that shift. The employee who did not report to work as part of an approved substitution agreement shall have the equivalent amount of time removed from his or her annual leave accrual, and if not, from future annual leave accrual until the deficit is erased.

Failure to work a trade twice in six months shall result in termination of all trade privileges for the subsequent six months. Failure to fulfill a trade may also result in the termination of trade privileges and/or disciplinary action.

Nothing in this Agreement prevents management from approving individual trades of full or partial shifts for all Metro employees according to the provisions of the Fair Labor Standards Act. Employees who are not subject to the shift bid process, may with their supervisor's approval, trade schedules with other employees.

This Agreement shall expire upon the conclusion of the 2004-() collective bargaining agreement.

Exhibit A: Metro AFSCME Pay Schedule

(ANNUAL RATE BASED ON 2000 HOURS PER YEAR FOR EXEMPT EMPLOYEES)

Pay Range	Job Code	Classification	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
01N	6012*	Office Assistant	9.46	9.93	10.42	10.97	11.51	12.08	12.69
	6003*	Visitor Services Worker III							
02N			9.93	10.42	10.97	11.51	12.08	12.69	13.32
03N	0037*	Accounting Technician I	10.42	10.97	11.51	12.08	12.69	13.32	13.99
	0018*	Receptionist							
	0538*	Safety & Security Officer 1							
04N			10.97	11.51	12.08	12.69	13.32	13.99	14.69
05N	0364*	Graphics Technician	11.51	12.08	12.69	13.32	13.99	14.69	15.42
	0040*	Program Assistant 1							
	0022*	Secretary							
06N	0539*	Safety and Security Officer 2	12.08	12.69	13.32	13.99	14.69	15.42	16.19
	0013*	Scalehouse Technician							
07N	0038*	Accounting Technician II	12.69	13.32	13.99	14.69	15.42	16.19	17.01
	0015*	Building Service Worker							
	0006*	Food Service/Retail Specialist							
	0330*	Planning Technician							
	0050*	Printing/Mail Services Clerk							
08N	0021*	Administrative Secretary	13.32	13.99	14.69	15.42	16.19	17.01	17.84
09N	0014*	Lead Scalehouse Technician	13.99	14.69	15.42	16.19	17.01	17.84	18.76
	0051*	Printing/Mail Services Lead							
	0042*	Program Assistant 2							
10N	0036*	Accounting Specialist	14.69	15.42	16.19	17.01	17.84	18.76	19.67
	0005*	Storekeeper							
10E	0031	Administrative Assistant	30,669.22	32,218.19	33,814.78	35,506.72	37,270.15	39,152.72	41,082.94
		* Non-exempt classification							
		Employees in this class are eligible to receive overtime compensation							

Effective: 07/01/2002 - 06/30/2003

Revised: 11/22/2002

COLA: 2.3% (07/01/2002)

by Lena L. Bannick

METRO
AFSCME PAY SCHEDULE
(Annual Rate Based on 2080 Hours Per Year for Exempt Employees)

Pay Range	Job Code	Classification	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
11N			15.42	16.19	17.01	17.84	18.76	19.67	20.66
	0016*	Building Service Technician				17.84	18.76	19.67	20.66
	0020*	Maintenance Equipment Operator				17.84	18.76	19.67	20.66
12N	0054*	Education Coordinator I	16.19	17.01	17.84	18.76	19.67	20.66	21.73
	0331*	Hazardous Waste Technician							
	0055*	Landfill & Environmental Technician							
	0052*	Latex Operations Technician							
	0329*	Management Technician							
	0053*	REM Facilities Maintenance Technician							
12E	0329	Management Technician	33,814.78	35,506.72	37,270.15	39,152.72	41,082.94	43,156.16	45,348.51
	0023	Program Coordinator							
	0056	Records & Information Analyst							
	0639	Video and Photography Technician							
13N	0633*	Technical Assistant	17.01	17.84	18.76	19.67	20.66	21.73	22.79
	0057*	Technical Specialist I							
14N	0059*	Technical Specialist II	17.84	18.76	19.67	20.66	21.73	22.79	23.93
	0058*	Volunteer Coordinator I							
14E		Asst Creative Services Specialist	37,270.15	39,152.72	41,082.94	43,156.16	45,348.51	47,588.54	49,971.54
	0333	Asst Management Analyst							
	0338	Asst Public Affairs Specialist							
	0060	Education Coordinator II							
	0360	Graphics/Exhibit Designer							
	0061	Systems Analyst I							
15E	0306	Assistant Engineer	39,152.72	41,082.94	43,156.16	45,348.51	47,588.54	49,971.54	52,497.53
	0354	Assistant Regional Planner							
	0343	Assistant Solid Waste Planner							
	0348	Assistant Transportation Planner							
	0062	Systems Administrator I							
16N	0332*	Hazardous Waste Specialist	19.67	20.66	21.73	22.79	23.93	25.14	26.38
	0064*	Landfill & Environmental Specialist							
	0063*	Latex Operations Specialist							

* Non-exempt classification
Employees in this class are eligible to receive overtime compensation

Effective: 07/01/2002 - 06/30/2003

Revised: 11/22/2002

COLA: 2.3% (07/01/2002)

by Lena L. Bannick

METRO
AFSCME PAY SCHEDULE
(Annual Rate Based on 2080 Hours Per Year for Exempt Employees)

Pay Range	Job Code	Classification	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
16E	0334	Associate Management Analyst	41,082.94	43,156.16	45,348.51	47,588.54	49,971.54	52,497.53	55,094.99
	0339	Associate Public Affairs Specialist							
	0039	Senior Accountant							
	0066	Systems Analyst II							
	0065	Volunteer Coordinator II							
17E	0307	Associate Engineer	43,156.16	45,348.51	47,588.54	49,971.54	52,497.53	55,094.99	57,859.26
	0355	Associate Regional Planner							
		Associate Solid Waste Planner							
	0344	Planner							
	0349	Associate Transportation Planner							
18E	0067	Systems Administrator II							
	0335	Senior Management Analyst	45,348.51	47,588.54	49,971.54	52,497.53	55,094.99	57,859.26	60,742.71
	0340	Senior Public Affairs Specialist							
	0069	Systems Analyst III							
	0068	Web Master							
19E	0365	Real Estate Negotiator	47,588.54	49,971.54	52,497.53	55,094.99	57,859.26	60,742.71	63,792.95
	0308	Senior Engineer							
	0070	Systems Administrator III							
20E	0476	Construction Coordinator	49,971.54	52,497.53	55,094.99	57,859.26	60,742.71	63,792.95	66,962.35
	0356	Senior Regional Planner							
	0345	Senior Solid Waste Planner							
	0350	Senior Transportation Planner							
	0071	Systems Analyst IV							
21E	0072	Systems Administrator IV	52,497.53	55,094.99	57,859.26	60,742.71	63,792.95	66,962.35	70,310.46
22E	0357	Principal Regional Planner	55,094.99	57,859.26	60,742.71	63,792.95	66,962.35	70,310.46	73,825.98
	0346	Principal Solid Waste Planner							
	0351	Principal Transportation Planner							

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3515, FOR THE PURPOSE OF RATIFYING THE 2004-2007 COLLECTIVE BARGAINING AGREEMENT BETWEEN AFSCME LOCAL 3580 AND METRO.

Date: November 18, 2004

Prepared by: Kevin B. Dull

BACKGROUND

This resolution is submitted to ratify the tentative agreement between AFSCME 3580 and Metro for the period July 1, 2004 through June 30, 2007. Total membership in AFSCME 3580 is 256 employees. Under this three-year agreement the following key economic work conditions have been agreed to:

I. Wages - Cost-of-Living Adjustments:

- a. 2004-05 - 2.7% for lowest paid, 1.8% for highest paid (beginning on Sept. 1, 2004). This CoLA adjustment equals a 2% across the board adjustment for all current employees.
- b. 2005-06 - 1.5-3.5% (based on CPI-U Portland-Salem)
- c. 2006-07 - 1.5%-3.5% (based on CPI-U Portland-Salem)
- d. Reimbursement for 2004 out-of-pocket health insurance of \$337.50 per member.

II. Health insurance - Employer contribution caps of:

- a. 2004-05 - \$629.50
- b. 2005-06 - \$692.50
- c. 2006-07 - \$727.50

ANALYSIS/INFORMATION

- 1. **Known Opposition:** none
- 2. **Legal Antecedents:** Previously ratified AFSCME 3580 collective bargaining agreements.
- 3. **Anticipated Effects:** Metro operations will continue uninterrupted.
- 4. **Budget Impacts:** For the current year beginning July 1, 2004, the wages increase and the health insurance cap for medical costs is accounted for in the 2004-05 budget passed by Council.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of the resolution.

Resolution No. 04-3498, For the Purpose of Endorsing Regional Priorities For a State Transportation Funding Package.

Metro Council Meeting
Thursday, November 18, 2004
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENDORSING	)	RESOLUTION NO. 04-3498
REGIONAL PRIORITIES FOR A STATE)	
TRANSPORTATION FUNDING PACKAGE	)	Introduced by Councilor Rod Park

WHEREAS, an efficient and adequately funded transportation system is critical to ensuring a healthy economy and livable communities throughout the state of Oregon; and

WHEREAS, the Governor and the Oregon Legislature have effectively begun to address critical transportation needs with the passage of the Oregon Transportation Investment Acts; and

WHEREAS, the investments that have been made possible by OTIA I, II, and III will help Oregon respond to both population growth and important economic opportunities; and

WHEREAS, these acts have provided new transportation investment dollars for the Portland metropolitan region, both for new projects and for maintenance of the existing system; and

WHEREAS, the impact of these investments will have a positive impact on the regional economy; and

WHEREAS, Oregon still has the lowest transportation funding per capita and per mile among all western states; and

WHEREAS, connecting Oregon's people and businesses with local, domestic and international markets is critical for a healthy economy; and

WHEREAS, Oregon's population growth continues to outpace the nation, and freight volumes in Oregon are expected to double in the next twenty years; and

WHEREAS, the distribution and logistics employment sector accounts for over 11.5% of the jobs in the Portland Metropolitan Statistical Area, placing the region 3rd among all U.S. MSA's; and

WHEREAS, funding for non-highway transportation projects is an appropriate and wise use of state funds; and

WHEREAS, the region has identified multiple project and funding needs for all modes of transportation through its Regional Transportation Plan, which has been adopted by Ordinance No.00-869A and Resolution No. 00-2968B; and

WHEREAS, the Regional Transportation Plan documents a need for \$7.8 billion in multi-modal transportation improvements to ensure a vibrant economy and the efficient movement of freight, automobiles and transit; and

WHEREAS, there is a need to build major new facilities to serve high growth areas in the Portland Metro region and throughout the state; and

WHEREAS, approximately one-half of the needed transportation improvements called for in the Regional Transportation Plan remain unfunded; and

WHEREAS, there is also a funding shortfall to maintain, operate and improve the existing city, county and state road system; and

WHEREAS, additional funding to meet these transportation needs will create or sustain thousands of jobs and help stimulate the economy of the region and the state; and

WHEREAS, without additional investment in Oregon's transportation infrastructure, increasing congestion will cost Oregon businesses and motorists tens of millions of dollars each year; and

WHEREAS, it is in the interest of local governments inside Metro to jointly seek additional transportation funding from the 2005 Oregon Legislature; now, therefore

BE IT RESOLVED that the Metro Council and the Joint Policy Advisory Committee on Transportation (JPACT) endorse a state legislative funding proposal for a multi-modal transportation program as shown in Exhibit "A" including:

1. A funding package for road operations, maintenance and modernization.
2. A funding package for transit, freight and passenger rail, marine and aviation projects.
3. Funding through the ODOT budget for elderly and disabled transit service, bus replacement and transportation demand management.

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

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**Joint Policy Advisory
Committee on
Transportation**

Rod Park, Chair
Metro Councilor

Rex Burkholder, Vice Chair
Metro Councilor

Rob Drake
*Mayor, City of Beaverton
Cities of Washington County*

Jim Francesconi
*Commissioner
City of Portland*

Matthew Garrett
*Region 1 Manager
Oregon Department of
Transportation*

Stephanie Hallock
*Director
Oregon Department of
Environmental Quality*

Fred Hansen
*General Manager
TriMet*

Larry Haverkamp
*Councilor, City of Gresham
Cities of Multnomah County*

Bill Kennemer
*Commissioner
Clackamas County*

Rod Monroe
Metro Councilor

Royce Pollard
*Mayor
City of Vancouver, WA*

Roy Rogers
*Commissioner
Washington County*

Karl Rohde
*Councilor, City of Lake
Oswego
Cities of Clackamas County*

Maria Rojo de Steffey
*Commissioner
Multnomah County*

Judie Stanton
*Commissioner
Clark County*

Don Wagner
*District Administrator
Washington State Department
of Transportation*

Bill Wyatt
*Executive Director
Port of Portland*

JPACT Multi-Modal Transportation Funding Concept

JPACT intends to seek support from the Governor and the Oregon Legislature for development of a multi-modal transportation finance legislative package, including:

1. Road Infrastructure Package:

JPACT recommends the adoption of a state road finance package to fund operations and maintenance of the existing system as well as modernization of the road system to address congestion and foster business expansion and economic development. While there has been significant progress through the adoption of OTIA I, II and III, urgent needs remain unfunded. In particular, maintenance and operation of the existing city, county and state road systems have fallen behind, threatening the condition of the existing system. In addition, urban road investments are vital to support economic development and recovery and reduce the backlog of congestion.

Even with the new revenues generated by OTIA I, II and III, Oregon still ranks lowest among western states in per capita and per mile transportation funding. Nationally, Oregon now ranks 46th in registration fees, 34th in title fees and 13th in gas taxes. In addition to considering these traditional funding sources, we support ODOT's efforts to explore more creative options for meeting our outstanding Highway Fund needs. Such options might include bonding against increased federal funds, indexing the gas tax or instituting a title fee for vehicles added to the statewide fleet.

2. Non-Road Infrastructure Package:

As all modes of transportation are critical in providing a healthy transportation network and a healthy economy, JPACT also recommends the adoption of a funding package to support non-Highway Fund modes of passenger and freight transportation improvements as well as additional investments in transit. While other states have aggressively invested in rail, marine, aviation and transit infrastructure, these modes have received relatively small investments here in Oregon in recent years.

We are therefore encouraged that the Governor, under the banner of "Connect Oregon," has recently asked the Oregon Transportation Commission to undertake an assessment of the state's need for investment in its multi-modal transportation system. Because there are multiple projects in each of these modes that would significantly benefit the public and provide economic returns for the state and region, JPACT supports identification of passenger and freight rail, transit, marine and aviation projects that merit public investment. We agree with the Governor that lottery dollars would be an appropriate source of funds for these investments.

The region and the state have benefited significantly from past investments in light rail and passenger and freight rail infrastructure, marine terminals, and airports. Additional funding for future projects that support a diverse, efficient and healthy transportation network, including the next leg of the Portland region's light rail system, is essential in order to address both short-term and long-term economic and livability needs.

3. Elderly and Disabled, Bus Replacement and Transportation Demand Management:

JPACT recommends continued funding within the ODOT budget for elderly and disabled transit service, bus replacement and transportation demand management.

Elderly and Disabled

Transit providers are struggling to meet the demand for complementary paratransit services for the elderly and people with disabilities. TriMet's annual General Fund contribution to door-to-door (LIFT) operations has increased 484% since FY92, from \$3.1 million in FY92 to \$18.0 million a year in FY04. LIFT operating costs will continue to increase because Oregon's population is aging faster than most other states. In fact, by 2025, the U.S. Census Bureau projects Oregon will have the 4th highest proportion of elderly in the nation. JPACT supports growing the Special Transportation Fund to allow transit providers to pursue cost-saving ideas while continuing to meet the increasing demand for elderly and disabled transportation.

Bus Replacement

JPACT supports growing ODOT's Mass Transit Vehicle Replacement program from \$2 million to \$4 million. Constrained budgets are forcing transit providers across the state to keep high-mileage vehicles in service for up to 15 to 17 years even though the FTA standard is 12 years. With 35% of fixed route buses in fair or poor condition statewide, transit providers are experiencing increased maintenance costs and reduced reliability. The situation is equally bad for the paratransit fleet.

Transportation Demand Management

In the 2003-04 ODOT budget, \$1.5 million was committed to support an aggressive effort to promote demand management to encourage reduced reliance on the automobile, thereby decreasing the need for highway expansion. In order to produce the greatest impact, these ODOT resources are coordinated with similar funding commitments from the region. These resources need to be continued.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3498, FOR THE PURPOSE OF ENDORISING REGIONAL PRIORITIES FOR A STATE TRANSPORTATION FUNDING PACKAGE

Date: November 9, 2004

Prepared by: Richard Brandman

BACKGROUND

The Metro Council approved the Regional Transportation Plan in 2000 and a Plan update in 2004. Currently, the Plan calls for \$7.8 billion in multi-modal transportation improvements within the region to meet transportation needs, provide efficient movement of people and goods, autos, trucks and transit and ensure a healthy economy and livable region. However, about 50 percent of these improvements have no identified funding source. This shortfall includes funding to maintain, operate and improve the existing city, county and state road system. Recently, Metro's Transportation Funding Task Force has recommended that Metro address this shortfall with a two-phase strategy. This strategy includes: 1) a legislative package for multi-modal improvements as shown in Exhibit A to the resolution; and 2) proposing a ballot measure for 2006, seeking voter approval.

ANALYSIS/INFORMATION

1. **Known Opposition** There is widespread local government support to take the transportation agenda to the Legislature. It is unknown what the legislature's response would be since the recommendations include an increase in fees or use of lottery proceeds to help implement this package.
2. **Legal Antecedents**
 - Ordinance 03-1024, For the Purpose of Adopting the 2004 Regional Transportation Plan as the Regional Transportation System Plan and the Regional Functional Plan For Transportation to Meet State Planning Requirements.
3. **Anticipated Effects** Needed multi-modal projects would be built, many miles of roads would be maintained and added, buses would be replaced and added, elderly and disabled transit would be maintained and improved and transportation demand management programs would be sustained. This activity would also mean thousands of jobs created and economic benefits distributed throughout the State and region.
4. **Budget Impacts** There is no direct impact to the Metro budget.

RECOMMENDED ACTION

Approval of Resolution No. 04-3498, For the Purpose of Endorsing Regional Priorities for A State Transportation Funding Package.

Agenda Item Number 8.1

Resolution No. 04-3507, For the Purpose of Authorizing Execution of Change Order No. 30 to the Contract
fro Waste Transport Services for Provision of a \$2.5 Million Dollar Performance Bond.

Contract Review Board

Metro Council Meeting
Thursday, November 18, 2004
Metro Council Chamber

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING	)	RESOLUTION NO. 04-3507
EXECUTION OF CHANGE ORDER NO. 30 TO)	
CONTRACT NO. 900848 FOR WASTE	)	Introduced by Michael Jordan, with the
TRANSPORT SERVICES FOR PROVISION OF A	)	concurrence of David Bragdon, Council
\$2.5 MILLION DOLLAR PERFORMANCE BOND	)	President

WHEREAS, the Waste Transport Service Contractor has requested substitution of a single performance bond in the amount of \$2.5 million for the current requirement of a \$1.3 million irrevocable letter of credit and a \$1.2 million corporate guarantee (or other security instrument as described in Change Order No. 25 to the Contract); and,

WHEREAS, as described in the accompanying staff report, such a substitution provides Metro with at least the same amount of performance protection as the current security requirements; 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. 30 to the Waste Transport Service contract, Contract No. 900848, 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"
Resolution No. 04-3507

CHANGE ORDER NO. 30
METRO CONTRACT NO. 900848

MODIFICATION TO THE CONTRACT BETWEEN
METRO AND CSU TRANSPORT, INC.
ENTITLED "WASTE TRANSPORT SERVICES"

This Change Order No. 30, dated as of the last signature date below (the "Effective Date of Change Order No. 30"), hereby amends Metro Contract No. 900848, entitled "Waste Transport Services," dated March 27, 1989, including all prior amendments (which contract and amendments are collectively referred to as the "Waste Transport Services Agreement").

In exchange for the promises and other considerations set forth in the Waste Transport Services Agreement and in this Change Order No. 30, the parties hereby agree as follows:

A. Purpose

The purpose of Change Order No. 30 is to modify the security for release of retainage provisions now found in Paragraph B.8.i. of Change Order No. 24 to the Waste Transport Services Agreement.

B. Provisions of Change Order No. 30

1. In lieu of the Irrevocable Letter of Credit for which provision is made in Paragraph B.8.i. of Change Order No. 24 to the Waste Transport Services Agreement, Contractor may provide a performance bond or other similar instrument of security in a form acceptable to Metro in the amount of \$1.3 million. Such bond or instrument may be combined with and added to any similar bond or instrument required under this Agreement.
2. Contractor agrees that the replacement or renewal of any security instrument required under this Agreement shall be effective at least 30 days before the expiration of any such replaced or renewed security instrument. Failure by Contractor to execute and deliver to Metro such replaced or renewed security instrument at least thirty (30) days before the expiration of any current security instrument shall constitute a default under this Agreement. To remedy such default, Metro shall have the right to retain one hundred percent (100%) of any and all payments due Contractor under this Agreement until the total amount of retainage is equal to \$2,500,000.00 or until the default is cured. This remedy shall be in addition to any other remedies for default to which Metro is entitled.

C. No Other Modifications

Except as modified herein, all other terms and conditions of the Waste Transport Services Agreement shall remain in full force and effect. Any conflict between the provisions of this Change Order No. 30, on the one hand, and the original Waste Transport Services Agreement, including other previous amendments and change orders, on the other hand, shall be resolved by reference to and reliance upon this Change Order No. 30.

CSU TRANSPORT, INC.

METRO

Signature

Gary I. Goldberg, President

Signature

Michael Jordan, Chief Operating Officer

Date

Date

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3507, FOR THE PURPOSE OF AUTHORIZING EXECUTION OF CHANGE ORDER NO. 30 TO THE CONTRACT FOR WASTE TRANSPORT SERVICES FOR PROVISION OF A \$2.5 MILLION DOLLAR PERFORMANCE BOND

Date: October 21, 2004

Prepared by: Chuck Geyer

BACKGROUND

In March 1989, Metro entered into Contract No. 900848 for the provision of Waste Transport Services until December 2009. The original contract required the provision of performance and labor and materials bonds in the amount of \$2.5 million. In addition, Metro retained 5% of each monthly payment until a retainage fund of \$2.5 million was established. The bonds and retainage fund constituted the security instruments to protect Metro against defaults in the performance of the contract.

In May 1999, the Metro Council approved Change Order No. 24 that released retainage to the Contractor and allowed the substitution of a letter of credit (LOC) in the amount of \$4.1 million that decreased annually to a base amount of \$1.3 million. The intent of the change order was to assist the Contractor in maintaining its financial viability while providing a reduction in rates charged to Metro.

In January 2001, the Metro Council approved Change Order No. 25 that required the provision of a security instrument acceptable to Metro in the amount of \$1.2 million (the Contractor chose to provide a corporate guarantee from its corporate parent) in exchange for allowing a change in ownership. The \$1.2 million corporate guarantee was in addition to the \$1.3 LOC. These security instruments were continued under Change Order No. 26 in which Metro consented to the change of ownership to the current Waste Transport Contractor - CSU, Inc.

CSU has requested that it be permitted to substitute a performance bond in the amount of \$2.5 million for the existing security instruments. The substitution has two primary benefits to CSU. By eliminating the letter of credit, CSU can increase its line of credit with its financial institution by a corresponding amount. Since provision of a corporate guarantee to Metro must be listed as a liability, substituting a bond for the guarantee significantly improves the financial reports of CSU and its corporate parent.

Description of Security Instruments

The following description of security instruments is provided to assist in assessing whether Metro should grant the substitution.

Corporate Guarantee

A corporate guarantee is a pledge by the contractor (or in the case of this contract, CSU's corporate parent that has more resources than CSU) to assure the unconditional performance of the contract. Such a security instrument unconditionally guarantees payment of all actual damages by the contractor that occur as a result of any default by the contractor that results in any loss to the owner (in this case Metro, up to a limit of \$1.2 million).

The current contract with the Waste Transport Contractor contains similar language under its general default language. The value of the additional corporate guarantee is to strengthen this right, and to link it explicitly to the corporate parent.

It is expected that Metro would still need to pursue the payment of such damages through legal actions or negotiations with or without the corporate guarantee.

Letter of Credit (LOC)

An irrevocable letter of credit is a security instrument provided by a financial institution (in the case of CSU - Mellon Bank). The financial institution agrees to pay up to the amount of the LOC if the owner (Metro) submits a request for payment testifying that the contractor is in breach. Such requests must be in conformance with the language of the LOC, including a statement that all other remedies have been exhausted prior to submitting a claim. The amounts requested are to reflect Metro's actual damages from the contract breach. In the event of contract breaches that result in termination, the full amount of the LOC would be due.

In theory the LOC is straightforward. Metro would submit its claim for payment based on actual damages and the financial institution would make payment. In practice, disputes over the extent of the breach, the value of such damages and whether all other remedies have been exhausted are likely to complicate the collection of such payments.

Performance Bond

A performance bond is akin to the contractor taking out an insurance policy for the faithful performance of the contract. Under a performance bond, the company providing the bond and the contractor sign a pledge to promptly remedy any default of the contract, up to the face amount of the bond.

The bond company must hire the personnel, equipment, etc. to cure such defaults unlike a LOC that anticipates directly paying Metro damages. In practice, Metro could be paid by the bond company to cure the default.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Metro Code section 2.04.058 (b), Public Contract Amendments, requires approval of this change order by the Metro Council.

3. Anticipated Effects

The change order would substitute a performance bond in an amount of the existing corporate guarantee plus the existing LOC. In addition the change order requires that the performance bond be renewed at least thirty (30) days prior to expiration. If the bond is not renewed, Metro may withhold payments until the instrument is renewed or Metro has retained the value of the instrument - \$2.5 million. It is anticipated that the substitution reduces Metro's risk of defaults related to the performance of the contract.

This is because a third party would be financially liable for ensuring performance of the contract and Metro has a financial remedy in the event of non-renewal.

This is not the case under either the corporate guarantee or LOC. While the LOC would provide Metro with funds to cover its increased costs for nonperformance (up to the limit of the LOC), Metro would have to take actions such as hiring a replacement contractor to ensure performance. The LOC was probably a more appropriate security interest when Change Order 24 was executed, since that created significant financial risk. Now that the risk is related to performance and operations, a performance bond can provide adequate security.

As pointed out above, while the corporate guarantee provides Metro with explicit rights to recover actual damages from the corporate entity providing the guarantee, litigation would probably still be necessary. The performance bond theoretically ensures performance before such damages are incurred.

4. Budget Impacts

None.

RECOMMENDED ACTION

The Chief Operating Officer has no objection to the approval of Resolution No. 04-3507.

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Agenda Item Number 8.2

Resolution No. 04-3509, For the Purpose of Approving Change Order 31 to the Waste Transport Services Contract.

Contract Review Board

Metro Council Meeting
Thursday, November 18, 2004
Metro Council Chamber

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF APPROVING CHANGE) RESOLUTION NO. 04-3509
ORDER NO. 31 TO THE WASTE TRANSPORT)
SERVICES CONTRACT) Introduced by Michael Jordan, Chief
) Operating Officer, with the concurrence of
) David Bragdon, Council President

WHEREAS, Metro leases a parking area from CSU Transport, Inc., located near Metro's solid waste transfer station located at 6161 NW 61st Avenue, Portland, Oregon 97232; and

WHEREAS, Metro requires a parking area near the Metro Central Transfer Station for the parking of Metro employee vehicles and facility operator employee vehicles; and

WHEREAS, A parking area with 36 leased parking spaces is provided by Change Order No. 27 to the Waste Transport Services Contract between Metro and CSU Transport, Inc., which change order expires December 31, 2006; and

WHEREAS, Metro needs only 12 leased parking spaces for its employees and facility operator employees at the Metro Central Transfer Station, and

WHEREAS, Change Order No. 31 would reduce the number of leased parking spaces to 12, would reduce leased parking costs, and would continue to provide leased parking through December 31, 2009; and

WHEREAS, This resolution was submitted to the Chief Operating Officer for consideration and was forwarded to the Metro Council for their approval; 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. 31 to Contract No. 900848, 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

**MODIFICATION TO THE CONTRACT BETWEEN
METRO AND CSU TRANSPORT, INC.
ENTITLED "WASTE TRANSPORT SERVICE"**

This Change Order No. 31, dated as of the last signature date below (the "Effective Date of Change Order No. 31"), hereby amends Metro Contract No. 900848, entitled "Waste Transport Services," dated March 27, 1989, including all prior amendments (which contract and amendments are collectively referred to as the "Waste Transport Service Agreement").

In exchange for the promises and other considerations set forth in the Waste Transport Services Agreement and in this Change Order No. 31, the parties agree as follows:

A. Purpose

The purpose of this Change Order No. 31 is for Contractor to provide Metro with a paved parking area near the Metro Central Transfer Station.

B. Provisions of Change Order No. 31

1. Commencing on January 1, 2005, through December 31, 2009, unless terminated in accordance with the provisions below, Contractor agrees to make available to Metro a parking area as described below.
2. Contractor shall provide a paved parking area 30' x 117' with 12 parking spaces as shown on the attached drawing, located in the north corner of the 1.81 acre storage yard near Metro Central Station that Contractor is leasing from the Burlington Northern and Santa Fe Railway Company (BNSFRC). The attached drawing is labeled as Attachment "1" and is incorporated herein by this reference.
3. Metro, or parties designated by Metro, shall be permitted to use the paved area provided by the Contractor, if Metro makes its annual payment to the Contractor for this right-of-entry.
4. Metro agrees to pay Contractor an annual fee for use of the parking area. Metro shall not be required to pay any fees, taxes or charges other than the payment specified in this section. The annual payment shall be equal to 5.24% of the annual payment that the Contractor pays to BNSFRC for the storage yard described in item #2. Contractor shall include documentation of its annual payment due BNSFRC, with its request for payment to Metro. Metro shall pay its annual payment to the Contractor by January 31 of each year, if the Contractor's request is received by Metro on or before January 10. If the Contractor's request

EXHIBIT A TO RESOLUTION NO. 04-3509

is made after January 10 of any calendar year, Metro shall have 21 calendar days to make payment.

In the event that this Amendment is terminated prior to the end of the calendar year in which the annual payment has been made by Metro to the Contractor, the Contractor shall refund to Metro that amount of the annual payment as prorated to reflect that portion of the calendar year for which the area is unavailable to Metro. The refund may take the form of an offset against other charges due the Contractor from Metro if mutually agreed upon by the parties.

5. This right-of-entry may be terminated by either party, giving the other party 30-days notice of its intent to terminate.
6. Except as modified herein, all other terms and conditions of the Waste Transport Services Agreement shall remain in full force and effect. Any conflict between the provision of the Original Agreement, and other previous amendments or change orders, on the one hand, and this change Order No. 31 on the other hand, shall be resolved by reference to and reliance upon this Change Order No. 31.

CSU TRANSPORT, INC.

METRO

Signature

Signature

Gary I. Goldberg, President

Print name and title

Date

Date

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3509 FOR THE PURPOSE OF APPROVING CHANGE ORDER NO. 31 TO THE WASTE TRANSPORT SERVICES CONTRACT

October 28, 2004

Prepared by: Ray Barker

BACKGROUND

Metro currently leases from CSU Transport, Inc. (CSU) a paved parking area with 36 parking spaces, located in the north corner of the 1.81 acre storage yard near Metro Central Transfer Station. CSU leases the storage yard from The Burlington Northern and Santa Fe Railway Company. Metro leases the parking area for some employee vehicles and also employee vehicles of the facility operator. There are also some parking spaces available on the transfer station site for Metro and facility operator employees.

The leased parking referred to above was originally authorized by Change Order No. 14 to the Waste Transport Services Contract between Metro and Specialty Transportation Services, Inc. (STS). The Change Order commenced January 1, 1994 and expired December 31, 2000. Change Order No. 27 extended the parking lease, with CSU, to December 31, 2006.

Because of the reduced number of facility operator employees (due to the decrease in solid waste tonnage at the facility) and because there are more parking spaces now available on site, only 12 leased parking spaces are currently needed. The most recent annual payment to CSU for use of the parking area was \$7,760. This is equal to 15.72% of the annual payment that CSU makes to the Railway Company for leasing the storage yard. With a reduction in the number of leased parking spaces to 12, Metro's annual payment would be 5.24% or about \$2,600.

ANALYSIS/INFORMATION

1. Known Opposition

None

2. Legal Antecedents

Section 2.04.058 (b) of the Metro Code requires that no contract which was designated as a contract having a significant impact on Metro may be amended without the express approval of the council evidenced by a duly adopted resolution or ordinance.

3. Anticipated Effects

Adoption of Resolution No. 04-3509 would reduce the number of parking spaces leased to Metro by CSU from 36 spaces to 12, would reduce Metro's leased parking costs, and would provide continued parking through December 31, 2009.

4. Budget Impacts

The annual cost of Amendment No. 31 is estimated to be \$2,600.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 04-3509.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENDORSING	)	RESOLUTION NO. 04-3498A
REGIONAL PRIORITIES FOR A STATE)	
TRANSPORTATION FUNDING PACKAGE	)	Introduced by Councilor Rod Park

WHEREAS, an efficient and adequately funded transportation system is critical to ensuring a healthy economy and livable communities throughout the state of Oregon; and

WHEREAS, the Governor and the Oregon Legislature have effectively begun to address critical transportation needs with the passage of the Oregon Transportation Investment Acts; and

WHEREAS, the investments that have been made possible by OTIA I, II, and III will help Oregon respond to both population growth and important economic opportunities; and

WHEREAS, these acts have provided new transportation investment dollars for the Portland metropolitan region, both for new projects and for maintenance of the existing system; and

WHEREAS, the impact of these investments will have a positive impact on the regional economy; and

WHEREAS, Oregon's highway funding per mile is among the lowest of all western states; and

WHEREAS, connecting Oregon's people and businesses with local, domestic and international markets is critical for a healthy economy; and

WHEREAS, Oregon's population growth continues to outpace the nation, and freight volumes in Oregon are expected to double in the next twenty years; and

WHEREAS, the distribution and logistics employment sector accounts for over 11.5% of the jobs in the Portland Metropolitan Statistical Area, placing the region 3rd among all U.S. MSA's; and

WHEREAS, funding for non-highway transportation projects is an appropriate and wise use of state funds; and

WHEREAS, the region has identified multiple project and funding needs for all modes of transportation through its Regional Transportation Plan, which has been adopted by Ordinance No. 00-869A For the Purpose of Adopting the 2000 Regional Transportation Plan; Amending Ordinance No. 96-647C For the Purpose of Adopting a Functional Plan For Early Implementation of the 2040 Growth Concept and Ordinance No. 97-715B For the Purpose of Adopting the Regional Framework Plan and Resolution No. 00-2969B For the Purpose of Adopting the 2000 Regional Transportation Plan as the Federal Metropolitan Transportation Plan; and

WHEREAS, the Regional Transportation Plan documents a need for \$7.8 billion in multi-modal transportation improvements to ensure a vibrant economy and the efficient movement of freight, automobiles and transit; and

WHEREAS, there is a need to build major new facilities to serve high growth areas in the Portland Metro region and throughout the state; and

WHEREAS, approximately one-half of the needed transportation improvements called for in the Regional Transportation Plan remain unfunded; and

WHEREAS, there is also a funding shortfall to maintain, operate and improve the existing city, county and state road system; and

WHEREAS, additional funding to meet these transportation needs will create or sustain thousands of jobs and help stimulate the economy of the region and the state; and

WHEREAS, without additional investment in Oregon's transportation infrastructure, increasing congestion will cost Oregon businesses and motorists tens of millions of dollars each year; and

WHEREAS, it is in the interest of local governments inside Metro to jointly seek additional transportation funding from the 2005 Oregon Legislature; now, therefore

BE IT RESOLVED that the Metro Council and the Joint Policy Advisory Committee on Transportation (JPACT) endorse a state legislative funding proposal for a multi-modal transportation program as shown in Exhibit "A" including:

1. A funding package for road operations, maintenance and modernization.
2. A funding package for transit, freight and passenger rail, marine and aviation projects.
3. Funding through the ODOT budget for elderly and disabled transit service, bus replacement and transportation demand management.

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

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

**Joint Policy Advisory
Committee on
Transportation**

Rod Park, Chair
Metro Councilor

Rex Burkholder, Vice Chair
Metro Councilor

Rob Drake
Mayor, City of Beaverton
Cities of Washington County

Jim Francesconi
Commissioner
City of Portland

Matthew Garrett
Region 1 Manager
Oregon Department of
Transportation

Stephanie Hallock
Director
Oregon Department of
Environmental Quality

Fred Hansen
General Manager
TriMet

Larry Haverkamp
Councilor, City of Gresham
Cities of Multnomah County

Bill Kennemer
Commissioner
Clackamas County

Rod Monroe
Metro Councilor

Royce Pollard
Mayor
City of Vancouver, WA

Roy Rogers
Commissioner
Washington County

Karl Rohde
Councilor, City of Lake
Oswego
Cities of Clackamas County

Maria Rojo de Steffey
Commissioner
Multnomah County

Judie Stanton
Commissioner
Clark County

Don Wagner
District Administrator
Washington State Department
of Transportation

Bill Wyatt
Executive Director
Port of Portland

JPACT Multi-Modal Transportation Funding Concept

JPACT intends to seek support from the Governor and the Oregon Legislature for development of a multi-modal transportation finance legislative package, including:

1. Road Infrastructure Package:

JPACT recommends the adoption of a state road finance package to fund operations and maintenance of the existing system as well as modernization of the road system to address congestion and foster business expansion and economic development. While there has been significant progress through the adoption of OTIA I, II and III, urgent needs remain unfunded. In particular, maintenance and operation of the existing city, county and state road systems have fallen behind, threatening the condition of the existing system. In addition, urban road investments are vital to support economic development and recovery and reduce the backlog of congestion.

Even with the new revenues generated by OTIA I, II and III, Oregon still ranks lowest among western states in per capita and per mile transportation funding. Nationally, Oregon now ranks 46th in registration fees, 34th in title fees and 13th in gas taxes. In addition to considering these traditional funding sources, we support efforts to explore more creative options for meeting our outstanding Highway Fund needs. Such options might include bonding against increased federal funds, indexing the gas tax or instituting a title fee for vehicles added to the statewide fleet.

2. Non-Road Infrastructure Package:

As all modes of transportation are critical in providing a healthy transportation network and a healthy economy, JPACT also recommends the adoption of a funding package to support non-Highway Fund modes of passenger and freight transportation improvements as well as additional investments in transit. While other states have aggressively invested in rail, marine, aviation and transit infrastructure, these modes have received relatively small investments here in Oregon in recent years.

We are therefore encouraged that the Governor, under the banner of "Connect Oregon," has recently asked the Oregon Transportation Commission to undertake an assessment of the state's need for investment in its multi-modal transportation system. Because there are multiple projects in each of these modes that would significantly benefit the public and provide economic returns for the state and region, JPACT supports identification of passenger and freight rail, transit, marine and aviation projects that merit public investment.

The region and the state have benefited significantly from past investments in light rail and passenger and freight rail infrastructure, marine terminals, and airports. Additional funding for future projects that support a diverse, efficient and healthy transportation network, including the continued development of the Portland region's light rail system, is essential in order to address both short-term and long-term economic and livability needs.

3. Elderly and Disabled, Bus Replacement and Transportation Demand Management:

JPACT recommends continued funding within the ODOT budget for elderly and disabled transit service, bus replacement and transportation demand management.

Elderly and Disabled

Transit providers are struggling to meet the demand for complementary paratransit services for the elderly and people with disabilities. TriMet's annual General Fund contribution to door-to-door (LIFT) operations has increased 484% since FY92, from \$3.1 million in FY92 to \$18.0 million a year in FY04. LIFT operating costs will continue to increase because Oregon's population is aging faster than most other states. In fact, by 2025, the U.S. Census Bureau projects Oregon will have the 4th highest proportion of elderly in the nation. JPACT supports growing the Special Transportation Fund to allow transit providers to pursue cost-saving ideas while continuing to meet the increasing demand for elderly and disabled transportation.

Bus Replacement

JPACT supports growing ODOT's Mass Transit Vehicle Replacement program from \$2 million to \$4 million. Constrained budgets are forcing transit providers across the state to keep high-mileage vehicles in service for up to 25 years even though the FTA standard is 12 years. With 35% of fixed route buses in fair or poor condition statewide, transit providers are experiencing increased maintenance costs and reduced reliability. The situation is equally bad for the paratransit fleet.

Transportation Demand Management

In the 2003-05 ODOT budget, \$1.5 million was committed to support an aggressive effort to promote demand management to encourage reduced reliance on the automobile, thereby decreasing the need for highway expansion. In order to produce the greatest impact, these ODOT resources are coordinated with similar funding commitments from the region. These resources need to be continued.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3498A, FOR THE PURPOSE OF ENDORING REGIONAL PRIORITIES FOR A STATE TRANSPORTATION FUNDING PACKAGE

Date: November 9, 2004

Prepared by: Richard Brandman

BACKGROUND

The Metro Council approved the Regional Transportation Plan in 2000 and a Plan update in 2004. Currently, the Plan calls for \$7.8 billion in multi-modal transportation improvements within the region to meet transportation needs, provide efficient movement of people and goods, autos, trucks and transit and ensure a healthy economy and livable region. However, about 50 percent of these improvements have no identified funding source. This shortfall includes funding to maintain, operate and improve the existing city, county and state road system. Recently, Metro's Transportation Funding Task Force has recommended that Metro address this shortfall with a two-phase strategy. This strategy includes: 1) a legislative package for multi-modal improvements as shown in Exhibit A to the resolution; and 2) proposing a ballot measure for 2006, seeking voter approval.

ANALYSIS/INFORMATION

1. **Known Opposition** There is widespread local government support to take the transportation agenda to the Legislature. It is unknown what the legislature's response would be since the recommendations include an increase in fees or use of lottery proceeds to help implement this package.

2. **Legal Antecedents**

Ordinance No. 00-869A For the Purpose of Adopting the 2000 Regional Transportation Plan; Amending Ordinance No. 96-647C For the Purpose of Adopting a Functional Plan For Early Implementation of the 2040 Growth Concept and Ordinance No. 97-715B For the Purpose of Adopting the Regional Framework Plan; and Ordinance 04-1045A For the Purpose of Amending the 2000 Regional Transportation Plan (RTP) For Consistency With the Interim Federal 2004 RTP and Statewide Planning Goals.

2. **Anticipated Effects** Needed multi-modal projects would be built, many miles of roads would be maintained and added, buses would be replaced and added, elderly and disabled transit would be maintained and improved and transportation demand management programs would be sustained. This activity would also mean thousands of jobs created and economic benefits distributed throughout the State and region.
3. **Budget Impacts** There is no direct impact to the Metro budget.

RECOMMENDED ACTION

Approval of Resolution No. 04-3498A, For the Purpose of Endorsing Regional Priorities for A State Transportation Funding Package.

11 1804c-02



Friends of Lone Fir Cemetery

5905 SE 62nd Ave
Portland, OR 97206
Fall 2004

URGENT TASKFORCE NOTICE

The Morrison Building Taskforce has been meeting for six months to determine the best way to deal with this derelict, condemned county building on the property at 2115 SE Morrison. The Task Force developed a plan to rejoin the Morrison Building lot, originally Cemetery Block 14, with the current cemetery land. Block 14 was the old Chinese Burial Ground. The plan endorsed by the Taskforce for Block 14 includes a new cemetery entrance, a scatter garden and a cemetery office. The Morrison Building must be removed because it is a health and safety hazard.

A representative from Multnomah County, at the October 4, 2004 meeting, proposed an alternative plan: sell Block 14 at market value to pay for building demolition and construct condominium units on the property.

Friends of Lone Fir Cemetery is concerned about this turn of events for the following reasons:

- Lone Fir Cemetery, including Block 14, is a Historical Landmark. *There is data from ground penetrating radar that indicates possible burial sites under parking lot of the Morrison Building.*
- The cemetery has important open space and cultural significance for the Buckman neighborhood and the development of condominiums at this site is an inappropriate use of a significant public space.
- *Developing this site could have a long-term negative effect on Lone Fir, a Pioneer Cemetery, which contains the graves of many people significant to Portland's history.*

The County Commissioners are disregarding the public input from a taskforce they created. ***We need to hold our elected leaders accountable!***

Friends of Lone Fir Cemetery supports reuniting Block 14 with the rest of Lone Fir Cemetery.

Here's what you can do to help:

- **Call** County Commissioner Maria Rojo de Steffey at 503-988-5220 or e-mail district1@multnomah.or.us to indicate your support for rejoining the properties.
- **Send** in your membership renewal form and a contribution **today** to support the work needed to save Block 14.
- **Attend** the Multnomah County Council Meeting on Tuesday, November 23, 2004 at 6:00 PM, 501 SE Hawthorne, Suite 600.

Please cut out, complete and send to :-----

Friends of Lone Fir Cemetery
5905 SE 62nd Ave
Portland, OR 97206

Name _____

Address _____ Phone _____

City _____ State _____ Zip _____

E-mail _____ Family Members _____

Individual	\$20	Individual Pioneer	\$50	
Family	\$30	Family Pioneer	\$100	
Senior	\$10	Corporate Pioneer	\$150	Morrison Building Donation _____

_____ I will volunteer to help with the project to rejoin the cemetery property.

Friends of Lone Fir is tax exempt under section 501c(3). Tax ID 93-1305562



Southeast Uplift Neighborhood Program
Friends of Lone Fir Cemetery
5905 SE 62nd Ave
Portland, Or 97206

PRSRT STD
US POSTAGE
PAID
PORTLAND OR
PERMIT NO. 1062

**Do you want to see Portland lose
open space and an historical resource?**

**Time is running out to preserve Lone Fir from
the negative impact of proposed development!**

PUBLIC HEARING: NOVEMBER 23, 2004,



MEMORANDUM

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1700 | FAX 503 797 1797

111804c-03



METRO

DATE: November 12, 2004
TO: Metro Council
FROM: Michael Hoglund, SW&R Director *MH*
SUBJECT: CSU Transport

At the work session held on November 9, regarding the modifications to the Contract between Metro and CSU Transport, the discussion focused on CSU's request to substitute a performance bond for their existing security instruments. During the discussion the Council requested additional information concerning the banking institution that would be furnishing the performance bond.

Article 17 of the Contracts General Conditions requires that, "The Surety or Banking Institution furnishing this Bond or Letter 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 institution is ACE INA Group Westchester Fire Insurance Company. Best's Rating assigned a rating of A (excellent) with a financial size category of Class 9. Staff contacted JBL&K Risk Services concerning the remaining requirements of Article 17 and received the following responses:

- 1) Is the financial size category of 9 sufficient for them to offer a \$2.5 million bond? Their answer was "Yes".
- 2) Are they authorized to do business in the State of Oregon? Their answer was "Yes, per the Oregon Department of Consumer and Business Services, Insurance Division."
- 3) Do you consider them to have a sound financial standing? Their answer was "Yes, Ace has a good, solid financial rating, according to A.M. Best."

MH:sm

cc: Jim Watkins, Division Manager, Engineering & Environmental Services
Bill Jemison, Risk Manager, Business Services Division
Marvin D. Fjordbeck, Sr. Attorney, Office of Metro Attorney

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Draft

November 18, 2004

(JPACT &
MPAC
Comments
Incorporated)

Dr. Jane Lubchenco, Mr. Mark Dodson, Co-Chairs
Governor's Advisory Group on Global Warming
c/o Kathy King
Oregon Department of Energy
625 Marion Street, NE
Salem OR 97301-3737

RE: draft *Oregon Strategy for Greenhouse Gas Reductions*

Dear Co-Chairs Lubchenco and Dodson:

Following are comments representing the discussion of your draft *Oregon Strategy for Greenhouse Gas Reductions (Strategy)* by the local elected officials from the Metro region. These officials include members of the Joint Policy Advisory Committee on Transportation (JPACT), the Metro Policy Advisory Committee (MPAC) and the Metro Council.

We appreciate the opportunity to participate in this discussion of greenhouse gas reduction strategies for Oregon. We also recognize that your official deadline for public comment is November 15. However, our standing meeting schedule did not allow us to conclude our comments until today. Given that the greenhouse gas issue is one that is vast in scope and progress will likely require a series of efforts, we hope that our comments and recommendations can be taken into consideration by your committee for your immediate recommendations to Governor Kulongoski, as well as serving as Metro area suggestions for future efforts.

Accordingly, we offer the following comments and recommendations concerning the draft *Strategy*:

Recognize Strategy Contribution. Global warming is an immense topic, yet the result of the Governor's Task Force on Global Warming, as evident by the *Strategy*, is a most impressive product. While we have several recommendations following, we believe that the overall *Strategy* and its recommendations should be supported and encouraged.

Greenhouse Gas Challenge, Strategy Good First Step. Global warming is likely to be the largest environmental challenge that we will face. The draft *Strategy* is a good first step, however, its recommendations represent only a small first step, and much greater actions will be needed in the future to protect citizens of the State. Reducing the amount of fossil fuels that are burned is the key.

Lubchenco, Dodson
November 18, 2004

Support Advisory Group Charter Extension. As noted in action IA-2, we support the recommendation that the Governor continue the charter of the Advisory Group on Global Warming so that this important work can continue.

Provide Additional Impact Information. We suggest that more specific information about the adverse impacts and any benefits that are likely to occur ~~to~~ⁱⁿ the State and regions within the State would help us and others understand the potential local consequences of not acting to reduce greenhouse gas (GHG) emissions. More local evidence about potential adverse consequences would be useful to educate everyone. For example, it appears as though global warming could cause very substantial changes to the amount of drinking water available during the summer season. Water shortages could have a devastating effect on the residents of our region, many of who depend on surface water sources as well as adversely impact the State and region's economic development potential.

Assess Both Modification and Adaptation. We urge that work be completed to assess what adaptation measures might be needed so that a clearer picture of the actions that may need to be taken can be assessed.

Provide an Action Matrix. We suggest that in addition to the other materials available in the *Strategy*, a matrix showing each recommendation action and the venue in which next steps are expected should be included. That is, each recommendation could be shown with its expected legislative agenda, administrative consideration, local action, etc. so that it is clear what action is next and who should be taking such action. This method would also provide an easy means to track progress.

Consider Oregon Jobs, Non-Kyoto Protocol Countries. We urge that any greenhouse gas emission reduction actions consider whether the actions are likely to become an incentive to lose existing Oregon jobs or jobs that might be located in Oregon to countries not included in the Kyoto Protocol. Concerns have been raised with getting too far ahead of other nations, states or regions GHG initiatives that could result in a competitive economic disadvantage for our region. Alternatively, we understand that the other West Coast States are considering actions and that Oregon leadership could encourage new technologies and jobs. However, there are many factors to consider and the subject is complex. It is difficult to assess how to strike an appropriate balance.

We further suggest that the Strategy or other future analyses include tools or methods for local governments and regional entities to help support local businesses that may otherwise be adversely impacted by GHG emission reduction actions.

Lubchenco, Dodson
November 18, 2004

Consider Cost of Mandates to Local Government. We recognize that the State government and private sector can't be responsible for all greenhouse gas reductions. However, we urge that before local governments are mandated to take actions that the cost of such mandates are carefully considered.

Unforeseen Consequences, Use All Deliberate Speed. The scope and depth of global warming is immense and global warming consequences could be dire. However, there very well could be adverse unforeseen consequences to some greenhouse gas reduction actions. Accordingly, we urge that the efforts take an all deliberate speed approach, considering a variety of factors before moving ahead with an action.

Include a Climate Registry System. The Strategy should include a climate registry system which encourages voluntary greenhouse gas emission reductions by certifying a baseline level of emissions and any voluntary reductions made by businesses or other sources. In this way, earlier implementation could get credit for investments or other actions made to reduce greenhouse gas emissions prior to any regulatory actions.

Assess Swiss Approach. It appears that at least in 1995, Switzerland had per capita greenhouse gas emissions about 70 percent less than the US. The Strategy recommends a 2050 goal of 75% below 1990 emissions. We suggest that it could be useful to consider what actions Switzerland has taken to achieve much lower GHG emissions, how their approach compares with the *Strategy* and whether their methods might be applicable in the US.

Clarify Cost-Effectiveness Estimates. We recommend that the *Strategy* clarify and document how the cost-effectiveness estimates were calculated.

Recognize Past and Present Metro Area Success, Quantification. The Metro area has worked for about the past ten years to manage the region's land use and transportation systems to achieve goals that in many cases also reduce GHG emissions. For example, the region has managed the urban growth boundary to maintain a compact urban form and to reduce vehicle miles traveled. As a result, while most of the US continues to experience increasing vehicle miles traveled per capita (vmt/capita), the Metro region's rate has leveled off and has decreased. The Metro area has vmt/capita rates that are approximately 20 percent less than the US average (source: Federal Highway Administration, *Highway Statistics* which can be found on the Web at <http://www.fhwa.dot.gov/ohim/hs01/re.htm>).

In addition, the City of Portland and Multnomah County have adopted a plan that is intended to meet *Strategy* goals. We believe that individual local government efforts and the region's actions should be quantified and included in any consideration of remaining actions that may be needed. Further, the Strategy might recognize measures suitable for urban areas and those suitable for rural areas.

Lubchenco, Dodson
November 18, 2004

Carefully Consider Building Code Update Approach. The energy efficiency section calls for updating building codes every 3 to 6 years. We urge consideration of whether large scale changes at such frequent intervals would be the best approach. It may be that there are other methods, including incentives, which could help achieve GHG emission reductions at a lower cost.

Take Bolder Internal Action. There are a great number of actions that the State could take to reduce its own greenhouse gas emissions and demonstrate even greater leadership. For example, the State motor pool could transition its fleet to vehicles that have much lower greenhouse gas emission levels.

Consider Greater State Transit and Freight Rail Role. While the State has provided one source of funding for transit within the state, the *Strategy* could recognize the key role that transit can play in reducing GHG and recommend that the State make a greater commitment to funding urban transit system expansion and operation as well as inter-city transit passenger rail and bus. In addition the Oregon Transportation Plan could be revised to set a priority for addressing transportation problems, so that before a roadway capacity is expanded, TDM strategies are implemented; then alternative modes, including transit are implemented; then Intelligent Transportation Systems improvements and value pricing are considered. In addition, land use changes would be examined to see if these changes could become part of a transportation solution. Finally, the State could play a larger role in addressing freight rail needs. ODOT has sponsored a February 2003 I-5 Rail Capacity Study identifying many freight rail improvements within the region and southwest Washington needed now and through out the next 10 to 20 years. Improvements for freight rail would also help address conflicts between passenger rail and freight rail needs.

Improve Coordination of Land Use, Housing and Transportation. The *Strategy* could include a recommendation that a mechanism be developed to better coordinate growth forecasts and Urban Growth Boundary decisions within each metropolitan area and adjacent travel shed. A requirement that calculation and consideration of the likely GHG emission consequences of new transportation facilities and/or Urban Growth Boundary expansions could reduce travel demand and GHG emissions. In Tran-2 and Tran-5, use of the MOBILE6.2 air quality software could be required as a readily available tool for estimating likely GHG emission results.

Consider Measure 37 Aspect. With the passage of Measure 37, any land use regulatory actions will need to be considered and will affect the ability of local and state governments to complete some of the recommended land use actions.

Favor Region-wide Versus Project Level Assessment. Within a transportation plan, some projects may lessen GHG emissions, others may increase GHG emissions. The most important consideration is the impact of the overall mix of projects, not the impact

of an individual project. This would follow the same approach as Federal air quality requirements.

Support Transportation Choices and Travel Smart. Tran-6 suggests a variety of approaches to reduce travel demand. While the suggested methods are not the only ones available, they are ones in use within our region and we urge your support for this overall approach, the specific programs included as well as other programs which could provide similar results.

Support Traffic Flow Engineering Best Practices. Tran-12 includes support for best practices traffic flow engineering. Significant portions, though certainly not all of the region have already instituted this approach. Through the Intelligent Transportation System Plan and future updates and future investments, better management of the transportation system will be provided to get the most out of the transportation system investment. Accordingly, we support this measure.

Carefully Consider Warehousing and Distribution Land Use Locations. The region continues to assess its capacity to accommodate additional employment including warehousing and distribution centers. However, some of these uses can have very low employment density. Very low employment density may not be compatible with the economics of transit service. Accordingly, we suggest that it be recognized that in the consideration of the location of some types of employment, transit service may not always be a critical factor.

Review Airport Plans. Tran-13 suggests a different role than that now played by the Hillsboro Airport and its share of the region's overall airport capacity. We suggest that this recommendation be further analyzed and that the airport plans for both Hillsboro Airport and Portland International Airport be reviewed and the Port of Portland be consulted with further on this measure.

Support Changes in Agricultural Practices. It is appropriate that the draft *Strategy* recognizes the contributions that agriculture and silvaculture can make to reducing greenhouse gases and includes methods for further exploration.

Support Goal Setting, Market Signals and Investment Approach. The *Strategy* recommends setting goals and defining a path based on cost-effective actions. This process provides a signal to markets about the State's commitment to reducing GHG. This approach is consistent with how the Metro region set and has tried to reach its waste reduction goals. In addition, the *Strategy* supports an "investment-based" approach rather than just viewing actions as unrecoverable costs. This is an approach consistent with regional waste reduction efforts. Accordingly, we urge support for this approach.

Lubchenco, Dodson
November 18, 2004

Recognize Effectiveness of Reducing Waste Generation, Support Additional

Analysis. The region continues to work hard to increase the level of recycling and will continue to do so. However, the *Strategy* documents the substantially greater GHG emission reductions that can be achieved through meeting waste generation goals. While we support efforts to set solid waste performance measures that incorporate all costs, including GHG, we believe additional analysis is necessary. We are examining the issue in our solid waste planning process. We also support the completion of additional analysis by the DEQ on the programs that will be required to reach the waste generation goals.

Complete Further Analysis of Landfill Measures. MW-2, MW-3 and MW-10 recommend methods of reducing GHG from landfills. We support additional analysis to determine how effective each approach would be. We also would like more information on what the costs would be or the impact on tip fee structure that could result at affected landfills which take waste from the Metro region.

Support Increase in Salvage of Used Building Materials. We recognize the resources, including energy, embodied within used building materials and support MW-4, which encourages incentives for increasing used building material salvage.

Support Increase and Expand Bottle Bill. We agree with the interest in reducing litter and increasing the recycling of beverage containers within the State. An increase in the redemption value from 5-cents to 10-cents and expanding the list of beverage containers included to juice, water, liquor, wine, tea and sports drinks could also reduce contamination currently occurring in the region's recycling.

Support Consumer Electronics Waste Recovery. We support MW-6 that would encourage the State to consider statewide recovery infrastructure for consumer electronics waste.

The above concludes our comments at this time. The work that the Governor's Advisory Group on Global Warming is extensive and demonstrates a great deal of work completed. Thank you for your consideration of the above. We look forward to working with you in the future to ensure a bright future for Oregon and our region.

Sincerely,

David Bragdon, President
Metro Council

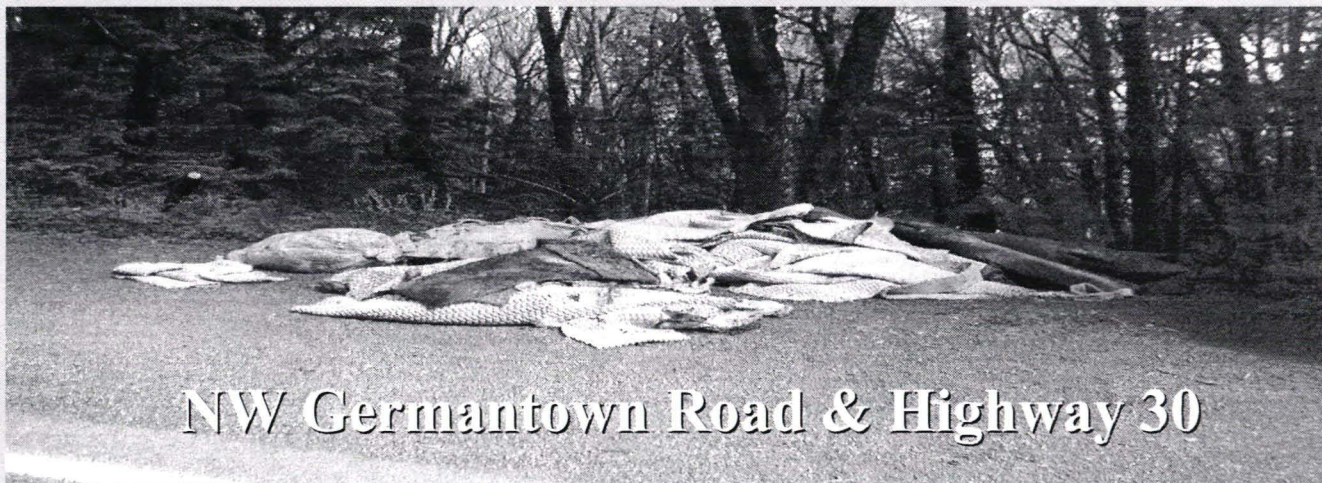
Rod Park, Chair
JPACT

Charles J. Becker, Chair
MPAC

cc: Metro Council
JPACT
MPAC

Metro's Illegal Dumping Program

Program mission is to efficiently & quickly cleanup illegal dumps within Metro & prosecute the worst dumping when evidence is available. Coordinate with all levels of government to assure program is effective.



NW Germantown Road & Highway 30

11/804c-05

Metro's Illegal Dumping Program

Background

- Program created in 1993
- Council adopted an illegal dumping ordinance in 1994 (Chapter 5.09)
- Initial concern that the \$20 increase in tip fee would increase dumping & flow control violations
- Started with 4 deputies & 1 cleanup crew from MCSO – now we have 2 deputies & 1.5 cleanup crews

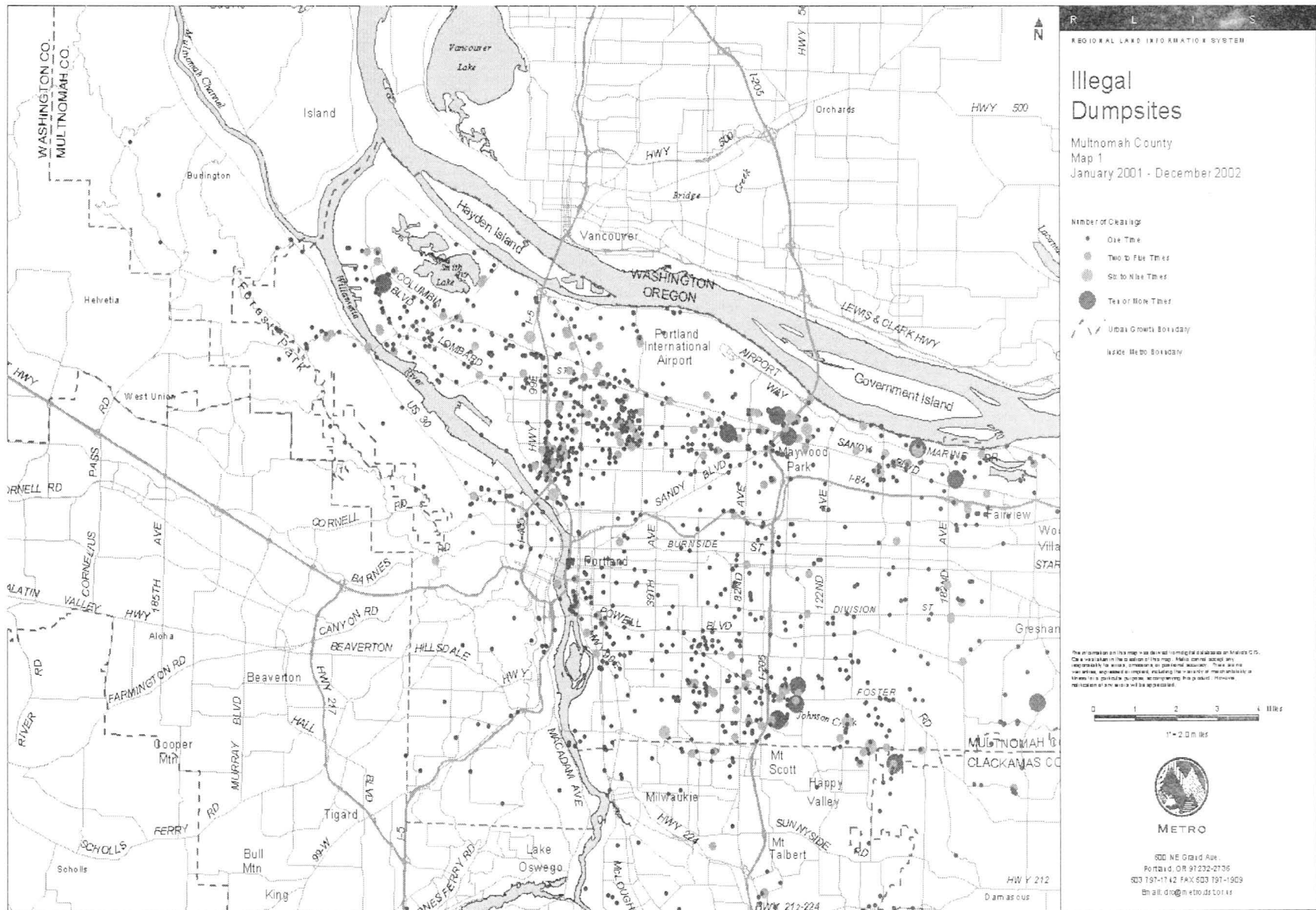
Metro's Illegal Dumping Program

Background (cont.)

- Public property cleanups inside Metro
- Investigate public & private property
- Assist local jurisdictions with large scale cleanups such as homeless camp cleanups and newly discovered large dump sites
- Mostly focused in Portland, Multnomah & Clackamas County



Map of Dump Sites Cleanedup (2001-02)



Metro's Illegal Dumping Program

Program Benefits

- Directly supports Council's objectives to reduce pollution & minimize impact of waste stream on the environment
- Program is well-regarded among local code enforcement, law enforcement and solid waste agencies
- Popular program among public



609 NE Simpson

Metro's Illegal Dumping Program

Program Benefits (cont.)

- Metro uniquely provides this service for many jurisdictions & plays strong role in coordinating activities across the region
- Because cleanup crews can react quickly, new large dumps are prevented



SE Knapp & Mt. Scott Blvd.

Metro's Illegal Dumping Program

Accomplishments

- Cleaned up over 12,000 dumps in the region since 1993 – about 1,000/year
- Cleaned up 1,548 tons of waste since 1993
- \$369,000 in fines issued since 1994
- Program more efficient (Budget has decreased since 1994 from \$457,000 to \$335,000)



7750 N. Williams

Metro's Illegal Dumping Program

How program works

- Calls/web reports are prioritized and assigned to a work crew or to a local jurisdiction
 - Recycling Information Center: (503) 234-3000
 - Barb Leslie: (503) 797-1835
 - Web Address: www.metro-region.org

(click on “*report illegal dumping*” under the Garbage, recycling and waste prevention section and follow instructions.)

Metro's Illegal Dumping Program

- Crews dispatched, within 24 hours, to clean sites
- Evidence collected if available
- Investigation conducted on worst sites
- Citation and penalty issued when possible
- If contested, Hearings Officer will rule in Metro's own civil procedure
- Average 109 citations/year & about 10% are contested & \$33,000 in fines/year

Work Crew Rig



NE Killingsworth & Portland Highway





SE Clinton & 84th Place

NE 8th &
Lombard





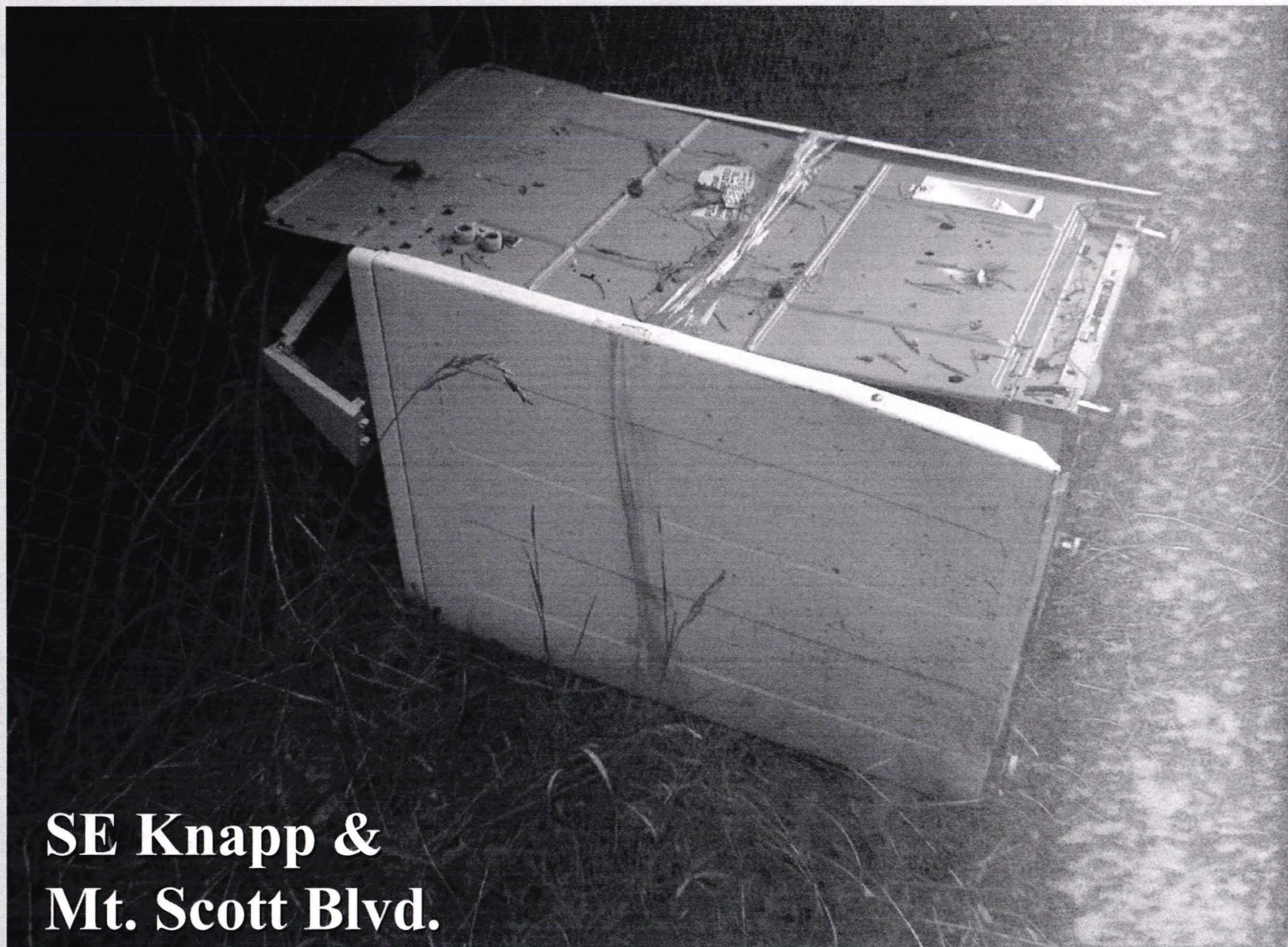
**SE 147th &
Tenino**

5949 NE Cully





938 N. Cook



**SE Knapp &
Mt. Scott Blvd.**

Private Property Investigations



10103 NE Marx

Private Property Investigations



11601 SW Teal,
Beaverton

Private Property Investigations



1300 NE 68th

Homeless Camp
Grand Avenue Bridge (near Metro)



Homeless Camp SE MLK & Morrison Bridge



← Before

After →



SOLV Clean Up: 11th & Columbia



SOLV Clean Up: 11th & Columbia



SOLV Clean Up: 11th & Columbia



SOLV Clean Up: 11th & Columbia



Metro's Illegal Dumping Program

Trends & Future

- Dumping is a persistent problem
- Frequency of dumps has remained constant but size of dumps are smaller
- Large dumps have been nearly eliminated
- Metro's quick cleanup response keeps protracted dumping from occurring
- Density has forced more dumping in farm & forest land outside Metro region

Metro's Illegal Dumping Program

Trends & Future

- Generally 2 types of dumpers
 - Criminal or socially irresponsible lifestyle and
 - Cultural difference or language barriers – where disposal options are not well-understood



**SW Kingston Drive &
SW Fairview**

Metro's Illegal Dumping Program

Trends & Future

- Collaborate with local governments, businesses, etc to solve protracted dumping problems
- Restrict dump investigations to most serious incidents (e.g. environmental damage, health & safety threats, repeat violators)
- Expand education/outreach to civic, ethnic & neighborhood associations
- Use of surveillance equipment and institutional barriers at chronic dumpsites

Metro's Illegal Dumping Program

Trends & Future

- Explore replacing inmate work crews with Metro crews (more access to the region, increased stability & more time in field)
- Explore replacing MCSO detectives with Metro investigators (more stability, less turnover, ability to pursue more complex waste system investigations)



SE Deardoff & 138th